

# **Customs (Prohibited Imports) Amendment Regulations 2004 (No. 3) 2004 No. 121**

## **EXPLANATORY STATEMENT**

### STATUTORY RULES 2004 NO. 121

Issued by the Authority of the Minister for Justice and Customs

*Customs Act 1901*

*Customs (Prohibited Imports) Amendment Regulations 2004 (No. 3)*

Subsection 270(1) of the *Customs Act 1901* (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 or for the conduct of any other business relating to the Customs.

Section 50 of the 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.

The *Customs (Prohibited Imports) Regulations 1956* (the Principal Regulations) control the importation of the goods specified in various regulations or schedules to regulations, by prohibiting importation absolutely, or making importation subject to the permission of a Minister or an authorised person.

The purpose of the amending Regulations is to remove the existing absolute prohibition on the importation of four breeds of dog so that they may be imported for certain scientific purposes.

Under regulation 3 and item 26 of Schedule 1 to the Principal Regulations, dogs of the following breeds cannot be imported into Australia:

- dogo Argentino;
- fila Brasileiro;
- Japanese tosa;
- American pit bull terrier or pit bull terrier.

The amending Regulations omit item 26 from Schedule 1 to the Principal Regulations and insert a new regulation 5L. Under new regulation 5L, the Minister for Agriculture, Fisheries and Forestry (the Minister) or an authorised officer is able to permit the importation of a dog of one of the above breeds only if it is to be imported for scientific purposes. Those scientific purposes are the same as set out in the Australian Code of Practice for the Care and Use of Animals for Scientific Purposes (the Code). In deciding whether to grant a permission, the Minister or authorised person has to take into account whether the place at which the dog is to be used conforms with the Code and whether an Animal Ethics Committee (established in accordance with the Code) has approved the scientific purpose.

Details of the amending Regulations are set out in the Attachment.

The amending Regulations commenced on gazettal.

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## **ATTACHMENT**

### **DETAILS OF THE CUSTOMS (*PROHIBITED IMPORTS*) AMENDMENT REGULATIONS 2004 (No. 3)**

#### **Regulation 1 - Name of Regulations**

Regulation 1 provides that the amending Regulations are the *Customs (Prohibited Imports) Amendment Regulations 2004 (No. 3)*.

#### **Regulation 2 - Commencement**

Regulation 2 provides that the amending Regulations commenced on gazettal.

#### **Regulation 3 - Amendment of *Customs (Prohibited Imports) Regulations 1956***

Regulation 3 provides that Schedule 1 amends the *Customs (Prohibited Imports) Regulations 1956* (the Principal Regulations).

#### **Schedule 1 Amendments**

##### **Item 1 - After regulation 5K**

Item 1 inserts regulation 5L into the Principal Regulations. New regulation 5L, prohibits the importation of dogs of any of the following breeds (defined as a dog of a dangerous breed):

- dogo Argentino;
- fila Brasileiro;
- Japanese tosa;
- American pit bull terrier or pit bull terrier;

unless the permission of the Minister for Agriculture, Fisheries and Forestry (the Minister) or an authorised person has been granted to import the dog and the permission is produced to a Collector (new subregulation 5L(3) refers).

New subregulation 5L(2) provides that the Minister is able to authorise an APS employee performing duties in the Minister's Department to give, or revoke, permission for a person to import a dog of a dangerous breed into Australia. In practice, only senior APS employees in the Minister's Department may be authorised.

A permission may only be given if the dog is being imported for scientific purposes (new subregulation 5L(4) refers). Scientific purposes has the same meaning as in the Australian Code of Practice for the Care and Use of Animals for Scientific Purposes (the Code). In accordance with section 49A of the *Acts Interpretation Act 1901*, the Code is the Code published by the National Health and Medical Research Council in 1997 as in force at the time the amending Regulations take effect.

Under the Code, scientific purposes is defined to mean "All those activities performed to acquire, develop or demonstrate knowledge or techniques in any scientific discipline, including activities for the purposes of teaching, field trials, environmental studies, research, diagnosis, product testing, and the production of biological products."

Under new subsection 5L(5), the Minister or an authorised person has to take into account the following when deciding whether to give a permission:

- whether the place at which the dog is to be used conforms with the Code; and
- whether an Animal Ethics Committee (established in accordance with the Code) has approved the scientific purpose.

A decision to refuse to give a permission is reviewable by the Administrative Appeals Tribunal (the AAT) (new paragraph 5L(8)(a) refers).

A permission for importation may include conditions or requirements to be complied with by the permission holder and set a time at or before which such conditions or requirements must be complied with (new subregulation 5L(6)). A decision to impose a condition or set a time is reviewable by the AAT (new paragraph 5L(8)(b) refers).

The Minister or an authorised person may revoke a permission if it is subject to a condition or requirement and the holder fails to comply with the condition or requirement (new subregulation 5L(7) refers). The permission may be revoked even if the holder is not charged with an offence of failing to comply with the condition or requirement. The decision to revoke a permission is reviewable by the AAT (new paragraph 5L(8)(c) refers).

### **Item 2 - Schedule 1, item 26**

Regulation 3 of the Principal Regulations prohibits absolutely the importation of those goods specified in Schedule 1 to the Principal Regulations. Item 26 of Schedule 1 specifies dogs of the following breeds:

- dogo Argentino;
- fila Brasileiro;
- Japanese tosa;
- American pit bull terrier or pit bull terrier.

Item 2 removes this absolute prohibition on the importation of dogs of those breeds by omitting item 26 from Schedule 1.