

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Law Enforcement and Cybersecurity

Customs (Prohibited Imports) Regulations 1956

*Customs (Prohibited Imports) (Importation of Hemp Seeds and Hemp Derived Products)
Approval 2018*

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.

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.

Subregulation 5(1) of the *Customs (Prohibited Imports Regulations) 1956* (PI Regulations), subject to specified approval or exemptions, provides that the importation into Australia of a drug is prohibited unless the specified requirements, such as that the importer holds a licence to import drugs granted by the Secretary of the Department of Health (the Secretary) or an authorised person, and a permission to import the drug granted by the Secretary or an authorised person, under this regulation.

The prohibition under subregulation 5(1) of the PI Regulations does not apply in relation to a drug in respect of which an approval is in force under subregulation 5(3) of these Regulations. Subregulation 5(3) of the PI Regulations provides that the Minister responsible for administering the Act (the Minister) may, on the recommendation of the Secretary, by notice published in the *Gazette*, approve the importation into Australia of a drug specified in, or included in a class of drugs specified in, the notice.

The *Customs (Prohibited Imports) (Importation of Hemp Seeds and Hemp Derived Products) Approval 2018* (Instrument of Approval) is made under the authority of subregulation 5(3) of the PI Regulations and approves the importation into Australia of drugs that are hemp seed and hemp plant derived products (fibre and food products) that contain very low concentrations of tetrahydrocannabinol (the psychoactive substance found in cannabis plants). Section 5 of the Instrument of Approval lists specified hemp seeds and products derived from hemp plants (including hemp seeds) that are approved for importation into Australia. These products are included in the Instrument of Approval on the recommendation of the Secretary in accordance with subregulation 5(3) of the PI Regulations.

The primary purpose of the Approval is to support the amendments made by the new *Food Standard (Proposal P1042 – Low THC Hemp Seeds as Food) Variation* (the P1042 Variation). The changes to the Food Standards Code came into effect on 12 November 2017 and permit the sale in Australia of hemp seeds and hemp seed products from low tetrahydrocannabinol varieties of Cannabis for human consumption.

The Minister's approval of the importation of the drugs specified in section 5 of the Instrument of Approval will allow these hemp products permitted for consumption as food under the new food standard to be imported into Australia which will support the growth of the domestic hemp-based industry.

The Instrument of Approval has the effect of allowing the drugs specified in section 5 of that Instrument to be imported into Australia without the need for importers to be granted a licence to import and a permit to import those drugs.

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

Consultation was not undertaken for the Instrument of Approval as this Instrument is consequential to the making of the new P1042 Variation. Food Standards Australia New Zealand undertook appropriate consultation, in accordance with the procedure in Division 2 of Part 3 of the *Food Standards Australia New Zealand Act 1991*, as part of the making of that Variation and details of that consultation is set out in the associated Explanatory Statement for the P1042 Variation.

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

The Instrument of Approval commences on the day after the Approval is registered in the Federal Register of Legislation.

Statement of Compatibility with Human Rights

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

Customs (Prohibited Imports) (Importation of Hemp Seeds and Hemp Derived Products) Approval 2018

This legislative instrument entitled the ‘Customs (Prohibited Imports) (Importation of Hemp Seeds and Hemp Derived Products) Approval 2018’ (the Instrument of Approval) 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 Disallowable Legislative Instrument

Subregulation 5(1) of the *Customs (Prohibited Imports Regulations) 1956* (PI Regulations), subject to specified approval or exemptions, provides that the importation into Australia of a drug is prohibited unless the specified requirements, such as that the importer holds a licence to import drugs granted by the Secretary of the Department of Health (the Secretary) or an authorised person, and a permission to import the drug granted by the Secretary or an authorised person, under this regulation.

This prohibition does not apply in relation to a drug in respect of which an approval is in force under subregulation 5(3) of the PI Regulations. Subregulation 5(3) of the PI Regulations provides that the Minister responsible for administering the *Custom Act 1901* (the Minister) may, on the recommendation of the Secretary, by notice published in the *Gazette*, approve the importation into Australia of a drug specified in, or included in a class of drugs specified in, the notice.

The Instrument of Approval is made under authority of subregulation 5(3) of the PI Regulations and approves the importation into Australia of drugs that are hemp seed and hemp plant derived products (fibre and food products) that contain very low concentrations of tetrahydrocannabinol (the psychoactive substance found in cannabis plants). Section 5 of the Instrument of Approval lists specified hemp seeds and products derived from hemp plants (including hemp seeds) that are approved for importation into Australia. These products were included in the Approval on the recommendation of the Secretary in accordance with subregulation 5(3) of the PI Regulations.

The primary purpose of the Approval is to support the amendments made by the new *Food Standard (Proposal P1042 – Low THC Hemp Seeds as Food) Variation*. These changes to the Food Standards Code came into effect on 12 November 2017 and permit the sale in Australia of hemp seeds and hemp seed products from low tetrahydrocannabinol varieties of Cannabis for human consumption.

The Minister’s approval of the importation of the drugs specified in section 5 of the Instrument of Approval will allow these hemp products permitted for consumption as food under the new food standard to be imported into Australia which will support the growth of the domestic hemp-based industry.

The Instrument of Approval has the effect of allowing the drugs specified in section 5 of that Instrument to be imported into Australia without the need for importers to be granted a licence to import and a permit to import those drugs.

Human rights implications

As noted, the effect of the notice is to approve the importation into Australia of the specified hemp seeds and other hemp plants derived products. There is no requirement for the importer for such products to be the holder of a licence and a permission. The Instrument of Approval does not engage any of the applicable rights or freedoms.

Conclusion

This Instrument of Approval is compatible with human rights as it does not raise any human rights issues.

The Hon. Angus Taylor MP
Minister for Law Enforcement and Cybersecurity