

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Assistant Minister for Customs, Community Safety and Multicultural Affairs and Parliamentary Secretary to the Minister for Home Affairs

Customs (Prohibited Imports) Regulations 1956

Customs (Prohibited Imports) (Kava) Approval 2019

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 legislative instrument, approve the importation into Australia of a drug that meets one or more of the following under subregulation 5(3):

- a) the drug is specified in, or included in a class of drugs specified in, the approval;
- b) the drug is imported in a form (including a concentration) specified in the approval;
- c) the drug is imported by a person, or class of persons, specified in the approval;
- d) the drug does not exceed a value or amount specified in the approval;
- e) the drug is imported in a way, or by a means, specified in the approval.

During a visit to Fiji on 11 October 2019, the Prime Minister announced a pilot program to ease the restrictions on the importation of kava for personal use by the end of 2019, to increase the quantity of kava that may be personally imported from 2kg to 4kg.

The *Customs (Prohibited Imports) (Kava) Approval 2019* (the Instrument of Approval) is made under the authority of subregulation 5(3) of the PI Regulations and approves the personal importation into Australia of kava that is in root or dried form, or in the form of a beverage obtained by aqueous suspension of kava root in cold water only, by persons over 18 who have arrived in Australia by ship or aircraft and have imported the kava in their accompanied personal effects. 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 Minister's approval of the importation of the types of kava, by the persons specified in section 5 of the Instrument of Approval will allow these kava products to be imported into Australia to facilitate the pilot program without the need for a person importing it to be granted a licence to import and a permit to import it.

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

The Department of Health conducted a public consultation process that commenced on 22 February 2019 and closed on 22 March 2019. The consultation process attracted 56 submissions, including eight from Pacific island governments. Although some individuals, peak bodies and government agencies raised concerns (in particular the Northern Territory Government), there was significant support for the introduction of an increase to the amount of kava that may be imported for personal use. Further information is available at: <https://www.odc.gov.au/consultation-pilot-program-ease-restrictions-importation-kava-personal-use>.

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 later of:

- (a) the start of the day after the Instrument is registered; and
- (b) the commencement of the *Customs Legislation Amendment (Prohibited Exports and Imports) Regulations 2019*, which inserted updated subregulation 5(3) in the PI Regulations.

Statement of Compatibility with Human Rights

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

Customs (Prohibited Imports) (Kava) Approval 2019

This legislative instrument entitled the ‘Customs (Prohibited Imports) (Kava) Approval 2019’ (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 *Customs Act 1901* (the Minister) may, on the recommendation of the Secretary, by legislative instrument, approve the importation into Australia of a drug that meets one or more of the following under subregulation 5(3):

- a) the drug is specified in, or included in a class of drugs specified in, the approval;
- b) the drug is imported in a form (including a concentration) specified in the approval;
- c) the drug is imported by a person, or class of persons, specified in the approval;
- d) the drug does not exceed a value or amount specified in the approval;
- e) the drug is imported in a way, or by a means, specified in the approval.

During his visit to Fiji on 11 October 2019, the Prime Minister announced a pilot program to ease the restrictions on the importation of kava for personal use by the end of 2019, to increase the quantity of kava that may be personally imported from 2kg to 4kg.

The Instrument of Approval is made under authority of subregulation 5(3) of the PI Regulations and approves the importation into Australia of kava that is in root or dried form, or in the form of a beverage obtained by aqueous suspension of kava root in cold water only, by persons over 18 who have arrived in Australia by ship or aircraft and have imported the kava in their accompanied personal effects. These products are included in this Instrument of Approval on the recommendation of the Secretary in accordance with subregulation 5(3) of the PI Regulations.

The Minister’s approval of the importation of the above types of kava, by the persons specified in section 5 of the Instrument of Approval, will allow these kava products to be

imported into Australia to facilitate the pilot program without the need for person importing it to be granted a licence to import and a permit to import it.

Human rights implications

As noted, the effect of this instrument is to approve the importation into Australia of the specified kava 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 may positively engage the right to enjoy and benefit from culture, contained in Article 15 of the *International Covenant on Economic, Social and Cultural Rights*, and Article 27 of the *International Covenant on Civil and Political Rights*, to the extent that it facilitates the increase of the quantity of kava that may be personally imported from 2kg to 4kg, particularly for cultural and ceremonial use. The Prime Minister in a media release on 11 October 2019 recognised the strong cultural and ceremonial significance of kava for Pacific communities.

Conclusion

This Instrument of Approval is compatible with human rights.

The Hon. Jason Wood MP
Assistant Minister for Customs, Community Safety and Multicultural Affairs
Parliamentary Secretary to the Minister for Home Affairs