



# **Customs (Prohibited Imports) Amendment (Commercial Importation of Kava as Food) Regulations 2021**

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 25 November 2021

David Hurley  
Governor-General

By His Excellency's Command

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

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## 1 Name

This instrument is the *Customs (Prohibited Imports) Amendment (Commercial Importation of Kava as Food) Regulations 2021*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 December 2021.	1 December 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Customs Act 1901*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Customs (Prohibited Imports) Regulations 1956*

#### **1 Subregulation 2(1)**

Insert:

*Australia New Zealand Food Standards Code* has the same meaning as in the *Food Standards Australia New Zealand Act 1991*.

#### **2 At the end of subregulation 5(2)**

Add:

; or (c) an importation that meets the requirements in paragraphs 5F(1)(a), (b) and (c).

#### **3 After regulation 5**

Insert:

#### **5F Importation of kava as food**

*Importation of kava food product without permission is prohibited*

- (1) The importation into Australia of a kava food product is prohibited unless:
  - (a) the person importing the kava food product is the holder of a permission to import the kava food product granted by the Secretary or an authorised person under this regulation; and
  - (b) the permission or a copy of the permission is produced to the Collector; and
  - (c) the importation is by means other than post.

*Permitted drug importations exempt from prohibition under this regulation*

- (2) Subregulation (1) does not apply to or in relation to:
  - (a) an importation that meets the requirements in paragraphs 5(1)(a), (b), (c) and (d); or
  - (b) a drug that is imported as mentioned in paragraph 5(2)(b) or subregulation 5(2A); or
  - (c) a drug in respect of the importation of which an approval is in force under subregulation 5(3).

*Application for permission*

- (3) An applicant for a permission to import a kava food product must:
  - (a) make the application on the form approved by the Secretary; and
  - (b) lodge the application with the Secretary or an authorised person; and
  - (c) give to the Secretary or authorised person any information that the Secretary or authorised person reasonably requires for the purpose of making a decision on the application.

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*Dealing with application for permission*

- (4) The Secretary or an authorised person must not grant to an applicant a permission to import a kava food product unless:
- (a) the applicant has given the Secretary or authorised person all the information required by the Secretary or authorised person under paragraph (3)(c); and
  - (b) the Secretary or authorised person is satisfied that the applicant is to import the kava food product for the purposes of selling it as part of the applicant's business; and
  - (c) the applicant is registered for GST; and
  - (d) the applicant has an ABN.
- (5) In considering whether to grant a permission, the Secretary or authorised person may consider any relevant matter.
- (6) A permission may specify:
- (a) conditions or requirements to be complied with by the holder of the permission; and
  - (b) when the holder must comply with a condition or requirement, whether before or after the importation of the kava food product to which the permission relates.

*Revocation of permission*

- (7) If:
- (a) a permission to import a kava food product specifies a condition or requirement to be complied with by the holder of the permission; and
  - (b) the holder of the permission fails to comply with the condition or requirement;

the Secretary or an authorised person may revoke the permission, whether or not the holder of the permission is charged with an offence against subsection 50(4) of the Act in respect of the failure to comply with the condition or requirement.

*Definitions*

- (8) In this regulation:

**ABN** has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

**authorised person** means an officer of the Department authorised in writing by the Secretary to be an authorised person for the purposes of this regulation.

**Department** means the Department administered by the Minister administering the *Therapeutic Goods Act 1989*.

**kava food product** means a food mentioned in section 2.6.3—3 of the Australia New Zealand Food Standards Code, as in force at the commencement of this regulation.

**registered for GST** means registered under the GST Act.

**Secretary** means the Secretary to the Department.

**4 Subregulation 5HA(1) (after paragraph (a) of the definition of *Initial decision*)**

Insert:

- (aa) of the Secretary, or an authorised person, under subregulation 5F(1), (6) or (7); or