

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2013 No. 41**

Issued by the Authority of the Minister for Home Affairs

*Customs Act 1901*

*Customs Legislation Amendment Regulation 2013 (No. 1)*

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.

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 PI Regulations) control the importation of specified goods for the purposes of the Act, by prohibiting importation absolutely, or by making importation subject to a permission or licence.

Regulation 5 of the PI Regulations sets out a regime controlling the importation into Australia of the narcotic and psychotropic drugs listed in Schedule 4 to the PI Regulations.

The Regulation adds a number of new substances, which are classified as controlled drugs or prohibited substances under the *Standard for Uniform Scheduling of Drugs and Poisons* (the Poisons Standard), to Schedule 4 to the PI Regulations. The new substances are listed in the Attachment.

The Department of Health and Ageing, through its Office of Chemical Safety, has identified that the substances listed in the Attachment are either:

- classified as controlled drugs or prohibited substances under the Poisons Standard, an instrument made under the *Therapeutic Goods Act 1989*; or
- controlled under the *Single Convention on Narcotic Drugs 1961*, the *Convention on Psychotropic Substances 1971* or the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988*.

The Regulation brings these substances into the Customs regime that applies to prohibited imports, which includes the substances list in Schedule 4, and enables Customs officers to seize such goods at the border without a warrant. These amendments would also support the Australian Government's National Drug Strategy and Australia's commitments as a signatory to the international drug names above.

The Regulation also makes five minor technical amendments to existing items contained in Schedule 4.

The Regulation also makes a minor technical amendment to the *Customs (Prohibited Exports) Regulations 1958*.

As the Regulation is machinery in nature, no consultation was undertaken in relation to the Regulation.

The Regulation commences on the day after registration on the Federal Register of Legislative Instruments.

## **Statement of Compatibility with Human Rights**

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

### ***Customs Legislation Amendment Regulation 2013 (No. 1)***

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### *Overview of the Regulation*

This Regulation amends the *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations) to update the list of controlled drugs contained in Schedule 4 to the Prohibited Imports Regulations. The Regulation will add a number of substances to Schedule 4 which are controlled under either:

- the Poisons Standard, an instrument made under the *Therapeutic Goods Act 1989*; or
- the *Single Convention on Narcotic Drugs 1961*, the *Convention on Psychotropic Substances 1971* and the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988*.

The Regulation commences on the day after it is registered.

#### *Human Rights implications*

This legislative instrument does not engage, impact on or limit in any way, the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### *Conclusion*

This legislative instrument does not raise any human rights issues.

**Minister for Home Affairs**

## **ATTACHMENT**

### **New substances to be added to Schedule 4**

- Anthranilic acid
- Butylone
- Compounds structurally derived from 3-(1-naphthoyl)indole or 1*H*-indol-3-yl-(1-naphthyl)methan by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not there is any further substitution in the indole ring or the naphthyl ring
- Compounds structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom or pyrrole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not there is any further substitution in the pyrrole ring or naphthyl ring
- Compounds structurally derived from 1-(1-naphthylmethyl)indene by substitution at the 3 position of the indene ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not there is any further substitution in the indene ring or naphthyl ring
- Compounds structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not there is any further substitution in the indole ring or phenyl ring
- Compounds structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl whether or not there is a further substitution in the cyclohexyl ring
- Dihydroetorphine
- 2,3-Dihydro-5-methyl-3-((4-morpholinyl)methyl)pyrrolo-(1,2,3-de)-1,4-benzoxazin-6-yl(1-naphthalenyl)methanone monomethanesulfonate (otherwise known as WIN-55,212-2)
- 2,5-dimethoxy-4-ethylphenethylamine (otherwise known as 2C-E)
- 2,5-dimethoxy-4-(n)-propylphenethylamine (otherwise known as 2C-P)
- 4-fluoro-N-methylamphetamine
- 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (otherwise known as AM-694)
- 2-[(1*R*,3*S*)-3-hydroxycyclohexyl]-5-(2-methylnonan-2-yl)phenol (otherwise known as CP 47, 497-C8)
- 2-[(1*R*,3*S*)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol (otherwise known as CP 47, 497)
- JWH-018 (otherwise known as 1-Pentyl-3-(1-naphthoyl)indole or AM-678)
- JWH-073 (otherwise known as 1-butyl-3-(1-naphthoyl)indole)
- JWH-122 (otherwise known as 1-Pentyl-3-(4-methyl-1-naphthoyl)indole)
- JWH-200 (otherwise known as 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole or WIN55, 225)
- JWH-250 (otherwise known as 1-pentyl-3-(2-methoxyphenylacetyl)indole)
- Levonantradol (otherwise known as CP 50, 5561)
- Methoxetamine
- 3,4-methylenedioxypyrovalerone (otherwise known as MDPV)

- Methylone
- Mitragynine
- Muscimol
- Naphyrone
- Parahexyl (otherwise known as 3-hexyl-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d)pyran-1-ol)
- N-phenethyl-4-piperidone (otherwise known as NPP)
- Salvinorin A
- Tapentadol
- 1-(3,4,5-trimethoxyphenyl)-2-aminobutane
- Ephedra sinica;
- Mitragyna speciosa;
- Salvia divinorum
- Alkoxyamphetamines
- Alkoxyphenylethylamines
- Alkylthioamphetamines
- Levomethorphan but not including dextromethorphan
- any of the genus *Lophophora*;