EXPLANATORY STATEMENT

SELECT LEGISLATIVE INSTRUMENT NO. 152, 2015

Issued by the Authority of the Minister for Immigration and Border Protection

Customs Act 1901

Customs Legislation Amendment (Drugs) Regulation 2015

The *Customs Act 1901* (the Act) relates to customs functions and provides, amongst other things, 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.

In particular, section 50 of the Act allows the Governor-General to make regulations which prohibit the importation of goods into Australia and section 112 of the Act allows the Governor-General to make regulations to prohibit the exportation of goods from Australia.

The purpose of the *Customs Legislation Amendment (Drugs) Regulation 2015* (proposed Regulation) is to amend the *Customs (Prohibited Exports) Regulations 1958* (PE Regulations) and the *Customs (Prohibited Imports) Regulations 1956* (PI Regulations) to support the Government's *National Drug Strategy* and Australia's commitment to the international drug conventions. The amendments will update the PE Regulations and PI Regulations to reflect the inclusion and update of drugs contained in the:

- *Standard for the Uniform Scheduling of Medicines and Poisons*;
- *Single Convention on Narcotic Drugs, 1961;*
- *Convention on Psychotropic Substances of 1971;* and
- *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988*

The schedules of drugs that can be found in the *Single Convention on Narcotic Drugs, 1961,* the *Convention on Psychotropic Substances of 1971* and the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* provide a list of drugs that are under international control. These schedules are generally arranged starting with drugs which require the most control to those requiring the least control.

Details of the Regulation are set out in the Attachment.

The Act does not specify any conditions that need to be met before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation will commence on the day after it is registered on the Federal Register of Legislative Instruments.

No formal consultation was undertaken in relation to the Regulation as it is minor or machinery in nature and does not substantially alter existing arrangements

OPC60743-A

Statement of Compatibility with Human Rights

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

Customs Legislation Amendment (Drugs) Regulation 2015

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

The purpose of the *Customs Legislation Amendment (Drugs) Regulation 2015* (proposed Regulation) is to amend the *Customs (Prohibited Exports) Regulations 1958* (PE Regulations) and the *Customs (Prohibited Imports) Regulations 1956* (PI Regulations) to support the Government's *National Drug Strategy* and Australia's commitment to the international drug conventions. The amendments will update the PE Regulations and PI Regulations to reflect the inclusion and update of drugs contained in the:

- *Standard for the Uniform Scheduling of Medicines and Poisons*;
- *Single Convention on Narcotic Drugs, 1961;*
- *Convention on Psychotropic Substances of 1971;* and
- *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988*

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Human Rights implications

The Regulation 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

The Regulation does not raise any human rights issues.

Minister for Immigration and Border Protection

Attachment

Details of the Customs Legislation Amendment (Drugs) Regulation 2015

Section 1 – Name

This section provides that the title of the Regulation is the *Customs Legislation Amendment (Drugs) Regulation 2015.*

Section 2 – Commencement

This section provides that the Regulation commences on the day after it is registered.

Section 3 – Authority

This section provides that the Regulation is made under the *Customs Act 1901.*

Section 4 – Schedules

This section provides that 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 Exports) Regulations 1958

Clause 1 – Subregulation 2(1) (definition of *poppy straw)*

This clause repeals the current definition of poppy straw and substitutes it so that poppy straw means any part (other than the seeds) of either of the following:

(a) a plant of the species *Papaver somniferum* (otherwise known as opium poppy);
(b) a plant of the species *Papaver bracteatum.*

The clause clarifies that the definition of poppy straw includes the species *Papaver bracteatum* as well as *Papaver somniferum*. Both species are subject to international controls.

Clause 2 – After regulation 14

This clause inserts a transitional provision and provides that the clause applies if immediately before the day the *Customs Legislation Amendment (Drugs) Regulation 2015* commenced:

- an application had been lodged with the Secretary under subregulation 10(3) for a permission to export the Schedule 8 drug known as 4-hydroxybutanoic acid (otherwise known as Gamma-hydroxybutyric acid, or GHB); and
- a decision about whether to grant the application had not been made.

It also provides that if the application was not accompanied by an authorisation from the appropriate government authority of the country to which the drug is to be exported then an additional 28 days will be provided for the applicant to lodge such an authorisation.

The clause also provides that Regulation 15 be repealed 29 days after the commencement day as it will no longer be required however the repeal will not affect the operation of proposed subregulations (1) and (2).

Clause 3 – Part 1 of Schedule 8 (after table item 3)

This clause inserts the drug known as 'Acetylmorphine' as item 3A of the table in Part 1 of Schedule 8. This drug has been added to Part 1 of Schedule 8 in order to meet Australia's international Treaty obligations as a result of it being added as a Schedule 1 drug within the *Single Convention on Narcotic Drugs, 1961* (1961 Convention).

Clause 4 – Part 1 of Schedule 1 (after table item 26)

This clause inserts the drug known as 'Codeine-N-oxide' as item 26A of the table in Part 1 of Schedule 8. This drug has been added to Part 1 of Schedule 8 in order to meet Australia's international Treaty obligations as a result of it being added as a Schedule 1 drug within the 1961 Convention.

Clause 5 – Part 1 of Schedule 8 (after table item 27)

This clause inserts 'Concentrate of poppy straw (the material arising when poppy straw has entered into a process for the concentration of its alkaloids)' as item 27A of the table in Part 1 of Schedule 8. This has been added to Part 1 of Schedule 8 in order to meet Australia's international Treaty obligations as a result of it being added as a Schedule 1 drug within the 1961 Convention.

Clause 6 – Part 1 of Schedule 8 (after table item 34)

This clause inserts the drug known as 'Dihydroetorphine' as item 34A of the table in Part 1 of Schedule 8. This drug has been added to Part 1 of Schedule 8 in order to meet Australia's international Treaty obligations as a result of it being added as a Schedule 1 drug within the 1961 Convention.

Clause 7 – Part 1 of Schedule 8 (after table item 61)

This clause inserts the drug known as 'Meprodine' as item 61A of the table in Part 1 of Schedule 8. This drug has been added to Part 1 of Schedule 8 in order to meet Australia's international Treaty obligations as a result of it being added as a Schedule 1 drug within the 1961 Convention.

Clause 8 – Part 1 of Schedule 8 (table item 74)

This item repeals table item 74 and replaces it with the drug known as 'Morphine'. As a concentrate of poppy straw will be listed as a Part 1 of Schedule 8 drug there is no need to include such a reference to poppy straw when referring to Morphine.

Clause 9 – Part 1 of Schedule 8 (after table item 88)

This clause inserts the drug known as 'Oripavine' as item 88A of the table in Part 1 of Schedule 8. This drug has been added to Part 1 of Schedule 8 in order to meet Australia's international Treaty obligations as a result of it being added as a Schedule 1 drug within the 1961 Convention.

Clause 10 – Part 1 of Schedule 8 (after table item 106)

This clause inserts the drug known as 'Prodine' as item 106A of the table in Part 1 of Schedule 8. This drug has been added to Part 1 of Schedule 8 in order to meet Australia's international Treaty obligations as a result of it being added as a Schedule 1 drug within the 1961 Convention.

Clause 11 – Part 1 of Schedule 8 (item 115)

This clause repeals table item 115 and substitutes it with 'Thebaine'. This amendment removes redundant parts of the description of Thebaine which will be captured by the definition of poppy straw.

Clause 12 – Part 2 of Schedule 8 (before table item 1)

This clause inserts the drug known as 'Amineptine' as item 1A of the table in Part 2 of Schedule 8. This drug has been added to Part 2 of Schedule 8 in order to meet Australia's international Treaty obligations as a result of it being added to Schedule II of the *Psychotropic Convention of 1971* (Psychotropic Convention).

Clause 13 – Part 2 of Schedule 8 (after table item 13)

This clause inserts the drug known as 'Gamma-hydroxybutyric acid (otherwise known as GHB)' as item 13A of the table in Part 2 of Schedule 8. This drug was previously found in table item 15A of Part 3 of Schedule 8 however as a result of rescheduling by the Commission on Narcotic Drugs the drug has moved from Schedule IV to Schedule II of the Psychotropic Convention. This rescheduling means that additional controls are needed for this drug which is why there was a need to move the drug from Part 3 of Schedule 8 to Part 2. The effect of which is that an additional authorisation is required under subregulation 10(3)(d) of the PE Regulation before permission can be granted to export this drug.

Clause 14 – Part 2 of Schedule 8 (after table item 28)

This clause inserts the drug known as 'Parahexyl (otherwise known as 3-hexyl-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d)pyran-1-ol)' as item 28A of the table in Part 2 of Schedule 8. This drug has been added to Part 2 of Schedule 8 in order to meet Australia's international Treaty obligations as a result of it being added to Schedule II of the Psychotropic Convention.

Clause 15 – Part 3 of Schedule 8 (before table item 1)

This clause inserts the drug described as 'Alpha-phenylacetoacetonitrile (otherwise known as APAAN)' as item 1A of the table in Part 3 of Schedule 8. This drug has been added to Part 3 of Schedule 8 in order to meet Australia's international Treaty obligations as a result of it being added to Table 1 of the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1998* (1998 Convention).

Clause 16 – Part 3 of Schedule 8 (table item 15A)

This clause repeals item 15A and substitutes it with the drug described as 'Ketamine'.

Import controls on Ketamine were introduced in 2002 due to concerns about its use and this clause introduces a corresponding export control.

Clause 17 – Part 3 of Schedule 8 (table item 23)

This clause repeals item 23and inserts 'Pipradrol' so as to correct a typographical error.

Customs (Prohibited Imports) Regulation 1956

Clause 18 – Subregulation 2(1) (definition of poppy straw)

This clause repeals the current definition of poppy straw and substitutes it so that poppy straw means any part (other than the seeds) of either of the following:

(c) a plant of the species *Papaver somniferum* (otherwise known as opium poppy);
(d) a plant of the species *Papaver bracteatum.*

The clause clarifies that the definition of poppy straw includes the species *Papaver bracteatum* as well as *Papaver somniferum*. Both species are subject to international controls.

Clause 19 – Schedule 4 (after table item 11)

This clause inserts the drug known as 'Alpha-phenylacetoacetonitrile (otherwise known as APAAN)' as item 11A of the table in Schedule 4. This drug has been added to Schedule 4 in order to meet Australia's international Treaty obligations as a result of it being added in Table 1 of the 1998 Convention.

Clause 20 – Schedule 4 (table item 16)

This clause repeals and replaces item 16 to correct a typographical error.

Clause 21 – Schedule 4 (after table item 49E)

This clause inserts the drug described as 'Concentrate of poppy straw (the material arising when poppy straw has entered into a process for the concentration of its alkaloids)' as item 49Fof the table in Schedule 4. This drug has been added to

Schedule 4 in order to meet Australia's international Treaty obligations as a result of it being added in Schedule 1 of the 1961 Convention.

Clause 22 – Schedule 4 (after table item 56)

This clause inserts the drug described as '3,4-dichloro-N-{[1-(dimethylamino)cyclohexyl1]methyl}benzamide (otherwise known as AH-7921)' as item 56A of the table in Schedule 4. This is to ensure that there is consistency in the PI Regs and the *Standard for the Uniform Scheduling of Medicines and Poisons* (SUSMP).

Clause 23 – Schedule 4 (after table item 120)

This clause inserts the drug known as 'Lisdexamfetamine' as item 120A of the table in Schedule 4. This is to ensure that there is consistency in the PI Regs and the SUSMP.

Clause 24 – Schedule 4 (after table item 137)

This clause inserts the drug known as 'Methamphetamine' as item 137A of the table in Schedule 4.

The terms Methamphetamine and Methylamphetamine (the latter already listed in Schedule 4) are often used synonymously and the amendment clarifies that the drug, described by either term, is a prohibited import.

Clause 25 – Schedule 4 (table item 204, column headed "Description of drugs", after paragraph (a))

This clause inserts the species of plant described as 'Catha edulis (otherwise known as khat)' within table item 204 of Schedule 4.

While the active components of khat (cathine and cathinone) are already listed as prohibited imports in Schedule 4, the addition of the commonly known plant names adds clarity.