**Explanatory Statement**

Issued by Authority of the Minister for Agriculture, Drought and Emergency Management

*Export Control (Orders) Regulations 1982*

*Export Control Legislation Amendment (Certification of Narcotic Exports) Order 2020*

**Legislative Authority**

The *Export Control Act 1982* (the Act) regulates the export of goods as defined by the Act. This includes a range of agricultural commodities, such as an animal or a plant, or part of an animal or a plant.

Recent amendments to the Act, made by the *Export Control Legislation Amendment (Certification of Narcotic Exports) Act 2020* (the Certification of Narcotic Exports Act) included ‘*narcotic goods* within the meaning of the *Customs Act 1901*’ in the definition of *goods*. These amendments ensure that narcotic goods can receive government certification, which may be required to accompany consignments of exports in order to satisfy importing country requirements. The provisions for issue of government certification for goods under the Act are contained in relevant Export Control Orders, including the *Export Control (Prescribed Goods — General) Order 2005* (the General Order).

Subsection 25(1) of the Act relevantly provides that the Governor General may make regulations not inconsistent with the Act prescribing matters required or permitted by the Act to be prescribed; or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Regulation 3 of the *Export Control (Orders) Regulations 1982* (the Orders Regulations) provides that the Minister may, by instrument in writing, make orders, not inconsistent with regulations made under the Act, with respect to any matter for or in relation to which provision may be made by regulations made under the Act.

**Purpose**

The *Export Control Legislation Amendment (Certification of Narcotic Exports) Order 2020* (the Certification of Narcotics Order) is consequential to the amendments to the Act by theCertification of Narcotic Exports Act*.* Those amendments to the Act have the effect that goods that are *narcotic goods* under the *Customs Act 1901* are also *goods* for the purpose of the Act. The Certification of Narcotics Order will ensure that government certificates that attest to certain attributes, can be issued where required in respect of consignments of narcotic goods that are lawfully exported in accordance with other legislation.

In addition, the amendments made by the Certification of Narcotics Order to the General Order and the *Export Control (Plants and Plant Products) Order 2011* (the Plant Order) will ensure that there are no unintended consequences flowing from the extension of the definition of *goods* to include narcotic goods. It is not intended that other regulatory controls provided by other legislation in relation to narcotic goods, including, for example, the *Customs (Prohibited Exports) Regulations 1958* and *Narcotic Drugs Act 1967* should be displaced.

**Background**

Goods, the export of which is regulated by the Act, include a range of agricultural commodities, such as animals, plants, or parts of an animal or a plant. Previously, ‘*narcotic goods* within the meaning of the *Customs Act 1901’* were excluded from the definition of *goods* under the Act.

Amendments to the Act made by the Certification of Narcotic Exports Act had the effect of including goods that are *narcotic goods* under the *Customs Act 1901* in the definition of *goods* for the purpose of the Act.

Provisions for the issue of government certificates for goods under the Act are contained in relevant Export Control Orders, including, for example, the General Order, the Plant Order and the *Export Control (Organic Produce Certification) Orders*.

The amendments in the Certification of Narcotics Order are consequential to the amendments made by the Certification of Narcotic Exports Actand support legitimate exports of narcotic goods, including, for example, medicinal cannabis and low-tetrahydrocannabinol (THC) hemp products, which require government certification in order to meet the import requirements of some overseas countries. They will also allow for narcotic goods that are exported as organic produce to be certified as meeting relevant internationally recognised standards.

Amendments in the Certification of Narcotics Order support removal of unnecessary and unintended regulatory barriers imposed on Australia’s exports, by supporting the ability to provide government certification for those exports. This will facilitate trade and the growth of Australia’s legitimate export markets for low-THC hemp, medicinal cannabis industries, as well as other legitimate narcotic goods exports. It will remove discrepancies in the treatment of narcotic goods with other agricultural goods under the Act that bear similar risks to Australia’s trade reputation and market access.

These changes will ensure that Australia can meet its obligations under international agreements, including, for example, obligations under the International Plant Protection Convention by providing a legislative basis for regulating the appropriate issue of phytosanitary (plant health) certificates.

**Impact and Effect**

The amendments in the Certification of Narcotics Order will not change other regulatory controls provided by other legislation in relation to narcotic goods but will facilitate the export of legitimate narcotic goods and the growth of these export industries.

**Consultation**

The *Legislation Act 2003* requires the rule-maker, in this instance the Minister for Agriculture, Drought and Emergency Management, to be satisfied that any consultation the rule-maker considers appropriate and reasonably practicable has been undertaken (subsection 17(1)).

Officers of the Department of Agriculture, Water and the Environment have consulted colleagues in the Department of Home Affairs and the Office of Drug Control in the Department of Health, and the Department of Industry, Science, Energy and Resources, about the need to make legislative changes and amendments to the legislative framework, to enable government certificates to be issued in respect of narcotic goods for export through round-table discussions and formal letters of endorsement.

**Regulatory Impact Statement**

The Office of Best Practice Regulation (OBPR) was consulted on the regulatory impact of the Certification of Narcotics Order. OBPR advised that, as the amendments to be introduced are minor in nature and will not impose additional regulation on industry, no regulatory impact statement is required. The OPBR reference number for this advice is 42472.

**Statement of Compatibility with Human Rights**

The Certification of Narcotics Order is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The full statement of compatibility with human rights is set out in Attachment B.

**Details**

Details of the Order are set out in Attachment A.

**Attachment A**

**Details of the *Export Control Legislation Amendment (Certification of Narcotic Exports) Order 2020***

**Part 1 - Preliminary**

Section 1 – Name

This section provides that the name of the instrument is the *Export Control Legislation Amendment (Certification of Narcotic Exports) Order 2020* (the Certification of Narcotic Exports Order).

Section 2 – Commencement

This section provides for the Certification of Narcotics Order to commence immediately after the *Export Control Legislation Amendment (Certification of Narcotic Exports) Act 2020* commences.

Section 3 – Authority

This section provides that the Certification of Narcotics Order is made under the *Export Control (Orders) Regulations 1982*.

Section 4 – Schedules

This section refers to the Schedules in the Certification of Narcotics Order, which contains amendments to the *Export Control (Prescribed Goods—General) Order 2005* and the *Export Control (Plants and Plant Products) Order 2011*. The effect of section 4 is that these instruments are amended or repealed as set out in the applicable items in Schedule 1 below.

**Schedule 1 – Amendments**

***Export Control (Plants and Plant Products) Order 2011***

Item 1 – Paragraph 3(e)

This item amends paragraph 3(e) of the *Export Control (Plants and Plant Products) Order 2011* to exclude *narcotic goods* from the group of plants or plant products declared to be *prescribed goods* for the purposes of section 3 of the *Export Control Act 1982* (the Act).

Section 3 of the Act defines *prescribed goods* as

*goods, or goods included in a class of goods, that are declared by the regulations to be prescribed goods for the purposes of this Act.*

Paragraph 3(e) of the *Export Control (Plants and Plant Products) Order 2011* declares plants or plant products for which a phytosanitary certificate or any other official certificate is required by an importing country authority to be *prescribed goods* for that definition.

This amendment excludes plants or plant products that are *narcotic goods* under the *Customs Act 1901* from being prescribed goods under section 3(e) of the *Export Control (Plants and Plant Products) Order 2011*.

This ensures that the amendments made by the *Export Control Legislation Amendment (Certification of Narcotic Exports) Act 2020* to the definition of *goods* in the Act*,* which means that *narcotic goods* are *goods* under the Act, will not result in unintended consequences flowing from the operation of the *Export Control (Plants and Plant Products) Order 2011*.

It is not intended that regulatory controls provided by other legislation in relation to narcotic goods, including, for example, the *Customs (Prohibited Exports) Regulations 1958* and *Narcotic Drugs Act 1967*,should be affected by the operation of the *Export Control (Plants and Plant Products) Order 2011* following amendments made to the definition of *goods* in the Act by the *Export Control Legislation Amendment (Certification of Narcotic Exports) Act 2020*.

Item 2 – Section 5

This amendment inserts a definition of *narcotic goods* into section 5 of the *Export Control (Plants and Plant Products) Order 2011*, which contains definitions of terms used in that Order. For the purpose of the *Export Control (Plants and Plant Products) Order 2011* the term *narcotic goods* will have the same meaning as it has in the *Customs Act 1901.*

***Export Control (Prescribed Goods—General) Order 2005***

Item 3 – Subsection 1.05(1)

This amendment inserts a definition of *narcotic goods* into section 1.05 of the *Export Control (Prescribed Goods—General) Order 2005*, which contains definitions of terms used in that Order. For the purpose of the *Export Control (Prescribed Goods—General) Order 2005* the term *narcotic goods* will have the same meaning as it has in the *Customs Act 1901*.

Item 4 - Paragraph 1.07(1)(b)

This amendment ensures that the term *pharmaceutical material* in section 1.07(b) of the *Export Control (Prescribed Goods—General) Order 2005* does not include narcotic goods.

Section 1.07 declares animal food and pharmaceutical material to be prescribed goods for the purpose of section 3 of the Act. The amendment is to make it clear that narcotic goods, as defined in section 1.05, are not pharmaceutical material for the purpose of the *Export Control (Prescribed Goods—General) Order 2005* and are therefore not declared to be prescribed goods by the operation of section 1.07.

Item 5 - Subsection 2.01(4)

This amendment inserts the words ‘(other than Part 8)’ into subsection 2.01(4) after the words ‘Neither this Order’ to ensure that the power to issue government certificates is not unnecessarily restricted.

Section 2.01(4) has the effect that the Export Control Orders do not apply to prescribed goods in certain circumstances; for example, when they are exported in a consignment of no more than 10 litres for liquids or 10 kilograms for goods of any other kind.

Part 8 of the *Export Control (Prescribed Goods—General) Order 2005* deals with the power to issue government certificates for prescribed goods and for goods other than prescribed goods. The purpose of the amendment is to exempt Part 8 from the operation of subsection 2.01(4) to clarify the application of Part 8 to prescribed goods and the power to issue government certificates in relation to prescribed goods. For example, the amendment will make it clear that in certain circumstances a government certificate can be issued for small consignments of prescribed goods where such certification is needed to accompany a consignment to satisfy the import requirements of an overseas country.

The amendment clarifies that government certificates can be issued for prescribed goods in a wide range of circumstances when a government certificate is necessary.

Item 6 - Paragraph 8.04(1)(a)

Section 8.04 applies restrictions on the power to issue government certificates for prescribed goods unless consignments of prescribed goods have met other regulatory requirements for export, including an export permit.

This purpose of this amendment is to extend the power under section 8.03 of the *Export Control (Prescribed Goods—General) Order 2005* to issue government certificates in respect of consignments of prescribed goods for export.

This item repeals and substitutes paragraph 8.04(1)(a). The repealed provision limited the power to issue government certificates for prescribed goods if an export permit had not been issued for them under the Act. Since narcotic goods must meet strict regulatory requirements for lawful export, imposed under other legislation, a requirement for an export permit in accordance with an Export Control Order would impose unnecessary additional regulatory requirements.

New paragraph 8.04(1)(a) will provide that government certificates must not be issued for prescribed goods if an export permit is required under an export control order to export the goods and the permit has not been issued. This means that the new paragraph will not unnecessarily restrict the issuing of government certificates for prescribed goods if no such export permit is required for the prescribed goods under an Export Control Order.

This will apply, for example, to narcotic goods that are to be exported as organic produce, since they will be prescribed goods for the purpose of the *Export Control (Organic Produce Certification) Orders*, which imposes certification requirements to ensure internationally recognised standards for organic produce are met by Australian exports but does not require an export permit to be issued.

**Attachment B**

**Statement of Compatibility with Human Rights**

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

***Export Control Legislation Amendment (Certification of Narcotic Exports) Order 2020***

This Legislative Instrument is compatible with the 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 Legislative Instrument**

The amendments in this Legislative Instrument to the *Export Control (Prescribed Goods — General) Order 2005* and the *Export Control (Plants and Plant Products) Order 2011* will ensure that government certificates can be issued in respect of consignments of narcotic goods that are lawfully exported in accordance with other legislation, where importing country requirements or internationally recognised standards require such certificates.

**Human rights implications**

Article 6(1) of the ICESCR protects the right of everyone to the opportunity to gain their living by work that they freely choose or accept. The United Nations Committee on Economic, Social and Cultural Rights (the UNCESCR) has stated that the right to work also encompasses the right not to be unjustly deprived of work. This right may be subject only to such limitations ‘as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society’.

This Legislative Instrument promotes the right to work, and aims to address any unintended or unjust deprivation of work, because it enables Australian businesses to meet the importing country requirements necessary to export their goods. Many importing countries require certification from the Australian Government that goods meet specified requirements. This Legislative Instrument is part of a regulatory framework to enable the Government to provide such certification and enable export of Australian goods and participation of more Australian businesses in the export supply chain.

This Legislative Instrument therefore promotes the right to work by enabling the export of goods to emerging overseas markets. It promotes economic growth for Australian exporters, increasing the number and variety of employment opportunities in the Australian labour market. It enables a greater number of people to participate in the export supply chain, including in the production and preparation of goods for export, particularly in regional areas, where opportunities are more limited compared to non-regional areas.

**Summary**

This Legislative Instrument is compatible with the right to work in Article 6(1) of the ICESCR because it promotes that right. The Legislative Instrument raises no other human rights issues.

**Conclusion**

The Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* as it promotes the right to work in Article 6(1) of the ICESCR and does not limit any human rights.

**The Hon. David Littleproud MP**

**Minister for Agriculture, Drought and Emergency Management**