

## **SUPPLEMENTARY EXPLANATORY STATEMENT**

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

*Customs Act 1901*

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

### **Purpose of the supplementary explanatory statement**

This supplementary explanatory statement amends the initial statement (the explanatory statement) to the *Customs (Prohibited Imports) Amendment (Commercial Importation of Kava as Food) Regulations 2021* (the Regulations), following correspondence with the Senate Standing Committee for the Scrutiny of Delegated Legislation. It provides further information on the scope of persons authorised under 5F(8) to the Regulations.

### **Delegation of administrative powers and functions**

*After the paragraph starting with 'This level of authorisation' in Attachment A to the explanatory statement, include the paragraphs below:*

#### **Persons authorised by the Department of Health**

Officers of the Department of Health authorised as 'authorised persons' for the purpose of subregulation 5F(8) to the Regulations are APS employees at the Executive Level 1 (EL1) and above within the Office of Drug Control. Authorising EL1 officers and above for the purpose of administering the permission scheme under regulation 5F is consistent with existing authorisations for the importation of prohibited drugs under regulation 5 of the Regulations.

It was not considered appropriate to authorise persons only at the Senior Executive Service (SES) or equivalent level as the limited number and availability of SES employees would impact resourcing and the Department's ability to consider applications in a timely manner. This in turn could be of detriment to an applicant's business. Authorising EL1 officers and above serves to ensure a sufficient number of suitably experienced APS employees with the appropriate technical expertise are available to consider the volume of applications that are anticipated to be received.

It is noted that in practice, for the first two years in which the scheme is in force, import permissions will generally be granted by authorised persons at the Executive Level 2 (EL2), with EL1 officers granting permissions if an EL2 officer is not available.

#### **Reviewable decisions by authorised persons**

Initial decisions made by authorised persons in relation to an application for permission to import kava food products may be subject to internal review under subregulation 5HA(1) to the Regulations. Subsequent merits review of a decision may be sought in the Administrative Appeals Tribunal on reconsideration.