

2019–2020

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**EXPORT CONTROL LEGISLATION AMENDMENT
(CERTIFICATION OF NARCOTIC EXPORTS) BILL 2020**

EXPLANATORY MEMORANDUM

(Circulated by authority of
the Minister for Agriculture, Drought and Emergency Management,
the Hon. David Littleproud MP)

EXPORT CONTROL LEGISLATION AMENDMENT (CERTIFICATION OF NARCOTIC EXPORTS) BILL 2020

GENERAL OUTLINE

The Export Control Legislation Amendment (Certification of Narcotic Exports) Bill 2020 (the Bill) will facilitate the legitimate export of consignments comprising narcotics under the *Export Control Act 1982* and the *Export Control Act 2020* (the Export Control Acts).

The Bill will make amendments to the:

- *Export Control Act 1982*, which provides controls on the export of goods; and
- *Export Control Act 2020*, which was given Royal Assent on 6 March 2020 and will replace the *Export Control Act 1982* when its substantive provisions commence at a time fixed by proclamation or on 28 March 2021.

The Export Control Acts regulate the export of goods, as defined by these Acts. This includes a range of agricultural commodities, such as an animal or a plant, or part of an animal or a plant. Under the Export Control Acts, ‘narcotic goods within the meaning of the *Customs Act 1901*’ (narcotic goods), are not included in the definition of goods. As a result, narcotic goods cannot receive government certification, which may be required to accompany consignments of exports in order to satisfy importing country requirements. The provisions to issue government certification for goods under the *Export Control Act 1982* are contained in relevant Export Control Orders. The *Export Control Act 2020* contains provisions to issue government certificates for goods, and Rules can be made for, and in relation to, government certificates under that Act.

The Bill will amend the definition of goods as defined by the Export Control Acts to include narcotic goods. The amendments will support legitimate exports of narcotic goods, including, for example, medicinal cannabis and low-tetrahydrocannabinol (THC) hemp products, which requires government certification for the import requirements of some overseas countries to be met.

The amendments will remove unnecessary and unintended regulatory barriers imposed on Australia’s 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 Export Control Acts that bear similar risks to Australia’s trade reputation and market access. The amendments ensure that Australia can meet its obligations under international agreements, including, for example, obligations under the International Plant Protection Convention.

The Bill will not change other regulatory controls provided by other legislation in relation to narcotic goods, including, for example, the *Customs (Prohibited Exports) Regulation 1958* and *Narcotic Drugs Act 1967*.

FINANCIAL IMPACT STATEMENT

The Bill will have no financial impact on the Australian Government Budget.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The Bill 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 and does not limit any human rights issues.

The full statement of compatibility with human rights for each amending Bill is included in this explanatory memorandum.

NOTES ON CLAUSES

Export Control Legislation Amendment (Certification of Narcotic Exports) Bill 2020

Clause 1 Short title

This clause will provide that the Export Control Legislation Amendment (Certification of Narcotic Exports) Bill 2020 (the Bill), when enacted, may be cited as the *Export Control Legislation Amendment (Certification of Narcotic Exports) Act 2020*.

Clause 2 Commencement

This clause will provide for the commencement of the whole of the Bill on the day after the Bill receives the Royal Assent.

Clause 3 Schedules

This clause will provide that legislation specified in a Schedule to the Bill will be amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to the Bill will have effect according to the terms of the Bill. This is a technical provision to give operational effect to the amendments contained in the Schedules.

Schedule 1—Amendments

Export Control Act 1982

Item 1 – Section 3 (definition of *goods*)

Item 1 will repeal the definition of ‘goods’ and insert a new definition. The new definition removes the limit on the meaning of goods that excludes ‘narcotic goods within the meaning of the *Customs Act 1901*’. This will enable ‘narcotic goods within the meaning of the *Customs Act 1901*’ to be goods under the Act.

Export Control Act 2020

Item 2 – Section 12 (paragraph (d) of the definition of *goods*)

Item 2 will make a consequential amendment to the definition of goods, to ensure it is grammatically correct, following the amendment in Item 3.

Item 3 – Section 12 (definition of *goods*)

Item 3 will amend the definition of goods by removing the reference ‘but does not include narcotic goods within the meaning of the *Customs Act 1901*.’ This will enable ‘narcotic goods’ to be dealt with in the same way as the *Export Control Act 1982* when the substantive provisions of the *Export Control Act 2020* commence. This will enable ‘narcotic goods within the meaning of the *Customs Act 1901*’ to be goods under the Act.

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) Bill 2020

The Export Control Legislation Amendment (Certification of Narcotic Exports) Bill 2020 (the Bill) is compatible with the human rights and freedoms recognised or declared by the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Bill will amend the definition of goods under the *Export Control Act 1982* and the *Export Control Act 2020*. These amendments will remove the exclusion of narcotic goods within the meaning of the *Customs Act 1901*. It will enable narcotic goods to be regulated under the *Export Control Act 1982* and the *Export Control Act 2020*, which already covers other agricultural commodities.

Human rights implications

The Bill has the potential to engage Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (the ICESCR) – the right to work.

Assessment of compatibility with human rights

Article 6(1) of the ICESCR protects the right of everyone to the opportunity to gain the person's living by work that he or she freely chooses or accepts. 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'.

The Bill promotes the right to 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 those countries' requirements. Without such certification, importing countries will not allow goods to be imported. The Bill will change the definition of goods to enable the Government to provide the certifications necessary to assure importing countries that their requirements have been met.

The Bill will enable more Australian businesses to participate in the export supply chain.

The Bill therefore promotes the right to work by enabling the export of goods to emerging overseas markets. The Bill 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

The Bill is compatible with the right to work in Article 6(1) of the ICESCR because it promotes that right.

Conclusion

The Bill 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 and does not limit any human rights issues.

(Circulated by authority of
the Minister for Agriculture, Drought and Emergency Management,
the Hon. David Littleproud MP)