



Australian Government
Department of Home Affairs



Department of Home Affairs submission to the Inquiry into the Legalising Cannabis Bill 2023

Senate Legal and Constitutional Affairs Legislation
Committee

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Introduction

The Department of Home Affairs (Department) and the Australian Border Force (ABF) work together with the trust of our partners and community to keep Australia safe and secure, and support a cohesive and united Australia open for global engagement.

The ABF is Australia's frontline border law enforcement agency and customs service. As an operationally independent body within the department, the ABF delivers operational activities across the border continuum. As Australia's customs service, the ABF works to enhance economic growth through streamlined trade and traveller processes, while targeting trade enforcement activities to protect government revenue and ensuring compliance with Australia's customs laws.

The Department welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee (Committee) Inquiry into the Legalising Cannabis Bill 2023 (Bill).

The regulatory framework

The Department is responsible for the targeting, detection, seizure, storage, and related enforcement activity for prohibited and restricted goods that are being imported and exported, while facilitating the movement of legitimate trade and travel. It works closely with internal stakeholders and external entities nationally and internationally to share knowledge, information, and expertise, in order to protect the Australian community by detecting, deterring, and disrupting the trade of illicit drugs through coordinated intelligence and law enforcement action.

The Department administers Australia's framework of import and export controls for prohibited goods. Australia prohibits a broad range of goods from import or export that pose health or safety risks to the Australian community or environment from entering or leaving the country. Commonwealth policy agencies initiate import and export prohibitions to give effect to Australia's international obligations, such as international conventions on drugs, or in response to public safety concerns, such as firearms.

The policy agency for the control of drugs is the Department of Health and Aged Care. This includes ensuring compliance with the following conventions that Australia is a signatory to the:

- *Single Convention on Narcotic Drugs 1961*, as amended by the 1972 Protocol;
- *Convention on Psychotropic Substances of 1971*; and the
- *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychoactive Substances 1988*.

Prohibited goods are controlled at the border upon import and export under Commonwealth legislation, including the *Customs Act 1901* (Customs Act), the *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations) and the *Customs (Prohibited Exports) Regulations 1958* (Prohibited Exports Regulations).

Border controlled goods specified in the Prohibited Imports Regulations and the Prohibited Exports Regulations fall into two categories: the first are goods that are prohibited absolutely; the second are restricted goods, which are prohibited unless written permission or a licence has been granted and used in accordance with any specified conditions or requirements or there is an exemption or exception.

The Customs Act defines 'border controlled drug', 'border controlled plant,' 'narcotic goods' and 'narcotic-related goods' (section 4).

Cannabis is controlled under the Prohibited Imports Regulations (regulation 5 and schedule 4) and the Prohibited Exports Regulations (regulations 10 and 10A and schedule 8).

Cannabis is a 'border controlled drug' and 'border controlled plant' under the *Criminal Code Act 1995* (part 9.1) and the *Criminal Code Regulations 2019* (regulation 14).

The responsible agency for biosecurity efforts is the Department of Agriculture, Forestry and Fisheries. This includes the *Export Control Act 2020* (Export Control Act), which regulates the export of goods, including agricultural products and food, from Australian territory, amongst other things.

Considerations

In order to be effective, a border control on the importation of any good or class of goods into Australia should be practically actionable at the border. Additionally, the ABF must be able to accurately identify the goods subject to the control.

The ABF conducts physical interventions on consignments of goods at the border to confirm the nature of the goods and inform any decision to seize, detain or lawfully release the goods in line with legislative, policy and operational obligations and factors. Physical intervention relies on ABF officers screening, inspecting or testing the goods to positively identify their contents and characteristics. This is a time and resource-intensive activity. ABF officers do not assess the intended use of particular goods at the border.

In assisting them to perform their role, ABF officers use intelligence, data and border screening to identify goods that may be at risk of breaching an Australian import or export prohibition. Where a suspected prohibited good is identified at the border, ABF officers may apply a range of treatments as outlined above.

Where an ABF officer suspects on reasonable grounds that a good is in breach of an import or export prohibition, the ABF may seize the offending goods. As cannabis is a narcotic good, once the ABF seizes it, the narcotic goods must be delivered to a member of the Australian Federal Police (AFP), as soon as practicable (section 204(4) of the Customs Act). The AFP is responsible for issuing a seizure notice and taking any further action in respect of the goods.

The ABF has detected non-legal cannabis on average 16,897 times per financial year since 2018-19, the majority of these detections have been in the international mail environment.

Concerns arising from the proposed Bill

The Department has three significant concerns with the Bill:

1. The specific interaction with other laws (section 6). It appears that this bill would over-ride customs laws, and other related Commonwealth laws, e.g. Criminal Code laws and the Export Control Act.
2. The 'regulated cannabis activities' (section 10) relating to the import and export of a cannabis product. As detailed earlier, there are established regulatory regimes for the import and export of cannabis. It is also unclear how ABF officers would determine if the proposed imported/exported cannabis is licenced or registered.
3. The offence provisions for the import and export of a cannabis product (sections 16 and 17). There are existing offence provisions in other Commonwealth laws.

Further detailed consideration should be given to the interaction of the Bill with critical and long established laws.

The Department also raises the need for extensive engagement on the implementation of the Bill should it be passed, as it will have significant operational and funding impacts for the Department. Decisions would be required across government as to how existing laws and processes for controlling cannabis at the border would be altered and expectations on the functions to be undertaken by the ABF clearly articulated.

Conclusion

The Department thanks the committee for the opportunity to provide a submission. Departmental representatives are available should the committee wish to discuss this further.