

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 66

Subject *Criminal Code Act 1995*

Criminal Code Amendment Regulation 2013 (No. 1)

Part 9.1 of the *Criminal Code Act 1995* (Criminal Code) contains the Commonwealth serious drug offences. These offences are divided into domestic offences involving 'controlled' drugs, plants and precursors and import/export offences, involving 'border controlled' drugs, plants and precursors. The definition of a drug, plant and precursor are found at Division 301 of the Criminal Code. Precursors are substances that are used to unlawfully manufacture controlled drugs.

The *Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Act 2012* (the Act) received Royal Assent on 28 November 2012. Schedule 1 Part 1 to the Act includes amendments to the serious drug offence provisions in the Criminal Code to strengthen the Commonwealth's serious drug offences framework to ensure it remains up to date and effective in combating the evolving illicit drug trade. These provisions have not yet commenced.

Schedule 1 Part 1 to the Act includes, among other things, provisions allowing for the transfer of the drug, plant and precursor lists from the Criminal Code to the *Criminal Code Regulations 2002* (CCR). This amendment will assist the Commonwealth to better respond to new and emerging substances through providing for a more timely response to listing new substances. Given the growing markets in new psychoactive substances, it is increasingly important the Government is able to take swift action to list new substances, where appropriate.

The Regulation transfers the lists of drugs, plants and precursors from the Criminal Code to the CCR, to allow for substances to be listed more quickly and improve the Government's ability to be responsive as the illicit market evolves. The Regulation also updates the controlled drug list and border controlled drug list so that they more accurately reflect current substances of concern in Australia. Further details on the Regulation and substances being added are found at the [Attachment](#).

The Criminal Code, as amended by the Act, requires that before a Regulation can be made which lists a new substance in the CCR, the Minister must be satisfied that the substance is likely to be taken without appropriate medical supervision, and that one or more of the following conditions have been met:

- i) Taking the substance would create a risk of death or serious harm;
- ii) Taking the substance or plant would have a physical or mental effect substantially similar to that caused by taking a serious drug that is already listed;
- iii) The substance has the capacity to cause physiological dependence;
- iv) Possession or conduct in relation to the substance or plant is proscribed under a law of a State, a Territory or a foreign country;
- v) The substance poses a substantial risk to the health or safety of the public

The Minister is satisfied that the above criteria have been met in relation to the new substances being listed. In particular, each of the new substances being added to the controlled and border controlled drug list meet criteria (ii),(iv) or (v) above. These substances are classified as prohibited substances under the *Standard for Uniform Scheduling of Drugs and Poisons* (the Poisons Standard), have an effect similar to taking a listed drug and/or have been recognised as having addictive properties and present a serious risk to public health.

The Criminal Code specifies no other conditions which must be fulfilled before the power to make the Regulation can be exercised.

Consultation on the substances added to the controlled and border controlled drug lists has taken place between Commonwealth agencies (including the Attorney-General's Department, the Australian Federal Police, the Australian Customs and Border Protection Service, the Department of Health and Ageing, and the Australian Crime Commission)

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

The Regulation commences on 29 May 2013.

The Office of Best Practice was consulted in the drafting of the Regulation and has advised no Regulation Impact Statement is required.

Authority: Section 5 of the *Criminal Code Act 1995*

Statement of Compatibility with Human Rights

The *Criminal Code Amendment Regulation 2013 (No. 1)* 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*.

The Regulation amends the *Criminal Code Regulations 2002* to provide for the amendments in Schedule 1 Part 1 to the *Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Act 2012*.

In particular, the Regulation transfers the lists of drugs, plants and precursors to the *Criminal Code Regulations 2002* to provide the Commonwealth with the ability to list substances of concern quickly, as necessary. The Regulation also updates the controlled drug list and border controlled drug list so these more accurately reflect current substances of concern in Australia.

The Regulation does not create any new offences. While the Regulation does add new substances to the controlled and border controlled drug lists, these are substances which are already subject to the serious drug offences or have no known legitimate use. The Regulation could broadly be considered to promote the right to health in article 12 of the International Covenant of Economic, Social and Cultural Rights (ICESCR) and the right to life in article 6 of the International Covenant on Civil and Political Rights (ICCPR), particularly where the substance creates a risk of death or serious harm.

ATTACHMENT – Details of the Criminal Code Amendment Regulation 2013 (No. 1)

Section 1 – Name of Regulation

This clause provides that, when enacted, the Regulation may be cited as the *Criminal Code Amendment Regulation 2013 (No. 1)*

Section 2 – Commencement

This clause sets out that the Regulation will commence on the commencement of Schedule 1 Part 1 to the *Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Act 2012* (The Act).

The Act received Royal Assent on 28 November 2012. The Act provides that Schedule 1 Part 1 commences on a day fixed by proclamation or if the provisions do not commence within six months of the day the Act received Royal Assent, the day after that six month period finishes. The Regulation will therefore commence on 29 May 2013, which is the day following six months from the date of Royal Assent.

Section 3 – Authority

This is a formal clause that outlines that the Regulation is made under the *Criminal Code Act 1995* (the Criminal Code). Section 5 of the Criminal Code provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 4 – Schedule(s)

This is the formal clause that identifies that the Regulation amends the *Criminal Code Regulations 2002*, which is the instrument specified in Schedule 1.

Schedule 1- Amendments

Item 1

Repeals the heading and inserts a new heading: Division 3.2 Serious drugs and precursors

Item 2

Inserts Regulations 5A, 5B, 5C, 5D, 5E and 5F at the end of Part 3 (Dangers to the Community) of the *Criminal Code Regulations 2002*.

Division 3.2 Serious drugs and precursors

Regulation 5A Controlled Drugs

Item 2 inserts regulation 5A, which refers to the list of controlled drugs inserted at Schedule 3 of the *Criminal Code Regulations 2002* (CCR) by Item 3. Regulation 5A also identifies the threshold quantities that apply to controlled drugs and the location of these on the list at Schedule 3.

Regulation 5A(1)

This subregulation indicates that the drugs listed in column 1 of Schedule 3 are controlled drugs.

The definition of ‘controlled drug’ can be found at section 301.1 of the Criminal Code, as amended by Schedule 1 Part 1 to the Act. A controlled drug may be listed indefinitely in CCR as a controlled drug, an analogue of a listed controlled drug or a controlled drug listed temporarily by emergency determination. Offences relating to controlled drugs can be found at Divisions 302, 305, 308 and 309 of the Criminal Code, as amended by the Act.

Regulation 5A(2)

This subregulation indicates that a commercial quantity of a controlled drug listed in column 1 of the list at Schedule 3 can be found at column 2 of that list. Section 301.10 of the Criminal Code, as amended by the Act, contains the definition of commercial quantity which includes quantities listed as such in the CCR.

Drug analogues of controlled drugs have the same commercial quantity as the drug listed in Schedule 3 of which it is an analogue.

Regulation 5A(3)

This subregulation indicates that a marketable quantity of a controlled drug listed in column 1 of the list at Schedule 3 can be found at column 2 of that list. Section 301.11 of the Criminal Code, as amended by the Act, contains the definition of commercial quantity which includes quantities listed as such in the CCR.

Drug analogues of controlled drugs have the same marketable quantity as the drug listed in Schedule 3 of which it is an analogue.

Regulation 5A(4)

This subregulation indicates that a trafficable quantity of a controlled drug listed in column 1 of the list at Schedule 3 can be found at column 3 of that list. Section 301.12 of the Criminal Code, as amended by the Act, contains the definition of marketable quantity which includes quantities listed as such in the CCR.

Drug analogues of controlled drugs have the same trafficable quantity as the drug listed in Schedule 3 of which it is an analogue.

The controlled drug list

The controlled drug list in the Criminal Code is repealed by Schedule 1 Part 1 to the Act and inserted, with amendment, to Schedule 3 of the CCR by this regulation. The list of substances has been included in Schedule 3 rather than at regulation 5A as there are a large number of substances on the list. These additional substances, like all substances on the controlled drug list, will remain in the CCR indefinitely until removed.

Most of the substances on the controlled drug list in the Criminal Code were inserted in 2005 when Part 9.1 was inserted into the Criminal Code. The controlled drug list is therefore in need of updating.

The controlled drug list inserted at Schedule 3 of the CCR contains an additional 230 substances to the repealed controlled drug list. Of these additional substances, 96 are analogues of substances already listed on the controlled drug list and 134 are listed as border controlled drugs and currently

subject to the import/export offences in the Criminal Code but not the domestic offences in the Criminal Code. Tables 1 and 2 at Schedule 3 below list the substances added.

The Criminal Code does not currently require particular criteria to be met before a controlled drug may be listed as subject to the serious drug offences indefinitely. Section 301.7 of the Criminal Code, which will commence on 29 May 2013, will introduce criteria that the Minister must be satisfied of before a controlled drug may be listed indefinitely. These criteria are largely based on the detrimental effect the substances has on the individual and the risk to the community.

All substances added to the controlled drug list are already controlled under Part 9.1 of the Criminal Code as well as listed, or analogues of substances listed, on the *Single Convention on Narcotic Drugs 1961* or *Convention on Psychotropic Substances 1971*. As a result, it is appropriate to list these substances as they have been recognised as having addictive properties, presenting a serious risk of abuse and/or presenting a threat to public health.

Analogues

The controlled drug list is updated to include 96 analogue substances.

Analogues are substances that have a similar chemical structure, and may be expected to have a similar pharmacological effect to that of a drug subject to the serious drug offences. The definition of a drug analogue can be found at section 301.9 of Criminal Code (as amended by the Act). Substances that meet the definition of a drug analogue at section 301.9 are subject to the Commonwealth serious drug offences as if they were listed drugs. The possession, supply, trafficking of analogues of controlled drugs is already controlled in Australia.

Law enforcement agencies have indicated that analogue substances are being reported in many countries around the world, including Australia. These substances have been shown to have a detrimental effect on the user due to their similarity to listed drugs and therefore pose a serious risk to the community. The list of the analogue substances added to the controlled drug list can be found below at Table 1.

Most of the 96 analogue substances added to the controlled drug list are amphetamine or cathinone type substances (which means these substances have a similar chemical structure to amphetamine or methcathinone). Both methcathinone and amphetamine act as central nervous stimulants. Both are controlled internationally and listed as psychotropic drugs on the *United Nations Convention on Psychotropic Substances 1971*. As a party to this Convention, Australia is required to prohibit use, control manufacture, export, import, distribution and possession of these psychotropic drugs. Amphetamine and cathinone type substances have the potential to cause serious long term harm for users, such as psychosis and hallucinations.

As the analogue substances are already subject to the serious drug offences in the Criminal Code, the impact of listing these analogues on the controlled drug list would be minimal. While it is not necessary for all substances to be explicitly listed in order to be subject to the serious drug offences, the substances are placed in the controlled drug list in the interest of transparency, so that it is clearer on the face of the legislation what substances of concern will be subject to the serious drug offences. It is important that criminal offences, in particular offences that carry imprisonment terms or substantial financial penalties are as clear as possible, and that the general public is able to determine what constitutes an offence. The serious drug offences relating to controlled drugs carry severe financial penalties and imprisonment terms that range from two years to life imprisonment.

When considering whether a drug is a controlled drug, reference should be made to the controlled drug list in the CCR and the analogue clause at section 301.9 of the Criminal Code. While a number of drug analogues are added to the controlled drug list, analogues not listed remain subject to the serious drug offences.

Substances currently subject to import/export offences

An additional 134 substances that are currently subject to the import/export offences in the Criminal Code are added to the controlled drug list.

Currently in the Criminal Code there are 19 common drugs that appear on the controlled drug list and border controlled list. As a result, these substances are subject to the import/export offences as well as domestic offences in Part 9.1 of the Criminal Code. To continue to align the two lists as much as possible, an additional 134 substances are added to the controlled drug list. Listing these substances means that in addition to being subject to the import/export offence provisions these substances are also subject to the range of domestic offences in Part 9.1 of the Criminal Code.

The reason for this amendment is to achieve consistency as much as possible between the two lists so as to ensure the Commonwealth is able to control the possession, trafficking and manufacture of these dangerous drugs within Australia as well as at the border. The list of these substances can be found below at Table 2.

The substances are already subject the import/export offences in the Criminal Code and most are also listed on the *Standard for the Uniform Scheduling* (Poison Standard), so already subject to a range of legal and regulatory controls in States and Territories. As a result, it is appropriate to list these substances as they have been recognised as having addictive properties, presenting a serious risk of abuse and/or presenting a threat to public health.

Quantities of controlled drugs

The quantities for the substances added to the controlled drug list have been set by adopting quantities prescribed already in the Criminal Code for the same drug or a drug with similar strength and effect. In the alternative, where a quantity for a comparable drug does not exist in the Criminal Code the amount is set by adopting quantities for the same or similar drugs in the laws of another Australian jurisdiction. In line with current arrangements in the Criminal Code, the quantity amounts for the added substances are pure quantities. This means that where the prosecution must prove that the relevant threshold quantity of the controlled drug was involved in the commission of the offence, if the drug was contained in a mixture of other substances, the prosecution will need to prove that the mixture contained the relevant quantity of that drug.

Marketable quantities have not been prescribed for twelve of the substances added to the controlled drug list¹. For these substances, the trafficable and commercial amounts have been specified but the marketable quantity has been left blank. This is because at the time of drafting no comparable amounts were available in the Criminal Code or in the laws of other Australian jurisdictions. The consequence is that the maximum penalty for importing (and related offences) an amount greater than the trafficable quantity but less than a commercial quantity of these substances will be limited to maximum of 10 years imprisonment until a marketable amount is prescribed. The marketable

¹ Barbiturates (No. 22), Ethchlorvynol (No. 107), Ethinamate (No.105), Etaqualone (No. 109), Glutethimide (No. 126), Lysergamides (No. 151), Meprobamate (No. 153), Methaqualone (No. 158), Methypylon (No. 193), Myrophine (No. 201), Normorphine (No. 209) Pentazocine (No. 216)

quantities for the twelve substances will be inserted at a later date if an appropriate amount is determined.

Regulation 5B Controlled Plants

Item 2 also inserts regulation 5B to the CCR. Regulation 5B lists controlled plants and identifies the threshold quantities that apply to these substances.

Regulation 5B(1)

This subregulation contains the list of controlled plants for the purposes of the serious drug offences. A controlled plant is listed at column 1 of the table in this regulation.

The definition of a controlled plant can be found at section 301.2 of the Criminal Code, as amended by Schedule 1 Part 1 to the Act. A controlled plant includes substances listed indefinitely in CCR as controlled plants and substances listed temporarily by emergency determination as controlled plants. Offences relating to controlled plants can be found at Divisions 303, 304, 308 and 309 of the Criminal Code.

Regulation 5B(2)

This subregulation indicates that a commercial quantity of a controlled plant is listed at subregulation 5B(1) can be found at column 2 of the list. Section 301.10 of the Criminal Code, as amended by the Act, contains the definition of commercial quantity which includes quantities listed as such in a regulation.

Regulation 5B(3)

This subregulation indicates that a marketable quantity of a controlled plant listed at subregulation 5B(1) can be found at column 3 of that list. Section 301.11 of the Criminal Code, as amended by the Act, contains the definition of marketable quantity which includes quantities listed as such in a regulation.

Regulation 5B(4)

This subregulation indicates that a trafficable quantity of a controlled plant listed at subregulation 5B(1) can be found at column 4 of the list. Section 301.12 of the Criminal Code, as amended by the Act, contains the definition of marketable quantity which includes quantities listed as such in a regulation.

The controlled plant list

The Criminal Code does not currently require criteria to be met before a controlled plant may be listed as subject to the serious drug offences indefinitely. Section 301.7 of the Criminal Code, which will commence on 29 May 2013, will introduce criteria that the Minister must be satisfied of before a controlled plant may be listed indefinitely. These criteria are largely based on the detrimental effect the plant has on the individual and the risk to the community.

In accordance with section 24 of the Act, which contains the transitional provisions that apply to the Act, the criteria at section 301.7 does not apply to a regulation made for the purposes of Subsection A Division 301 of the Criminal Code that lists a substance as belonging to the same Criminal Code class to which it belonged immediately before the commencement of Schedule 1 Part 2 to the Act. This means the criteria at section 301.7 does not apply to this regulation.

The controlled plant list is added, without amendment, to the regulation 5B of the CCR. The substances on the controlled plant list will remain in the CCR indefinitely unless removed. The substances and quantities of the controlled plants reflect the existing substances and quantities in the controlled plant schedule at section 314.2 of the Criminal Code, which is repealed by the Act.

Regulation 5C Controlled Precursors

Item 2 also inserts regulation 5C into the CCR. Regulation 5C lists controlled precursors and identifies the threshold quantities that apply to these substances.

Regulation 5C(1)

This subregulation contains the list of controlled precursors for the purposes of the serious drug offences. A controlled precursor is listed at column 1 of the table in this subregulation.

The definition of a controlled precursor can be found at section 301.3 of the Criminal Code, as amended by Schedule 1 Part 1 to the Act. A controlled precursor includes substances listed indefinitely in the CCR as controlled precursors, salts or esters of a controlled precursor and controlled precursors listed temporarily by emergency determination. Offences relating to controlled precursors are found at Division 306, 308 and 309 of the Criminal Code.

Regulation 5C(2)

This subregulation indicates that a commercial quantity of a controlled precursor is listed at subregulation 5C(1) can be found at column 2 of the list. Section 301.10 of the Criminal Code, as amended by the Act, contains the definition of commercial quantity which includes quantities listed as such in the CCR.

Regulation 5C(3)

This subregulation indicates that a marketable quantity of a controlled precursor listed at subregulation 5C(1) can be found at column 2 of that list. Section 301.11 of the Criminal Code, as amended by the Act, contains the definition of commercial quantity which includes quantities listed as such in the CCR.

The controlled precursor list

The Criminal Code does not currently require particular criteria to be met before a controlled precursor may be listed as subject to the serious drug offences indefinitely. Section 301.8 of the Criminal Code, which will commence on 29 May 2013, is introducing a requirement for the Minister to be satisfied that there is a risk the substance will be used to unlawfully manufacture a controlled drug before a controlled precursor may be listed indefinitely in CCR.

In accordance with section 24 of the Act which outlines the transitional provisions that apply to the Act, the criteria at section 301.8 does not apply to a regulation made for the purposes of Subsection A Division 301 of the Criminal Code that lists a substance as belonging to the same Criminal Code class to which it belonged immediately before the commencement of Schedule 1 Part 2 to the Act. This means the criteria at section 301.8 does not apply to this regulation.

The controlled precursor list is added, without amendment, to regulation 5C of the CCR. The substances on the controlled precursor list will remain in the CCR indefinitely until removed. The substances and quantities of the controlled precursors reflect the existing substances and

quantities in the controlled precursor schedule at section 314.3 of the Code, which is repealed by the Act.

Regulation 5D Border Controlled Drugs

Item 2 also inserts regulation 5D, which refers to the list of controlled drugs inserted at Schedule 4 of the CCR by Item 3. Regulation 5D identifies the threshold quantities that apply to border controlled drugs and the location of these on the list at Schedule 4.

Regulation 5D(1)

This subregulation indicates that the drugs listed in column 1 of Schedule 4 are border controlled drugs.

The definition of ‘border controlled drug’ can be found at section 301.4 of the Criminal Code, as amended by Schedule 1 Part 1 to the Act. In accordance with this section, a border controlled drug includes substances listed indefinitely in CCR as border controlled drugs, analogues of listed controlled drugs and drugs listed temporarily by emergency determination. Offence provisions that relate to border controlled drugs are found at Division 307 of the Criminal Code.

Regulation 5D(2)

This subregulation indicates that a commercial quantity of a border controlled drug listed in column 1 of the list at Schedule 4 can be found at column 2 of that list. Section 301.10 of the Criminal Code, as amended by the Act, contains the definition of commercial quantity which includes quantities listed as such in the CCR.

Drug analogues of border controlled drugs have the same commercial quantity as the drug listed in Schedule 4 of which it is an analogue.

Regulation 5D(3)

This subregulation indicates that a marketable quantity of a border controlled drug listed in column 1 of the list at Schedule 4 can be found at column 2 of that list. Section 301.11 of the Criminal Code, as amended by the Act, contains the definition of commercial quantity which includes quantities listed as such in the CCR.

Drug analogues of border controlled drugs have the same marketable quantity as the drug listed in Schedule 4 of which it is an analogue.

The controlled drug list

The border controlled drug list in the Criminal Code is repealed by Schedule 1 Part 1 to the Act and inserted, with amendment, to Schedule 4 of the CCR by this regulation. The list of substances has been included in Schedule 4 rather than at regulation 5A as there are a large number of substances on the list. These additional substances, like all substances on the border controlled drug list, will remain in the CCR indefinitely until removed.

Most of the substances on the border controlled drug list in the Criminal Code were inserted in 2005 when Part 9.1 was inserted into the Criminal Code. The border controlled drug list is therefore in need of updating. The border controlled drug list inserted at Schedule 4 of the CCR contains an additional 158 substances to the border controlled drug list removed from the Criminal Code. Of these additional substances, 39 are analogues of substances already listed on the border controlled

drug list and 8 substances are synthetic cannabinoids, not currently subject to the import/export offences in the Criminal Code. Tables 3 and 4 at Schedule 4 below list the substances added to the border controlled drug list.

The Criminal Code does not currently require particular criteria to be met before a border controlled drug may be subjected to the serious drug offences indefinitely. Section 301.7 of the Criminal Code, which will commence on 29 May 2013, is introducing criteria that the Minister must be satisfied of before a border controlled drug may be listed. These criteria are largely based on the detrimental effect the substances has on the individual and the risk to the community.

The border controlled drug list is updated to more accurately reflect current substances of concern at the border and to list analogues so that substances covered by the import/export offences in Part 9.1 are as clear as possible. The new substances added are classified as prohibited substances under the *Standard for Uniform Scheduling of Drugs and Poisons* (the Poisons Standard) or already controlled under the Criminal Code.

Analogues

The controlled drug list is updated to include 39 analogue substances.

Analogues are substances that have a similar chemical structure, and may be expected to have a similar pharmacological effect, to that of a drug subject to the serious drug offences. The definition of a drug analogue can be found at section 301.9 of Criminal Code (as repositioned by the Act). Substances that meet the definition of a drug analogue at section 301.9 are subject to the Commonwealth serious drug offences as if they were listed drugs. The import/export of analogues of border controlled drugs or the possession of analogues suspected of being unlawfully imported/exported is already controlled in Australia.

Law enforcement agencies have indicated that analogue substances are being reported in many countries around the world, including Australia. These substances have been shown to have a detrimental effect on the user due to their similarity to listed drugs and therefore pose a serious risk to the community. The list of the analogue substances added to the border controlled drug list can be found below at Table 3.

Most of the 39 analogue substances added to the border controlled drug list are amphetamine or cathinone type substances (which means these substances have a similar chemical structure to amphetamine or methcathinone). Both methcathinone and amphetamine act as central nervous stimulants. Both are controlled internationally and listed as psychotropic drugs on the *United Nations Convention on Psychotropic Substances 1971*. As a party to this Convention, Australia is required to prohibit use, control manufacture, export, import, distribution and possession of these psychotropic drugs. Amphetamine and cathinone type substances have the potential to cause serious long term harm for users, such as psychosis and hallucinations. An illicit market exists in Australia in relation to these substances.

As these substances are already subject to the serious drug offences in the Criminal Code, the impact of listing these analogues on the border controlled drug list would be minimal. While it is not necessary for all substances to be explicitly listed in order to be subject to the serious drug offences, the substances are added to the border controlled drug list in the interest of transparency, so that it is clearer on the face of the legislation what substances of concern will be subject to the serious drug offences. It is important that criminal offences, in particular offences that carry imprisonment terms or substantial financial penalties are as clear as possible, and that the general public is able to determine what constitutes an offence. The serious drug offences relating to border controlled drugs

carry severe financial penalties and imprisonment terms that range from two years to life imprisonment.

When considering whether a drug is a border controlled drug reference should be made to the border controlled drug list in the CCR and the analogue clause at section 301.9 of the Criminal Code. While a number of drug analogues are added to the border controlled drug list, analogues not listed remain subject to the serious drug offences.

Synthetic Cannabinoids

Eight synthetic cannabinoids are added to the border controlled drug list.

Cannabinoids are currently listed as a border controlled drug in the Criminal Code and have no authorised or established use in human or veterinary medicine, or any other known legitimate use. Some synthetic cannabinoids are currently subject to border controlled drug offences through the application of the analogue clause in Part 9.1 of the Criminal Code, due to the relationship with Tetrahydrocannabinols (THC), which is listed as a border controlled drug. However, not all synthetic cannabinoids are chemically similar to THC and therefore require specific prescription to be subject to the serious drug offences in the Criminal Code.

Synthetic cannabinoids are often identified as plant material and marketed in a variety of ways, such as 'legal highs' or 'herbal highs'. The incidences associated with the use of synthetic cannabinoids in Australia has increased in recent years. Due to the effect synthetic cannabinoids have on the cannabinoid receptors in the brain, it is understood these substances are used for the purpose of obtaining a psychoactive effect similar to taking cannabis. Taking the substances may have an adverse effect on the health of an individual and cause physiological dependence. There have been widespread reports of abuse and symptoms, including hallucinations and psychosis

The eight synthetic cannabinoids added to the border controlled drug list are in Table 4 below. These substances are already controlled domestically either through the adoption of the *Standard for the Uniform Scheduling* (Poison Standard) in States and Territories or specific listing in drug or poison legislation.

The Poisons Standard, an instrument under section 52D of the *Therapeutic Goods Act 1989* (Cth), is the standard for scheduling medicines and poisons in Australia. It is a legislative instrument that compiles substances into schedules according to the degree of control required over the availability of these substances. Schedule 9 substances are the most dangerous substances that appear on the Poisons Standard and are most likely to be abused or misused, and therefore most likely to cause serious harm to the community. Substances on Schedule 9 are to have legislated prohibitions on manufacture, possession, sale or use. Criminal offences exist in States and Territories for conduct associated with substances listed on Schedule 9 of the Poison Standard.

The substances are also regulated at the Australian border. The eight synthetic substances have recently been added to Schedule 4 of the *Customs (Prohibited Imports) Regulations 1956*. As a result, these substances are subject to permit or licensing controls for importation.

The Australian Government released a discussion paper for public consultation in late 2010, seeking views on the implementation of model drug, plant and precursor schedules in the Criminal Code. Among the responses received were concerns about synthetic cannabinoids and suggestions that these should be subject to the serious drug offences. Synthetic cannabinoids are prescribed to address these concerns and provide law enforcement with the ability to respond to this emerging market.

Listing the eight synthetic cannabinoids on the border controlled drug list will provide the Commonwealth with the ability to control the import/export of these substances and their analogues. These substances may be seized at the border which will reduce the supply in Australia and the likelihood of new markets being formed in relation to these substances. As a result, the control at the border will be more in line with the current level of control in place across State and Territory jurisdictions and the regulatory controls in relation to these substances at the border.

The eight synthetic cannabinoids are not currently listed on, nor analogues of substances listed on, the international drug conventions. As the Commonwealth derives its power to list substances to be subject to the domestic drug offences through the implementation of treaties to which Australia is a party, the eight synthetic cannabinoids are not being added to the controlled drug list.

Quantities

The quantities for the substances added to the controlled drug list have been set by adopting quantities prescribed already in the Criminal Code for the same drug or a drug with similar strength and effect. In the alternative, where a quantity for a comparable drug does not exist in the Criminal Code the amount is set by adopting quantities for the same or similar drugs in the laws in another Australian jurisdiction. In line with current arrangements in the Criminal Code the quantity amounts for the added substances are pure quantities. This means that where the prosecution must prove that the relevant threshold quantity of the border controlled drug was involved in the commission of the offence, if the drug was contained in a mixture of other substances, the prosecution will need to prove that the mixture contained the relevant quantity of that drug.

Regulation 5E Border Controlled Plants

Item 2 also inserts regulation 5E to the CCR. Regulation 5E lists border controlled plants and identifies the threshold quantities that apply to these substances.

Regulation 5E(1)

This subregulation contains the list of border controlled plants for the purposes of the serious drug offences. A border controlled plant is listed at column 1 of the table in this subregulation.

The definition of a border controlled plant can be found section 301.5 of the Criminal Code, as amended by the Act. A border controlled plant includes substances listed indefinitely in CCR and plants listed temporarily by emergency determination as border controlled plants. Offence provisions that relate to border controlled plants are found at Division 307 of the Criminal Code.

Regulation 5E(2)

This subregulation indicates that a commercial quantity of a border controlled plant listed at subregulation 5E(1) can be found at column 2 of the list. Section 301.10 of the Criminal Code, as amended by the Act, contains the definition of commercial quantity which includes quantities listed as such in the CCR.

Regulation 5E(3)

This subregulation indicates that a marketable quantity of a border controlled plant listed at subregulation 5E(1) can be found at column 3 of that list. Section 301.11 of the Criminal Code, as amended by the Act, contains the definition of marketable quantity which includes quantities listed as such in the CCR.

The border controlled plant list

The Criminal Code does not currently require particular criteria to be met before a border controlled plant may be listed as subject to the serious drug offences indefinitely. Section 301.7 of the Criminal Code, which will commence on 29 May 2013, will introduce criteria that the Minister must be satisfied of before a controlled drug may be listed indefinitely. These criteria are largely based on the detrimental effect the plant has on the user and the risk to the community.

In accordance with section 24 of the Act which contains the transitional provisions that apply to the Act, the criteria at 301.7 does not apply to a regulation made for the purposes of Subsection A Division 301 of the Criminal Code that lists a substance as belonging to the same Criminal Code class to which it belonged immediately before the commencement of Schedule 1 Part 2 to the Act. This means the criteria at section 301.7 does not apply to this regulation.

The border controlled plant list is added, without amendment, to regulation 5E of the CCR. The substances on the border controlled plant list will remain in the CCR indefinitely unless removed. The substances and quantities of the border controlled plants reflect the existing substances and quantities in the border controlled plant at section 314.5 the Criminal Code.

Regulation 5F Border Controlled Precursors

Item 2 also inserts regulation 5F of the CCR. Regulation 5F lists border controlled precursors and identifies the threshold quantities that apply to these substances.

Regulation 5F(1)

This subregulation contains the list of border controlled precursors for the purposes of the serious drug offences. A border controlled precursor is listed at column 1 of the table in this subregulation.

The definition of a border controlled precursor can be found at section 301.6 of the Criminal Code. A border controlled precursor includes substances listed indefinitely in CCR as border controlled precursors, salts or esters of precursors listed, immediate precursors of controlled precursors listed, or precursors listed temporarily by emergency determination. Offence provisions that relate to border controlled precursors are found at Division 307 of the Criminal Code

Regulation 5F(2)

This subregulation indicates that a commercial quantity of a border controlled precursor listed at subregulation 5F(1) can be found at column 2 of that list. Section 301.10 of the Criminal Code, as amended by the Act, contains the definition of commercial quantity which includes quantities listed as such in the CCR

Regulation 5F(3)

This subregulation indicates that a marketable quantity of a border controlled precursor listed at subregulation 5F(1) can be found at column 3 of that list. Section 301.11 of the Criminal Code, as amended by the Act, contains the definition of marketable quantity which includes quantities listed as such in the CCR.

The border controlled precursor list

The Criminal Code does not currently require particular criteria to be met before a controlled precursor may listed as subject to the serious drug offences indefinitely. Section 301.8 of the

Criminal Code, which will commence on 29 May 2013, is introducing a requirement for the Minister to be satisfied that there is a risk the substance will be used to unlawfully manufacture a controlled drug before a border controlled precursor may be listed in CCR.

In accordance with section 24 of the Act which outlines the transitional provisions that apply to the Act, the criteria at 301.8 does not apply to a regulation made for the purposes of Subsection A Division 301 of the Criminal Code that lists a substance as belonging to the same Criminal Code class to which it belonged immediately before the commencement of Schedule 1 Part 2 to the Act. This means the criteria at section 301.8 does not apply to this regulation.

The border controlled precursor list is added, without amendment, to Regulation 5F of the CCR. The substances on the controlled precursor list will remain in the CCR indefinitely until removed. The substances and quantities of the controlled precursors reflect the existing substances and quantities in the border controlled precursor schedule at section 314.6 of the Code, which is repealed by the Act.

Item 3

This item inserts Schedule 3 and Schedule 4 to the end of the CCR. Schedule 3 will list controlled drugs for the purposes of regulation 5A and Schedule 4 will list border controlled drugs for the purposes of regulation 5D.

Schedule 3 Controlled Drugs

This item contains the controlled drug list in Schedule 3 of the CCR.

The current controlled drug list, at section 314.1 of the Criminal Code, contains 19 substances which are subject to the domestic drug offences in Part 9.1. Most of these substances were added to Criminal Code in 2005.

The controlled drug list in the Criminal Code is repealed by Schedule 1 Part 1 to the Act and inserted, with amendment, to the CCR by regulation 5A (discussed above). The list of substances has been included in Schedule 3 rather than at regulation 5A as there are a large number of substances on the list.

The controlled drug list at Schedule 3 of the CCR inserts an additional 230 substances to the controlled drug list. Of these additional substances, 96 are analogues of substances already listed on the controlled drug list (Table 1) and 134 are listed as border controlled drugs and currently subject to the import/export offences in the Criminal Code, but not currently subject to the domestic offences in the Criminal Code (Table 2).

Further information on controlled drugs, what an analogue is and why the controlled drug list is being amended can be found in the description of regulation 5A, above.

Table 1: The 96 analogues added to the controlled drug list

4-Acetoxy-N, N-dimethyltryptamine (4-AcO-DMT)	4-Chloromethcathinone	4'-Methoxy-alpha-pyrrolidinopropiophenone (MOPPP)
4-Acetoxy-N-methyl-N-ethyltryptamine (4-AcO-MET)	4-Chlorophenyl-1-methoxypropan-2-amine	4-Methoxyamphetamine
alpha-Pyrrolidinobutiophenone (α-PBP)	1-(2,3-Dihydro-1-benzofuran-5-yl)propan-2-amine (5-APDB)	4-Methoxymethamphetamine
alpha-Pyrrolidinopropiophenone	2,5-Dimethoxy-4-	4-Methoxymethcathinone

(α -PPP)	bromophenethylamine (2C-B)	
alpha-Pyrrolidinovalerophenone (α -PVP)	2,5-Dimethoxy-4-ethylphenethylamine (2C-E)	4'-Methyl-alpha-pyrrolidinobutiophenone (MPBP)
5-(2-Aminopropyl)-2,3-dihydro-1h-indene (5-APDI)	2,5-Dimethoxy-4-methylphenethylamine (2C-D)	4'-Methyl-alpha-pyrrolidinohexiophenone (MPHP)
6-(2-Aminopropyl)-2,3-dihydrobenzofuran (6-APDB)	2,5-Dimethoxy-4-nitrophenethylamine (2C-N)	4'-Methyl-alpha-pyrrolidinopropiophenone (MPPP)
1-(Benzofuran-6-yl) propan-2-amine (6-APB)	2,5-Dimethoxy-4-(n)-propylphenethylamine (2C-P)	N-Methyl butylone
beta-Keto-methylbenzodioxolypentanamine (pentylone)	3,4-Dimethoxymethcathinone	2-Methylamino-1-phenylbutan-1-one (buphedrone)
beta-Keto-N-methyl-3,4-benzodioxolylbutanamine (butylone)	1, 1-Dimethylheptyl-11-hydroxytetrahydrocannabinol (HU-210)	4-Methylamphetamine
2-Bromoamphetamine	3,4-Dimethylmethcathinone	4-Methylethcathinone
3-Bromoamphetamine	N-Ethylcathinone	3,4-Methylenedioxyethcathinone (MDEC)
4-Bromoamphetamine	3-(2-Ethylphenyl)-2-methylquinazolin-4-one (Etaqualone)	3,4-Methylenedioxymethcathinone (MDMC)
2-Bromo-5-methoxymethcathinone	2-Fluoroamphetamine	3,4-Methylenedioxyprovalerone (MDPV)
2-Bromomethamphetamine	3-Fluoroamphetamine	3',4'-Methylenedioxy-alpha-pyrrolidinobutiophenone (MDPBP)
3-Bromomethamphetamine	4-Fluoroamphetamine	3',4'-Methylenedioxy-alpha-pyrrolidinopropiophenone (MDPPP)
4-Bromomethamphetamine	2-Fluoromethamphetamine	4-Methylmethamphetamine
2-Bromomethcathinone	3-Fluoromethamphetamine	4-Methylthioamphetamine (4-MTA)
3-Bromomethcathinone	4-Fluoromethamphetamine	4-Methylthiobutylamphetamine (4-MTBA)
4-Bromomethcathinone	2-Fluoromethcathinone	4-Methylthiodimethamphetamine (4-MTDMA)
Bupropion	3-Fluoromethcathinone	4-Methylthioethylamphetamine (4-MTEA)
Cathinone	4-Fluoromethcathinone	4-Methylthiomethamphetamine (4-MTMA)
1-(4-Chloro-2,5-dimethoxyphenyl)-2-ethenamine (2C-C)	p-Hydroxyephedrine	4-Methylthiopropylamphetamine (4-MTPA)
2-Chloroamphetamine	2-Iodoamphetamine	Oripavine
3-Chloroamphetamine	3-Iodoamphetamine	Pyrovalerone
4-Chloroamphetamine	4-Iodoamphetamine	2,4,5-Trimethoxyphenethylamine (2C-O)
2-Chloromethamphetamine	2-Iodomethamphetamine	2,3,4-Trimethoxyamphetamine
3-Chloromethamphetamine	3-Iodomethamphetamine	2,3,5-Trimethoxyamphetamine
4-Chloromethamphetamine	4-Iodomethamphetamine	2,3,6-Trimethoxyamphetamine
4-Chloro-N-ethylamphetamine	2-Iodomethcathinone	2,4,5-Trimethoxyamphetamine
2-Chloromethcathinone	3-Iodomethcathinone	2,4,6-Trimethoxyamphetamine
3-Chloromethcathinone	4-Iodomethcathinone	3,4,5-Trimethoxyamphetamine

Table 2: The 134 substances added to the controlled drug list

Acetorphine	1-Dimethylamino-1,2-diphenylethane	Methypylon
Acetyl-alpha-methylfentanyl	N,N-Dimethylamphetamine	Metopon
Acetylcodeine	N, N-Dimethylcathinone	Monoacetylmorphines
Acetyldihydrocodeine	Dimethylthiambutene	Moramide
Acetylmethadol	N,N-Dimethyltryptamine	Morphan, but not including dextrorphan
Allylprodine	Dioxaphetyl butyrate	Morpheridine
Alphacetylmethadol	Diphenoxylate	Morphine
Alphameprodine	Dipipanone	Morphine-N-oxide
Alphamethadol	Drotebanol	Myrophine
alpha-Methylfentanyl	Ecgonine	Nicocodeine
alpha-Methylthiofentanyl	Ethchlorvynol	Nicodicodine
Alphaprodine	Ethinamate	Nicomorphine
Anileridine	Ethylmethylthiambutene	Noracymethadol
Barbiturates	Ethylmorphine	Norcodeine
Benzethidine	Etonitazene	Norlevorphanol
Benzoylcegonine	Etorphine	Normethadone
Benzylmorphine	Etoperidine	Normorphine
Betacetylmethadol	Fentanyl	Norpipanone
beta-Hydroxyfentanyl	4-Fluoro-2,5-dimethoxyphenethylamine (2C-F)	Oxycodone
beta-Hydroxy-3-methylfentanyl	Furethidine	Oxymorphone
Betameprodine	Glutethimide	para-Fluorofentanyl
Betamethadol	Hydrocodone	Pentazocine
Betaprodine	Hydromorphenol	Pethidine
Bezitramide	Hydromorphone	Phenadoxone
4-Bromo-2,5-dimethoxyamphetamine	Hydroxyamphetamine	Phenampromide
Bufotenine	Hydroxypethidine	Phenazocine
Chlorphentermine	Isomethadone	Phencyclidine
Clonitazene	4-Isopropoxy-2,5-dimethoxyphenethylamine (2C-O-4)	Phendimetrazine
Codeine	Ketobemidone	Phenmetrazine
Codeine-N-oxide	Levophenacymorphan	Phenomorphane
Codoxime	Levomethorphan	Phenoperidine
Desomorphine	Levorphanol, but not including dextrorphan	Phentermine
Dexamphetamine	Lysergamides	1-Phenylethyl-4-phenyl-4-acetoxypiperidine (PEPAP)
Dextromoramide	Meprobamate	Pholcodine
Diampromide	Mescaline	Piminodine
Diethylpropion (N, N-Diethylcathinone)	Metazocine	Pipradrol
Diethylthiambutene	Methadone	Piritramide
N,N-Diethyltryptamine	Methaqualone	Proheptazine
Difenoxin	Methorphan, but not including dextromethorphan	Properidine

Dihydrocodeine	Methyldesorphine	Propiram
Dihydromorphine	Methyldihydromorphine	Thebacon
Dimenoxadol	3-Methylfentanyl	Thebaine
Dimepheptanol	Methylphenidate	Thiofentanyl
2,5-Dimethoxy-4-iodophenethylamine (2C-I)	1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP)	Trimeperidine
2,5-Dimethoxy-4-methylamphetamine (STP, DOM)	3-Methylthiofentanyl	

Schedule 4 Border Controlled Drugs

This item also contains the border controlled drug list in Schedule 4 the CCR.

The current border controlled drug list, at section 314.4 of the Criminal Code, contains 158 substances which are subject to the import and export drug offences in Part 9.1. Most of these substances were added to the border controlled drug list in the Criminal Code in 2005.

The border controlled drug list in the Criminal Code is repealed by Schedule 1 Part 1 to the Act and inserted, with amendment, to the CCR by regulation 5D (discussed above). The list of substances has been included in Schedule 4 rather than at regulation 5D as there are a large number of substances on the list.

The border controlled drug list inserted at Schedule 4 of the CCR inserts an additional 46 substances to the border controlled drug list. Of these additional substances, 39 are analogues of substances already listed on the border controlled drug list (Table 3) and eight are synthetic cannabinoids, not currently subject to the import/export offences in the Criminal Code (Table 4).

Further information on border controlled drugs, analogues, synthetic cannabinoids and why the border controlled drug list is amended can be found in the description of regulation 5D, above.

Table 3: The 39 analogues added to the border controlled drug list

5-(2-Aminopropyl)-2,3-dihydro-1H-indene (5-APDI)	2,5-Dimethoxy-4-(n)-propylphenethylamine (2C-P)	4-Methylthiodimethamphetamine (4-MTDMA)
1-(Benzofuran-6-yl) propan-2-amine (6-APB)	1, 1-Dimethylheptyl-11-hydroxytetrahydrocannabinol (HU-210)	4-Methylthioethylamphetamine (4-MTEA)
beta-Keto-N-methyl-3,4-benzodioxylbutanamine (butylone)	4-Fluoro-2,5-dimethoxyphenethylamine (2C-F)	4-Methylthiomethamphetamine (4-MTMA)
Cathinone	4-(2-Fluoroethylthio)-2,5-dimethoxyphenethylamine (2C-T-21)	4-Methylthiopropylamphetamine (4-MTPA)
1-(4-Chloro-2,5-dimethoxyphenyl)-2-ethanamine (2C-C)	4-Isopropoxy-2,5-dimethoxyphenethylamine (2C-O-4)	Oripavine
2,5-Dimethoxy-4-bromophenethylamine (2C-B)	4-Methoxyamphetamine	Pyrovalerone
2,5-Dimethoxy-4-(n)-butylthiophenethylamine (2C-T-9)	4-Methoxymethamphetamine	2,4,5-Trimethoxyphenethylamine (2C-O)
2,5-Dimethoxy-4-ethylphenethylamine (2C-E)	4-Methylamphetamine	2,3,4-Trimethoxyamphetamine
2,5-Dimethoxy-4-(β-	3,4-Methylenedioxypyrovalerone (MDPV)	2,3,5-Trimethoxyamphetamine

isobutylthio)phenethylamine (2C-T-17)		
2,5-Dimethoxy-4-isopropylthiophenethylamine (2C-T-4)	4-Methylmethamphetamine	2,3,6-Trimethoxyamphetamine
2,5-Dimethoxy-4-(β-methoxyethylthio)phenethylamine (2C-T-13)	4-Methylthio-2,5-dimethoxyphenethylamine (2C-T)	2,4,5-Trimethoxyamphetamine
2,5-Dimethoxy-4-methylphenethylamine (2C-D)	4-Methylthioamphetamine (4-MTA)	2,4,6-Trimethoxyamphetamine
2,5-Dimethoxy-4-nitrophenethylamine (2C-N)	4-Methylthiobutylamphetamine (4-MTBA)	3,4,5-Trimethoxyamphetamine

Table 4: The 8 synthetic cannabinoids added to the border controlled drug list

1-(5-fluoropentyl)-3-(2-iodobenzyl)indole (AM-694)	2-(2-Methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone (JWH-250)	1-Pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122)
2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol (CP 47,497)	(1-(2-Morpholin-4-ylethyl)indol-3-yl)-naphthalen-1-ylmethanone (JWH-200)	1-Pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122)
2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methylnonan-2-yl)phenol (CP 47,497-C8)	Naphthalen-1-yl-(1-butyldiol-3-yl)methanone (JWH-073)	