

EXPLANATORY STATEMENT

Issued by the Minister for Home Affairs

Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990

Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Regulations 2018

The *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990* (the Act) was enacted to give effect to Australia's obligations under the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (the Convention).

Subsection 22(1) of the Act provides that the Governor-General may make regulations 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.

The Act contains offences for intentionally converting, concealing and acquiring property derived from a serious State drug offence at sections 15A, 15B and 15C respectively. These offences apply in a State other than a prescribed State or Territory, which may be prescribed pursuant to subsection 22(1) of the Act.

Subsection 22(2) provides that the Governor-General may not make regulations for the purposes of sections 15A, 15B or 15C unless the Governor-General is satisfied that any conduct that, immediately before the making of the regulations, is an offence against the relevant section is also an offence against a law of that State or Territory. This subsection ensures that, where a State or Territory implements offences of sufficient breadth, the Commonwealth offences under sections 15A, 15B or 15C will no longer apply in that jurisdiction.

The *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Regulations 1992* (the Drugs Regulations 1992), which sunset on 1 October 2018, prescribe the States and Territories that are no longer subject to the offences under sections 15A, 15B and 15C of the Act.

The *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Regulations 2018* (the Regulations) remake the Drugs Regulations 1992 in their entirety. The Regulations also add Tasmania and the Northern Territory as a prescribed State and Territory, respectively. This recognises that these jurisdictions have now implemented offences of sufficient breadth under subsection 22(2) of the Act, and there is no longer a need to extend the Commonwealth offences under sections 15A, 15B and 15C to these jurisdictions.

The Regulations were informed by consultation with the Australian Federal Police, the Australian Criminal Intelligence Commission, the Australian Government Solicitor and the Commonwealth Attorney-General's Department.

The following State and Territory justice agencies were also consulted:

- the Attorney-General's Department (SA)
- the Department of the Attorney-General and Justice (NT)

- the Department of Justice and the Attorney-General (Qld)
- the Department of Justice (Tas)
- the Department of Justice and Regulation (Vic)
- the Department of Justice (NSW)
- the Department of Justice (WA), and
- the Department of Justice and Community Safety (ACT).

These stakeholders agreed that the Drugs Regulations 1992 should be remade in their entirety. The Northern Territory and Tasmania submitted that their jurisdictions should be prescribed and, after appropriate consultation with the Australian Government Solicitor, this was agreed by the Commonwealth.

Details of the Regulations are set out in Attachment A.

A Statement of Compatibility with Human Rights prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commenced the day after registration on the Federal Register of Legislation.

Authority: Section 22(1) of the
Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990

Details of the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Regulations 2018*

Section 1 – Name

This section provides that the title of this instrument is the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Regulations 2018* (the Drugs Regulations 2018).

Section 2 – Commencement

This section provides that the whole of the instrument is to commence the day after the instrument is registered.

Section 3 – Authority

This section provides that this instrument is made under the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990* (the Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 5 – Prescribed States and Territories

This section provides that, for the purpose of sections 15A, 15B and 15C of the Act, the following States and Territories are prescribed: New South Wales; Victoria; Queensland; Western Australia; South Australia, Tasmania, the Australian Capital Territory and the Northern Territory.

The section recognises that these States and Territories have introduced offences of sufficient breadth under subsection 22(2) of the Act, and there is no longer a need to extend the Commonwealth offences under sections 15A, 15B and 15C to these jurisdictions.

Schedule 1—Repeals

This Schedule repeals the whole of the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Regulations 1992*, as these Regulations have subsequently been replaced by the Drugs Regulations 2018.

Statement of Compatibility with Human Rights

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

Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Regulations 2018

1. 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

2. The *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990* (the Act) was enacted to give effect to Australia's obligations under the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (the Convention).

3. The Act contains offences for intentionally converting, concealing and acquiring property derived from a serious State drug offence at sections 15A, 15B and 15C respectively.

4. These offences, however, were intended as interim measures to ensure that Australia had offence provisions of adequate breadth to address this conduct. It was always intended that, where a State or Territory implemented a sufficiently broad offence provision, the corresponding Commonwealth offence would cease to apply in their jurisdiction.

5. To ensure that this policy objective can be achieved, section 4 of the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Regulations 2018* (the Drug Regulations 2018) outlines the States and Territories which are prescribed under subsections 22(1) of the Act. Where States and Territories are prescribed, the Commonwealth offences at sections 15A, 15B and 15C of the Act no longer apply in their jurisdiction.

6. Under subsection 22(2) of the Act, States and Territories may only be prescribed where they have broader offence provisions than the Commonwealth offences at sections 15A, 15B and 15C.

7. The previous *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Regulations 1992* (the Drugs Regulations 1992) prescribed: New South Wales; Victoria; Queensland; Western Australia; South Australia and the Australian Capital Territory.

8. The Drug Regulations 2018 expand on the 1992 Regulations by also prescribing the Northern Territory and Tasmania, recognising that these jurisdictions have now implemented offence provisions of sufficient breadth, and there is no longer a need to extend the Commonwealth offences under sections 15A, 15B and 15C to these jurisdictions.

Human rights implications

9. The Drugs Regulations 2018 do not raise human rights implications. The only relevant provision in these Regulations is section 4, which prevents the offence provisions at sections 15A, 15B or 15C of the Act from applying in a particular State or Territory jurisdiction.

10. Section 4 prescribes every State and self-governing Territory, ensuring that the Commonwealth offence provisions at sections 15A, 15B and 15C do not apply in these jurisdictions.

11. As the Drugs Regulations 2018 do not effectively prohibit any conduct, they do not raise human rights implications.

Conclusion

12. This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.