CRIMINAL CODE AMENDMENT (CONTROLLED AND BORDER CONTROLLED DRUGS AND PRECURSORS) REGULATIONS 2025

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

PURPOSE AND OPERATION OF THE INSTRUMENT

The purpose of the *Criminal Code Amendment (Controlled and Border Controlled Drugs and Precursors) Regulations 2025* (the Regulations) is to amend the Criminal Code Regulations 2019 (Principal Regulations) to list 53 substances, including nitazenes and fentanyl-type substances as controlled and border controlled drugs and precursors. The Regulations also seek to modify the threshold quantities of two already listed substances, clonitazene and etonitazene, to more accurately reflect their potency and harm potential.

Regulation-making power in the Criminal Code Act 1995

The *Criminal Code Act 1995* (the Code) codifies the general principles of criminal responsibility under laws of the Commonwealth, including for serious drug offences in Part 9.1. Section 5 of the Code provides that the Governor-General may make regulations prescribing matters required or permitted by the Code to be prescribed; or necessary or convenient to be prescribed for carrying out or giving effect to the Code.

The Code provides the following definitions and regulation making powers for controlled and border controlled drugs and precursors and associated quantities in Part 9.1:

- Controlled drug has the meaning given by section 301.1 of the Code, that a controlled drug is a substance (other than a growing plant) listed by a regulation as a controlled drug (section 301.1(1)(a))
- Controlled precursor has the meaning given by section 301.3 of the Code, that a controlled precursor is a substance (including a growing plant) that is listed by a regulation as a controlled precursor (section 301.3(1)(a))

- Border controlled drug has the meaning given by section 301.4 of the Code, that a border controlled drug is a substance (other than a growing plant) that is listed by a regulation as border controlled drug (section 301.4(1)(a))
- Border controlled precursor has the meaning given by section 301.6 of the Code, that a border controlled precursor is a substance (including a growing plant) that is listed by a regulation as a border controlled precursor (section 301.6(1(a))
- Commercial quantity has the meaning given by section 301.10 of the Code, that a commercial quantity of a serious drug, controlled precursor or border controlled precursor is a quantity not less than that listed as the commercial quantity of the drug or precursor in a regulation made for the purposes of this section (section 301.10(1)(a)
- Marketable quantity has the meaning given by section 301.11 of the Code, that a marketable quantity of a serious drug, controlled precursor or border controlled precursor is a quantity not less than that listed as the marketable quantity of the drug or precursor in a regulation made for the purposes of this section (section 301.11(a)
- Trafficable quantity has the meaning given by section 301.12 of the Code, that a trafficable quantity of a controlled drug or a controlled plant is not less than that listed as the trafficable quantity of the drug or plant in a regulation made for the purposes of this section (section 301.12(a))

The Principal Regulations list controlled drugs in a table in clause 1 of schedule 1, controlled precursors in a table under section 13, border controlled drugs in a table in subclause 1(1) of schedule 2 and border controlled precursors in a table in subclause 1 of section 16.

Restricted listings of border controlled drugs and precursors may also be made under subsections 301.4(2) and 301.6(1A) of the Code respectively. This permits the restricted listing of dual-use substances by regulation against offences in Part 9.1, or elements of those offences, rather than Part 9.1 as a whole. The Principal Regulations provides restricted listings of border controlled drugs in a table in subclause 2 of schedule 2 and the restricted listing of border controlled precursors in subclause 1(2) of section 16.

The conditions for listing substances by a regulation must be satisfied before a regulation can be made. The Code provides the relevant conditions for listing substances in the Principal Regulations:

- Section 301.7 of the Code prescribes the matters the Minister administering the *Australian Federal Police Act 1979* (the AFP Minister) must be satisfied of to list a serious drug by regulation.

- Section 301.8 of the Code provides that in listing substances as controlled or border controlled precursors, the AFP Minister must be satisfied that there is a risk that the substance will be used to unlawfully manufacture a controlled drug, other than a determined controlled drug (related to emergency determinations).

Listing nitazenes and fentanyl-type substances

The listing of nitazenes and fentanyl-type substances responds to recent detections of the substances in Australia and the increasing harms associated with the substances. Nitazenes are a highly potent synthetic opioid, which may be lethal in very small doses. As little as 2 milligrams of the substance can result in a fatal overdose. Nitazenes are often found mixed with fentanyl-type substances, as well as heroin, ketamine and synthetic cannabinoids. As such, listing these substances seeks to better protect the cohort of people who are unknowingly consuming the substance.

The National Centre for Clinical Research on Emerging Drugs reports that, in the 12 months to June 2024, nitazenes made up the second highest number of drug alerts issued by states and territories, next only to 3,4-methylenedioxymethylamphetamine (MDMA). Further, nitazenes have no legitimate use.

The purpose and effect of listing nitazenes and fentanyl-type substances is to ensure they are appropriately captured by the serious drug offences in Part 9.1 of the Code, and support law enforcement agencies to respond to the evolving illicit drug operations of serious organised crime groups.

Modifying existing quantities of nitazenes

The Regulations will modify the quantities of already listed clonitazene and etonitazene to align them with similar synthetic opioids and reflect that very small doses of nitazenes can be lethal. The current prescribed quantities are much higher.

Substance	**Current controlled quantity**	**Modified controlled quantity**	**Current border controlled quantity**	**Modified border controlled quantity**
Clonitazene	C: 5kg M: 100g T: 5g	C: 0.005kg M: 2.5g T: 0.005g	C: 5kg M: 5g	C: 0.005kg M: 0.005g

Etonitazene	C: 5kg M: 2,500g T: 5g	C: 0.005kg M: 2.5g T: 0.005g	C: 5kg M: 5g	C: 0.005kg M: 0.005g

C: Commercial; M: Marketable; T: Trafficable.

The purpose and effect of modifying the threshold quantities of clonitazene and etonitazene is to align the substances with the new listings and more accurately reflect the potency and harms associated with nitazenes. For example, a recent seizure of approximately 4kg of a nitazenes analogue would not have met the previous commercial threshold quantity of the listed nitazenes, despite the high potential for harm, including death. The modified quantities will ensure the appropriate serious drug offences (and associated penalties) apply in future.

Conditions met for listing controlled and border controlled drugs

The Regulations include 28 substances as controlled drugs in the table in clause 1 of Schedule 1 of the Principal Regulations and border controlled drugs in subclause 1(1) of Schedule 2 of the Principal Regulations, including relevant quantities.

Nitazenes

Nitazenes are taken to be consumed without appropriate medical supervision, as they were not formulated or approved for therapeutic purposes due to their high overdose potential and associated adverse effects (section 301.7(a)). Further to this, the consumption of nitazenes is associated with a risk of death, with as little as 2 milligrams of the substance having the potential to result in fatal overdose (section 301.7(b)(i)). Other harms and associated health implications include respiratory depression, analgesia and euphoria. The nitazenes identified for listing, are considered analogues to etonitazene (item 110 in schedule 1 and item 86 in schedule 2) and fentanyl (item 113 in schedule 1 and item 89 in schedule 2). This means they are considered to produce substantially similar (in this case, more potent) effects to the already listed substances (section 301.7(b)(ii)).

Fentanyl-type substances

The fentanyl-type substances identified for listing are commonly used as illicit fentanyl and are consumed without appropriate medical supervision (section 301.7(a)). The consumption of the substance may be fatal, with the lethal dose of the most potent fentanyl-type substances being as little as 2 milligrams (section 301.7(b)(i)). Other harms and health implications associated with fentanyl-type substances are vomiting, analgesia, euphoria and respiratory depression. The identified fentanyl-type substances are analogues to fentanyl (item 113 in

schedule 1 and item 89 in schedule 2), and when consumed produce a substantially similar physical and mental effect (section 301.7(b)(ii)).

Bromazolam

Bromazolam is commonly sold as a counterfeit benzodiazepine not approved for medical use and is consumed without appropriate medical supervision (section 301.7(a)). Bromazolam produces similar effects to prescription benzodiazepine but is often more potent and unpredictable. Higher doses can lead to drowsiness, reduced consciousness, difficulty breathing and death (section 301.7(b)(i)).

Dipentylone (N,N dimethylpentylone)

Dipentylone is a synthetic cathinone that is not approved for medical use and is consumed without appropriate medical supervision (section 301.7(a)). Dipentylone is observed to have stimulant effects similar to MDMA and a notably higher risk of producing unpredictable or adverse effects. Further, dipentylone is an analogue to pentylone (item 174 in schedule 1 and item 134 in schedule 2), and when consumed they produce a substantially similar physical and mental effect (section 301.7(b)(ii)).

2-Fluorodeschloroketamine (2- FDCK)

2-Fluorodeschloroketamine is a novel dissociative drug that is not approved for medical use, consumption of which also takes place without appropriate medical supervision (section 301.7(a)). The substance is an analogue to ketamine (item 146 in schedule 1 and item 110 in schedule 2), and when consumed they produce a substantially similar physical and mental effect (section 301.7(b)(ii)).

The AFP Minister is satisfied that the criteria for listing controlled and border controlled drugs by regulation in section 301.7 of the Code have been met.

Conditions met for listing controlled and border controlled precursors

The Regulations include 24 substances as controlled precursors in the table in section 13 of the Principal Regulations and border controlled precursors in the table in section 16 of the Principal Regulations.

All identified controlled and border controlled precursors for listing are used in the illicit manufacture of controlled drugs including fentanyl, MDMA and ketamine.

The AFP Minister is satisfied that the criteria for listing controlled and border controlled precursors by regulation in section 301.8 of the Code have been met.

Conditions met for restricted listing of border controlled precursor – Methylamine

The Regulations include the restricted listing of methylamine as a border controlled precursor in a restricted listing table in subclause 2 of section 16 the Principal Regulations, including commercial and marketable quantities.

Methylamine has known legitimate industrial uses, for example as a cleaning agent, fuel additive and photograph developer. However, it is also commonly used to manufacture a range of illicit amphetamine-type substances, most notably MDMA.

The restricted listing of methylamine recognises the increasing threat precursor chemicals pose to the Australian community. It also balances the need to better enable law enforcement to disrupt the supply and manufacture of illicit drugs and precursors in Australia, while still allowing registered importers to continue importing the substances for legitimate industrial uses.

The AFP Minister is satisfied that the criteria for listing border controlled precursors by regulation in section 301.8 of the Code have been met to create a restricted listing of methylamine in the Regulations.

Details of the proposed Regulations are set out in Attachment A.

CONSULTATION

The substances were identified and regulations developed in consultation with the Australian Criminal Intelligence Commission, Australian Federal Police, Australian Border Force, Australian Industrial Chemicals Introduction Scheme, Office Drug Control and Therapeutic Goods Administration.

POLICY IMPACT ANALYSIS

The Office of Impact Analysis (OIA) was consulted and advised that no Impact Analysis is required. This is because the proposal represents no significant difference from the status quo. The OIA consultation reference number is OIA24-08219.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at Attachment B.

ATTACHMENT A

Details of the proposed *Criminal Code Amendment (Controlled and Border Controlled Drugs and Precursors) Regulations 2025*

Section 1 - Name of Regulations

1. This section provides that the title of the Regulations is the *Criminal Code Amendment (Controlled and Border Controlled Drugs and Precursors) Regulations 2025*.

Section 2 - Commencement

2. This section provides for the Regulations to commence on 1 March 2025.

Section 3 - Authority

3. This section provides that the *Criminal Code Amendment (Border Controlled Drugs and Precursors) Regulations 2025* is made under the *Criminal Code Act 1995* (the Code).

Section 4 - Schedules

4. This section sets out that the instrument specified in the Schedule (the Criminal Code Regulations 2019) to this instrument is amended or repealed by the applicable items in the Schedule.

Schedule 1 - Amendments

Item [1] Section 13 (after table item 1C)

5. This item inserts new substances as controlled precursors in the table in section 13 with commercial and marketable quantities:
    - Butyl 3-(3',4'-methylenedioxyphenyl)-2-methyl glycidate (item 1D)
    - Butyl 3-phenyl-2-methyl glycidate (item 1E)
    - Diethyl 2-(2-phenylacetyl)propanedioate (DEPAPD) (item 1F)

Item [2] Section 13 (after table item 3)

6. This item inserts new substances as controlled precursors in the table in section 13 with commercial and marketable quantities:
    - Ethyl alpha-phenylacetoacetate (EAPA) (item 3A)
    - Ethyl 3-(3',4'-methylenedioxyphenyl)-2-methyl glycidate (item 3B)
    - Ethyl 3-phenyl-2-methyl glycidate (item 3C)

- Isobutyl 3-(3’,4’-methylenedioxyphenyl)-2-methyl glycidate (item 3D)
- Isobutyl 3-phenyl-2-methyl glycidate (item 3E)
- Isopropyl 3-(3’,4’-methylenedioxyphenyl)-2-methyl glycidate (item 3F)
- Isopropyl 3-phenyl-2-methyl glycidate (item 3G)

Item [3] Section 13 (after table item 6)

7. This item inserts a new substance as a controlled precursor in the table in section 13 with commercial and marketable quantities:
    - 3-(3’,4’-methylenedioxyphenyl)-2-methyl glycidic acid (item 6AA)

Item [4] Section 13 (after table item 7B)

8. This item inserts a new substance as a controlled precursor in the table in section 13 with commercial and marketable quantities:
    - Norfentanyl (item 7BA)

Item [5] Section 13 (after table item 8)

9. This item inserts a new substance as a controlled precursor in the table in section 13 with commercial and marketable quantities:
    - 3-Phenyl-2-methyl glycidic acid (item 8AA)

Item [6] Section 13 (after table item 8A)

10. This item inserts a new substance as a controlled precursor in the table in section 13 with commercial and marketable quantities:
    - N-Phenyl-4-piperidinamine (4-AP) (item 8B)

Item [7] Section 13 (after table item 10A)

11. This item inserts new substances as controlled precursors in the table in section 13 with commercial and marketable quantities:
    - 1-phenylpropan-2-yl 4-methylbenzenesulfonate (para-tosyl-phenyl-2-propanol) (item 10B)
    - 4-Piperidone (item 10C)

Item [8] Section 13 (after table item 11)

12. This item inserts new substances as controlled precursors in the table in section 13 with commercial and marketable quantities:
    - Propyl 3-(3',4'-methylenedioxyphenyl)-2-methyl glycidate (item 11A)
    - Propyl 3-phenyl-2-methyl glycidate (11B)

Item [9] Section 13 (at the end of the table)

13. This item inserts new substances as controlled precursors in the table in section 13 with commercial and marketable quantities:
    - sec-Butyl 3-(3',4'-methylenedioxyphenyl)-2-methyl glycidate (item 14)
    - sec-Butyl 3-phenyl-2-methyl glycidate (item 15)
    - N-(tert-Butoxycarbonyl)-4-piperidone (item 16)
    - tert-Butyl 3-(3',4'-methylenedioxyphenyl)-2-methyl glycidate (item 17)
    - tert-Butyl 4-(phenylamino)piperidine-1-carboxylate (1-boc-4-AP) (item 18)
    - tert-Butyl 3-phenyl-2-methyl glycidate (item 19)

Item [10] Subsection 16(1) (after table item 2)

14. This item inserts new substances as border controlled precursors in the table in section 16 with commercial and marketable quantities:
    - Butyl 3-(3',4'-methylenedioxyphenyl)-2-methyl glycidate (item 2AA)
    - Butyl 3-phenyl-2-methyl glycidate (item 2AB)

Item [11] Subsection 16(1) (after table item 2B)

15. This item inserts a new substance as a border controlled precursor in the table in section 16 with commercial and marketable quantities:
    - Diethyl 2-(2-phenylacetyl)propanedioate (DEPAPD) (item 2C)

Item [12] Subsection 16(1) (after table item 5)

16. This item inserts new substances as border controlled precursors in the table in section 16 with commercial and marketable quantities:
    - Ethyl alpha-phenylacetoacetate (EAPA) (item 5A)
    - Ethyl 3-(3',4'-methylenedioxyphenyl)-2-methyl glycidate (item 5B)
    - Ethyl 3-phenyl-2-methyl glycidate (item 5C)

- Isobutyl 3-(3’,4’-methylenedioxyphenyl)-2-methyl glycidate (item 5D)
- Isobutyl 3-phenyl-2-methyl glycidate (item 5E)
- Isopropyl 3-(3’,4’-methylenedioxyphenyl)-2-methyl glycidate (item 5F)
- Isopropyl 3-phenyl-2-methyl glycidate (item 5G)

Item [13] Subsection 16(1) (after table item 7A)

17. This item inserts a new substance as a border controlled precursor in the table in section 16 with commercial and marketable quantities:
    - 3-(3’,4’-methylenedioxyphenyl)-2-methyl glycidic acid (item 7AA)

Item [14] Subsection 16(1) (after table item 8B)

18. This item inserts a new substance as a border controlled precursor in the table in section 16 with commercial and marketable quantities:
    - Norfentanyl (item 8BA)

Item [15] Subsection 16(1) (after table item 9)

19. This item inserts a new substance as a border controlled precursor in the table in section 16 with commercial and marketable quantities:
    - 3-Phenyl-2-methyl glycidic acid (item 9AA)

Item [16] Subsection 16(1) (after table item 9A)

20. This item inserts a new substance as a border controlled precursor in the table in section 16 with commercial and marketable quantities:
    - N-Phenyl-4-piperidinamine (4-AP) (item 9B)

Item [17] Subsection 16(1) (after table item 11A)

21. This item inserts new substances as border controlled precursors in the table in section 16 with commercial and marketable quantities:
    - 1-phenylpropan-2-yl 4-methylbenzenesulfonate (para-tosyl-phenyl-2-propanol) (item 11B)
    - 4-Piperidone (item 11C)

Item [18] Subsection 16(1) (after table item 12)

22. This item inserts new substances as border controlled precursors in the table in section 16 with commercial and marketable quantities:
    - Propyl 3-(3',4'-methylenedioxyphenyl)-2-methyl glycidate (item 12A)
    - Propyl 3-phenyl-2-methyl glycidate (item 12B)

Item [19] Subsection 16(1) (after at the end of the table)

23. This item inserts new substances as border controlled precursors in the table in section 16 with commercial and marketable quantities:
    - sec-Butyl 3-(3',4'-methylenedioxyphenyl)-2-methyl glycidate (item 15)
    - sec-Butyl 3-phenyl-2-methyl glycidate (item 16)
    - N-(tert-Butoxycarbonyl)-4-piperidone (item 17)
    - tert-Butyl 3-(3',4'-methylenedioxyphenyl)-2-methyl glycidate (item 18)
    - tert-Butyl 4-(phenylamino) piperidine-1-carboxylate (1-boc-4-AP) (item 19)
    - tert-Butyl 3-phenyl-2-methyl glycidate (item 20)

Item [20] Subsection 16(2) (at the end of table)

24. This item inserts a new substance as a restricted listing border controlled precursor in the second table in section 16 with commercial and marketable quantities:
    - Methylamine (item 5)

Item [21] Clause 1 of Schedule 1 (after table item 24)

25. This item inserts a new substance as a controlled drug in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - Benzoylbenzylfentanyl (item 24A)

Item [22] Clause 1 of Schedule 1 (after table item 25)

26. This item inserts new substances as controlled drugs in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - Benzoylfentanyl (item 25A)
    - Benzylfentanyl (item 25B)
    - Benzylfuranylfentanyl (item 25C)

Item [23] Clause 1 of Schedule 1 (after table item 36)

27. This item inserts a new substance as a controlled drug in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - Bromazolam (item 36A)

Item [24] Clause 1 of Schedule 1 (after table item 49)

28. This item inserts a new substance as a controlled drug in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - Butonitazene (item 49A)

Item [25] Clause 1 of Schedule 1 (table item 66)

29. This item omits and substitutes item 66 (clonitazene) as a controlled drug and provides updated commercial, marketable and trafficable quantities:
    - Clonitazene (item 66)

Item [26] Clause 1 of Schedule 1 (after table item 70)

30. This item inserts new substances as controlled drugs in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - N-Desethyl etonitazene (item 70A)
    - N-Desethyl isotonitazene (item 70B)
    - N-Desethyl protonitazene (item 70C)

Item [27] Clause 1 of Schedule 1 (after table item 99)

31. This item inserts a new substance as a controlled drug in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - Dipentylone (N,N-dimethylpentylone)(item 99A)

Item [28] Clause 1 of Schedule 1 (after table item 106)

32. This item inserts new substances as controlled drugs in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - Ethylene etonitazene (item 106A)
    - Ethyleneoxynitazene (item 106B)

Item [29] Clause 1 of Schedule 1 (after table item 109)

33. This item inserts a new substance as a controlled drug in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - Etodesnitazene (etazene) (item 109A)

Item [30] Clause 1 of Schedule 1 (table item 110)

34. This item omits and substitutes item 110 (etonitazene) as a controlled drug and provides updated commercial, marketable and trafficable quantities:
    - Etonitazene (item 110)

Item [31] Clause 1 of Schedule 1 (after table item 110)

35. This item inserts new substances as controlled drugs in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - Etonitazepipne (N-piperidinyl etonitazene) (item 110A)
    - Etonitazepyne (N-pyrrolidino etonitazene) (item 110B)

Item [32] Clause 1 of Schedule 1 (after table item 113)

36. This item inserts new substances as controlled drugs in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - Flunitazene (item 113A)

Item [33] Clause 1 of Schedule 1 (after table item 117)

37. This item inserts new substances as controlled drugs in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - 2-Fluorodeschloroketamine (2-FDCK) (item 117A)

Item [34] Clause 1 of Schedule 1 (after table item 123)

38. This item inserts a new substance as a controlled drug in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - Furanylfentanyl (item 123A)

Item [35] Clause 1 of Schedule 1 (after table item 145)

39. This item inserts new substances as controlled drugs in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - Isotodesnitazene (item 145A)
    - Isotonitazene (item 145B)

Item [36] Clause 1 of Schedule 1 (after table item 176)

40. This item inserts a new substance as a controlled drug in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - Methylenedioxynitazene (2-(2-(benzo[d][1,3]dioxol-5-ylmethyl)-5-nitro-1H-benzo [d]imidazol-1-yl)-N,N-diethylethan-1-amine) (item 176A)

Item [37] Clause 1 of Schedule 1 (after table item 193)

41. This item inserts new substances as controlled drugs in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - Metodesnitazene (metazene) (item 193A)
    - Metonitazene (item 193B)

Item [38] Clause 1 of Schedule 1 (after table item 227)

42. This item inserts a new substance as a controlled drug in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - 3-Phenylpropanoylfentanyl (item 227A)

Item [39] Clause 1 of Schedule 1 (after table item 234)

43. This item inserts new substances as controlled drugs in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - Protonitazene (item 234A)
    - Protonitazepyne (N-pyrrolidino protonitazene) (item 234B)

Item [40] Clause 1 of Schedule 1 (after table item 237)

44. This item inserts a new substance as a controlled drug in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - Secofentanyl (item 237A)

Item [41] Clause 1 of Schedule 1 (after table item 241)

45. This item inserts a new substance as a controlled drug in the table in clause 1 of schedule 1 with commercial, marketable and trafficable quantities:
    - Thiofuranylfentanyl (item 241A)

Item [42] Subclause 1(1) of Schedule 2 (after table item 20)

46. This item inserts a new substance as a border controlled drug in the table in subclause 1(1) of schedule 2 with commercial and marketable quantities:
    - Benzoylbenzylfentanyl (item 20A)

Item [43] Subclause 1(1) of Schedule 2 (after table item 21)

47. This item inserts new substances as border controlled drugs in the table in subclause 1(1) of schedule 2 with commercial and marketable quantities:
    - Benzoylfentanyl (item 21A)
    - Benzylfentanyl (item 21B)
    - Benzylfuranylfentanyl (item 21C)

Item [44] Subclause 1(1) of Schedule 2 (after table item 31)

48. This item inserts a new substance as a border controlled drug in the table in subclause 1(1) of schedule 2 with commercial and marketable quantities:
    - Bromazolam (item 31A)

Item [45] Subclause 1(1) of Schedule 2 (after table item 34)

49. This item inserts a new substance as a border controlled drug in the table in subclause 1(1) of schedule 2 with commercial and marketable quantities:
    - Butonitazene (item 34A)

Item [46] Subclause 1(1) of Schedule 2 (table item 42)

50. This item omits and substitutes item 42 (clonitazene) as a border controlled drug and provides updated commercial and marketable quantities:
    - Clonitazene (item 42)

Item [47] Subclause 1(1) of Schedule 2 (after table item 46)

51. This item inserts new substances as border controlled drugs in the table in subclause 1(1) of schedule 2 with commercial and marketable quantities:
    - N-Desethyl etonitazene (item 46A)
    - N-Desethyl isotonitazene (item 46B)
    - N-Desethyl protonitazene (item 46C)

Item [48] Subclause 1(1) of Schedule 2 (after table item 77)

52. This item inserts a new substance as a border controlled drug in the table in subclause 1(1) of schedule 2 with commercial and marketable quantities:
    - Dipentylone (N,N-dimethylpentylone) (item 77A)

Item [49] Subclause 1(1) of Schedule 2 (after table item 83)

53. This item inserts new substances as border controlled drugs in the table in subclause 1(1) of schedule 2 with commercial and marketable quantities:
    - Ethylene etonitazene (item 83A)
    - Ethyleneoxynitazene (item 83B)

Item [50] Subclause 1(1) of Schedule 2 (after table item 85)

54. This item inserts a new substance as a border controlled drug in the table in subclause 1(1) of schedule 2 with commercial and marketable quantities:
    - Etodesnitazene (etazene) (item 85A)

Item [51] Subclause 1(1) of Schedule 2 (table item 86)

55. This item omits and substitutes item 86 (etonitazene) as a border controlled drug and provides updated commercial and marketable quantities:
    - Etonitazene (item 86)

Item [52] Subclause 1(1) of Schedule 2 (after table item 86)

56. This item inserts new substances as border controlled drugs in the table in subclause 1(1) of schedule 2 with commercial and marketable quantities:
    - Etonitazepipne (N-piperidinyl etonitazene) (item 86A)
    - Etonitazepyne (N-pyrrolidino etonitazene) (item 86B)

Item [53] Subclause 1(1) of Schedule 2 (after table item 89)

57. This item inserts new substances as border controlled drugs in the table in subclause 1(1) of schedule 2 with commercial and marketable quantities:
    - Flunitazene (item 89A)
    - 2-Fluorodeschloroketamine (2-FDCK) (item 89B)

Item [54] Subclause 1(1) of Schedule 2 (after table item 92)

58. This item inserts a new substance as a border controlled drug in the table in subclause 1(1) of schedule 2 with commercial and marketable quantities:
    - Furanylfentanyl (item 92A)

Item [55] Subclause 1(1) of Schedule 2 (after table item 109)

59. This item inserts new substances as border controlled drugs in the table in subclause 1(1) of schedule 2 with commercial and marketable quantities:
    - Isotodesnitazene (item 109A)
    - Isotonitazene (item 109B)

Item [56] Subclause 1(1) of Schedule 2 (after table item 134)

60. This item inserts a new substance as a border controlled drug in the table in subclause 1(1) of schedule 2 with commercial and marketable quantities:
    - Methylenedioxynitazene (2-(2-(benzo[d][1,3]dioxol-5-ylmethyl)-5-nitro-1H-benzo [d]imidazol-1-yl)-N,N-diethylethan-1-amine) (item 134A)

Item [57] Subclause 1(1) of Schedule 2 (after table item 149)

61. This item inserts new substances as border controlled drugs in the table in subclause 1(1) of schedule 2 with commercial and marketable quantities:
    - Metodesnitazene (metazene) (item 149A)
    - Metonitazene (item 149B)

Item [58] Subclause 1(1) of Schedule 2 (after table item 187)

62. This item inserts a new substance as a border controlled drug in the table in subclause 1(1) of schedule 2 with commercial and marketable quantities:
    - 3-Phenylpropanoylfentanyl (item 187A)

Item [59] Subclause 1(1) of Schedule 2 (after table item 194)

63. This item inserts new substances as border controlled drugs in the table in subclause 1(1) of schedule 2 with commercial and marketable quantities:
    - Protonitazene (item 194A)
    - Protonitazepyne (N-pyrrolidino protonitazene) (194B)

Item [60] Subclause 1(1) of Schedule 2 (after table item 197)

64. This item inserts a new substance as a border controlled drug in the table in subclause 1(1) of schedule 2 with commercial and marketable quantities:
    - Secofentanyl (item 197A)

Item [61] Subclause 1(1) of Schedule 2 (after table item 201)

65. This item inserts a new substance as a border controlled drug in the table in subclause 1(1) of schedule 2 with commercial and marketable quantities:
    - Thiofuranylfentanyl (item 201A)

ATTACHMENT B

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Criminal Code Amendment (Border Controlled Drugs and Precursors) Regulations 2025

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 Regulations

2. The Criminal Code Amendment (Border Controlled Drugs and Precursors) Regulations 2025 (The Regulations) amends the Criminal Code Regulations 2019 (the Principal Regulations) to list emerging substances, including nitazenes and fentanyl-type substances as controlled and border controlled drugs and precursors; and modify the threshold quantities of already listed clonitazene and etonitazene to more accurately reflect their potency and harm potential.
3. Sections 301.1 (controlled drugs) and 301.4 (border controlled drugs) of the Code provide that serious drugs are substances (other than a growing plant) listed by regulation.

4. Sections 301.3 (controlled precursors) and 301.6 (border controlled precursors) of the Code provide that serious drug precursors are substances (including growing plants) listed by regulation.

5. Sections 301.10 (commercial quantity), 301.11 (marketable quantity) and 301.12 (trafficable quantity) of the Code provide that relevant quantities are not less than those listed as the given quantities for a substance in a regulation made for the purposes of the sections.

6. The Principal Regulations list controlled drugs in a table in clause 1 of schedule 1, controlled precursors in a table under section 13, border controlled drugs in a table in subclause 1 of schedule 2 and border controlled precursors in a table in subclause 1 of section 16.

Conditions met for listing controlled and border controlled drugs

7. Section 301.7 of the Code prescribes the matters the Minister administering the *Australian Federal Police Act 1979* (the AFP Minister) must be satisfied of to list a serious drug by regulation.

8. The Regulations include 28 substances as controlled drugs in the table in clause 1 of Schedule 1 of the Principal Regulations and border controlled drugs in subclause 1(1) of Schedule 2 of the Principal Regulations, including relevant quantities.

9. Nitazenes

   Nitazenes are taken to be consumed without appropriate medical supervision, as they were not formulated or approved for therapeutic purposes due to their high overdose potential and associated adverse effects (section 301.7(a)). Further, the consumption of nitazenes is associated with a risk of death, with as little as 2 milligrams of the substance having the potential to result in fatal overdose (section 301.7(b)(i)). Other harms and associated health implications include respiratory depression, analgesia and euphoria. The nitazenes identified for listing are considered analogues to etonitazene (item 110 in schedule 1 and item 86 in schedule 2) and fentanyl (item 113 in schedule 1 and item 89 in schedule 2). This means they are considered to produce substantially similar (in this case, more potent) effects to the already listed substances (section 301.7(b)(ii)).

10. Fentanyl-type substances

    The fentanyl-type substances identified for listing are commonly used as illicit fentanyl and are consumed without appropriate medical supervision (section 301.7(a)). The consumption of the substance may be fatal, with the lethal dose of the main fentanyl-type substance as little as 2 milligrams (section 301.7(b)(i)). Other harms and health implications associated with fentanyl-type substances are vomiting, analgesia, euphoria and respiratory depression. The identified fentanyl-type substances are analogues to fentanyl (item 113 in schedule 1 and item 89 in schedule 2), and when consumed they produce a substantially similar physical and mental effect (section 301.7(b)(ii)).

11. Bromazolam

    Bromazolam is commonly sold as a counterfeit benzodiazepine not approved for medical use and is consumed without appropriate medical supervision (section 301.7(a)). Bromazolam produces similar effects to prescription benzodiazepine but is often more potent and unpredictable. Higher doses can lead to drowsiness, reduced consciousness, difficulty breathing and death (section 301.7(b)(i)).

12. Dipentylone (N,N dimethylpentylone)

    Dipentylone is a synthetic cathinone that is not approved for medical use and is consumed without appropriate medical supervision (section 301.7(a)). Dipentylone is observed to have stimulant effects similar to MDMA and a notably higher risk of producing unpredictable or adverse effects. Further, dipentylone is an analogue to pentylone (item 174 in schedule 1 and item 134 in

schedule 2) that when consumed can produce a substantially similar physical and mental effect (section 301.7(b)(ii)).

13. 2-Fluorodeschloroketamine (2- FDCK)

    2-Fluorodeschloroketamine is a novel dissociative drug that is not approved for medical use, consumption of which also takes place without appropriate medical supervision (section 301.7(a)). The substance is an analogue to ketamine (item 146 in schedule 1 and item 110 in schedule 2) that when consumed can produce a substantially similar physical and mental effect (section 301.7(b)(ii)).

14. The AFP Minister is satisfied that the criteria for listing controlled and border controlled drugs by regulation in section 301.7 of the Code have been met.

Conditions met for listing controlled and border controlled precursors

15. In relation to serious drug precursors, section 301.8 of the Code provides that the AFP Minister must be satisfied that there is a risk that the substance will be used to unlawfully manufacture a controlled drug (other than a determined controlled drug).

16. The Regulations include 13 substances as controlled precursors in the table in section 13 of the Principal Regulations and border controlled precursors in the table in section 16 of the Principal Regulations.

17. All identified controlled and border controlled precursors for listing are used in the illicit manufacture of controlled drugs including fentanyl, MDMA and ketamine.

18. The AFP Minister is satisfied that the criteria for listing controlled and border controlled precursors by regulation in section 301.8 of the Code have been met.

Conditions met for restricted listing of border controlled precursor - Methylamine

19. Section 301.6 of the Code provides that a border controlled precursor is a substance (including a growing plant) that is listed by a regulation as a border controlled precursor (section 301.6(1)(a)). The Principal Regulations lists border controlled precursors in a table in section 16.

20. A substance may also be a restricted listing of a border controlled precursor under section 301.6(1A) of the Code, meaning a substance is only listed by regulation against offences in Part 9.1, or elements of those offences, rather than Part 9.1 as a whole.

21. Section 301.8 of the Code also provides that the AFP Minister must be satisfied that there is a risk that the substance will be used to unlawfully manufacture a controlled drug (other than a determined controlled drug).

22. The Regulations include the restricted listing of methylamine as a border controlled precursor in the restricted listing table in subclause 1(2) of Schedule 2 of the Principal Regulations.

23. Methylamine has legitimate industrial uses as a cleaning agent, fuel additive and photograph developer. However, it is also commonly used to manufacture a range of illicit amphetamine-type substances, most notably MDMA. There are no identified alternatives available for legitimate importers of the substance.

24. The restricted listing of methylamine recognises the increasing threat precursor chemicals pose to the Australian community. It also balances the need to better enable law enforcement to disrupt the supply and manufacture of illicit drugs and precursors in Australia, while still allowing registered importers to continue importing the substances for legitimate industrial uses.

25. The AFP Minister is satisfied that the criteria for listing border controlled precursors by regulation in section 301.8 of the Code have been met to create a restricted listing of methylamine in the Regulations.

Human rights implications

26. The Regulations engage, directly or indirectly, with the following human rights:
    - The right to life in Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR).
    - The right to the enjoyment of the highest attainable standard of physical and mental health in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The right to life

27. The Regulations promote the right to life in Article 6(1) of the ICCPR. Article 6(1) provides, 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'

28. The United National Human Rights Committee notes the right to life should not be interpreted narrowly, and that it concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.

29. Listing the substances in the Principal Regulations promotes this right as the substances cause significant harms in Australia, including death and other overdose related harms, that limit individuals' right to life and enjoyment of a life with dignity.

30. The harms associated with nitazenes demonstrate the severity of the limits imposed on the right to life when left unregulated in the Australian community. Nitazenes are a highly potent synthetic

opioid, which may be lethal in very small doses. As little as 2 milligrams can result in a fatal overdose. Nitazenes are often found mixed with fentanyl-type substances, and have been found mixed with heroin, ketamine and synthetic cannabinoids. A key concern with regards to nitazenes, is the cohort of people who are unknowingly consuming the substance. The consumption of nitazenes (unintentional or otherwise), may therefore be expected to cause death, as well as limit individuals' entitlement to enjoy a life with dignity. Nitazenes have no legitimate use.

31. To combat these harms, the Regulations will ensure that the substances are subject to the serious drug offences in Part 9.1 of the *Criminal Code Act 1995* (the Code) and better enable law enforcement agencies including the Australian Federal Police and the Australian Border Force to detect, seize and investigate the trafficking of these substances.

32. Overall, the Regulations are necessary and reasonable to promote the right to life in Australia.

The right to the enjoyment of the highest attainable standard of physical and mental health

33. The Regulations promote the right to the enjoyment of the highest attainable standard of physical and mental health in Article 12(1) of the ICESCR. Article 12(2) notes the full realisation of this right includes steps necessary for the improvement of all aspects of environmental and industrial hygiene (Article 12(2)(b)), such as discouraging the use of drugs and other harmful substances.

34. Listing the substances in the Principal Regulations promotes this right by supporting law enforcement to prevent criminal groups from importing substances that contribute to Australia's illicit drug market. This will reduce the health risks to Australian communities related to the misuse of these substances if used or manufactured into illicit drugs. This is also consistent with the AFP Minister being satisfied of the matters prescribed for listing controlled and border controlled drugs and precursors in sections 301.7 and 301.8 respectively in the Code.

35. Furthermore, the Regulations seek to balance this right with the restricted listing of Methylamine against offences in Part 9.1 of the Code, or elements of those offences, to ensure that registered importers with legitimate industrial uses for the substances can continue importing them.

36. Overall, the Regulations are necessary and reasonable to promote the right to the enjoyment of the highest attainable standard of physical and mental health, and to protect the Australian community by discouraging the use of drugs and other harmful substances.

Conclusion

37. The Legislative Instrument is compatible with human rights because it promotes Article 12 of the ICESCR and Article 6(1) of the ICCPR by protecting the general health, welfare, and the

enjoyment of life with dignity of the Australian community by discouraging the use of drugs and other harmful substances.