

## EXPLANATORY STATEMENT

### Select Legislative Instrument No. 47, 2014

Subject - *Criminal Code Act 1995*

*Criminal Code Amendment (Border Controlled Drugs) Regulation 2014*

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. A border controlled drug is one that is listed in the Criminal Code Regulations 2002 (the CCR) or in a determination as a border controlled drug, or is an analogue of a listed drug. A drug analogue is defined in section 301.9 of the Criminal Code and includes substances that have a similar chemical structure to a listed drug.

The *Criminal Code Amendment (Border Controlled Drugs) Regulation 2014* (the Regulation) lists four substances as border controlled drugs in the CCR. These substances pose a risk to public safety and have very powerful effects at low dosages. These substances are part of a group of potent hallucinogenic drugs that have a chemical structure based on phenethylamine (called ‘NBOMes’). The harms associated with these substances include hallucinations, paranoia, cardiovascular complications, seizures, hyperthermia, organ failure and death. They have been linked to deaths in Australia and overseas.

Section 301.7 of the Criminal Code provides that the Minister may list a substance in the CCR if satisfied that certain criteria are met. 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 already listed;
- iii) the substance has the capacity to cause physiological dependence;
- iv) possession or conduct in relation to the substance is proscribed under a law of a State, a Territory or a foreign country that has purposes similar to those of this Part; and
- v) the substance poses a substantial risk to the health or safety of the public.

The Minister is satisfied that criteria (i), (ii) and (iv) has been met in relation to the substances listed in the Regulation.

In accordance with section 301.4 of the Criminal Code, the substances in the Regulation would be border controlled drugs and subject to the import/export offences in Division 307 of the Criminal Code. Drug analogues of these substances may also be considered border controlled drugs and subject to the import/export offences.

The Regulation prescribes marketable and commercial threshold quantities for each of the substances. These amounts are used for determining penalty levels. These amounts have been set by reference to quantities prescribed in the CCR for drugs that are believed to have similar strength and effect.

The substances in the Regulation are already subject to import/export controls through the *Customs (Prohibited Import) Regulations 1956*. They are also subject to a range of legal and regulatory controls in States and Territories that have adopted the *Standard for the Uniform Scheduling of Medicines and Poisons*.

The Australian Federal Police, the Australian Customs and Border Protection Service, the Department of Health, the Australian Crime Commission and the Commonwealth Department of Public Prosecutions were consulted in the preparation of the Regulation.

The Regulation commences on the day after it is registered.

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

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

The Office of Best Practice Regulation was consulted in the drafting of the Regulation and has advised that a Regulation Impact Statement is not required.

Authority: Section 301.7 of the *Criminal Code Act 1995*

### **Statement of Compatibility with Human Rights**

The Criminal Code Amendment (Border Controlled Drugs) Regulation 2014 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 promotes 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), as it attaches serious criminal offences to the importation of substances that create a risk of death or serious harm.

## **ATTACHMENT – Details of the Criminal Code Amendment (Border Controlled Drugs) Regulation 2014**

### **Section 1 – Name of Regulation**

This clause provides that, when enacted, the Regulation may be cited as the *Criminal Code Amendment (Border Controlled Drugs) Regulation 2014*

### **Section 2 – Commencement**

This clause sets out that the Regulation will commence on the day after it is registered.

### **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**

This is the formal clause that identifies that the Regulation amends the Criminal Code Regulations 2002, which is the instrument specified in Schedule 1 of the Criminal Code Amendment (Border Controlled Drugs) Regulation 2014.

### **Schedule 1 – Amendments**

The schedule adds four substances and their quantities to the border controlled drugs list at Schedule 4 of the Criminal Code Regulations 2002.