

EXPLANATORY STATEMENT

Select Legislative Instrument No. 117, 2014

Issued by the authority of the Minister for Justice

Criminal Code Act 1995

Criminal Code Amendment (Drugs) Regulation 2014

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

Part 9.1 of the Code contains Commonwealth serious drug offences. These offences are divided into two categories. The first category involves ‘controlled’ drugs, plants and precursors, and offences apply to their possession, sale, trafficking and commercial manufacture. The second category involves ‘border controlled’ drugs, plants and precursors and offences apply to their importation and exportation. The Code also prohibits the possession of border controlled substances that have been unlawfully imported or that are reasonably suspected of having been unlawfully imported.

Controlled and border controlled drugs are listed in Schedule 3 and Schedule 4 respectively of the Criminal Code Regulations 2002 (the Regulations). The schedules also list threshold quantities which are used by law enforcement to determine appropriate charges and by the court to determine penalty levels.

Prior to May 2013, the matters dealt with in Schedules 3 and 4 were set out in Division 314 of the Code. In May 2013, the list of controlled drugs was moved to Schedule 3.

When the matters dealt with in Schedule 3 were moved from the Code to the Regulations, an error occurred. The result is that the trafficable quantity prescribed for 13 controlled drugs differs from the trafficable quantity prescribed in the Code. As a result of the error, some controlled drugs have higher prescribed trafficable quantities than the Code prescribed. Other controlled drugs have lower prescribed trafficable quantities than the Code prescribed.

The purpose of the Regulation is to amend the threshold quantities for trafficable amounts of controlled drugs to reflect what was previously prescribed in the Code.

The Regulation amends the trafficable quantities of 13 controlled drugs as follows:

	Name of controlled substance	Current trafficable quantity	New trafficable quantity
1.	Amphetamine	0.75 grams	2.0 grams
2.	Benzylpiperazine	0.75 grams	2.0 grams
3.	Cannabis	125.0 grams	250.0 grams
4.	Cannabis resin	125.0 grams	20.0 grams
5.	Gammabutyrolactone (GBL)	1.0 grams	0.5 grams
6.	Heroin (diacetylmorphine)	1.5 grams	2.0 grams
7.	4-Hydroxybutanoic acid (GHB)	1.0 grams	0.5 grams
8.	Ketamine	1.0 grams	3.0 grams
9.	Methamphetamine	0.75 grams	2.0 grams
10.	Methcathinone	0.75 grams	2.0 grams
11.	3,4-Methylenedioxyamphetamine (MDA)	0.75 grams	0.5 grams
12.	4-Methylmethcathinone (4-MMC)	0.75 grams	2.0 grams
13.	Tetrahydrocannabinols (THC)	5.0 grams	2.0 grams

The Australian Federal Police (AFP) and Commonwealth Director of Public Prosecutions (CDPP) have been consulted on this proposal.

The AFP and CDPP have confirmed that to the best of their knowledge, no investigations or prosecutions were affected due the incorrect quantities. The incorrect quantities were in force from May 2013 to present. The Regulation will not affect past or ongoing investigations or prosecutions. The amendments to the trafficable quantities under the Regulation will commence on the day after it is registered on the Federal Register of Legislative Instruments. The Regulation will only affect investigations or prosecutions for conduct occurring after commencement.

The Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

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

Statement of Compatibility with Human Rights

This Legislative Instrument does not engage any of the applicable rights or freedoms. It will not have a retroactive effect. This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.