

EXPLANATORY STATEMENT

Select Legislative Instrument No. 250, 2015

Issued by the authority of the Minister for Justice

Criminal Code Act 1995

Criminal Code Amendment (Psychoactive Substances) Regulation 2015

Schedule 1 of the *Criminal Code Act 1995* (Act) contains the Commonwealth *Criminal Code* (Code). The Code sets out Commonwealth criminal law, including general principles of criminality and offences.

Section 5 of the Act allows the Governor-General to make regulations prescribing matters required or permitted to be prescribed or that are necessary or convenient to be prescribed to give effect to the Act. Paragraph 320.2(2)(l) of the Code exempts the importation of psychoactive substances that are prescribed by, or included in a class of substances prescribed by, the regulations. Paragraph 320.3(3)(f) of the Code exempts the importation of serious drug alternatives that are prescribed by, or included in a class of substances prescribed by, the regulations.

The Regulations allow forensic laboratories, law enforcement agencies, medical and scientific research facilities and their suppliers to import new psychoactive substances (NPS) for the purposes of forensic analysis, law enforcement, or medical or scientific research. NPS are substances designed to mimic the psychoactive effects of serious drugs but whose chemical structures are not captured by controls on serious drugs in the Code or *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations).

The importation of NPS has been prohibited following the commencement of the *Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015* (NPS Amendment Act). That Act inserted two new offences relating to NPS into the Code. Under section 320.2 of the Code, a person will commit an offence if he or she imports a psychoactive substance. Under section 320.3 of the Code, a person will commit an offence if he or she imports a substance whose presentation represents it to be an alternative to a serious drug (serious drug alternative).

Subsections 320.2(2) and 320.3(3) of the Code exempt classes of psychoactive substances and serious drug alternatives from the new offences. These exceptions include food, therapeutic goods and serious drugs listed in the Code or Prohibited Imports Regulations.

The Regulations add additional exemptions to allow a limited class of persons to import NPS for legitimate purposes, provided that they already hold a licence to import drugs under the Prohibited Imports Regulations and they have notified the Secretary of the Department of Health or his or her delegate.

The Attorney-General's Department consulted with the Therapeutic Goods Administration, Australian Federal Police and Australian Border Force in preparing these Regulations. In June 2015, the Department engaged in targeted consultation with a range of forensic

laboratories, medical and scientific research facilities and chemical suppliers about the proposal to authorise the importation of NPS. These entities broadly supported the proposal.

Details of the Regulations are set out in the Attachment.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

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

The Regulations commence on the day after they are registered.

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required.

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

Statement of Compatibility with Human Rights

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

Criminal Code Amendment (Psychoactive Substances) Regulation 2015

This Disallowable 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 Disallowable Legislative Instrument

The *Criminal Code Amendment (Psychoactive Substances) Regulation 2015* (Regulations) would allow forensic laboratories, law enforcement agencies, medical and scientific research facilities and their suppliers to import psychoactive substances that would otherwise be banned under sections 320.2 and 320.3 of the *Criminal Code* (Code). Those sections ban the importation of psychoactive substances and serious drug alternatives that do not have a legitimate use or are otherwise controlled.

Forensic laboratories, law enforcement agencies, medical and scientific research facilities need to import psychoactive substances and serious drug alternatives for forensic analysis, law enforcement or medical or scientific research (referred to here as relevant purposes). These purposes would include importations for developing reference standards to assist in prosecutions and investigations, for developing drug testing kits, or for authorised research on the health or other effects of psychoactive substances.

Subsections 320.2(2) and 320.3(3) of the Code set out a range of legitimate uses for which a person may import a psychoactive substance or serious drug alternative. These include where the substance is a medicine or food, as well as any other purposes specified in the regulations. In any prosecution for an offence against sections 320.2 or 320.3, a defendant bears the evidential burden of demonstrating that he or she was importing a substance for a purpose set out in subsections 320.2(2) or 320.3(3).

Under the disallowable legislative instrument, relevant bodies would be able to import psychoactive substances and serious drug alternatives in the following circumstances:

- they must already hold a licence to import illicit drugs under the *Customs (Prohibited Imports) Regulations 1956*
- they are importing the substance for a relevant purpose, and
- they must have notified the Secretary of the Department of Health (or his or her delegate) of the details of the importation.

Human rights implications

The Regulations engage the presumption of innocence under article 14(2) of the International Covenant on Civil and Political Rights (ICCPR).

Article 14(2) of the ICCPR provides that persons charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. It imposes on the prosecution the burden of proving a criminal charge and guarantees that no guilt can be

presumed until the charge has been proved beyond reasonable doubt. This right may be permissibly limited provided that the prosecution remains primarily responsible for proving the accused is guilty.

The Regulations add extra exemptions to the offences of importing a psychoactive substance or serious drug alternative under sections 320.2 and 320.3 of the Code. In accordance with subsection 13.3(3) of the Code, a defendant charged with one of these offences bears the evidential burden in establishing that the imported substance is exempt from the relevant offence under the Regulations.

The Regulations do not change the nature of the exceptions set out in subsections 320.2(2) and 320.3(3) of the Code. For the reasons set out in the Statement of Compatibility for Schedule 1 of the Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014, these exceptions are a necessary, proportionate and reasonable limitation on the presumption of innocence.

Details of the Criminal Code Amendment (Psychoactive Substances) Regulation 2015 (No.)

Regulation 1- Name

This regulation provides that the title of the regulations is the *Criminal Code Amendment (Psychoactive Substances) Regulation 2015* (Regulations).

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the day after they are registered.

Regulation 3 – Authority

This regulation provides that the Regulations are made under the *Criminal Code Act 1995*.

Regulation 4 – Schedules

This regulation provides that Schedule 1 to the regulations amends the *Criminal Code Regulations 2002* (Principal Regulations).

Schedule 1 – Amendments

Schedule 1 to the Regulations prescribes certain matters, including those related to the importation of psychoactive substances for the purposes of law enforcement, forensic analysis or medical or scientific research.

Item 1

This item changes the current heading of regulation 3 from ‘Definition’ to ‘Definitions’. The item is consequent upon item 2, which inserts additional definitions into regulation 3.

Item 2

This item inserts new definitions of *authorised person*, *Health Department*, *Health Minister* and *Health Secretary* into regulation 3. These definitions are used in new regulations 5G and 5H.

‘authorised person’

The term *authorised person* is used in relation to the people who can receive notices about the importation of psychoactive substances. The term means the person to whom the *Health Secretary* has delegated his or her authority to consider and issue licences and permits to import drugs under the *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations). It relies on the existing delegation made under the Prohibited Imports Regulations and does not require the *Health Secretary* to issue a new delegation for these provisions.

‘Health Department’ and ‘Health Minister’

The terms *Health Department* and *Health Minister* is used in relation to the definition of *Health Secretary*. *Health Department* means the department that the *Health Minister* administers. *Health Minister* means the Minister administering the *Therapeutic Goods Act 1989* (Therapeutic Goods Act). These definitions are consistent with similar definitions in regulation 5 of the Prohibited Import Regulations.

‘Health Secretary’

The term *Health Secretary* is used in relation to the people who can receive notices about the importation of psychoactive substances and the person who can determine the minimum requirements for such a notice. The term means the Secretary to the department administering the Therapeutic Goods Act. This is consistent with a similar definition in regulation 5 of the Prohibited Import Regulations.

Item 4

This item inserts new Division 3.3 into the Principal Regulations. Division 3.3 sets out the requirements for a person to be able to import a psychoactive substance that would otherwise be prohibited under sections 320.2 or 320.3 of the *Criminal Code* (Code).

Subregulation 5G(1)

Subregulation 5G(1) excludes substances that are imported in compliance with the requirements of subregulation 5G(2) from the offence in section 320.2 of the Code. Section 320.2 bans the importation of all substances that have a psychoactive effect, unless they are excluded under subsection 320.2(2).

Subregulation 5G(2)

Subregulation 5G(2) sets out the conditions that a person must satisfy in order to import a psychoactive substance under subregulation 5G(1). The person importing the substance must satisfy all relevant conditions before he or she is able to import the substance. Subregulation 5G(2) refers to the person importing the substance as the importer.

In accordance with subsections 13.3(3) and 320.2(2) of the Code, the importer bears the evidential burden of proving that he or she has satisfied each relevant condition in subregulation 5G(2). Further, an Australian Border Force (ABF) officer is able to stop an importation and seek more information from an importer if the officer suspects that the importer has not complied with all the conditions of subregulation 5G(2). Under subsection 203B(1) of the *Customs Act 1901* (Customs Act), an ABF officer may seize goods if he or she reasonably suspects they are a prohibited psychoactive substance.

Paragraph 5G(2)(a) requires the importer to hold a licence to import drugs under subregulation 5(5) of the Prohibited Imports Regulations. The term *drug* is defined in subregulation 5G(4). A licence enables the holder to import drugs listed in Schedule 4 of the Prohibited Imports Regulations. Under paragraph 320.2(3)(k) of the Code, drugs listed in the Prohibited Imports Regulations are not psychoactive substances.

Under subregulation 5(7) of the Prohibited Import Regulations, a person may only obtain a licence to import drugs if, among other things, he or she is a fit and proper person to be granted a licence to import drugs, his or her agents or employees are also fit and proper persons, and his or her premises are sufficiently secure to store any drugs imported.

An importer must already hold a licence to import drugs under the Prohibited Imports Regulations in order to satisfy paragraph 5G(2)(a) of the Principal Regulations. As psychoactive substances are not drugs listed in Schedule 4 of the Prohibited Imports Regulations, an importer cannot obtain such a licence solely in order to import psychoactive substances.

Paragraph (b) sets out the purposes for which an importer may import a psychoactive substance. The purpose for which an importer may import a substance will depend on the nature of the importer's work.

Under subparagraph (i), a forensic laboratory is able to import a psychoactive substance for the purposes of forensic analysis. A person who is employed by such a laboratory is also able to import a psychoactive substance for the purposes of forensic analysis. This is necessary to allow for circumstances where an individual in a forensic laboratory holds a licence under regulation 5 of the Prohibited Imports Regulations on behalf of that laboratory.

Neither 'forensic laboratory' nor 'forensic analysis' are defined in the regulations. These terms have their ordinary meaning.

The term 'forensic laboratory' is intended to capture all Commonwealth, state and territory forensic science facilities, such as the National Measurement Institute.

The term 'forensic analysis' is intended to include analysis for developing reference standards for use in prosecutions or coronial proceedings, in developing drug testing kits and for determining the toxicology of a substance.

Under subparagraph (ii), the Australian Federal Police (AFP) and State and Territory police forces are able to import a psychoactive substance for the purposes of law enforcement.

'Purposes of law enforcement' is not defined in the regulations. This term has its ordinary meaning.

The term 'purposes of law enforcement' is intended to include all purposes relevant to law enforcement. These include investigating and prosecuting offences, assisting domestic and foreign law enforcement agencies with investigations and prosecutions, and developing criminal intelligence and illicit drug policy.

Under subparagraph (iii), the Commissioner or a Deputy Commissioner of the AFP, and persons in the equivalent positions in State and Territory police forces, are also able to import psychoactive substances for the purposes of law enforcement. This subparagraph is necessary to allow for circumstances where an individual in a police force holds a licence under regulation 5 of the Prohibited Imports Regulations on behalf of that police force.

Under subparagraph (iv), a medical research facility is able to import a psychoactive substance for the purposes of medical research. A person who is employed by such a facility is also able to import a psychoactive substance for the purposes of medical research. This is necessary to allow for circumstances where an individual in a medical research facility holds a licence under regulation 5 of the Prohibited Imports Regulations on behalf of that facility.

Neither ‘medical research facility’ nor ‘purposes of medical research’ are defined in the regulations. These terms have their ordinary meaning.

The term ‘medical research facility’ is intended to cover government and non-government organisations that are engaged solely or primarily in medical research.

The term ‘purposes of medical research’ is intended to include purposes directly related to research into human health or medicine. This includes research into the potential effect of substances on diseases or other health conditions. Substances used in human trials would not generally fall within this category as they would be covered by the Therapeutic Goods Act.

Under subparagraph (v), a scientific research facility is able to import a psychoactive substance for the purposes of scientific research. A person who is employed by such a facility is also able to import a psychoactive substance for the purposes of scientific research. This is necessary to allow for circumstances where an individual in a scientific research facility holds a licence under regulation 5 of the Prohibited Imports Regulations on behalf of that facility.

Neither ‘scientific research facility’ nor ‘purposes of scientific research’ are defined in the regulations. These terms have their ordinary meaning.

The term ‘scientific research facility’ is intended to cover government and non-government organisations that are engaged solely or primarily in scientific research, including universities and associated research centres. It is not intended to include individuals conducting ad hoc or personal experiments.

The term ‘purposes of scientific research’ is intended to include a range of systematic and organised scientific inquiry. This includes studies into the effects of drugs and their potential uses, and in developing tests to determine the presence of a substance. It is not intended to include ad hoc or personal experiments on the effects of drugs.

Subparagraph (vi) allows an importer to import a psychoactive substance on behalf of a forensic laboratory, Commonwealth, State or Territory police force (or the head or deputy head of such a police force) or medical or scientific research facility.

If the importer is an organisation, it is only able to import a psychoactive substance if:

- the organisation regularly imports drugs under the Prohibited Imports Regulations
- the organisation is importing the psychoactive substance at the written request of another entity, being a forensic laboratory, Commonwealth, State or Territory police force or medical or scientific research facility, and
- that entity also holds a licence under regulation 5 of the Prohibited Imports Regulations.

If the importer is an individual, he or she is only able to import a psychoactive substance if:

- he or she is employed by an organisation
- that organisation regularly imports drugs under the Prohibited Imports Regulations
- the importer is importing the psychoactive substance at the written request of another entity, being a forensic laboratory, Commonwealth, State or Territory police force or medical or scientific research facility, and
- that entity also holds a licence under regulation 5 of the Prohibited Imports Regulations.

This subparagraph is intended to allow the Australian distributors of international chemical wholesalers to import psychoactive substances at the request of a forensic laboratory, law enforcement agency or medical or scientific research facility. There are circumstances where contractual or licencing arrangements will require such organisations to purchase psychoactive substances through an Australian distributor.

Paragraph (c) requires the importer to give the Health Secretary or his or her delegate written notice about the importer's intention to import the psychoactive substance. The importer must give this notice before importing the substance.

Subparagraphs (c)(i) to (v) set out the minimum information that an importer needs to include in a notice.

Under subparagraph (c)(ii), the importer is required to identify the period in which the importation is likely to occur. This is intended to allow the importer some flexibility in importing a substance in the event that there are delays associated with supply. If an import is likely to occur outside this 30-day period, the importer should provide a new notification to the Health Secretary.

Subparagraph (c)(v) requires importers who are employed by forensic laboratories, medical or scientific research facilities or third party chemical distributors to identify their employer in the notification. As subparagraph (b)(iii) only allows the Commissioner and Deputy Commissioners of the AFP (and their state and territory equivalents) to import psychoactive substances, there is no need to require them to identify the organisation for whom they work.

Under subparagraph (vi), the importer may also be required to provide additional information in the notice at the Health Secretary's request.

It is intended that the ABF will reconcile the goods in the notice of the importer's intention to import a psychoactive substance against the substance actually imported. This will assist in reducing the risk of diversion or misappropriation of illegal and potentially harmful psychoactive substances.

Subregulation 5G(3)

Subregulation 5G(3) gives the Health Secretary the power to determine two matters in relation to notices given to the Secretary or his or her delegate under paragraph 5G(2)(c).

Under paragraph (a), the Secretary is able to determine the information that an importer needs to provide in a notice in order to comply with paragraph 5G(2)(c). This paragraph is

intended to allow the Secretary to obtain additional information about the substance and the importation to that set out in subparagraphs 5G(2)(c)(i) to (vi).

Under paragraph (b), the Secretary is able to determine the form in which an importer must provide the notice to the Secretary or his or her delegate.

It is intended that the Secretary or his or her delegate will provide written confirmation to the importer that he or she has received the importer's notification, and that this will be dealt with in a Memorandum of Understanding between the Secretary and the ABF.

Subregulation 5G(4)

Subregulation 5G(4) sets out the definition of the term *drug* as used in regulation 5G. The term has the same meaning as it has in subregulation 5(20) of the Prohibited Imports Regulations. Under that subregulation, drug means any substance listed in Schedule 4 of the Prohibited Imports Regulations, along with analogues of those substances.

The term *drug* is used in paragraph 5G(2)(a) and subparagraph 5G(2)(b)(vi) in relation to the requirement that any importer or legitimate end user of a psychoactive substance must hold a licence to import drugs under regulation 5 of the Prohibited Imports Regulations.

Subregulation 5H(1)

Subregulation 5H(1) excludes substances that are imported in compliance with the requirements of subregulation 5H(2) from the offence in section 320.3 of the Code. Section 320.3 bans the importation of all substances that include a representation that the substance is a serious drug alternative, unless they are excluded under subsection 320.3(3). Such substances are referred to in this Explanatory Statement as 'serious drug alternatives'.

Subregulation 5H(2)

Subregulation 5H(2) sets out the conditions that a person must satisfy in order to import a serious drug alternative under subregulation 5H(1). The person importing the substance must satisfy all relevant conditions before he or she is able to import the substance. Subregulation 5H(2) refers to the person importing the substance as the importer.

In accordance with subsections 13.3(3) and 320.2(2) of the Code, the importer bears the evidential burden of proving that he or she has satisfied each relevant condition in subregulation 5H(2). Further, an ABF officer is able to stop an importation and seek more information from an importer if the officer suspects that the importer has not complied with all the conditions of subregulation 5H(2). Under subsection 203B(1) of the Customs Act an ABF officer may seize goods if he or she reasonably suspects they are a prohibited serious drug alternative.

Paragraph 5H(2)(a) requires the importer to hold a licence to import drugs under subregulation 5(5) of the Prohibited Imports Regulations. The term *drug* is defined in subregulation 5H(4). A licence enables the holder to import drugs listed in Schedule 4 of the Prohibited Imports Regulations.

Under subregulation 5(7) of the Prohibited Import Regulations, a person may only obtain a licence to import drugs if, among other things, he or she is a fit and proper person to be granted a licence to import drugs, his or her agents or employees are also fit and proper persons, and his or her premises are sufficiently secure to store any drugs imported.

An importer must already hold a licence to import drugs under the Prohibited Imports Regulations in order to satisfy paragraph 5H(2)(a) of the Principal Regulations. An importer cannot obtain such a licence solely in order to import serious drug alternatives.

Paragraph (b) sets out the purposes for which an importer may import a serious drug alternative. The purpose for which an importer may import a substance will depend on the nature of the importer's work .

Under subparagraph (i), a forensic laboratory is able to import a serious drug alternative for the purposes of forensic analysis. A person who is employed by such a laboratory is also able to import a serious drug alternative for the purposes of forensic analysis. This is necessary to allow for circumstances where an individual in a forensic laboratory holds a licence under regulation 5 of the Prohibited Imports Regulations on behalf of that laboratory.

Neither 'forensic laboratory' nor 'forensic analysis' are defined in the regulations. These terms have their ordinary meaning.

The term 'forensic laboratory' is intended to capture all Commonwealth, state and territory forensic science facilities, such as the National Measurement Institute.

The term 'forensic analysis' is intended to include analysis for developing reference standards for use in prosecutions or coronial proceedings, in developing drug testing kits and for determining the toxicology of a substance.

Under subparagraph (ii), the AFP and State and Territory police forces are able to import a serious drug alternative for the purposes of law enforcement.

'Purposes of law enforcement' are not defined in the regulations. This term has its ordinary meaning.

The term 'purposes of law enforcement' is intended to include all purposes relevant to law enforcement. These include investigating and prosecuting offences, assisting domestic and foreign law enforcement agencies with investigations and prosecutions, and developing criminal intelligence and illicit drug policy.

Under subparagraph (iii), the Commissioner or a Deputy Commissioner of the AFP, and persons in the equivalent positions in State and Territory police forces, are also able to import serious drug alternatives for the purposes of law enforcement. This subparagraph is necessary to allow for circumstances where an individual in a police force holds a licence under regulation 5 of the Prohibited Imports Regulations on behalf of that police force.

Under subparagraph (iv), a medical research facility is able to import a serious drug alternative for the purposes of medical research. A person who is employed by such a facility is also able to import a serious drug alternative for the purposes of medical research. This is necessary to allow for circumstances where an individual in a medical research

facility holds a licence under regulation 5 of the Prohibited Imports Regulations on behalf of that facility.

Neither ‘medical research facility’ nor ‘purposes of medical research’ are defined in the regulations. These terms have their ordinary meaning.

The term ‘medical research facility’ is intended to cover government and non-government organisations that are engaged solely or primarily in medical research.

The term ‘purposes of medical research’ is intended to include purposes directly related to research into human health or medicine. This includes research into the potential effect of substances on diseases or other health conditions. Substances used in human trials would not generally fall within this category as they would be covered by the Therapeutic Goods Act.

Under subparagraph (v), a scientific research facility is able to import a serious drug alternative for the purposes of scientific research. A person who is employed by such a facility is also able to import a serious drug alternative for the purposes of scientific research. This is necessary to allow for circumstances where an individual in a scientific research facility holds a licence under regulation 5 of the Prohibited Imports Regulations on behalf of that facility.

Neither ‘scientific research facility’ nor ‘purposes of scientific research’ are defined in the regulations. These terms have their ordinary meaning.

The term ‘scientific research facility’ is intended to cover government and non-government organisations that are engaged solely or primarily in scientific research, including universities and associated research centres. It is not intended to include individuals conducting ad hoc or personal experiments.

The term ‘purposes of scientific research’ is intended to include a range of systematic and organised scientific inquiry. This includes studies into the effects of drugs and their potential uses, and in developing tests to determine the presence of a substance. It is not intended to include ad hoc or personal experiments on the effects of drugs.

Subparagraph (vi) allows an importer to import a serious drug alternative on behalf of a forensic laboratory, Commonwealth, State or Territory police force or medical or scientific research facility.

If the importer is an organisation, it is only able to import a serious drug alternative if:

- the organisation regularly imports drugs under the Prohibited Imports Regulations
- the organisation is importing the serious drug alternative at the written request of another entity, being a forensic laboratory, Commonwealth, State or Territory police force or medical or scientific research facility, and
- that entity also holds a licence under regulation 5 of the Prohibited Imports Regulations.

If the importer is an individual, he or she is only able to import a serious drug alternative if:

- he or she is employed by an organisation
- that organisation regularly imports drugs under the Prohibited Imports Regulations

- the importer is importing the serious drug alternative at the written request of another entity, being a forensic laboratory, Commonwealth, State or Territory police force or medical or scientific research facility, and
- that entity also holds a licence under regulation 5 of the Prohibited Imports Regulations.

This subparagraph is intended to allow the Australian distributors of international chemical wholesalers to import serious drug alternatives at the request of a forensic laboratory, law enforcement agency or medical or scientific research facility. There are circumstances where contractual or licencing arrangements will require such organisations to purchase serious drug alternatives through an Australian distributor.

Paragraph (c) requires the importer to give the Health Secretary or his or her delegate written notice about the importer's intention to import the serious drug alternative. The importer must give this notice before importing the substance.

Subparagraphs (c)(i) to (v) set out the minimum information that an importer needs to include in a notice.

Under subparagraph (c)(ii), the importer is required to identify the period in which the importation is likely to occur. This is intended to allow the importer some flexibility in importing a substance in the event that there are delays associated with supply. If an import is likely to occur outside this 30 day period, the importer should provide a new notification to the Health Secretary.

Subparagraph (c)(v) requires importers who are employed by forensic laboratories, medical or scientific research facilities or third party chemical distributors to identify their employer in the notification. As subparagraph (b)(iii) only allows the Commissioner and Deputy Commissioners of the AFP (and their state and territory equivalents) to import serious drug alternatives, there is no need to require them to identify the organisation for whom they work.

Under subparagraph (vii), the importer may also be required to provide additional information in the notice at the Health Secretary's request.

It is intended that the ABF will reconcile the goods in the notice of the importer's intention to import a serious drug alternative against the substance actually imported. This will assist in reducing the risk of diversion or misappropriation of illegal and potentially harmful serious drug alternatives.

Subregulation 5H(3)

Subregulation 5H(3) gives the Health Secretary the power to determine two matters in relation to notices given to the Secretary or his or her delegate under paragraph 5G(2)(c).

Under paragraph (a), the Secretary is able to determine the information that an importer needs to provide in a notice in order to comply with paragraph 5H(2)(c). This paragraph is intended to allow the Secretary to obtain additional information about the substance and the importation to that set out in subparagraphs 5H(2)(c)(i) to (iv).

Under paragraph (b), the Secretary is able to determine the form in which an importer must provide the notice to the Secretary or his or her delegate.

It is intended that the Secretary or his or her delegate will provide written confirmation to the importer that he or she has received the importer's notification, and that this will be dealt with in a Memorandum of Understanding between the Secretary and the ABF.

Subregulation 5H(4)

Subregulation 5H(4) sets out the definition of the term *drug* as used in regulation 5H. The term has the same meaning as it has in subregulation 5(20) of the Prohibited Imports Regulations. Under that subregulation, drug means any substance listed in Schedule 4 of the Prohibited Imports Regulations, along with analogues of those substances.

The term *drug* is used in paragraph 5H(2)(a) and subparagraph 5H(2)(b)(vi) in relation to the requirement that any importer or legitimate end user of a serious drug alternative must hold a licence to import drugs under regulation 5 of the Prohibited Imports Regulations.