

## EXPLANATORY STATEMENT

Issued by authority of the Minister for Home Affairs

*Customs Act 1901*

*Customs Legislation Amendment (Drugs) Regulations 2025*

### **Legislative Authority**

The *Customs Act 1901* (the Act) concerns customs-related functions. It is the legislative authority that sets out the customs requirements for the importation to and exportation from Australia.

Subsection 270(1) of the Act provides that the Governor-General may make regulations not inconsistent with the Act prescribing all matters, which by the Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to the Act.

Subsection 50(1) of the Act provides that the Governor-General may, by regulation, prohibit the importation of goods into Australia. Subsection 50(2) of the Act provides that the Governor-General may exercise this power by prohibiting the importation of goods absolutely, in specified circumstances or from a specified place, or unless specified conditions or restrictions are complied with. The *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations) control the importation into Australia of certain goods by prohibiting importation in accordance with section 50.

Subsection 112(1) of the Act provides that the Governor-General may make regulations prohibiting the exportation of goods from Australia. Subsection 112(2) provides that the Governor-General may exercise this power by prohibiting the exportation of goods absolutely, in specified circumstances or in specified places, or unless specified conditions or restrictions are complied with. The *Customs (Prohibited Exports) Regulations 1958* (Prohibited Exports Regulations) control the exportation of certain goods from Australia in accordance with section 112.

Subsection 233BAA(1) of the Act provides that the regulations may provide that specified goods constitute tier 1 goods, and subsection 233BAA(3) provides that the regulations may prescribe quantities at which those specified goods constitute tier 1 goods. Subsections 233BAA(4) and (5) of the Act makes it an offence to unlawfully import or export, respectively, tier 1 goods. Subsection 130(1) and clause 1 of Part 1 of Schedule 7 to the *Customs Regulation 2015* (Customs Regulation) set out a list of goods that are ‘tier 1 goods’.

## **Background**

### *Amendments in relation to drugs*

The Minister for Health and Aged Care requested amendments to the Prohibited Exports Regulations and the Prohibited Imports Regulations in relation to drugs due, in part, to scheduling decisions by the United Nations Commission on Narcotic Drugs for the *Single Convention on Narcotic Drugs of 1961*, as amended by the 1972 Protocol, the *Convention on Psychotropic Substances of 1971* and the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988*.

Australia, as a signatory to these Conventions, is obliged to impose import and export controls on substances scheduled in these Conventions. The amendments made by the *Custom Legislation Amendment (Drugs) Regulations 2025* (Amendment Regulations) will ensure Australia's continuing compliance with these Conventions by adding the substances scheduled during the 67<sup>th</sup> session of the United Nations Commission on Narcotic Drugs to Schedule 8 to the Prohibited Exports Regulations and Schedule 4 to the Prohibited Imports Regulations.

Also on the recommendation of the Minister for Health and Aged Care, additional drugs are added to Schedule 4 to the Prohibited Imports Regulations in order to better align with state and territory drug control regulations. These drugs have been classified as Prohibited Substances in Schedule 9 to the *Standard for the Uniform Scheduling of Medicines and Poisons* (Poisons Standard) which allows restrictions to be placed on their supply to the public.

### *Amendments in relation to precursors*

The Amendment Regulations will also add to Schedule 4 to the Prohibited Imports Regulations border controlled precursors that are proposed to be listed in the *Criminal Code Regulations 2019*. These additions reflect new drug manufacturing methodologies that are constantly evolving to use new chemicals in the domestic manufacture of illicit drugs.

In order to more effectively deter the unlawful importation of these precursor substances, the Amendment Regulations will also amend Schedule 7 to the Customs Regulation to prescribe the precursors that will be made prohibited imports and exports under the Prohibited Imports Regulations and Prohibited Exports Regulations as special offence tier 1 goods for the purposes of section 233BAA of the *Customs Act 1901*.

## **Impact and effect**

The Amendment Regulations amends the Prohibited Exports Regulations and Prohibited Imports Regulations to:

- to impose controls on the importation and exportation of drugs and the importation of precursors, and

- to include additional precursors as special offence tier 1 goods.

Regulation 5 of the Prohibited Imports Regulations has the effect that, amongst other matters, the importation of a drug listed in Schedule 4 to those Regulations is prohibited unless the requirements under that regulation are satisfied or otherwise not applicable. Similarly, regulation 10 of the Prohibited Exports Regulations provides that the exportation from Australia of a Schedule 8 drug is prohibited unless certain circumstances apply.

The outcome of listing new drugs and precursors in the Prohibited Imports and Prohibited Exports Regulations is that the importation and exportation of the listed goods is only permissible with the approval of the relevant authority, and the illicit movement of those drugs and precursors becomes an offence.

The Amendment Regulations, under the recommendation of the Assistant Minister for Health and Aged Care, will ensure Australia's continuing compliance with the relevant treaties and alignment with State and Territory controls by adding the newly listed drugs to Parts 1, 2, 3 and 4 of Schedule 8 to the Prohibited Exports Regulations and Schedule 4 to the Prohibited Imports Regulations.

When a substance, such as a precursor, is listed in the *Criminal Code Regulations 2019* it can only be lawfully imported if the importer or exporter has a permit under the Prohibited Import or Export Regulations. In order for a permit to be granted under those regulations, the precursor must first be listed in the Prohibited Import or Prohibited Export Regulations.

Consequently, listing precursors which are included in the Criminal Code Regulations in the Prohibited Import and Prohibited Export Regulations allows for the lawful import or export of these substances.

Finally, listing precursors as tier 1 goods in the Customs Regulation provides greater deterrence to their unlawful exportation and importation. These precursors, if exported or imported in contravention of subsections 233BAA(3) or (5) of the Customs Act, will result in an offence punishable by imprisonment of five years or 1000 penalty units, or both. This is an alternative to the offence of importing or exporting prohibited goods that are not tier 1 goods, under section 233 of the Customs Act, which is punishable by penalty units only.

## **Consultation**

The Amendment Regulations were initiated by the Office of Drug Control, within the Department of Health and Aged Care, in consultation with the Department of Home Affairs and the Attorney General's Department. No public consultation was undertaken, as the amendments implement the existing treaty arrangements by adding new drugs to the schedules to the Prohibited Exports Regulations and Prohibited Imports Regulations. The Amendment Regulations fulfil existing international obligations and do not alter the underlying controls in the import or export of listed drugs.

## **Details and operation**

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

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

Details of the Amendment Regulations are set out in **Attachment A**.

## **Other matters**

As a Disallowable Legislative Instrument, the Amendment Regulations are compatible with the human rights and freedoms recognised or declared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full Statement of Compatibility with Human Rights is set out in **Attachment B**.

Division 1 of Part 3 of Chapter 3 of the Legislation Act operates to automatically repeal a legislative instrument that has the sole purpose of amending or repealing another instrument. That Division has the effect of automatically repeal the Amendment Regulations. As the Amendment Regulations will be automatically repealed, the sunseting framework under Part 4 of the Legislation Act is not engaged. This is consistent with paragraph 54(2)(b) of the Legislation Act, which provides that a legislative instrument prescribed by regulation is exempt from the sunseting requirement.

Item 21 of the table under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* prescribes, in part, a regulation made solely for the purposes of section 50 or 112 of the Customs Act as being exempt from sunseting for the purposes of paragraph 54(2)(b) of the Legislation Act.

Sections 50 and 112 of the Customs Act provide for the making of regulations in relation to prohibited exports and prohibited imports. The majority of regulations made under these sections are exempt from sunseting because they relate to intergovernmental schemes or have the sole or primary purpose of giving effect to an international obligation of Australia. Subjecting these regulations to sunseting may conflict with Australia's international obligations and with ongoing intergovernmental arrangements.

**Details of the *Customs Legislation Amendment (Drugs) Regulations 2025***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Customs Legislation Amendment (Drugs) Regulations 2025* (Amendment Regulations).

**Section 2 – Commencement**

This section has effect that the Amendment Regulations commence on 1 March 2025.

**Section 3 – Authority**

This section provides that the Amendment Regulations are made under the *Customs Act 1901*.

**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.

**Schedule 1—Amendments**

**Part 1—Amendments**

***Customs (Prohibited Exports) Regulations 1958***

**Items 1 to 9**

Items 1 to 9 of the Amendment Regulations amend Schedule 8 to the Prohibited Exports Regulations to align with the *Single Convention on Narcotic Drugs 1961*, the *Convention on Psychotropic Substances of 1971*; and the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988* (collectively, the Conventions).

Item 1 inserts the drug known as Butonitazene as table item 23AAA of Part 1 of Schedule 8 to the Prohibited Export Regulations.

Items 2 to 4 make the following amendments to Part 2 of Schedule 8 to the Prohibited Exports Regulations:

- item 2 inserts the drug known as 3-chloromethcathinone (otherwise known as 3-CMC) as table item 5A;

- item 3 inserts the drug known as Dipentylone as table item 10AA;
- item 4 inserts the drug known as 2-fluorodeschloroketamine as table item 13AAAA.

Items 5 to 8 make the following amendments to Part 3 of Schedule 8 to the Prohibited Exports Regulations:

- item 5 inserts the drug known as 1-boc-4-piperidone as table item 3AB;
- item 6 repeals the table item 17B and substitutes 3,4-MDP-2-P methyl glycidic acid (otherwise known as PMK glycidic acid) and its ethyl, propyl, isopropyl, butyl, isobutyl, sec-butyl, and tert-butyl esters as new table item 17B;
- item 7 inserts the drug known as 4-piperidone as table item 22A;
- item 8 inserts the drug known as P-2-P methyl glycidic acid (otherwise known as BMK glycidic acid) and its methyl, ethyl, propyl, isopropyl, butyl, isobutyl, sec-butyl and tert-butyl esters as table item 23A.

Item 9 inserts the drug known as Bromazolam as table item 3A of Part 4 of Schedule 8 to the Prohibited Export Regulations.

Regulation 10 of the Prohibited Exports Regulations prohibits the exportation of Schedule 8 drugs from Australia, with some exceptions. Regulation 9A of the Prohibited Exports Regulations defines Schedule 8 Drug to mean a drug mentioned in Schedule 8 of the Prohibited Exports Regulations. Schedule 8 consists of four Parts, with each Part containing a table of prohibited drugs which can be distinguished from those in the other Parts by the effects they produce in people.

The amendments in items 1 – 9 ensure these drugs are subject to export controls, except where relevant exceptions in Regulation 10 apply. Item 7 replaces previous table item 17B because the UN Commission decided to include several of the esters of the drug referred to by that table item number in the Conventions.

The amendments apply to these drugs exported from Australia on or after the commencement of the Amendment Regulations.

### ***Customs (Prohibited Imports) Regulations 1956***

#### **Items 10 to 35**

Items 10 to 35 of the Amendment Regulations amend Schedule 4 of the Prohibited Imports Regulations to:

- align with the Conventions;
- align with the *Standard for the Uniform Scheduling of Medicines and Poisons* (Poisons Standard); and
- align with amendments sought to the *Criminal Code Regulations 2019* (Criminal Code Regulations).

Specifically, these items provide for the following amendments to Schedule 4 to the Prohibited Imports Regulations:

- item 10 inserts the drug known as Benzoylbenzylfentanyl as table item 19B and the drug known as Benzoylfentanyl as table item 19C to align with amendments to the Criminal Code Regulations;
- item 11 inserts the drug known as Benzylfentanyl as table item 20A, and the drug known as Benzylfuranylfentanyl as table item 20B to align with amendments to the Criminal Code Regulations;
- item 12 inserts the drug known as 1-boc-4-piperidone as table item 28B to implement the decisions of the UN Commission;
- item 13 inserts the drug known as Bromazolam as table item 29AA to implement the decisions of the UN Commission;
- item 14 inserts the drug known as Butonitazene as table item 32AA to implement the decisions of the UN Commission;
- item 15 inserts the drug known as 3-chloromethcathinone (otherwise known as 3-CMC) as table item 39AA to implement the decisions of the UN Commission;
- item 16 inserts the drug known as N-Desethyl etonitazene as table item 50B, and the drug known as N-Desethyl isotonitazene as table item 50C, and the drug known as N-Desethyl protonitazene as table item 50D to align with amendments to the Criminal Code Regulations;
- item 17 inserts the drug known as Diethyl 2-(2-phenylacetyl) propanedioate as table item 56D to align with amendments to the Criminal Code Regulations;
- item 18 inserts the drug known as Dipentylone as table item 71AA to implement the decisions of the UN Commission;
- item 19 inserts the drug known as Ethyl alpha-phenylacetoacetate (otherwise known as EAPA) as table item 82A to align with amendments to the Criminal Code Regulations;
- item 20 inserts the drug known as Ethylene etonitazene as table item 83AA, and the drug known as Ethyleneoxynitazene as table item 83AB, and the drug known as P-2-P ethyl glycidate as table item 83AC to align with amendments to the Criminal Code Regulations;
- item 21 inserts the drug known as Etodesnitazene as table item 87D to align with the Poisons Standard;
- item 22 inserts the drug known as Etonitazepipne as table item 88AA to align with the Poisons Standard;
- item 23 inserts the drug known as Flunitazene as table item 95A to align with the Poisons Standard;
- item 24 inserts the drug known as 2-fluorodeschloroketamine as table item 97AAA to implement the decisions of the UN Commission;
- item 25 inserts the drug known as Ibotenic Acid as table item 111A to align with the Poisons Standard;
- item 26 inserts the drug known as Isotodesnitazene as table item 112AAA to align with amendments to the Criminal Code Regulations;

- item 27 repeals table item 127B and substitutes 3,4-MDP-2-P methyl glycidic acid (otherwise known as PMK glycidic acid) and its ethyl, propyl, isopropyl, butyl, isobutyl, sec-butyl and tert-butyl esters as new table item 127B to implement the decisions of the UN Commission;
- item 28 inserts the drug known as Methylenedioxyinitazene (2-(2-(benzo[d][1,3]dioxol-5-yl)methyl)-5-nitro-1H-benzo[d]imidazol-1-yl)-N,N-diethyl-ethan-1-amine) as table item 146AAA to align with amendments to the Criminal Code Regulations;
- item 29 inserts the drug known as P-2-P methyl glycidic acid (otherwise known as BMK glycidic acid) as table item 147AAB to implement the decisions of the UN Commission;
- item 30 inserts the drug known as Metodesnitazene (otherwise known as metazene) as table item to align with amendments to the Criminal Code Regulations;
- item 31 inserts the drug known as 3-Phenylpropanoylfentanyl table item 197B, and the drug known as 1-phenyl-2-propyl-2-yl 4-methylbenzenesulfonate as table item 197C to align with amendments to the Criminal Code Regulations;
- item 32 inserts the drug known as 4-piperidone as table item 201AA to implement the decisions of the UN Commission;
- item 33 inserts the drug known as Protonitazepyne (otherwise known as N-pyrrolidino protonitazene) as table item 211B to align with amendments to the Criminal Code Regulations;
- item 34 inserts the drug known as Secofentanyl as table item 218C to align with amendments to the Criminal Code Regulations;
- item 35 inserts the drug known as Thiofuranylfentanyl as table item 227A to align with amendments to the Criminal Code Regulations.

To avoid ambiguity, whilst Furanylfentanyl was scheduled by the UN Commission at its 67<sup>th</sup> session, it is already included at item 97E of Schedule 4 to the Prohibited Imports Regulations. Therefore, no further amendments are required to the Prohibited Imports Regulations for Australia to control the importation of Furanylfentanyl as required under the Conventions.

Regulation 5 of the Prohibited Imports Regulations prohibits the importation of drugs into Australia unless particular circumstances exist. It provides for exemptions to the general prohibition in specified situations, and when specified conditions and restrictions are complied with. The term **drug** is defined in subregulation 5(20) to include ‘a chemical, compound, or other substance or thing, that is included in Schedule 4 [to the Prohibited Imports Regulations]’.

The effect of the proposed amendments to Schedule 4 is to subject the drugs mentioned to import control, which limits the importation of these drugs unless the importation satisfies a specified entry requirement under regulation 5 of the Prohibited Imports Regulations. Amending the Prohibited Imports Regulations to include these drugs would ensure that the



regulations correspond with the changes to the Conventions, and to align with the Poisons Standard.

The Attorney-General's Department periodically seeks amendments to the Criminal Code Regulations to include new substances as border controlled substances. A border controlled precursor is defined in section 301.6 of the *Criminal Code*, which is the Schedule to the *Criminal Code Act 1995*, as a precursor listed by regulation as a border controlled precursor, a salt or ester of a precursor that is so listed, or a precursor determined by the Australian Federal Police Minister as a border controlled precursor under section 301.14 of the Criminal Code (which deals with emergency determinations of serious drug precursors).

Including these substances as border controlled precursors requires corresponding scheduling in the Prohibited Imports Regulations to allow for import permission to be granted for special purposes, such as medical or scientific purposes.

The amendments apply to drugs imported into Australia on or after the commencement of the Amendment Regulations.

### ***Customs Regulations 2015***

#### **Items 36 to 40**

Items 36 to 40 of the Amendment Regulations amend the table at subclause 1(1) of Schedule 7 of the Customs Regulations to include additional substances as tier 1 substances.

Specifically, these items provide for the following amendments to the table at Clause 1 of Schedule 7 of the Customs Regulations:

- item 36 inserts the drug known as 1 boc 4 piperidone as table item 1AAA, the drug known as 1 phenyl 2 propyl 2 yl 4 methylbenzenesulfonate as table item 1AAB, and the drug known as 3,4 MDP 2 P methyl glycidic acid (otherwise known as PMK glycidic acid) and its ethyl, propyl, isopropyl, butyl, isobutyl, sec butyl and tert butyl esters as table item 1AAC;
- item 37 inserts the drug known as Diethyl 2 (2 phenylacetyl) propanedioate as table item 3A;
- item 38 inserts the drug known as Ethyl alpha phenylacetoacetate (otherwise known as EAPA) as table item 7A;
- item 39 inserts the drug known as P-2-P ethyl glycidate as table item 13B, and the drug known as P 2 P methyl glycidic acid (otherwise known as BMK glycidic acid) and its methyl, ethyl, propyl, isopropyl, butyl, isobutyl, sec butyl and tert butyl esters as table item 13C;
- item 40 inserts the drug known as 4 piperidone as table item 16B.

Subsection 130(1) and clause 1 of Part 1 of Schedule 7 to the Customs Regulation set out a list of goods that are “tier 1 goods” and their quantities where relevant, for the purpose of section 233BAA of the Customs Act, which creates a special offence relating to tier 1 goods. The importation or exportation of these goods, in contravention of subsections 233BAA(3) or (5) of the Customs Act, will result in an offence punishable by imprisonment of five years or 1000 penalty units, or both.

The purpose and effect of this proposed amendment will be to add a number of precursors to the list of substances that will enliven the special offence of unlawfully importing or exporting prohibited goods that are tier 1 goods. This will provide greater deterrence to the unlawful importation and exportation of these precursors because the unlawful importation and exportation of tier 1 goods is subject to greater penalties than are available in respect of non tier 1 goods under section 233 of the Customs Act.

## **Part 2—Application and transitional provisions**

### ***Customs (Prohibited Exports) Regulations 1958***

#### **Item 41 In the appropriate position in Part 5**

This item of the Amendment Regulations amends Part 5 of the Prohibited Exports Regulations to insert new regulation 26 which deals with transitional matters.

New regulation 26 has the effect that the amendments to the Prohibited Exports Regulations made by Part 1 of Schedule 1 to the Amendment Regulations applies in relation to drugs exported from Australia on or after the commencement of Part 1 of Schedule 1 of the Amendment Regulations.

### ***Customs (Prohibited Imports) Regulations 1956***

#### **Item 42 In the appropriate position before Schedule 1**

This item of the Amendment Regulations will amend the Prohibited Imports regulations to insert new regulation 20 which deals with transitional matters.

New regulation 20 has the effect that the amendments to the Prohibited Imports Regulations made by Part 1 of Schedule 1 to the Amendment Regulations will apply in relation to drugs imported into Australia on or after the commencement of Part 1 of Schedule 1 of the Amendment Regulations.

## *Customs Regulations 2015*

### **Item 43 In the appropriate position in Part 18**

This item of the Amendment Regulations will amend the Customs Regulations to insert new regulation 166 which deals with transitional matters.

New regulation 166 has the effect that the amendments to the Customs Regulations made by Part 1 of Schedule 1 to the Amendment Regulations will apply in relation to:

- goods imported into Australia on or after the commencement of Part 1 of Schedule 1 of the Amendment Regulations; or
- goods exported from Australia on or after the commencement of Part 1 of Schedule 1 of the Amendment Regulations.

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

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

### ***Customs Legislation Amendment (Drugs) Regulations 2025***

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 *Customs Legislation Amendment (Drugs) Regulations 2025* (Disallowable Legislative Instrument) amend the *Customs (Prohibited Exports) Regulations 1958* (Prohibited Exports Regulations) and *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations) to list new drugs and precursors subject to import and export control and amends the *Customs Regulation 2015* (Customs Regulation) to include additional precursors as special offence tier 1 goods.

#### *Amendments in relation to drugs*

The Minister for Health and Aged Care requested amendments of the Prohibited Exports Regulations and the Prohibited Imports Regulations in relation to drugs due, in part, to scheduling decisions by the United Nations Commission on Narcotic Drugs for the *Single Convention on Narcotic Drugs of 1961*, as amended by the 1972 Protocol, the *Convention on Psychotropic Substances of 1971* and the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988*.

Australia, as a signatory to these Conventions, is obliged to impose import and export controls on substances scheduled in these Conventions. The amendments made by the Disallowable Legislative Instrument will ensure Australia's continuing compliance with these Conventions by adding the substances scheduled during the 67<sup>th</sup> session of the United Nations Commission on Narcotic Drugs to Schedule 8 to the Prohibited Exports Regulations and Schedule 4 to the Prohibited Imports Regulations.

Also on the recommendation of the Minister for Health and Aged Care, additional drugs are added to Schedule 4 to the Prohibited Imports Regulations in order to better align with state and territory drug control regulations. These drugs have been classified as Prohibited Substances in Schedule 9 to the *Standard for the Uniform Scheduling of Medicines and Poisons* (Poisons Standard) which allows restrictions to be placed on their supply to the public.

### *Amendments in relation to precursors*

The amendments made by the Disallowable Legislative Instrument also adds to Schedule 4 to the Prohibited Imports Regulations border controlled precursors that are proposed to be listed in the *Criminal Code Regulations 2019* (Criminal Code Regulations). These additions reflect new drug manufacturing methodologies that are constantly evolving to use new chemicals in the domestic manufacture of illicit drugs.

In order to more effectively deter the unlawful importation of these precursor substances, the Disallowable Legislative Instrument also amends Schedule 7 to the Customs Regulation to prescribe the precursors that will be made prohibited imports and exports under the Prohibited Imports Regulations and Prohibited Exports Regulations as special offence tier 1 goods for the purposes of section 233BAA of the *Customs Act 1901*.

In effect, the Disallowable Legislative Instrument ensures Australia's compliance with its international obligations under the relevant treaties, and alignment with State and Territory controls by inserting new drugs into the existing import and export controls.

The effect of listing new drugs and precursors in the Prohibited Imports and Prohibited Exports Regulations is that the importation and exportation of the listed goods is only permissible with the approval of the relevant authority, and the illicit movement of those drugs and precursors becomes an offence.

The Disallowable Legislative Instrument has the effect of ensuring precursors which are included in the Criminal Code Regulations are able to be lawfully imported by obtaining approval under Prohibited Import Regulations.

The amendments made by the Disallowable Legislative Instrument also have the effect of increasing the range of penalties for the substances listed as tier 1 goods in the Customs Regulation which provides greater deterrence to their unlawful exportation and importation.

### **Human rights implications**

The Disallowable Legislative Instrument promotes the right to the enjoyment of the highest attainable standard of physical and mental health in Article 12(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

The addition of import and export controls over new substances reflects Australia's implementation of international obligations under the relevant treaties. The restriction of access to these substances promotes the right to health in Article 12(1) of the ICESCR by preventing a danger to general health and welfare of the Australian community posed by the uncontrolled importation of these substances.

Where a legitimate need for the substances arises (such as for medical purposes), the Prohibited Imports Regulations allow a person to obtain a licence or a permission to import those substances. The outcome of these amendments is that the importation of listed goods will be permissible with approval from the relevant authority (in this case the Department of Health and Aged Care), but the illicit movement of goods will be an offence.

To the extent that these substances are required for medical purposes, this amendment may limit Article 12(1) of the ICESCR but any limitation is reasonable and necessary to achieving the legitimate objective of protecting the Australian community from the uncontrolled importation of these substances. The measures are proportionate as persons with a legitimate need for the substances are still able to import them with a licence or permission to import obtained from the relevant authority.

### **Conclusion**

The Disallowable Legislative Instrument is compatible with human rights because it promotes Article 12 of the ICESCR by protecting the general health and welfare of the Australian community and to the extent that it may limit the right, it is reasonable, necessary and proportionate in achieving a legitimate objective.

**The Hon Tony Burke MP  
Minister for Home Affairs**