

This submission relates to schedule 1 of the Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014.

1) Import of seeds for horticultural, agricultural and botanical purposes is unfairly affected.

Many seeds used in horticulture, agriculture and in botanical collections have some level of psychoactive effect (as defined in the proposed legislation). Despite these effects usually also being toxic, undesirable and un-abusable, this proposed legislation would criminalise importers of such seeds.

Please see attached list for some examples and explanations (not exhaustive).

2) Import of medicinal and culinary herbs are unfairly affected because many are:

- **not exempted by TGA lists & schedules and**
- **not exempted by the food exemption**

The TGA's 'listable ingredients' list does not contain many herbs commonly imported and consumed by Australians, especially those with ethnic backgrounds. Some of these herbs have mild sedative or stimulating effects similar to more common herbs already permitted by the inclusion on the 'listable ingredients' list. These herbs also fall outside the food exemption as they do not have "a long history of traditional consumption in Australia or NZ".

Please see attached list for some examples and explanations (not exhaustive).

3) The definition of 'significant effect' is too vague.

This makes it impossible for importers to know for sure which herbs might be captured by the proposed laws and which aren't. Some herbs might also be regarded as not having 'significant effect', while their constituents might. This will affect herb importers of any scale and put a disproportionate evidentiary burden on consumer-importers.

Please see attached list for some examples and explanations (not exhaustive).

4) Herbal products are easily controlled via existing legislation as herbs can't be 'tweaked' to evade laws under existing mechanisms.

Herbs and herbal products should be exempted from this new legislation because they do not fall within the parameters of the defined threat of new psychoactive drugs. Herbs can't be 'tweaked', ie it is impossible to make analogues, homologues, isomers or apply other minor changes to a herb that get around an import restriction in the Customs Act or Criminal Code Act. Regulatory agencies can easily schedule a plant species or an active constituent to immediately and effectively restrict any herbal import and they have done so very effectively in the past.

Summary

The proposed legislation creates ambiguity and unnecessary restrictions on many harmless herbal products and seeds. I urge you to consider the NSW model of restricting new psychoactive substances, which specifically exempts ALL herbal products.

1) Import of seeds for horticultural, agricultural and botanical purposes is unfairly affected.

Most members of the dogbane family (Apocynaceae) contain toxic alkaloids that are often CNS stimulants or depressants. They are also very popular ornamental plants and the toxins are usually also present in the seeds in substantial quantity. Many seeds or plants would be illegal to import under the proposed laws, including Frangipani (*Plumeria* spp), Desert Roses (*Adenium* spp), Mandevillas (*Mandevilla* spp), Madagascar Palms (*Pachypodium* spp), Captain Cook Tree (*Thevetia peruviana*), Oleander (*Nerium* spp), and many more.

The seeds of all *Erythrina* species contain sedating lectins and inebriating alkaloids with strong CNS activity. Even though all species are approximately equally potent only *Erythrina variegata* is exempted by the TGA's 'listable ingredients' list.

Delphinium species & Monkshood (*Aconitum* spp) are popular ornamental bedding plants, with (mostly imported) seed packets being sold in every hardware shop and online. The seeds contain methyllycaconitine and aconitine which are both very strong CNS stimulants. They are also fatally toxic and hence have no recreational drug value.

The bulbs of daffodils, hippeastrums, and many lilies contain lycorine and galanthamine, which are very toxic CNS depressants. The proposed laws would affect hundreds of varieties of commonly imported flower bulbs.

2) Import of medicinal and culinary herbs are unfairly affected because many are:

- **not exempted by TGA lists & schedules and**
- **not exempted by the food exemption**

Withanolides are compounds with substantial sedative effect on the CNS. They are the active constituents in the popular and widely available herb Ashwaganda (*Withania somnifera*), which is on the TGA's 'listable ingredients' list. However other species of *Withania* that are used medicinally in Asia are not listed and hence would be restricted under the proposed laws. Similarly *Jaborosa* spp., *lochroma* spp. and others with traditional therapeutic uses contain the same withanolides, but would be import restricted under the proposal.

Many wormwoods (*Artemisia* spp) are listed in the TGA's 'listable ingredients' list, but they do not include all species used by ethnic groups. Southern Europeans use *Artemisia pontica*, while Chinese herbal practitioners use *Artemisia verlotiorum* and many other Asian species. Wormwoods contain alkaloids and essential oils that have significant effects on the CNS, yet the only species with abuse potential is the one already permitted by the TGA. This puts other ethnic groups at a disadvantage.

The bark of all *Erythrina* species contains mildly relaxing lectins & alkaloids with significant CNS activity. Even though all species are approximately equally potent only *Erythrina variegata* is exempted by the TGA's 'listable ingredients' list. This is discriminatory to Australians with South American heritage who prefer to use *E.mulungu* and *E.crista-galli*, or those with Asian heritage who prefer their regional species. *E.mulungu* has also become a popular therapeutic relaxant used by non-ethnic Australians.

Datura stramonium contains tropane alkaloids with very significant psychoactive effects. It is used in herbal medicine and is permitted by the TGA's 'listable ingredients' list. Other species of *Datura* which contain the same alkaloids at the same potency would not be permitted despite being preferred by other ethnic groups.

3) The definition of 'significant effect' is too vague.

The explanatory memorandum sets the bar for 'significant effect' at or below caffeine [see the Rebecca example in the memo]. Hence it appears to include even very mild CNS activity. As discussed in the example, an energy drink would be regarded as illegal if it wasn't for the fact it is exempt by the food exemption. That means the same would apply to tea or coffee as it contains the same active ingredient, and again these are exempt by the food regulations. But there are many other caffeine (or similarly stimulating purine alkaloid) containing herbs that are not listed in the food or TGA regulations and hence are not exempt.

For example *Ilex guayusa*. It contains purine alkaloids at exactly the same potency as the related *Ilex paraguayensis* and has approximately the potency of a strong cup of tea. *Ilex paraguayensis* (commonly called mate) is the most common beverage drunk in south America [similar in prevalence to how we drink coffee or tea] and is exempted via the TGA's 'listable ingredients' list. However, *Ilex guayusa* is the variant drunk only in Ecuador and as it is much less common and hence absent from TGA's 'listable ingredients' list, it is being discriminated against by this proposed legislation.

The TGA's 'listable ingredients' list contains *Nymphaea alba* and *Nymphaea odorata*, but while there are several other unlisted *Nymphaea* species of the same potency regularly imported into Australia, it is impossible to be sure whether they are targeted or not.

Calea zacatechichi is a popular mild sedative tea from Mexico that is probably not affected by the new legislation, but no importer seems to be confident of that.