



## Schedule 5

- 5.1 The purpose of Schedule 5 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 (the Bill) is to help combat the emergence and importation of illicit substances.
- 5.2 Amendments to Part 9.1 of the *Criminal Code Act 1995* (Cth) (the Criminal Code) will ensure substances and quantities that are temporarily prescribed in the Criminal Code Regulations 2002 (Cth) will remain subject to Commonwealth serious drug offences in the longer term.
- 5.3 Amendments to the *Customs Act 1901* (Cth) (the Customs Act) aim to ensure that the Australian Customs and Border Protection Service (Customs) is provided with the legislative tools to enable it to consistently and efficiently undertake its role in seizing illicit substances unlawfully entering Australia.

### Existing laws and practices

- 5.4 Part 9.1 of the Criminal Code contains the Commonwealth's serious drug offences. Where referred to below, the term 'substances' includes drugs, plants and precursors.
- 5.5 Domestic offences involve 'controlled' substances. Import/export offences involve 'border controlled' substances. The quantity of the substance determines the level of seriousness of the crime. The most serious is 'commercial' quantity, followed by 'marketable' and 'trafficable' quantities.

## Proposed legislative amendments

### *Criminal Code Act 1995 (Cth)*

- 5.6 Items 1-5 insert certain drugs on the 'controlled' list and specify threshold quantities for prosecution. Respectively, the drugs are Benzylpiperazine, Ketamine, Methcathinone, 4-Methylmethcathinone and Phenylpropanolamine.
- 5.7 Items 6, 7 and 11 insert certain drugs on the 'border controlled' list and specify threshold quantities for prosecution. Item 6 relates to Benzylpiperazine, item 7 to Ketamine and item 11 to 4-MMC.
- 5.8 Item 9 inserts threshold quantities for Methcathinone which is already a 'border controlled' substance. Item 12 inserts threshold quantities for phenylpropanolamine which is already a 'border controlled' substance.
- 5.9 The quantities specified in Items 1-12 are pure quantities, which is relevant where a prosecution relates to a quantity of a particular drug contained in a mixture of other substances.

### *Customs Act 1901 (Cth)*

- 5.10 The Bill amends the Customs Act to provide consistency in how Customs seizes substances. Customs can seize substances under two instruments, the Customs (Prohibited Imports) Regulations 1956 (PI Regulations) and the Criminal Code.
- 5.11 There exists considerable overlap between 'prohibited' substances as defined in the PI regulations and the 'border controlled' substances as defined in the Criminal Code.
- 5.12 Currently, Customs can seize substances without a warrant only if they are covered by the PI Regulations. This places an administrative burden on Customs, which can be inefficient in light of an emerging drug analogues market. Drug analogues are legal substances for illicit drugs and are not prohibited under the PI Regulations.
- 5.13 The amendments do not disrupt any safeguards in the Customs Act or give Customs any other additional powers. For example, it continues to be the case that Customs may only seize substances without a warrant if it is necessary to prevent the goods from being concealed, lost or destroyed.<sup>1</sup>

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<sup>1</sup> *Customs Act 1901 (Cth)* s 203.

- 5.14 Hence, the proposed amendment inserts a new definition of ‘border controlled precursor’ into the Definitions section of the Customs Act. This definition aligns with Part 9.1 of the Criminal Code. A further amendment repeals the existing definition of ‘special forfeited goods’ and inserts an expanded definition which will include ‘border controlled precursors’. The practical effect of these amendments is that Customs can seize border controlled substances at and outside Customs Places without a warrant. Customs Places include designated ports, airports and wharfs.
- 5.15 The amendment of item 15 is only required if the Customs Amendment (Military End-Use) Bill 2011 (Military Bill) which is currently before Parliament commences before the commencement of this Bill. The amendment is merely to ensure application of the Military Bill; there is no additional substantive impact.

## **Committee comment**

- 5.16 No significant issues were raised in consultation regarding the amendments proposed in Schedule 5 of the Bill.
- 5.17 The Committee notes the importance of safeguards to protect individual rights. The Committee also notes that law enforcement agencies act in the public interest, and require tools to effectively and efficiently carry out their functions. In this instance, the Committee considers that an appropriate balance between these two objectives has been achieved.

## **Recommendation 6**

- 5.18 **The Committee recommends that Schedule 5 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 be passed by the House of Representatives.**