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Ms Vicki Gillick
Co-ordinator
Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council

By email: vicki.gillick@npywc.org

Dear Vicki,

NPY Women's Council – Compulsory use of opal and amendments to the *Anangu Pitjantjatjara Yankunytjatjara Land Rights (Regulated Substances) Amendment Act* 2006

We refer to your letter to Anne Cregan dated 1 October 2006 and your subsequent telephone conversations with Melissa Randall and Sarah Arthur in relation to this matter.

1. Request For Advice

1.1 In this advice, we consider the following issues raised by the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council (the **NPYWC**):

(a) which government, or governments, have responsibility for the regulation of the sale of petrol;

(b) how best to draft legislation requiring retailers within a particular area to stock only Opal fuel with some exception for premium unleaded petrol;

(c) the practical advantages and disadvantages of amending the definition of regulated substance as set out in section 4 of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights (Regulated Substances) Amendment Act 2006* (the **APY Amendment Act**) to include "petrol, alcohol, marijuana and drugs of dependence and prohibited substances as defined in the *Controlled Substances Act 1984* (SA)" (the **CSA Act**); and

(d) whether there is any obstacle to increasing or altering penalties for the supply of cannabis and other illicit drugs as they currently apply in South Australia where the supply occurs on Anangu Pitjantjatjara Yankunytjatjara Lands (**APY Lands**).

2. Summary Of Advice

Mandating the Use of Opal

2.1 The State and Territory governments are responsible for the regulation of the sale of petrol. As there is little uniformity in their approach to this issue, it is difficult to recommend a uniform approach to drafting legislation that limits the use of petrol and/or mandates the use of Opal in an area that spans three jurisdictions.

2.2 In our view, the most effective approach is to create an offence prohibiting the storage, sale, possession or supply of petrol within the relevant area (see *Option One* in section 4 below).The legislation would have clearly defined sanctions and would have a broad application, applying to all people who attempt to supply petrol in the area regardless of their status or location. It also overcomes the difficulty of amending existing legislation which has different objectives and may result in loopholes which defeat the purpose of the amendments and/or create difficulties in achieving the purpose of the existing legislation. This approach may prove difficult to implement, however, as it requires either the introduction of new legislation or the amendment of existing legislation.

2.3 It is significantly easier to attach conditions to licences held by retailers, wholesalers and those who transport petrol in the relevant area (see *Option Two* and *Option Three* in section 4 below). It is generally within the discretion of the Minister or a public official to impose conditions on these licences and as such does not require the approval of parliament. This approach is somewhat less effective, however, as, unlike a criminal offence, it does not have universal application.

2.4 We would recommend that whichever approach is ultimately adopted, it is supplemented by the imposition of additional conditions on permits that travellers into the indigenous lands of South Australia, Western Australia and the Northern Territory are required to hold.

Amendments to the APY Amendment Act

2.5 We propose defining 'regulated substance' under the APY Amendment Act as 'petrol, alcoholic liquor, and drugs of dependence, prohibited substances and volatile solvents as defined in the *Controlled Substances Act 1984* (SA)'. In our view, this definition has the practical advantage of

including all substances which may cause problems within the communities and would create consistency across South Australian legislation, making enforcement of the relevant offences easier and making the proposed amendments more palatable to the legislature. Because of the process by which the relevant terms in the CSA Act are defined, the NPYWC would also be able to be actively involved in what substances are encompassed within these terms.

2.6 There are a number of inherent dangers in defining key terms in one Act be reference to another. In these circumstances, it is possible that solely relying on the CSA Act to define 'drugs of dependence' and 'prohibited substances' for new offences under the APY Amendment Act will result in medical practitioners committing an offence when supplying some drugs for health reasons. Future amendments to the CSA Act, without a corresponding change to the APY Amendment Act, may also result in unintended gaps in the operation of the APY Amendment Act.

2.7 Prima facie, there is no obstacle to applying different penalties on the APY Lands to those apply in the remainder of South Australia for identical offences particularly given that increased penalties already apply to certain drug-related offences that occur in school zones in South Australia. It is possible, however, to argue that different penalties which, although they are of broad application, are more likely to impact on Aboriginal people, are discriminatory although it is not conclusive that such an argument would be successful.

Advice

3. Responsibility for the Regulation of the Sale of Petrol

3.1 The regulation of the sale of petrol is generally a matter for the States rather than the Commonwealth. The Commonwealth's role in relation to the sale of petrol has largely been in the form of financial assistance[1]. Each state approaches the regulation of the sale of petrol differently. South Australia, for example, requires retailers and wholesalers to have a licence to sell petrol[2], while Western Australia does not have a licensing scheme but regulates from whom retailers purchase petrol[3]. The Northern Territory requires that wholesalers who supply fuel to retailers have a licence[4].

[1] See the *Product Grants and Benefits Administration Act 2000* (Cth) and the *Fuel Sales Grants Act 2000* (Cth).
[2] *Petroleum Products Regulation Act 1995* (SA).
[3] *Petroleum Retailers Rights and Liabilities Act 1982* (WA).
[4] Section 6 of the *Fuel Subsidies Act* (NT).

3.2 Despite the regulation of the sale of petrol falling within the legislative power of the States, we note that the current approach of the States, Territories and the Commonwealth to the issue of petrol-sniffing is that generally all solutions should be pursued collaboratively[5].

4. Proposed Legislation

4.1 Given the disparate regulatory regimes in each State, it is difficult to recommend a uniform approach to drafting legislation which mandates the use of Opal across an area that covers South Australia, Western Australia and the Northern Territory. It is possible that while the relevant States and Territory may agree that the use of Opal should be compulsory in the relevant area, each jurisdiction may choose to adopt different legislative approaches. We have accordingly examined a range of legislation connected in some way with the supply of petrol and proposed several options which either expressly or by necessary implication mandate the use of Opal.

Option One

4.2 One option may be to make it an offence to sell or supply any fuel other than Opal in the relevant area. This could be achieved by enacting new legislation. This may be the preferred approach of the relevant States and Territory as it would mean that only one piece of legislation would need to be drafted which could subsequently be adopted by all jurisdictions. This would suit the States' and Territories' current collaborative approach to the issue of petrol sniffing and would also allow other jurisdictions, such as New South Wales, to easily adopt the same prohibitions.

4.3 Alternatively, such an offence could be created by amending existing legislation in each of the relevant jurisdictions on largely identical terms, for example, the *Controlled Substances Act 1984* (SA), the *Misuse of Drugs Act 1981* (WA) and the *Misuse of Drugs Act 1990* (NT) or the *Volatile Substance Abuse Prevention Act 2005* (NT). We note, however, that amending existing legislation can be problematic – unintended loopholes may be created where legislation originally enacted for one purpose is amended and used for another purpose.

4.4 Even more stringent prohibitions could be created by making the possession of petroleum products within the designated area an offence. Such an offence would allow the police to contain the spread of petrol in circumstances where it penetrated an otherwise petrol free community.

[5] See the Senate Community Affairs References Committee, *Beyond petrol sniffing: renewing hope for Indigenous communities*, June 2006 particularly at 113. Consider also the 8 Point Plan agreed to by South Australian, Western Australian, Northern Territory and Australian Governments published in September 2005. The changes proposed in this advice address Points One and Three of the 8 Point Plan.

While this approach clearly has advantages, it is likely that it would also result in the criminalisation of petrol sniffers which may not be a desirable outcome. Accordingly, we have not pursued this approach.

4.5 The relevant provisions making it an offence to sell or supply petrol, either in new or existing legislation, could be drafted as follows:

(a) a person must not within the designated area store, sell or supply any petroleum product other than Opal fuel;

(b) nothing in this section renders unlawful:

(i) the storage of premium unleaded fuel by a person where the premium unleaded fuel is kept in a locked bowser accessible only by the person or a person employed by the person; or

(ii) the sale or supply of premium unleaded fuel where that fuel is supplied directly into the fuel tank of that vehicle to purchasers who can demonstrate that their vehicle cannot operate without premium unleaded petrol.

The composition of the 'designated area' could be set out in associated regulations and therefore could be easily altered as, and if, necessary.

4.6 We note, however, that where such an offence is being created by amending existing legislation, each jurisdiction may need to adjust this wording so that it is appropriate for the legislation being amended.

4.7 It would be prudent, in our view, to ensure that any terms used in any legislation mandating the use of Opal and/or restricting the sale of petrol are carefully defined to limit any loopholes that unduly wide or narrow definitions may create. In particular the terms that, in our view, require technical definitions include 'petroleum product' and 'premium unleaded petrol'. As many of these terms are describing complex chemical compounds, we would recommend seeking specialist advice although useful definitions may be found in other legislation such as the definition of petroleum product in section 4 of the *Petroleum Products Regulation Act 1995* (SA).

4.8 'Opal' also needs to be appropriately defined or an alternative term used. We note that currently only BP is producing a non-sniffable fuel for use in spark ignition engines. It is important, however, to recognise that BP's production facilities for this type of fuel are limited[6] which may inhibit any comprehensive roll-out. It therefore may be beneficial to ensure that any legislation mandating the use of non-sniffable fuels is not restricted to

[6] Senate Community Affairs References Committee, *Beyond petrol sniffing: renewing hope for Indigenous communities*, June 2006 at 112.

that produced by BP. It may be possible to define Opal by reference to its chemical structure, such as "a hydrocarbon fuel for use in spark ignition engines that contains less than 5% benzene, toluene and xylene".

Option Two

4.9 An alternative approach may be to place conditions on any licence that retailers and/or wholesalers are required to hold. In South Australia, for example, wholesalers and retailers are required to be licensed to sell petrol. The minister issuing the licence can attach conditions to that licence.[7] A condition of licenses issued to retailers in the relevant area could be to the effect that:

(a) only Opal fuel and premium unleaded fuel can be held, purchased, obtained, and used by retailers;

(b) premium unleaded fuel must be stored in a locked bowser accessible only by the retailer or a person employed by the retailer;

(c) premium unleaded fuel can only be sold or supplied to purchasers who can demonstrate that their vehicle cannot operate without premium unleaded petrol; and

(d) premium unleaded fuel can only be supplied directly from the petrol bowser into the fuel tank of that vehicle.

4.10 As it is within the discretion of the minister to attach conditions to these licences, it is not necessary to amend the existing legislation to account for new conditions.

4.11 In the Northern Territory under the *Fuel Subsidies Act* (NT) (**Fuel Subsidies Act**), a person who makes an initial supply of fuel within the Northern Territory must be licensed[8]. This licence is issued by the Commissioner of Taxes on a number of conditions which are largely concerned with ensuring that fuel is supplied at a subsidised price[9]. However, the Commissioner retains the right to impose any conditions on a fuel supplier's licence that he/she thinks fit and is not required to impose the same conditions on all licences[10]. The purpose of the Fuel Subsidies Act, "to licence suppliers of certain fuel and to pay subsidies for certain fuel", also appears wide enough to cover the attachment of a wide array of conditions to licences issued pursuant to that legislation.

[7] Sections 8 and 11 of the *Petroleum Products Regulation Act 1995* (SA).
[8] Section 6 of the Fuel Subsidies Act.
[9] See sections 10 and 11 of the Fuel Subsidies Act.
[10] Section 15 of the Fuel Subsidies Act.

4.12 It is therefore possible for the Commissioner to impose conditions, on terms such as those set out in paragraph 4.9 above, on fuel suppliers operating in the relevant geographic area only. Again, because the imposition of conditions is within the discretion of the Commissioner, it is not necessary to seek any legislative amendments for new conditions to be imposed.

4.13 However, a supplier only makes an initial supply of fuel under the Fuel Subsidies Act where they enter or deliver the fuel for home consumption for the purposes of the *Customs Act 1901* (Cth) (**Customs Act**) or the *Excise Act 1901* (Cth) (**Excise Act**) and either supplies the fuel in the Northern Territory or consumes the fuel for their own purposes within the Northern Territory. Under the Customs Act, fuel is entered for home consumption once an import declaration or a request for cargo release has been completed[11]. Under the Excise Act, fuel is entered for home consumption where similar administrative requirements are met[12] and delivers fuel for home consumption where they obtain the permission of an authorised officer or the Commissioner of Taxation[13].

4.14 It is therefore likely, in our view (although we note that we do not have a detailed understanding of the petroleum supply industry in the Northern Territory), that only wholesalers make initial supplies of fuels and are required to obtain licences. However, it is unclear whether all wholesalers would be considered to be suppliers who are required to be licensed. Accordingly, merely attaching additional conditions to such licences may not comprehensively cover all suppliers in the relevant area of the Northern Territory.

4.15 In Western Australia there is no requirement for either retailers or wholesalers of petrol products to be licensed and therefore an alternative approach would need to be adopted in that jurisdiction.

Option Three

4.16 A third approach may be to place additional conditions on licences that are issued in relation to the transport of dangerous substances. Petrol is considered to be a dangerous substance in each of the relevant jurisdictions[14]. In South Australia, the *Dangerous Substances Act 1979*

[11] Section 68(3A) of the Customs Act.
[12] Section 58 of the Excise Act.
[13] Section 61C of the Excise Act.
[14] In South Australia see section 2(1) of the *Dangerous Substances Act 1979* (SA), clauses 4(2), 5 and 10 of the *Dangerous Substances Regulations 2002* (SA), clause 2.3 of the *Road Transport Reform (Dangerous Goods) Regulations 1997* (Cth) and Division 2.1 and Appendix 2 of the Australian Dangerous Goods Code. In Western Australia, see clause 2.2 of the *Dangerous Goods (Transport) (Road and Rail) Regulations 1999* (WA) and Appendix 2 of the Australian Dangerous Goods Code. In the Northern

(SA) requires that person keeping or conveying a dangerous substance hold a licence[15]. These licences are issued by Safework SA under the auspices of the Department for Administrative and Information Services and may be issued on an unrestricted range of conditions[16].

4.17 In Western Australia and the Northern Territory, both the driver and the vehicle conveying dangerous goods in bulk must be licensed[17]. Goods are considered to be transported in bulk where their volume exceeds 450L and net mass exceeds 450kg[18]. These licences can also be issued on conditions including the types of dangerous goods that may or may not be transported or the areas where the dangerous goods may or may not be transported[19]. Currently in Western Australia, licences are issued by the Department of Consumer and Employment Protection and in the Northern Territory, they are issued by NT Worksafe, which operates under the auspices of the Department of Employment Education and Training.

4.18 In each of these jurisdictions, the conditions that may be attached to these licences are within the discretion of issuing authority. Without any legislative changes being required, dangerous goods licences issued in South Australia, Western Australia and the Northern Territory could therefore be conditional on the following:

(a) unleaded petrol and lead replacement petrol are not to be transported into the designated area for delivery to retailers or wholesalers or other persons within the designated area;

(b) premium unleaded petrol is only to be transported into the designated area for delivery to retailers or wholesalers or other persons if it is to be kept in a locked bowser which is accessible only by the retailer, wholesaler or person or their employees; and

(c) if unleaded petrol, lead replacement petrol or premium unleaded petrol is transported through the designated area, such petrol must not be removed from the vehicle in which it is conveyed except in cases of emergency, or, in the case of premium unleaded petrol, as authorised by (b).

Territory, see clause 2.2 of the *Dangerous Goods (Road and Rail Transport) Regulations* (NT) and Appendix 2 of the Australian Dangerous Goods Code.

[15] Sections 14 and 18 of the *Dangerous Substances Act 1979* (SA).

[16] Sections 15(2) and 19(2) of the *Dangerous Substances Act 1979* (SA).

[17] Section 35 of the *Dangerous Goods (Transport) Act 1998* (WA); clauses 18.4 and 18.5 of the *Dangerous Goods (Transport) (Road and Rail) Regulations 1999* (WA); section 35 of the *Dangerous Goods (Road and Rail) Transport Act* (NT); clauses 18.4 and 18.5 of the *Dangerous Goods (Road and Rail Transport Regulations* (NT).

[18] Clauses 2.11 and 2.12 of the *Dangerous Goods (Transport) (Road and Rail) Regulations 1999* (WA); clauses 2.11 and 2.12 of the *Dangerous Goods (Road and Rail Transport Regulations* (NT).

[19] Clauses 18.15 and 18.25 of the *Dangerous Goods (Transport) (Road and Rail) Regulations 1999* (WA); vlauses18.15. and 18.25 of the *Dangerous Goods (Road and Rail Transport Regulations* (NT).

4.19 Attaching these conditions to licences associated with transporting dangerous goods assumes that petrol is only transported through the relevant areas of Western Australia and the Northern Territory in bulk (see paragraph 4.17 above). If it is transported in smaller amounts, licences are not required and the proposed conditions would be ineffective.

4.20 It may also be difficult to convince the authorities issuing licences to impose these conditions. The legislation in each jurisdiction is directed towards regulating the safe transport of dangerous goods, which is arguably a different purpose to regulating the availability of petrol in order to reduce the occurrence of petrol sniffing. Alternatively, it could be argued that the proposed changes promote the safety of those who come into contact with petrol which is in keeping with the current underlying purpose of the legislation.

Discrimination

4.21 It is possible that each the proposed options may be challenged on the grounds that they are racially discriminatory. In addition to the negative publicity that such a claim would generate, if it were determined that the proposed options were inconsistent with the *Racial Discrimination Act 1975* (Cth), they would be invalid on the basis of section 109 of the Constitution.

4.22 It is arguable that while the proposals ostensibly apply to anyone living or operating within a particular region, given the majority of residents within that region are Indigenous, they disproportionately impact on Indigenous people. On this basis it could be argued that all of the options limit access to certain goods on the basis of a person's race. Similarly, the new offences relating to the supply of petrol could be seen as effectively targeting Indigenous people.

4.23 Conversely, it could be argued that the proposals simply apply to a region and apply equally to all people within or operating within that region. Additionally, to the extent that a consequence of this application is that more Indigenous people are affected than others, it is arguable that changes are reasonable in the circumstances and benefit a particular group of people[20].

[20] See section 8(1) of the *Racial Discrimination Act 1975* (Cth). Pursuant to this section, where an action is considered to constitute a special measure that secures the adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary to ensure equal enjoyment or exercise of human rights and fundamental freedoms, the action is exempt from the operation of the *Racial Discrimination Act 1975* (Cth) (see *Gerhardy v Brown* (1995) 159 CLR 70 per Brennan J).

Regulating Travellers

4.24 It is also important to allow people travelling in the relevant area whose vehicles require premium unleaded petrol to carry additional petrol supplies for use between roadhouses or in the case of an emergency yet also ensure that these additional supplies are not used for sniffing. This could be addressed by attaching conditions to the permits that people travelling into or through Indigenous lands in South Australia, Northern Territory and Western Australia are required to obtain[21].

4.25 In South Australia, under section 19 of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (SA) (the **APY Land Rights Act**), a person is not permitted to enter the APY Lands without the permission of the Anangu Pitjantjatjara Yankunytjatjara, the body corporate constituted by the APY Land Rights Act. This permission may be granted subject to conditions[22]. The current application form for a permit to enter and/or remain on the APY Lands available on www.waru.org lists several general conditions of issue of a permit. When applying for a permit, the applicant must provide details of the make, model and registration number of the vehicle that will be used by the applicant on the APY Lands.

4.26 In the Northern Territory, under section 5 of the *Aboriginal Land Act* (NT) either the Land Council or the traditional owners, as applicable, may issue permits to persons wishing to enter and remain on Aboriginal land. As in South Australia, this permission may be granted subject to conditions[23]. The current application forms for permits to transit or enter Aboriginal Land available from the Central Land Council on www.clc.org.au list several general conditions of issue of a permit. When applying for a permit, the applicant must again provide details of the make, model and registration number of the vehicle that will be used by the applicant on Aboriginal land.

4.27 There are similar requirements in Western Australia. Under clause 8 of the *Aboriginal Affairs Planning Authority Act Regulations 1972* (WA) the Minister may issue permits subject to conditions. Current conditions of entry/transit are listed on the website of the Department of Indigenous Affairs www.dia.wa.gov.au. Again, when applying for a permit, the applicant must provide details of the make, model and registration number of the vehicle that will be used by the applicant.

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[21] See section 19 of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (SA), section 4 of the *Aboriginal Land Act* (NT) and section 31 of the *Aboriginal Affairs Planning Authority Act 1972* (WA).
[22] Section 19 of the APY Land Rights Act.
[23] Sections 4-5 of the *Aboriginal Land Act* (NT).

4.28 The relevant organisations issuing the permits could therefore place additional conditions on permits issued to those travelling on/through their lands allowing but placing stringent restrictions on carrying premium unleaded fuel. For example, permits could be issued on the following conditions:

Where an applicant can satisfactorily demonstrate that the vehicle to which the permit applies cannot operate without premium unleaded petrol and the application is granted, the applicant may carry premium unleaded petrol in the Lands on the following conditions:

(a) the applicant must keep a log book which provides details of the amount of premium unleaded brought onto and taken off the Lands and accounts for any difference between the two amounts;

(b) the applicant must not sell, supply or otherwise dispose of premium unleaded petrol while on the Lands; and

(c) the applicant must not remove the premium unleaded petrol from the vessel in which it is stored other than as reasonably necessary to facilitate the powering of the vehicle.

Where an applicant for a permit cannot satisfactorily demonstrate that the vehicle to which the permit applies cannot operate without premium unleaded petrol:

(a) only Opal fuel may be used by the permit holder in the vehicle to which the permit applies; and

(b) no fuel or petrol other than Opal may be carried in the vehicle or be in the possession or under the control of the permit holder in the vehicle to which the permit applies.

4.29 The details of the vehicle supplied by the applicant could be used by the organisations issuing the permits to verify any claim that the relevant vehicle requires premium unleaded petrol.

Existing contractual arrangements

4.30 It is possible that the proposed changes detailed above may cause wholesalers and particularly retailers to breach their existing contracts with their suppliers. While we have not seen any of these contracts, nor are we aware of their terms, it is possible that they require the wholesaler and/or retailer to purchase a certain amount of their fuel supplies from a particular supplier or refinery or to stock particular types of fuel. If legislation either expressly or by necessary implication mandates the use of Opal and the supplier or refinery cannot supply Opal, the relevant retailer or wholesaler may be faced with either breaching the new legislation or their contract. A wholesaler or retailer may face similar consequences if they are no longer permitted at law to stock a particular type of fuel.

4.31 It may therefore be necessary to include an additional provision in any legislation which either mandates the use of Opal or imposes conditions restricting the supply of petrol, that the legislative requirements or conditions imposed:

(a) apply despite any agreement to the contrary; and

(b) do not cause an agreement to be terminated or amount to a breach of contract.

4.32 These type of provisions are not without precedent – the *Petroleum Retailers Right and Liabilities Act 1982* (WA) (the **Petroleum Retailers Act**) effectively provides that retailers may purchase fuel from a range of suppliers despite contractual arrangements to the contrary[24]. However, the Petroleum Retailers Act also places a range of conditions on retailers who seek to obtain fuel other than from their main supplier, such as giving a certain period of notice to their main supplier prior to seeking alternate supplies as well as in relation to the use of dispensing and bulk storage equipment. It is difficult to determine what, if any, conditions suppliers would seek to place on wholesalers or retailers who are required to stock only Opal fuel and premium unleaded in certain circumstances.

5. Current South Australian Legislation in relation to Controlled Substances

5.1 In South Australia, the supply of certain poisons, drugs and other similar substances is regulated by the CSA Act. The CSA Act prohibits the possession, consumption, sale and supply of a number of poisons and substances and sets out penalties for such offences, including fines and imprisonment.

5.2 The CSA Act defines these poisons and substances in three sets of regulations:

(a) *Controlled Substances (Poisons) Regulations 1996* (the **Poisons Regulations**);

(b) *Controlled Substances (Prohibited Substances) Regulations 2000* (the **Prohibited Substances Regulations**); and

(c) *Controlled Substances (Volatile Solvents) Regulations 1996* (the **Volatile Substances Regulations**).

5.3 The Poisons Regulations define a 'drug of dependence'[25] and declare the poisons listed in Schedule 8 of the Standard for the Uniform Scheduling of Drugs and Poisons (the **Standard**) published by the National Drugs

[24] Section 4 of the *Petroleum Retailers Right and Liabilities Act 1982* (WA).
[25] Sections 4 and 12(3) of the *Controlled Substances Act 1984* (SA).

and Poisons Schedule Committee (the **Committee**) as drugs of dependence for the purposes of the CSA Act[26]. Schedule 8 is attached to this advice as Annexure A and includes drugs such as methylamphetamine and codeine.

5.4 The Prohibited Substances Regulations define a 'prohibited substance'[27] and declare the substances listed in Schedule 1 of the Prohibited Substances Regulations 2000 to be prohibited substances for the purposes of the CSA Act[28]. Schedule 1 is attached to this advice as Annexure B and includes substances such as cannabis.

5.5 The Volatile Solvents Regulations define a 'volatile solvent'[29] and declare the solvents listed in the Schedule to the Volatile Solvents Regulations to be volatile solvents for the purpose of the CSA Act. This Schedule is attached to this advice as Annexure C.

5.6 The sale and supply of alcohol in South Australia is governed by the *Liquor Licensing Act 1997* (the **Liquor Act**) and associated regulations including the *Liquor Licensing (General) Regulations 1997*, the *Liquor Licensing (Dry Areas- Long Term) Regulations 1997* and the *Liquor Licensing (Dry Areas – Short Term) Regulations 1997*. Liquor is defined as 'a beverage which at 20° Celsius contains more than 1.15 per cent alcohol by volume'[30] and includes alcohol based food essence and alcoholic ice confection[31].

6. Proposed Amendment of the APY Amendment Act

6.1 The APY Amendment Act sets out a new penalty regime for the supply of 'regulated substances' on the APY Lands. Currently, 'regulated substances' are defined as petrol and other substances as declared by the regulations. However, no regulations have been issued under the APY Amendment Act. The current regulations under the APY Land Rights Act, the *Pitjantjatjara Land Rights Regulations 2003*, do not include a definition of 'regulated substances'.

6.2 You have proposed amending 'regulated substance' in the APY Amendment Act to include 'petrol, alcohol, marijuana and drugs of dependence and prohibited substances as defined in the *Controlled Substances Act 1984* (SA)' in order to capture a range of substances for which the NPYWC wishes to heavy penalties for trafficking.

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[26] Clause 7A of the *Controlled Substances (Poisons) Regulations 1996* (SA).
[27] Sections 4 and 12(4) of the *Controlled Substances Act 1984* (SA).
[28] Clause 5 of the *Controlled Substances (Prohibited Substances) Regulations 2000* (SA).
[29] Section 4 of the *Controlled Substances Act 1984* (SA).
[30] Section 4 of the *Liquor Licensing Act 1997* (SA).
[31] Clause 6 of the *Liquor Licensing (General) Regulations 1997* (SA).

6.3 To facilitate the aims of the NPYWC and to ensure that there is consistency in how terms are defined in legislation across South Australia, we would recommend that 'regulated substance' be defined as 'petrol, alcoholic liquor, and drugs of dependence, prohibited substances and volatile solvents as defined in the *Controlled Substances Act 1984* (SA)'.

6.4 We note that this definition varies somewhat from that proposed by the NPYWC. We have removed the reference to marijuana as cannabis is a prohibited substance under the CSA Act. We have adopted the phrase 'alcoholic liquor' rather than 'alcohol' as the APY Land Rights Act already contains references to 'alcoholic liquor'.[32]

6.5 It is also worthwhile, in our opinion, to include a reference to volatile substances as defined by the CSA Act in light of the recent report by the Senate Community Affairs References Committee which commented that where Opal is available petrol sniffers have turned to using paint.[33]

6.6 For the sake of clarity, it is important that the meanings of all the terms within this definition are unambiguous. The CSA Act and associated regulations clearly specify which substances are drugs of dependence, prohibited substances and volatile solvents. Additionally, petrol is already defined in the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*.

6.7 However, at this stage alcoholic liquor is undefined and consequently we would also recommend that any amendments include a definition of alcoholic liquor. For example, adopting the definition of liquor in the *Liquor Licensing Act* 1997 (see paragraph 5.6 above) may be sufficient and would maintain consistency across legislation.

7. Proposed Amendment of the APY Amendment Act – Advantages

7.1 The practical advantages of such an approach are clear. One advantage is that decisions as to what constitutes a 'drug of dependence' under the CSA Act and therefore what constitutes a 'regulated substance' under the APY Amendment Act would be relatively objective. These decisions would effectively be made by the Committee rather than by Parliament. The Committee includes State and Territory government members and other persons appointed by the Minister such as technical experts and representatives of various sectional interests[34] and considers a number of

[32] See section 43 of the Anangu *Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (SA).
[33] Senate Community Affairs References Committee, *Beyond petrol sniffing: renewing hope for Indigenous communities*, June 2006 at 40.
[34] Section 52B of the *Therapeutic Goods Act 1989* (Cth) and Division 3A Subdivision 3 of the *Therapeutic Goods Regulations 1990* (Cth).

factors when scheduling substances such as whether a substance has been included in either the WHO Single convention on Narcotic Medicines or the WHO Convention on Psychotropic Substances[35].

7.2 It is possible that the NPYWC may be able to be heard by the committee prior to any scheduling decision. Decisions regarding the scheduling of substances are made at meetings of the Committee. When and where such meetings are held are determined by the Chair of the Committee and are required to be notified in the Gazette[36]. Submissions from the public are permitted and will be considered by the Committee where they address a factor identified in section 52E of the *Therapeutic Goods Act 1989* (Cth). Relevant factors include the potential for abuse and the extent and patterns of use of the relevant substance[37]. If the Committee decides to add or remove a substance from the Standard, further public submissions are accepted from those who made a submission prior to that decision[38]. It should be noted that the process for public consultation may differ where the Chair considers that a scheduling decision is urgent[39]. The relevant provisions are attached at Annexure D.

7.3 The process for the inclusion of new addictive drugs in the APY Amendment Act would also become simpler as the APY Amendment Act would not need to be re-visited each time a new drug became available. Once a substance was considered to be suitable for inclusion in Schedule 8 of the Standard by the Committee, it would be considered a regulated substance under the APY Amendment Act (see paragraph 5.3 above). Alternatively, if it was considered a prohibited substance or a volatile solvent, an amendment to the Prohibited Substances Regulations or the Volatile Solvents Regulations would be sufficient to bring it within the auspices of both the CSA Act and the APY Amendment Act.

7.4 Another practical advantage is that the policing of drug offences in relation to sale and supply would arguably become easier given there would be a greater degree of uniformity across the relevant South Australian legislation. Currently, the offences for sale and supply under the APY Amendment Act are largely the same as those contained in the CSA Act. The notable difference is the added requirement under the APY Amendment Act that the person undertaking the sale or supply must know or have reason to suspect that the substance being supplied or sold will be inhaled or consumed by any person. Under the CSA Act, this

[35] Interim Guidelines for the National Drugs and Poisons Schedule Committee, July 2006 at 20-21, 35.
[36] Clause 42ZCU of the *Therapeutic Goods Regulations 1990* (Cth).
[37] Clauses 42ZCU and 42ZCV of the *Therapeutic Goods Regulations 1990* (Cth).
[38] Clauses 42ZCY and 42ZCZ of the *Therapeutic Goods Regulations 1990* (Cth).
[39] Clause 42ZCZB of the *Therapeutic Goods Regulations 1990* (Cth).

additional consideration only applies to the sale and supply of volatile solvents[40].

7.5 By adopting the proposed definition of regulated substance, the substances to which these offences apply would be identical albeit with the exception of alcohol and petrol. For police this would mean that when they suspect a person of supplying cannabis, for example, and they need to determine which legislation applies, they need only think about the location of the offence before arresting and charging the person. Conversely, if the substances to which the APY Amendment Act and the CSA Act apply are different, police would also need to be aware which substances are covered by which legislation as well as the place where the offence occurred in order to correctly arrest and charge the alleged offender. Minimising the points of difference between the legislative regimes that create drug offences reduces the possibility that a person may be charged under the wrong legislation.

7.6 Adopting terms used in existing legislation also means that it is likely that, where necessary, there is case law regarding their meaning and that consequently they are concepts that are well understood by the various levels of law enforcement including the police and the judiciary. It may also make it easier to persuade the legislature to make the relevant amendments given the terms contained in those amendments have already been accepted by parliament in a similar context.

8. Proposed Amendment of the APY Amendment Act – Disadvantages

8.1 There are, however, some drawbacks to defining 'regulated substances' under the APY Amendment Act by reference to the CSA Act. Many of the drugs of dependence under the CSA Act are also drugs that are administered by medical practitioners and dispensed by pharmacists, such as methadone, morphine and pethidine. The CSA Act exempts such health professionals from the various offences under the CSA Act where they are acting in the ordinary course of their profession[41]. This recognises that many of the drugs of dependence and prohibited substances under the CSA Act can have a valid therapeutic effect. A sample exemption is contained in Annexure E.

8.2 The APY Amendment Act includes no such exemption. Consequently, if a regulated substance under the APY Amendment Act includes a drug of dependence under the CSA Act and a doctor or nurse supplies methadone to a person on APY Lands, that doctor or nurse has committed an offence under the APY Amendment Act. Ultimately, this may affect the

[40] See section 19 of the *Controlled Substances Act 1984* (SA).
[41] See, for example, section 32(5) of the *Controlled Substances Act 1984* (SA).

availability on the APY Lands of some drugs regularly used for health reasons.

8.3 It would be necessary, in our view, if 'regulated substance' under the APY Amendment Act is defined by reference to the CSA Act, to also include the various exemptions for health practitioners that are included in the CSA Act.

8.4 It is also important to note that the purpose of the APY Amendment Act is close to, but is not the same as, that underlying the CSA Act. Accordingly the CSA Act may be amended in ways that impact negatively on the aims of the APY Amendment Act. For example, there may be a move to decriminalise cannabis resulting in its removal as a prohibited substance under the CSA Act. This would result in an unintended gap in the operation of the APY Amendment Act and would restrict the ability to control the supply of cannabis in communities where it may still be causing problems.

9. Increased Penalties For The Supply Of Illicit Drugs On APY Lands

9.1 Prima facie, there is no obstacle to applying different penalties on the APY Lands from those applied in the rest of South Australia. The CSA Act currently includes different penalties for identical drug offences that are committed in different areas. For example, more stringent penalties apply to possession for the purpose of sale, supply or administration in school zones[42]. Arguably, there would be little difference in applying a heavier penalty regime on APY Lands – both school zones and the APY Lands could be regarded as areas of increased vulnerability and therefore areas where harsher penalties are justified.

9.2 It is possible that applying different penalties for drug offences on APY Lands could be regarded as racially discriminatory. The potential consequences and the arguments that could be mounted for and against such a position are set out in paragraphs 4.21-4.23 above

9.3 Although we have not looked at this issue in detail, it is important to be aware that applying increased penalties in relation to cannabis goes against what we understand to be a trend towards the decriminalisation of cannabis and may provoke some opposition to the proposed changes.

[42] Section 32(5) of the *Controlled Substances Act 1984* (SA).

Please contact Melissa Randall (02 6234 4097) or Sarah Arthur (02 6234 4046) if you have any questions.

Yours faithfully

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ANNEXURE A – EXTRACT FROM THE STANDARD FOR THE UNIFORM SCHEDULING OF DRUGS AND POISONS

Schedule 8

Acetyldihydrocodeine

Acetylmethadol

Acetylmorphines

Alfentanil

Alphacetylmethadol

Alphaprodine

Amphetamine

Amylobarbitone except when included in Schedule 4

Anileridine

Benzylmorphine

Bezitramide

Buprenorphine

Butobarbitone

Butorphanol

Carfentanyl

Cocaine

Codeine except when included in Schedule 2, 3 or 4

Codeine-N-oxide

Concentrate of poppy straw (the material arising when poppy straw has entered into a process for concentration of its alkaloids)

4-cyano-1-methyl-4-phenylpiperidine (Pethidine intermediate A)

Cyclobarbitone

Dexamphetamine

Dextromoramide

Dextropropoxyphene except when included in Schedule 4

Difenoxin except when included in Schedule 4

Dihydrocodeine except when included in Schedule 2, 3 or 4

Dihydromorphine

Diphenoxylate except when included in Schedule 3 or 4

Dipipanone

#Dronabinol (delta-9-tetrahydrocannabinol) when prepared and packed for therapeutic use

Drotebanol

Ethylamphetamine

Ethylmorphine except when included in Schedule 2 or 4

Fentanyl

Flunitrazepam

Hydrocodone

Hydromorphinol

Hydromorphone

Ketamine

Levamphetamine

Levomethamphetamine

Levomoramide

Levorphanol

Methadone

Methylamphetamine

Methyldihydromorphine

Methylphenidate

1-methyl-4-phenylpiperidine-4-carboxylic acid (Pethidine intermediate C)

Morphine

Morphine methobromide

Morphine-N-oxide

Nabilone

Norcodeine

Normethadone

Opium except the alkaloids noscapine in Schedule 2 and papaverine when included in Schedule 2 or 4

Oxycodone

Oxymorphone

Pentazocine

Pentobarbitone except when included in Schedule 4

Pethidine

Phendimetrazine

Phenmetrazine

Phenoperidine

4-phenylpiperidine-4-carboxylic acid ethyl ester (Pethidine intermediate B)

Pholcodine except when included in Schedule 2 or 4

Piritramide

Propiram

Quinalbarbitone

Racemoramide

Remifentanil

Secbutobarbitone

Sufentanil

Thebacon

Thebaine

Tilidine

Ms Vicki Gillick
Co-ordinator
Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council

ANNEXURE B – EXTRACT FROM THE CONTROLLED SUBSTANCES (PROHIBITED SUBSTANCES) REGULATIONS 2000

Schedule 1—Declared prohibited substances

Acetorphine

Acetyl-alpha-methylfentanyl

Acetylmorphines

Alkoxyamphetamines and substituted alkoxyamphetamines except where separately specified.

Alkoxyphenethylamines and substituted alkoxyphenethylamines except where separately specified.

Alkylthioamphetamines and substituted alkylthioamphetamines except where separately specified.

Allylprodine

Alphameprodine

Alphamethadol

Alpha-methylfentanyl

Alpha-methylthiofentanyl

2-amino-1-(2,5-dimethoxy-4-methyl)phenylpropane (stp or dom)

5-(2-aminopropyl)indan and substituted 5-(2-aminopropyl)indans except where separately specified.

Benzethidine

Benzylpiperazine

Betacetylmethadol

Beta-hydroxyfentanyl

Beta-hydroxy-3-methylfentanyl

Betameprodine

Betamethadol

Betaprodine

4-bromo-2, 5-dimethoxyphenethylamine (bdmpea)

Bufotenine

Cannabinoids except tetrahydrocannabinols

Cannabis

Cannabis oil

Cannabis resin

Cathinone

Clonitazene

Coca leaf (leaves of any plant of the genus erythroxylon from which cocaine can be extracted either directly or by chemical transformation)

Codoxime

Concentrate of poppy straw (the material arising when poppy straw has entered into a process for concentration of its alkaloids)

4-cyano-2-dimethylamino-4, 4'-diphenylbutane (methadone intermediate)

4-cyano-1-methyl-4-phenylpiperidine (pethidine intermediate a)

Desomorphine

Diampromide

Diethylthiambutene

N, n-diethlytryptamine (det)

Dimenoxadol

Dimepheptanol

2, 5-dimethoxyamphetamine

2, 5-dimethoxy-4-bromoamphetamine (dob)

2, 5-dimethoxy-4-ethylamphetamine (doet)

3-(2-dimethylaminoethyl)-4-hydroxyindole (psilocine or psilotsin)

3-(1, 2-dimethylheptyl)-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6h-dibenzo (b, d) pyran (dmhp)

Dimethylthiambutene

N,n-dimethyltryptamine (dmt)

Dioxaphetyl butyrate

Ecgonine

N-ethyl-alpha-methyl-3, 4-(methylenedioxy) phenethylamine (n-ethyl mda)

Ethylmethylthiambutene

Eticyclidine (pce)

Etonitazene

Etorphine

Etoxeridine

Fenetylline

Furethidine

Harmala alkaloids except in herbs or preparations, for therapeutic use:

(a) containing 0.1 per cent or less of harmala alkaloids; or

(b) in divided preparations containing 2 mg. Or less of harmala alkaloids per recommended dose.

Heroin (diacetylmorphine)

3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6h-dibenzo(b,d)pyran (parahexyl)

4-hydroxybutanoic acid and its salts

Hydroxypethidine

Isomethadone

Ketobemidone

Levomethorphan

Levophenacylmorphan

Lysergamide

Lysergic acid

Lysergide (lysergic acid diethylamide: lsd)

Mecloqualone

Mescaline (3, 4, 5-trimethoxyphenethylamine)

Metazocine

Methaqualone

Methcathinone

4-methoxy-a-methylphenethylamine (pma)

5-methoxy-3, 4-methylenedioxyamphetamine (mmda)

4-methylaminorex

Methyldesorphine

3, 4-methylenedioxyamphetamine (mda)

3, 4-methylenedioxymethamphetamine (mdma)

3-methylfentanyl

N-methyl-1-(3,4-methylenedioxyphenyl)-2-butanamine (mbdb)

N-[alpha-methyl-3, 4-(methylenedioxy)phenethyl] hydroxylamine (n-hydroxy mda)

2-methyl-3-morpholino-1, 1-diphenylpropane carboxylic acid (moramide intermediate)

1-methyl-4-phenyl-4-propionoxypiperidine (mppp)

1-methyl-4-phenylpiperidine-4-carboxylic acid (pethidine intermediate c)

4-methylthioamphetamine

3-methylthiofentanyl

Metopon

Morpheridine

Muscimol

Myrophine

Nicocodine

Nicodicodine

Nicomorphine

Noracymethadol

Norlevorphanol

Normorphine

Norpipanone

Opium poppy (papaver somniferum l.)

Papaver bracteatum (lindl.)

Para-fluorofentanyl

Phenadoxone

Phenampromide

Phenazocine

Phencyclidine

Phenomorphan

1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (pepap)

4-phenylpiperidine-4-carboxylic acid ethyl ester (pethidine intermediate b)

Piminodine

Poppy straw (the straw of papaver somniferum l. Or papaver bracteatum lindl.)

Proheptazine

Properidine

Psilocybine

Racemethorphan

Racemorphan

Rolicyclidine (php or pcpy)

Salvia divinorum

Tenocyclodine (tcp)

Tetrahydrocannabinols and their alkyl homologues, except

(a) tetrahydrocannabinols included in schedule 8; and

(b) hemp seed oil

(i) that contains tetrahydrocannabinols at a level not exceeding 50 milligrams per kilogram; and

(ii) the packaging of which carries a label indicating that the oil is not for human internal use or consumption; and

(c) a product containing hemp seed oil, being a product

(i) that contains tetrahydrocannabinols at a level not exceeding 50 milligrams per kilogram; and

(ii) that is designed for human external use.

Thiofentanyl

Trifluoromethylphenylpiperazine

Trimeperidine

3, 4, 5-trimethoxy-a-methylphenylethylamine (tma)

1-(3, 4, 5-trimethoxyphenyl)-2-aminobutane

ANNEXURE C – EXTRACT FROM THE CONTROLLED SUBSTANCES (VOLATILE SOLVENTS) REGULATIONS 1996

Schedule—Volatile solvents

Acetone

Amyl Acetate

Amyl Nitrite

Benzene

Bromochlorodifluoromethane (BCF)

Butane

Butyl Acetate

Butyl Alcohol

Butyl Nitrite

Carbon Tetrachloride

Chlorofluorocarbons and Fluorocarbons except where separately specified

Chloroform

Diethyl Ether

Di-Isobutyl Ketone

Dipentene

Enflurane

Ethyl Alcohol

Ethyl Acetate

Ethyl Chloride

Ethyl Formate

Ethylene Dichloride

Halothane

Heptane

Hexane

Isobutyl Nitrite

Isopropyl Alcohol

Methoxyflurane

Methyl Acetate

Methyl Alcohol

Methyl Amyl Ketone (2-Heptanone)

Methyl Butyl Ketone (2-Hexanone)

Methyl Cellosolve (Ethylene Glycol Mono-ethyl Ether)

Methyl Cellosolve Acetate (Ethylene Glycol Mono-ethyl Ether Acetate)

Methyl Ethyl Ketone (2-Butanone)

Methyl Formate

Methyl Hexyl Ketone (2-Octanone)

Methyl Isobutyl Ketone

Methyl Propyl Ketone (2-Pentanone)

Methylene Chloride (Dichloromethane)

Mineral Turpentine

Naphthalene

Nitrous Oxide

Octane

Octyl Nitrite

Oil of Turpentine

Pentane

Petrol

Propane

Propyl Acetate

Styrene

Tetrachloroethylene

Toluene

1, 1, 1-Trichloroethane (Methylchloroform)

Trichloroethylene

Tricresyl Phosphate

Xylene

ANNEXURE D – EXTRACTS FROM THERAPEUTIC GOODS ACT 1989 AND THERAPEUTIC GOODS REGULATIONS 1990

Therapeutic Goods Act 1989

52E Matters to be taken into account in exercising powers

(1) In exercising its powers under subsection 52D(2), the Committee must take the following matters into account (where relevant):

(a) the toxicity and safety of a substance;

(b) the risks and benefits associated with the use of a substance;

(c) the potential hazards associated with the use of a substance;

(d) the extent and patterns of use of a substance;

(e) the dosage and formulation of a substance;

(f) the need for access to a substance, taking into account its toxicity compared with other substances available for a similar purpose;

(g) the potential for abuse of a substance;

(h) the purposes for which a substance is to be used;

(h) any other matters that the Committee considers necessary to protect public health, including the risks (whether imminent or long-term) of death, illness or injury resulting from its use;

and may take into account the labelling, packaging and presentation of a substance.

(2) In taking into account the matters referred to in subsection (1), the Committee must comply with any guidelines of the Australian Health Ministers' Advisory Council or the subcommittee of the Council known as the National Co-ordinating Committee on Therapeutic Goods, notified to the Committee for the purposes of this section.

Therapeutic Goods Regulations 1990

42ZCT Definitions for Subdivision 5

In this Subdivision:

public submission means a submission to the Committee by a person who is not a member of the Committee.

scheduling meeting means a Committee meeting for the scheduling of a substance.

42ZCU Public notice of scheduling meetings

(1) Before a scheduling meeting, the Chair of the Committee must publish a notice in the Gazette:

(a) mentioning the date of the proposed scheduling meeting; and

(b) mentioning each substance to be considered for scheduling at the meeting; and

(c) inviting public submissions to be made by a date mentioned in the notice as the closing date for public submissions (the closing date).

(2) The Committee, in making a decision in relation to the classification and scheduling of a s The closing date must be at least 4 weeks after publication of the Gazette notice.

(3) The Committee, in making a decision in relation to the classification and scheduling of a s The date of the meeting must be at least a week after the closing date.

42ZCV Consideration of public submissions

(1) The Committee, in making a decision in relation to the classification and scheduling of a substance, must consider all public submissions made by the closing date that address a matter mentioned in section 52E of the Act.

(2) The Committee need not consider a public submission made after the closing date.

42ZCW Other matters to be considered by Committee

(1) A submission prepared in relation to a substance by a Committee member and submitted before or at the meeting about the scheduling of the substance must be considered by the Committee at the meeting.

(2) The Committee must also take into account any recommendation of a subcommittee about the substance.

42ZCX Record of reasons for scheduling decisions

The Committee must make a record of the reasons for a scheduling decision.

42ZCY Public notice of amendment

(1) A notice under subsection 52D (4) of the Act must include:

(a) an indication of the amendment; and

(b) instruction on how the record of the reasons for the amendment may be accessed; and

(c) an invitation to persons who made a public submission in relation to the substance the subject of the amendment to make a further submission.

(2) An amendment must not be expressed to come into force earlier than 4 weeks after publication of the notice.

(1) Nothing in subregulation (1) requires the Committee to disclose in the notice, or to provide access to, information that it properly regards as requiring confidentiality for commercial reasons.

42ZCZ Further public submissions

(1) A submission in response to an invitation mentioned in paragraph 42ZCY (1) (c) must be made within 2 weeks after publication of the notice making the invitation.

(2) The submission must:

(a) address a matter mentioned in section 52E of the Act; and

(b) be relevant to the reasons recorded for making the amendment.

(3) If a submission is made to the Committee under this regulation, the Committee must consider the submission and then:

(a) confirm the amendment; or

(b) vary the amendment; or

(c) set aside the amendment, replace it with a new scheduling decision and publish notice of the decision under section 52D of the Act.

42ZCZA Public consultation by subcommittee

(1) The Committee may assign its public consultation responsibilities and functions under this Subdivision to a subcommittee.

(2) The subcommittee must give the Committee a written report setting out the manner of its compliance with those responsibilities and functions.

42ZCZB Urgent scheduling

(1) This regulation applies if the Chair of the Committee considers that, in the interests of public health and safety, urgent scheduling of a substance is necessary.

(2) If it is not practicable to follow the procedures for public consultation prescribed by this Subdivision before scheduling, the Committee may make a scheduling decision without following the procedures.

(3) A scheduling decision made without following the procedures must be reviewed by the Committee as soon as practicable.

(4) The procedures for public consultation prescribed by this Subdivision apply to the review as if the review were a scheduling meeting.

Ms Vicki Gillick
Co-ordinator
Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council

ANNEXURE E – SAMPLE EXEMPTION UNDER THE CONTROLLED SUBSTANCES ACT 1984

32—Prohibition of manufacture sale etc of drug of dependence or prohibited substance

(1) A person must not knowingly—

(a) manufacture or produce a drug of dependence or a prohibited substance; or

(b) take part in the manufacture or production of such a drug or substance; or

(c) sell, supply or administer such a drug or substance to another person; or

(d) take part in the sale, supply or administration of such a drug or substance to another person; or

(e) have such a drug or substance in his or her possession for the purpose of the sale, supply or administration of that drug or substance to another person.

(2) Nothing in this section renders unlawful the manufacture, production, sale, supply, administration or possession of a drug of dependence by—

(a) a medical practitioner, dentist, veterinary surgeon, pharmacist or nurse acting in the ordinary course of his or her profession; or

(b) a member of any other prescribed profession acting in the course of that profession; or

(c) a person licensed to do so by the Minister,

or renders unlawful—

(d) the administration or supply by a person to another person of a drug of dependence that has been lawfully prescribed for, or supplied to, that other person; or

(e) the taking part by any other person in the manufacture, production, sale, supply, administration or possession of a drug of dependence in the circumstances referred to in this subsection.

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