Australian Capital Territory

Criminal Code Amendment Regulation 2010 (No 1)

Subordinate law SL2010–41

made under the

Criminal Code 2002, section 800

EXPLANATORY STATEMENT

Outline
The Criminal Code Amendment Regulation 2010 (No1) amends the *Criminal Code Regulation 2005*.

The *Criminal Code Regulation 2005* specifies the substances and plants that are 'controlled drugs', 'controlled plants' and 'controlled precursors' pursuant to the *Criminal Code 2002*. The regulation also specifies the trafficable, commercial and large commercial quantities for each substance and plant.

It is necessary that the controlled drugs, plants and precursors are periodically reviewed and updated due to the development of new drugs and the changes in the methods and precursors used to produce controlled drugs.

The Criminal Code Amendment Regulation 2010 (No1) partly gives effect to the ACT Government's endorsement at the Ministerial Council on Drug Strategy ('MCDS') in May 2007 of the model schedules and quantities for drugs, plants and precursors.

The amendments to the definitions align the ACT definitions with the model definitions developed by the Model Criminal Code Officer's Committee (MCCOC) report on serious drug offences. All of the amendments have been considered and approved by the ACT Government's Drug Schedules Working Group.

The regulation substitutes a new definition for 'controlled drugs' at section 5 and substitutes a new definition of 'controlled precursors' at section 7. The regulation inserts new sections at 8(2), (5) and (6), inserts three new items to schedule 1.2, substitutes a new 'controlled precursor' schedule at schedule 3 and amends definitions located in the dictionary.

The prohibited drug and prohibited precursor schedules underpin the serious drug offences in Chapter 6 of the *Criminal Code 2002*. It is important that the drug and chemicals included in the schedules keep pace with contemporary law enforcement. The additional drugs in schedule 1 and the new schedule 3 have been endorsed by the Ministerial Council on Drugs Strategy ('MCDS').

Summary of Clauses

1- Name of regulation- this clause is a formal provision to set out the name of the regulation.

2- Commencement- this clause is a formal provision, which provides that the regulation commences on the day after it is notified.

3- Legislation amended- the regulation amends the *Criminal Code Regulation 2005*.

4- New Section 5- this section substitutes a new definition of 'controlled drug'. The new definition refers to a 'controlled drug' being a substance described at schedule 1. The definition also includes variations of the substances, which are described at subsection 5 (2).

The new subsection 5 (2) better captures the variations of 'controlled drugs' as new methods of manufacturing controlled drugs emerge. This amendment is necessary to ensure that all relevant variations of the schedule 1 substances are captured by the *Criminal Code Regulation 2005*.

5- New Section 7- this section substitutes a new definition of a 'controlled precursor'.

The new definition refers to a 'controlled precursor' being a precursor described at schedule 3. The definition also includes 'related precursors', which are described at 3(a), (b) and (c).

'Related precursors' are included to capture variations of the schedule 3 controlled precursor's as new variations and techniques for manufacturing these substances emerge.

6- New Section 8 (2)- this section substitutes section 8(2). The section details how to determine the trafficable, commercial and large commercial amounts for a related drug.

Section 8(2)(a)(i), b(i) and c(i) provide that where a related drug is related to one controlled drug in schedule 1, then the trafficable, commercial and large commercial quantities for that controlled drug apply to the related drug.

Section 8(2)(a)(ii), (b)(ii) and c(ii) provide that where a related drug is related to more than one controlled drug in schedule 1, then reference is made to schedule 1 column 3 for all the controlled drugs which the related drug is related to. The controlled drug with the smallest quantity provides the item

reference to determine the trafficable, commercial and large commercial quantities for the related drug.

7- New item, Sections 8(5) and (6)- these new sections detail how to determine the trafficable, commercial and large commercial amounts for a related precursor.

Section 8(5)(a)(i) provides that where a related precursor is related to one controlled precursor, then the commercial quantity at schedule 3 column 3 for the precursor to which it was related applies as the commercial quantity for the related precursor.

Section 8(5)(a)(ii) provides that where a related precursor is related to more than one controlled precursor, then reference is made to the commercial quantities at schedule 3, column 3 for all of the controlled precursors which the related precursor is related to. The controlled precursor with the smallest quantity provides the commercial quantity amount for the related precursor.

Section 8(5)(b)(i) provides that where a related precursor is related to one controlled precursor, then the large commercial quantity at schedule 3 column 4 applies as the large commercial quantity for the related precursor.

Section 8(5)(b)(ii) provides that where a related precursor is related to more than one controlled precursor, then reference is made to the large commercial quantities at schedule 3, column 3, for all of the controlled precursors which the related precursor is related to. The controlled precursor with the smallest quantity provides the item reference to determine the large commercial quantity for the related precursor.

Section 8(6) provides a reference for the definition of ‘related drug’ and ‘related precursor’.

8- New item, schedule 1.2, item 14A- the substance Benzylpiperazine (BZP) is to be included as a ‘controlled drug’. This substance was included on the model controlled drug schedule endorsed by the MCDS. It is recommended for inclusion as law enforcement agencies have detected this substance in Australian jurisdictions.

The trafficable amount of 2.00 (g) was recommended by ACT Government Analytical Laboratory. The commercial and large commercial amounts are arrived at by using the existing ACT schedule of controlled drugs multiplier of (500x) from trafficable to commercial and (2x) from commercial to large commercial.

9- New item, schedule 1.2, item 98A- the substance N,N-dimethylamphetamine is to be included as a ‘controlled drug’. This substance was included in the model drug schedule endorsed by the MCDS. It is recommended for inclusion as law enforcement agencies have detected this substance in Australian jurisdictions.

The trafficable amount of 2.00 (g) was recommended by ACT Government Analytical Laboratory. The commercial and large commercial amounts are arrived at by using the existing ACT schedule of controlled drugs multiplier of (500x) from trafficable to commercial and (2x) from commercial to large commercial.

10- New item, schedule 1.2, item 132A- the substance Trifluoromethylphenylpiperazine (TFMPP) is to be included as a 'controlled drug'. This substance was included in the model drug schedule endorsed by the MCDS. It is recommended for inclusions as law enforcement agencies have detected this substance in Australian jurisdictions.

The trafficable amount of 2.00 (g) has been adopted from the model drug schedules and was recommended by the ACT Government Analytical Laboratory. The commercial and large commercial amounts have been arrived at by utilising the existing ACT schedule of controlled drugs multiplier of (500x) from trafficable to commercial and (2x) from commercial to large commercial.

11- New Schedule 3- this section also inserts a new schedule 3 'controlled precursors' into the *Criminal Code Regulation 2005*. The new schedule 3 adopts the recommended precursor list developed by the Intergovernmental Committee on Drug Schedules Working Party, which was subsequently endorsed by the MCDS. The update to the precursor schedule was considered necessary by the ACT Government to ensure that the new substances being used to make controlled drugs are captured by the *Criminal Code Regulation 2005*.

In most instances, the marketable amounts proposed by the Intergovernmental Committee on Drug Schedules Working Party have been adopted, and appear as the commercial quantity on the ACT precursor schedule. The existing ACT controlled precursor schedule multiplier of (2x) has been applied to each precursor to arrive at the large commercial quantity.

Where a precursor appeared on both the ACT's previous precursor schedule and the model schedule, the ACT commercial and large commercial quantities have been retained. Where a precursor appeared on the previous ACT schedule without a commercial quantity, the model quantity has been adopted. The existing ACT controlled precursor multiplier of (2x) has been applied to arrive at the large commercial quantity.

With the substances Ethyl phenyl acetate, Gamma butyrolactone and 4-Hydroxy-butanoic acid nitrile, there was a discrepancy between the previous ACT amount and the amount proposed by the model schedule. Advice was sought from ACT Government Analytical Laboratory on the appropriate amount, with the model schedule quantity for the commercial quantity being adopted. The existing ACT controlled precursor multiplier of (2x) has been applied to arrive at the large commercial quantity.

12- Omit definition of 'associated drug' from dictionary- this section omits the definition of 'associated drug' from the *Criminal Code Regulation 2005* as the term has been replaced by the new definition of 'controlled drug'.

13- New definition of 'derivative' in dictionary- this section inserts a definition of 'derivative'.

14- Omit definition of 'related drug' from dictionary- this section omits the definition of 'related drug' from the dictionary. 'Related drug' is now defined at section 7(2).