



COMMISSIONER'S OFFICE

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Ms Sophie Dunstone
Committee Secretary
The Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Dunstone

Thank you for your email of 28 July 2014, providing the Northern Territory Police with the opportunity to make a submission to the Legal and Constitutional Affairs Legislation Committee's inquiry into the *Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014*.

Attached is the submission of the Northern Territory Police, which has been prepared in consultation with the Department of the Attorney-General and Justice and Department of Correctional Services.

I authorise publication of this submission on the Committee's website after the Committee has reviewed and authorised its publication.

If you would like to discuss any aspects of the submission, please contact Acting Commander Tony Fuller of the Crime and Specialist Command on

Yours sincerely

John McRoberts APM
Commissioner of Police

13 August 2014

Senate Legal and Constitutional Affairs Legislation Committee
Inquiry into the *Crimes Legislation Amendment (Psychoactive
Substances and Other Measures) Bill 2014*

Northern Territory Police Force Submission



**SENATE LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE
INQUIRY INTO THE CRIMES LEGISLATION AMENDMENT (PSYCHOACTIVE
SUBSTANCES AND OTHER MEASURES) BILL 2014**

NORTHERN TERRITORY POLICE FORCE SUBMISSION

***CRIMES LEGISLATION AMENDMENT (PSYCHOACTIVE SUBSTANCES AND
OTHER MEASURES) BILL 2014***

EXPLANATORY MEMORANDUM

(circulated by authority of the Minister for Justice, the Hon Michael Keenan MP)

Schedule 1 will amend the *Criminal Code Act 1995* (the Code) and *Customs Act 1901* (the Customs Act) to strengthen the Commonwealth's ability to respond to new and emerging illicit drugs, also known as 'new psychoactive substances'. New psychoactive substances are designed to mimic the psychoactive effects of illicit drugs, but their chemical compositions are not captured by existing controls on those drugs. There is evidence that manufacturers design the chemical structures of psychoactive substances to avoid these controls and prohibitions.

The amendments in sch 1 will fill the regulatory gap between when psychoactive substances first appear and when they are controlled under other parts of the Code or under the *Prohibited Imports Regulations*. They will ensure that new psychoactive substances cannot be imported while the Government assesses their harms and considers the appropriate controls to place on them. The measure takes a precautionary approach to dealing with psychoactive substances. It is intended to work in parallel with, and not replace, any of the existing schemes which regulate the importation of both illicit drugs and substances with a legitimate use into Australia.

Schedule 1 will:

- introduce an offence into the Code for importing a psychoactive substance that does not have a legitimate use or which is not already prohibited;
- introduce an offence into the Code of importing a substance where its presentation contains a representation that it has the same effects as, or substantially similar effects to, a serious drug, or that it is a lawful alternative to a serious drug; and
- amend the *Customs Act* to allow Australian Customs and Border Protection Service (ACBPS) and Australian Federal Police (AFP) officers to exercise appropriate administrative powers to search for, detain, seize and destroy substances prohibited under the new offences in the Code.

Response

The Northern Territory (NT) Police ordinarily investigate and prosecute drug offences under the authority of the *Misuse of Drugs Act (NT) (MDA)*; however, may investigate and prosecute under the authority of the Code or the *Customs Act*.

The NT Police has considered the issue of substances that induce a 'psychoactive effect', and as a result amended the MDA on 11 February 2014,

to remove all references to psychoactive and psychotropic effects, on the basis that it was difficult for an expert to give such evidence given the differing effects of substances on individuals. The terminology is subjective, and the interpretation would be broad and open to legal challenge.

However, effective increases in the powers pursuant to the *Customs Act* and the Code and the list of new psychoactive substances (NPS) and analogues as 'border controlled substances' may decrease the supply of these drugs domestically. The detection, control and banning of NPS at our borders would reduce supply locally, and related demand on NT Police services.

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Schedule 2 will amend the Code and the *Customs Act* to implement Election Commitments made in the Government's *Policy to Tackle Crime* (the Policy), released in August 2013. In the Policy, the Coalition undertook to implement tougher penalties for gun-related crime, including through the introduction of mandatory minimum sentences of five years imprisonment for illegal firearm trafficking.

Schedule 2 will:

- create new international firearms offences of trafficking prohibited firearms and firearm parts into and out of Australia (new div 361 of the Code);
- extend the existing offences of cross-border disposal or acquisition of a firearm and taking or sending a firearm across borders within Australia in div 360 of the Code to include firearm parts, as well as firearms; and
- introduce a mandatory minimum five year term of imprisonment for the new offences in div 361 and existing offences in div 360 of the Code.

Response

All firearms related offending is investigated and prosecuted by the NT Police under the authority of the NT *Firearms Act* and *Firearms Regulations*. Although the NT Police may occasionally assist the AFP or the ACBPS in a logistical manner, we do not rely on the authority of the Code and *Customs Act*.

The national Firearms and Weapons Policy Working Group has proposed a business case for a National Firearm Interface which, if adopted, would go some way to assisting with the trafficking issue in being able to 'manage' the movements of firearms across borders. There are significant issues with defining what is a 'firearm' and a 'firearms part'. This varies between jurisdictions and is currently subject to debate at a national level.

The challenge by all policing agencies has been standardising what is and what is not a firearm or firearm part, with some jurisdictions seeking to regulate additional parts to those currently specified under the respective State or Territory legislation, which also varies in its current form.

The ACBPS apply a different test to the respective jurisdictions, so whilst management of parts entering Australia is achievable, it is problematic on a cross-jurisdictional domestic level.

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Schedule 3 will amend the *International Transfer of Prisoners Act 1997* (ITP Act), which governs Australia's international transfer of prisoners (ITP) scheme. The ITP scheme aims to promote the successful rehabilitation and reintegration into society of a prisoner, while preserving the sentence imposed by the sentencing country as far as possible. This is a voluntary scheme which requires the consent of the prisoner, Australia's Attorney-General, the relevant transfer country, and where applicable, the relevant Australian State or Territory to or from which the prisoner wishes to transfer.

Since the ITP scheme has been in place, it has become clear that improvements to the ITP Act are required to clarify and streamline the process, to make the scheme more straightforward, operate more efficiently, and reduce unnecessary burdens on the resources required to process ITP applications. The amendments in this schedule seek to address these issues, with the effect being timelier processing of applications, reduced resource burden and improved usability of the legislation by prisoners, while still maintaining prisoners' rights and due process.

Schedule 3 will:

- remove the requirement for the Attorney-General to make a final decision where a transfer cannot proceed due to an application not meeting all requirements under the ITP Act (i.e., an unviable application);
- impose a one-year time limit on reapplications from prisoners whose applications are refused, or who withdraw their applications;
- clarify that prisoners with suspended sentences may be transferred under the ITP scheme;
- clarify that a prisoner who wishes to transfer to Australia may apply for transfer either to the country in which they are serving their sentence or directly to Australia;
- clarify that the date on which the assessment of dual criminality is based is the date the application for transfer is received;
- clarify that the definition of 'joint prisoner' includes a prisoner who was convicted in one or more Australian States and/or Territories;
- clarify that the option of writing to a transfer country to advise that the Attorney-General's consent would be given if a variation were made to the terms of transfer is a discretionary, rather than a mandatory, requirement;
- broaden the definition of 'prisoner's representative' to include a prisoner's close family member; and
- remove references to prescribed application forms.

Response

Schedule 3 of the Bill specifically deals with sentenced prisoners, which police typically have no involvement with.

The only potential for impact on NT Police custodial facilities in respect of the transfer of international prisoners would be if the prisoner were to commit offences while in custody, resulting in their arrest and transfer to a Police Watch House. The Bill does not outline if international prisoner transferees are subject to additional requirements should they commit offences whilst in prison. In this circumstance the relevant person would be dealt with under standard protocols for a person who breaches the law while in prison.

The NT Department of Correctional Services understands the proposed legislative amendments will have limited impact on their operations and resources.

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Schedule 4 amends the Code to clarify that the slavery offences in s 270.3 have universal jurisdiction. This approach accords with the prohibition of slavery as a *jus cogens* (peremptory) norm of customary international law; meaning that it is non-derogable and applies at all times and in all circumstances, and one that is expressly prohibited by a number of treaties to which Australia is a party. It is also in keeping with Australia's recognition of universal jurisdiction as a well-established principle of international law, and one which extends to a range of crimes including piracy, genocide, war crimes, torture and other crimes against humanity.

Response

The NT Police has no comment.

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Schedule 5 is to validate action undertaken by a member of the AFP, or a special member under the *Commonwealth Places (Application of Laws) Act 1970*, for an investigation of an applied State offence in relation to a Commonwealth place that would otherwise have been invalid because the Commonwealth place was not, for a time, a designated State airport. This retrospective application is limited to the period starting 19 March 2014 and ending on 16 May 2014, and refers only to those investigatory powers specified in sub-s 5(3A) of the *Commonwealth Places (Application of Laws) Act 1970*.

Response

The NT Police has no comment.

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Schedule 6 will make minor and technical amendments to the Code, the *Financial Transaction Reports Act 1988* (FTR Act) and the *Surveillance Devices Act 2004*.

The purpose of the amendment to the FTR Act is to give permanent effect to an exemption granted by the AUSTRAC CEO in relation to account blocking obligations of cash dealers in certain circumstances. A consequential amendment has also been made to the *Surveillance Devices Act 2004* to remove reference to an offence against a repealed section of the FTR Act.

These amendments will give permanent effect to an exemption granted by the AUSTRAC CEO from an obligation for cash dealers to block accounts in certain circumstances. This exemption was granted by the AUSTRAC CEO due to the fact that the obligation was largely duplicative of safeguards in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

In addition, sch 6 will make minor amendments to div 301.11 of the Code to correct an error in the definition of a minimum marketable quantity in respect of a drug analogue of 1 or more listed border controlled drugs. This error occurred when div 301.11 was inserted into the Code in November 2012, by the *Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Act 2012*.

Response

The NT Police has no comment.