

**2005**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**CRIMINAL CODE REGULATION 2005**

**SUBORDINATE LAW NO SL 2005-2**

**EXPLANATORY STATEMENT**

Circulated by the authority  
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## **Overview**

The *Criminal Code (Serious Drug Offences) Amendment Act 2004* (the Code Amendment Act) amends the *Criminal Code 2002* by inserting a new chapter 6, which deals with serious drug offences. The purpose of this regulation is to specify the substances and plants that are ‘controlled drugs’, ‘controlled plants’ and ‘controlled precursors’ and the quantities of each (eg. trafficable, commercial and large commercial) that apply to the new offences in chapter 6.

Currently, the ACT’s drug laws are governed by the *Drugs of Dependence Act 1991* (DDA) and the *Drugs of Dependence Regulation 1993* (the 1993 Regulations), which deal with both the legal and illegal trade in drugs. After the Code Amendment Act commences on 6 March 2005, chapter 6 will be the major source for offences directed at the illegal trade, whilst the DDA will be the primary legislative tool for regulating the legal manufacture, supply, and use of pharmaceuticals in the ACT.

This Regulation will operate for both chapter 6 and the DDA. This is similar to the current situation (in that the 1993 Regulations are the same for both the legal and illegal trade) and will ensure consistency in the drugs that are regulated in the ACT. The DDA will also have a separate Regulation that will apply this Regulation to the DDA and will also include another schedule that is needed for the licensing scheme for the manufacture of drugs in part 2 of the DDA.

## **Clauses**

### **Section 1 – Name of regulation**

This section sets out the name of the Regulation as the *Criminal Code Regulation 2005*.

### **Section 2 – Commencement**

Subsection (1) provides that the regulation commences on the day the *Criminal Code (Serious Drug Offences) Amendment Act 2004* commences. For the Act to operate effectively it is necessary to have the regulations in place on the day of commencement.

Subsection 2 provides that item 39 in schedule 1, part 1.1, ketamine, commences on 1 May 2005. It is appropriate to delay the commencement of this item. Ketamine is available presently on prescription and it’s listing in this Regulation as a controlled drug will subject it to tighter control. Ketamine has been abused in relation to drink spiking. 1 May 2005 is the date it is to be scheduled in the Standard for the Uniform Scheduling of Drugs and Poisons (SUSDP).

### **Section 3 - Dictionary**

This section provides that the dictionary is part of the regulation.

### **Section 4 - Notes**

This section provides that notes are explanatory and not part of the regulation.

## **Part 2 – Serious Drug Offences**

### **Section 5 – Controlled drugs – Code, s 600 def *controlled drug***

This section explains what a ‘controlled drug’ is for the purposes of chapter 6 of the Criminal Code. A controlled drug is a substance listed in schedule 1 of this Regulation and any ‘associated drug’ or ‘related drug’. The substances listed in schedule 1 of this regulation are taken from schedules 8 and 9 of SUSDP report no. 19. The SUSDP forms the basis for the scheduling and control of substances in Australia, and was the basis upon which the lists of ‘drugs of dependence’ and ‘prohibited substances’ were prepared for the 1993 Regulations. The schedule uses the Criminal Code heading, ‘controlled drugs’ but also incorporates the terms ‘drugs of dependence’ and ‘prohibited substances’, which are terms that are used in the DDA.

‘Associated drugs’ are the active principles of a substance mentioned in schedule 1 or any salt or derivative (a preparation or mixture) of such a drug. A ‘related drug’ is a substance that bears a specific chemical relationship to a schedule 1 drug but is not specifically listed. Similar provisions have existed in ACT drug schedules since 1989 (see the *Drugs of Dependence Ordinance 1989*).

### **Section 6 – Controlled plants – Code, s 600 def *controlled plant***

This section explains that a ‘controlled plant’ is a growing plant referred to in schedule 2. The list has been taken from schedule 1 of the DDA, which will be repealed by the Code Amendment Act, except for *mitragyna speciosa*, which is an additional plant that has been added to the SUSDP and accordingly added to schedule 2. In addition the entry for psilocibin has been corrected to psilocybe. No quantities have been listed except for cannabis and the papaver species (opium), two substances shown to have a market in Australia.

### **Section 7 – Controlled precursors – Code, s 600 def *controlled precursor***

‘Controlled precursors’ are those substances that can be used to make a controlled drug. For example, psuedoephedrine is commonly contained in cold and flu tablets. It is also a key chemical component for methamphetamine. The list of precursors in schedule 3 has been prepared from the list of category 1 substances in the Code of Practice for Supply Diversion into Illicit Drug Manufacture and additional substances listed in other Australian jurisdictions. The Plastics and Chemicals Industries Association and Science Industry Australia produce the Code of Practice. The list predominantly reflects current trends in the production, supply and use of amphetamine type substances. Quantities have been set with regard to the amount of precursor it takes to manufacture the controlled drug it makes.

### **Section 8 – Quantities of controlled drugs, plants and precursors – Code s 601(1)**

The penalties in chapter 6 are structured according to the quantity involved in the offence. This section makes clear that the quantities that are ‘trafficable’, ‘commercial and ‘large commercial’ for each substance listed are the quantities listed in columns 3, 4, and 5 for each substance.

**Section 9 – Quantities of controlled drugs in mixtures – Code s 601(2)**

This section makes clear that the quantities listed in schedule 1 are a pure quantity for the quantity listed in columns 3, 4, and 5. The provision is intended reinforce the effect of section 601(2) of the *Criminal Code 2002*.