



Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005

No. 129, 2005

**An Act to amend various Acts relating to law and
justice, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 129, 2005

An Act to amend various Acts relating to law and justice, and for related purposes

[Assented to 8 November 2005]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Law and Justice Legislation
Amendment (Serious Drug Offences and Other Measures) Act
2005*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	8 November 2005
2. Schedule 1	The 28th day after the day on which this Act receives the Royal Assent.	6 December 2005
3. Schedule 2	<p>The later of:</p> <p>(a) the 28th day after the day on which this Act receives the Royal Assent; and</p> <p>(b) the day on which the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, done at New York on 25 May 2000, enters into force for Australia.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister for Foreign Affairs must announce by notice in the <i>Gazette</i> the day on which the Optional Protocol enters into force for Australia.</p>	
4. Schedules 3 to 8	The day on which this Act receives the Royal Assent.	8 November 2005
5. Schedule 9, Part 1	The day on which this Act receives the Royal Assent.	8 November 2005
6. Schedule 9, Part 2	The day after this Act receives the Royal Assent.	9 November 2005

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Serious drug offences

Part 1—Serious drug offences

Criminal Code Act 1995

1 Before Part 9.4 of Chapter 9 of the *Criminal Code*

Insert:

Part 9.1—Serious drug offences

Division 300—Preliminary

300.1 Purpose

- (1) The purpose of this Part is to create offences relating to drug trafficking and to give effect to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988.

Note: The text of the Convention is set out in Australian Treaty Series 1993 No. 4. In 2005 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible on the Internet through that Department's world-wide web site.

- (2) Subsection (1) does not limit the legislative powers of the Parliament in relation to this Part.

300.2 Definitions

In this Part:

aggravated offence has the meaning given by section 310.4.

border controlled drug means a substance, other than a growing plant:

- (a) listed or described as a border controlled drug in section 314.4; or
- (b) prescribed by regulations under paragraph 301.3(1)(a); or
- (c) specified in a determination under paragraph 301.8(1)(a).

border controlled plant means a growing plant:

- (a) listed or described as a border controlled plant in section 314.5; or
- (b) prescribed by regulations under paragraph 301.3(1)(b); or
- (c) specified in a determination under paragraph 301.8(1)(b).

border controlled precursor means a substance (including a growing plant):

- (a) listed or described as a border controlled precursor in section 314.6; or
- (b) prescribed by regulations under subsection 301.4(1); or
- (c) specified in a determination under subsection 301.9(1).

child means an individual who is under 18 years of age.

commercial quantity, in relation to a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor means a quantity not less than the quantity specified as a commercial quantity of the drug, plant or precursor in:

- (a) Division 314; or
- (b) regulations under section 301.5; or
- (c) a determination under section 301.10.

conceal a thing includes conceal or disguise:

- (a) the nature, source or location of the thing; or
- (b) any movement of the thing; or
- (c) the rights of any person with respect to the thing; or
- (d) the identity of any owner of the thing.

controlled drug means a substance, other than a growing plant:

- (a) listed or described as a controlled drug in section 314.1; or
- (b) prescribed by regulations under paragraph 301.1(1)(a); or
- (c) specified in a determination under paragraph 301.6(1)(a).

controlled plant means a growing plant:

- (a) listed or described as a controlled plant in section 314.2; or
- (b) prescribed by regulations under paragraph 301.1(1)(b); or
- (c) specified in a determination under paragraph 301.6(1)(b).

controlled precursor means a substance (including a growing plant):

- (a) listed or described as a controlled precursor in section 314.3;
or
- (b) prescribed by regulations under subsection 301.2(1); or
- (c) specified in a determination under subsection 301.7(1).

cultivate has the meaning given by subsection 303.1(1).

cultivates a plant has the meaning given by subsection 303.1(2).

cultivates a plant for a commercial purpose has the meaning given by section 303.3.

export includes take from Australia.

import includes bring into Australia.

manufacture has the meaning given by subsection 305.1(1).

manufactures a substance has the meaning given by subsection 305.1(2).

manufactures a substance for a commercial purpose has the meaning given by section 305.2.

marketable quantity, in relation to a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor means a quantity not less than the quantity specified as a marketable quantity of the drug, plant or precursor in:

- (a) Division 314; or
- (b) regulations under section 301.5; or
- (c) a determination under section 301.10.

possession of a thing includes the following:

- (a) receiving or obtaining possession of the thing;
- (b) having control over the disposition of the thing (whether or not the thing is in the custody of the person);
- (c) having joint possession of the thing.

pre-traffics has the meaning given by section 306.1.

procures an individual to pre-traffic has the meaning given by section 309.9.

procures an individual to traffic has the meaning given by section 309.6.

product of a plant has the meaning given by section 303.2.

requisite fraction has the meaning given by subsection 312.2(3).

sell includes the following:

- (a) barter or exchange;
- (b) agree to sell.

supply includes the following:

- (a) supply, whether or not by way of sale;
- (b) agree to supply.

taking, in relation to a substance or plant, means taking the substance or plant, or a product of the plant, into the body.

trafficable quantity, in relation to a controlled drug or controlled plant, means a quantity not less than the quantity specified as a trafficable quantity of the drug or plant in:

- (a) Division 314; or
- (b) regulations under section 301.5; or
- (c) a determination under section 301.10.

traffics has the meaning given by section 302.1.

transport includes deliver.

300.3 Geographical jurisdiction

Section 15.2 (extended geographical jurisdiction—category B) applies to each offence against this Part.

300.4 Concurrent operation intended

- (1) This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

- (2) Without limiting subsection (1), this Part is not intended to exclude or limit the concurrent operation of a law of a State or Territory that makes:
- (a) an act or omission that is an offence against a provision of this Part; or
 - (b) a similar act or omission;
an offence against the law of the State or Territory.
- (3) Subsection (2) applies even if the law of the State or Territory does any one or more of the following:
- (a) provides for a penalty for the offence that differs from the penalty provided for in this Part;
 - (b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence under this Part;
 - (c) provides for a defence in relation to the offence that differs from the defences applicable to the offence under this Part.

300.5 Particular identity of drugs, plants and precursors

If, in a prosecution for an offence against this Part, it is necessary for the prosecution to prove that a person knew, or was reckless as to whether, a substance or plant was a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor, it is not necessary for the prosecution to prove that the person knew, or was reckless as to, the particular identity of the controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor.

Division 301—Listing additional drugs, plants and precursors

Subdivision A—Interim regulations

301.1 Interim regulations—controlled drugs and controlled plants

- (1) The regulations may prescribe:
- (a) a substance, other than a growing plant, as a controlled drug;
or
 - (b) a growing plant as a controlled plant;
-

if the conditions set out in subsection (2) are met.

- (2) The conditions are as follows:
 - (a) the Minister must be satisfied that taking the substance or plant concerned:
 - (i) would create a substantial risk of death or serious harm;
or
 - (ii) would have a physical or mental effect substantially similar to that caused by taking a substance or plant already listed or described in section 314.1 or 314.2;
 - (b) the Minister must be satisfied that there is a substantial risk that the substance or plant will be taken without appropriate medical supervision.
- (3) However, the regulations must not prescribe a particular substance or plant under this section for a period that exceeds, or for periods that in total exceed, 12 months.

301.2 Interim regulations—controlled precursors

- (1) The regulations may prescribe a substance (including a growing plant) as a controlled precursor if the condition set out in subsection (2) is met.
- (2) The condition is that the Minister must be satisfied that there is a substantial risk that the substance concerned will be used to unlawfully manufacture a controlled drug.
- (3) However, the regulations must not prescribe a particular substance under this section for a period that exceeds, or for periods that in total exceed, 12 months.

301.3 Interim regulations—border controlled drugs and border controlled plants

- (1) The regulations may prescribe:
 - (a) a substance, other than a growing plant, as a border controlled drug; or
 - (b) a growing plant as a border controlled plant;if the conditions set out in subsection (2) are met.
 - (2) The conditions are as follows:
-

- (a) the Minister must be satisfied that taking the substance or plant concerned:
 - (i) would create a substantial risk of death or serious harm; or
 - (ii) would have a physical or mental effect substantially similar to that caused by taking a substance or plant already listed or described in section 314.4 or 314.5;
 - (b) the Minister must be satisfied that there is a substantial risk that the substance or plant will be taken without appropriate medical supervision.
- (3) However, the regulations must not prescribe a particular substance or plant under this section for a period that exceeds, or for periods that in total exceed, 12 months.

301.4 Interim regulations—border controlled precursors

- (1) The regulations may prescribe a substance (including a growing plant) as a border controlled precursor if the condition set out in subsection (2) is met.
- (2) The condition is that the Minister must be satisfied that there is a substantial risk that the substance concerned will be used to unlawfully manufacture a controlled drug.
- (3) However, the regulations must not prescribe a particular substance under this section for a period that exceeds, or for periods that in total exceed, 12 months.

301.5 Interim regulations—commercial, marketable and trafficable quantities

- (1) The regulations may prescribe:
 - (a) a quantity of a controlled drug or controlled plant as a commercial, marketable or trafficable quantity of the drug or plant; or
 - (b) a quantity of a controlled precursor as a commercial or marketable quantity of the precursor.
 - (2) However, the regulations must not prescribe:
 - (a) a commercial quantity of a particular controlled drug, controlled plant or controlled precursor; or
-

- (b) a marketable quantity of a particular controlled drug, controlled plant or controlled precursor; or
 - (c) a trafficable quantity of a particular controlled drug or controlled plant;
- for a period that exceeds, or for periods that in total exceed, 12 months.
- (3) If:
- (a) there is no commercial, marketable or trafficable quantity specified in section 314.1 for a substance listed or described as a controlled drug in that section; or
 - (b) there is no commercial, marketable or trafficable quantity specified in section 314.2 for a substance listed or described as a controlled plant in that section; or
 - (c) there is no commercial or marketable quantity specified in section 314.3 for a substance listed or described as a controlled precursor in that section;
- regulations under subsection (1) may prescribe such a quantity of the drug, plant or precursor.
- (4) The regulations may prescribe a quantity of a border controlled drug, border controlled plant or border controlled precursor as a commercial or marketable quantity of the drug, plant or precursor.
- (5) However, the regulations must not prescribe:
- (a) a commercial quantity of a particular border controlled drug, border controlled plant or border controlled precursor; or
 - (b) a marketable quantity of a particular border controlled drug, border controlled plant or border controlled precursor;
- for a period that exceeds, or for periods that in total exceed, 12 months.
- (6) If:
- (a) there is no commercial or marketable quantity specified in section 314.4 for a substance listed or described as a border controlled drug in that section; or
 - (b) there is no commercial or marketable quantity specified in section 314.5 for a substance listed or described as a border controlled plant in that section; or

- (c) there is no commercial or marketable quantity specified in section 314.6 for a substance listed or described as a border controlled precursor in that section;
- regulations under subsection (4) may prescribe such a quantity of the drug, plant or precursor.

Subdivision B—Emergency determinations

301.6 Emergency determinations—controlled drugs and controlled plants

- (1) The Minister may, by legislative instrument, determine that:
- (a) a substance, other than a growing plant, is a controlled drug; or
 - (b) a growing plant is a controlled plant.
- (2) The Minister must not make a determination under subsection (1) unless he or she is satisfied:
- (a) that taking the substance or plant concerned:
 - (i) would create a substantial risk of death or serious harm; or
 - (ii) would have a physical or mental effect substantially similar to that caused by taking a substance or plant already listed or described in section 314.1 or 314.2; and
 - (b) that there is an imminent and substantial risk that the substance or plant will be:
 - (i) taken without appropriate medical supervision; or
 - (ii) imported and made available for taking without appropriate medical supervision.

Note: Sections 301.11 and 301.12 set out general rules for emergency determinations.

301.7 Emergency determinations—controlled precursors

- (1) The Minister may, by legislative instrument, determine that a substance (including a growing plant) is a controlled precursor.
- (2) The Minister must not make a determination under subsection (1) unless he or she is satisfied that there is an imminent and substantial risk that the substance will be:

- (a) used to unlawfully manufacture a controlled drug; or
- (b) imported and made available to be used in unlawfully manufacturing a controlled drug.

Note: Sections 301.11 and 301.12 set out general rules for emergency determinations.

301.8 Emergency determinations—border controlled drugs and border controlled plants

- (1) The Minister may, by legislative instrument, determine that:
 - (a) a substance, other than a growing plant, is a border controlled drug; or
 - (b) a growing plant is a border controlled plant.
- (2) The Minister must not make a determination under subsection (1) unless he or she is satisfied:
 - (a) that taking the substance or plant concerned:
 - (i) would create a substantial risk of death or serious harm; or
 - (ii) would have a physical or mental effect substantially similar to that caused by taking a substance or plant already listed or described in section 314.4 or 314.5; and
 - (b) that there is an imminent and substantial risk that the substance or plant will be:
 - (i) taken without appropriate medical supervision; or
 - (ii) imported and made available for taking without appropriate medical supervision.

Note: Sections 301.11 and 301.12 set out general rules for emergency determinations.

301.9 Emergency determinations—border controlled precursors

- (1) The Minister may, by legislative instrument, determine that a substance (including a growing plant) is a border controlled precursor.
- (2) The Minister must not make a determination under subsection (1) unless he or she is satisfied that there is an imminent and substantial risk that the substance will be:
 - (a) used to unlawfully manufacture a controlled drug; or

- (b) imported and made available to be used in unlawfully manufacturing a controlled drug.

Note: Sections 301.11 and 301.12 set out general rules for emergency determinations.

301.10 Emergency determinations—commercial, marketable and trafficable quantities

- (1) The Minister may, by legislative instrument, determine that:
 - (a) a quantity of a controlled drug or controlled plant is a commercial, marketable or trafficable quantity of the drug or plant; or
 - (b) a quantity of a controlled precursor is a commercial or marketable quantity of the precursor.
- (2) If:
 - (a) there is no commercial, marketable or trafficable quantity specified in section 314.1 for a substance listed or described as a controlled drug in that section; or
 - (b) there is no commercial, marketable or trafficable quantity specified in section 314.2 for a substance listed or described as a controlled plant in that section; or
 - (c) there is no commercial or marketable quantity specified in section 314.3 for a substance listed or described as a controlled precursor in that section;the Minister may, under subsection (1), determine such a quantity of the drug, plant or precursor.
- (3) The Minister may, by legislative instrument, determine that a quantity of a border controlled drug, border controlled plant or border controlled precursor is a commercial or marketable quantity of the drug, plant or precursor.
- (4) If:
 - (a) there is no commercial or marketable quantity specified in section 314.4 for a substance listed or described as a border controlled drug in that section; or
 - (b) there is no commercial or marketable quantity specified in section 314.5 for a substance listed or described as a border controlled plant in that section; or

(c) there is no commercial or marketable quantity specified in section 314.6 for a substance listed or described as a border controlled precursor in that section;

the Minister may, under subsection (3), determine such a quantity of the drug, plant or precursor.

Note: Sections 301.11 and 301.12 set out general rules for emergency determinations.

301.11 General rules—period of effect, publication etc.

- (1) A determination under this Subdivision has effect:
 - (a) from the time it is registered (within the meaning of the *Legislative Instruments Act 2003*); and
 - (b) for the period of 28 days from that registration or such shorter period as is specified in the determination.
- (2) However, despite paragraph (1)(b), if:
 - (a) the Minister has made a determination under this Subdivision; and
 - (b) exceptional circumstances have prevented the making of regulations to the same effect;the Minister may, by legislative instrument, extend the period during which the determination is in force by no more than 28 days.
- (3) The Minister must not make more than one determination under sections 301.6 to 301.9 in relation to a particular substance or plant.
- (4) If the Minister makes a determination under this Subdivision, the Minister must, on or before the day on which the determination is registered:
 - (a) make a public announcement of the determination; and
 - (b) cause a copy of the announcement to be published:
 - (i) on the Internet; and
 - (ii) in a newspaper circulating in each State, the Australian Capital Territory and the Northern Territory.
- (5) An announcement made under subsection (4) is not a legislative instrument.

301.12 General rule—inconsistency with regulations

Despite subsections 301.11(1) and (2), a determination made under this Subdivision has no effect to the extent that it is inconsistent with a regulation made under Subdivision A.

Division 302—Trafficking controlled drugs

302.1 Meaning of *traffics*

- (1) For the purposes of this Part, a person *traffics* in a substance if:
 - (a) the person sells the substance; or
 - (b) the person prepares the substance for supply with the intention of selling any of it or believing that another person intends to sell any of it; or
 - (c) the person transports the substance with the intention of selling any of it or believing that another person intends to sell any of it; or
 - (d) the person guards or conceals the substance with the intention of selling any of it or assisting another person to sell any of it; or
 - (e) the person possesses the substance with the intention of selling any of it.
- (2) For the purposes of paragraph (1)(b), preparing a substance for supply includes packaging the substance or separating the substance into discrete units.

302.2 Trafficking commercial quantities of controlled drugs

- (1) A person commits an offence if:
 - (a) the person traffics in a substance; and
 - (b) the substance is a controlled drug; and
 - (c) the quantity trafficked is a commercial quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

- (2) The fault element for paragraph (1)(b) is recklessness.
- (3) Absolute liability applies to paragraph (1)(c).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

302.3 Trafficking marketable quantities of controlled drugs

- (1) A person commits an offence if:
- (a) the person traffics in a substance; and
 - (b) the substance is a controlled drug; and
 - (c) the quantity trafficked is a marketable quantity.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

- (2) The fault element for paragraph (1)(b) is recklessness.

- (3) Absolute liability applies to paragraph (1)(c).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

302.4 Trafficking controlled drugs

- (1) A person commits an offence if:
- (a) the person traffics in a substance; and
 - (b) the substance is a controlled drug.

Penalty: Imprisonment for 10 years or 2,000 penalty units, or both.

- (2) The fault element for paragraph (1)(b) is recklessness.

302.5 Presumption where trafficable quantities are involved

- (1) For the purposes of proving an offence against this Division, if a person has:
- (a) prepared a trafficable quantity of a substance for supply; or
 - (b) transported a trafficable quantity of a substance; or
 - (c) guarded or concealed a trafficable quantity of a substance; or
 - (d) possessed a trafficable quantity of a substance;

the person is taken to have had the necessary intention or belief concerning the sale of the substance to have been trafficking in the substance.

- (2) Subsection (1) does not apply if the person proves that he or she had neither that intention nor belief.

Note 1: A defendant bears a legal burden in relation to the matters in subsection (2) (see section 13.4).

Note 2: This section does not apply where quantities are combined for the purposes of section 311.2 (see subsection 311.2(3)).

302.6 Purchase of controlled drugs is not an ancillary offence

A person does not commit:

- (a) an offence against this Division because of the operation of section 11.2; or
- (b) an offence against section 11.4 or 11.5 that relates to an offence against this Division;

merely because the person purchases, or intends to purchase, a controlled drug from another person.

Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3)).

Division 303—Commercial cultivation of controlled plants

303.1 Meanings of *cultivate* and *cultivates a plant*

- (1) For the purposes of this Part, *cultivate* includes the following:
 - (a) plant a seed, seedling or cutting;
 - (b) transplant a plant;
 - (c) nurture, tend or grow a plant;
 - (d) guard or conceal a plant (including against interference or discovery by humans or natural predators);
 - (e) harvest a plant, pick any part of a plant or separate any resin or other substance from a plant.
- (2) For the purposes of this Part, a person *cultivates a plant* if the person:
 - (a) engages in its cultivation; or
 - (b) exercises control or direction over its cultivation; or
 - (c) provides finance for its cultivation.

303.2 Meaning of *product of a plant*

For the purposes of this Part, the *product* of a plant includes the following:

- (a) a seed of the plant;
-

- (b) a part of the plant (whether alive or dead);
- (c) a substance separated from the plant.

303.3 Meaning of *cultivates a plant for a commercial purpose*

For the purposes of this Part, a person *cultivates a plant for a commercial purpose* if the person cultivates the plant:

- (a) with the intention of selling any of it or its products; or
- (b) believing that another person intends to sell any of it or its products.

303.4 Cultivating commercial quantities of controlled plants

- (1) A person commits an offence if:
 - (a) the person cultivates a plant for a commercial purpose; and
 - (b) the plant is a controlled plant; and
 - (c) the quantity cultivated is a commercial quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

- (2) The fault element for paragraph (1)(b) is recklessness.
- (3) Absolute liability applies to paragraph (1)(c).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

303.5 Cultivating marketable quantities of controlled plants

- (1) A person commits an offence if:
 - (a) the person cultivates a plant for a commercial purpose; and
 - (b) the plant is a controlled plant; and
 - (c) the quantity cultivated is a marketable quantity.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

- (2) The fault element for paragraph (1)(b) is recklessness.
- (3) Absolute liability applies to paragraph (1)(c).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

303.6 Cultivating controlled plants

- (1) A person commits an offence if:
- (a) the person cultivates a plant for a commercial purpose; and
 - (b) the plant is a controlled plant.

Penalty: Imprisonment for 10 years or 2,000 penalty units, or both.

- (2) The fault element for paragraph (1)(b) is recklessness.

303.7 Presumption where trafficable quantities are involved

- (1) For the purposes of proving an offence against this Division, if a person has cultivated a trafficable quantity of a plant, the person is taken to have had the necessary intention or belief concerning the sale of the plant to have been cultivating the plant for a commercial purpose.
- (2) Subsection (1) does not apply if the person proves that he or she had neither that intention nor belief.

Note: A defendant bears a legal burden in relation to the matters in subsection (2) (see section 13.4).

Division 304—Selling controlled plants

304.1 Selling commercial quantities of controlled plants

- (1) A person commits an offence if:
- (a) the person sells a plant; and
 - (b) the plant is a controlled plant; and
 - (c) the quantity sold is a commercial quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

- (2) The fault element for paragraph (1)(b) is recklessness.

- (3) Absolute liability applies to paragraph (1)(c).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

304.2 Selling marketable quantities of controlled plants

- (1) A person commits an offence if:
 - (a) the person sells a plant; and
 - (b) the plant is a controlled plant; and
 - (c) the quantity sold is a marketable quantity.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

- (2) The fault element for paragraph (1)(b) is recklessness.

- (3) Absolute liability applies to paragraph (1)(c).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

304.3 Selling controlled plants

- (1) A person commits an offence if:
 - (a) the person sells a plant; and
 - (b) the plant is a controlled plant.

Penalty: Imprisonment for 10 years or 2,000 penalty units, or both.

- (2) The fault element for paragraph (1)(b) is recklessness.

Division 305—Commercial manufacture of controlled drugs

305.1 Meanings of *manufacture* and *manufactures a substance*

- (1) For the purposes of this Part, *manufacture* means any process by which a substance is produced (other than the cultivation of a plant), and includes the following:
 - (a) the process of extracting or refining a substance;
 - (b) the process of transforming a substance into a different substance.
- (2) For the purposes of this Part, a person *manufactures a substance* if the person:
 - (a) engages in its manufacture; or

- (b) exercises control or direction over its manufacture; or
- (c) provides finance for its manufacture.

305.2 Meaning of *manufactures a substance for a commercial purpose*

For the purposes of this Part, a person *manufactures a substance for a commercial purpose* if the person manufactures the substance:

- (a) with the intention of selling any of it; or
- (b) believing that another person intends to sell any of it.

305.3 Manufacturing commercial quantities of controlled drugs

- (1) A person commits an offence if:
 - (a) the person manufactures a substance for a commercial purpose; and
 - (b) the substance is a controlled drug; and
 - (c) the quantity manufactured is a commercial quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

- (2) The fault element for paragraph (1)(b) is recklessness.
- (3) Absolute liability applies to paragraph (1)(c).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

305.4 Manufacturing marketable quantities of controlled drugs

- (1) A person commits an offence if:
 - (a) the person manufactures a substance for a commercial purpose; and
 - (b) the substance is a controlled drug; and
 - (c) the quantity manufactured is a marketable quantity.

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 28 years or 5,600 penalty units, or both; or
- (b) in any other case—imprisonment for 25 years or 5,000 penalty units, or both.

Note: The additional elements for an aggravated offence against this section are set out in subsection 310.4(2).

- (2) The fault element for paragraph (1)(b) is recklessness.
- (3) Absolute liability applies to paragraph (1)(c).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

305.5 Manufacturing controlled drugs

- (1) A person commits an offence if:
 - (a) the person manufactures a substance for a commercial purpose; and
 - (b) the substance is a controlled drug.

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 12 years or 2,400 penalty units, or both; or
- (b) in any other case—imprisonment for 10 years or 2,000 penalty units, or both.

Note: The additional elements for an aggravated offence against this section are set out in subsection 310.4(2).

- (2) The fault element for paragraph (1)(b) is recklessness.

305.6 Presumption where trafficable quantities are involved

- (1) For the purposes of proving an offence against this Division, if a person has manufactured a trafficable quantity of a substance, the person is taken to have had the necessary intention or belief concerning the sale of the substance to have been manufacturing the substance for a commercial purpose.
- (2) Subsection (1) does not apply if the person proves that he or she had neither that intention nor belief.

Note: A defendant bears a legal burden in relation to the matters in subsection (2) (see section 13.4).

Division 306—Pre-trafficking controlled precursors

306.1 Meaning of *pre-traffics*

For the purposes of this Part, a person *pre-traffics* in a substance if the person:

- (a) sells the substance believing that the person to whom it is sold, or another person, intends to use any of the substance to manufacture a controlled drug; or
- (b) manufactures the substance:
 - (i) with the intention of using any of it to manufacture a controlled drug; and
 - (ii) with the intention of selling any of the drug so manufactured, or believing that another person intends to sell any of the drug so manufactured; or
- (c) manufactures the substance:
 - (i) with the intention of selling any of it to another person; and
 - (ii) believing that the other person intends to use any of the substance to manufacture a controlled drug; or
- (d) possesses the substance:
 - (i) with the intention of using any of it to manufacture a controlled drug; and
 - (ii) with the intention of selling any of the drug so manufactured, or believing that another person intends to sell any of the drug so manufactured.

306.2 Pre-trafficking commercial quantities of controlled precursors

- (1) A person commits an offence if:
 - (a) the person pre-traffics in a substance; and
 - (b) the substance is a controlled precursor; and
 - (c) the quantity pre-trafficked is a commercial quantity.

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 28 years or 5,600 penalty units, or both; or
- (b) in any other case—imprisonment for 25 years or 5,000 penalty units, or both.

Note: The additional elements for an aggravated offence against this section are set out in subsection 310.4(3).

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Absolute liability applies to paragraph (1)(c).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

306.3 Pre-trafficking marketable quantities of controlled precursors

(1) A person commits an offence if:

- (a) the person pre-traffics in a substance; and
- (b) the substance is a controlled precursor; and
- (c) the quantity pre-trafficked is a marketable quantity.

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 17 years or 3,400 penalty units, or both; or
- (b) in any other case—imprisonment for 15 years or 3,000 penalty units, or both.

Note: The additional elements for an aggravated offence against this section are set out in subsection 310.4(3).

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Absolute liability applies to paragraph (1)(c).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

306.4 Pre-trafficking controlled precursors

(1) A person commits an offence if:

- (a) the person pre-traffics in a substance; and
- (b) the substance is a controlled precursor.

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 9 years or 1,800 penalty units, or both; or
- (b) in any other case—imprisonment for 7 years or 1,400 penalty units, or both.

Note: The additional elements for an aggravated offence against this section are set out in subsection 310.4(3).

- (2) The fault element for paragraph (1)(b) is recklessness.

306.5 Presumption for pre-trafficking controlled precursors—sale

- (1) For the purposes of proving an offence against subsection 306.4(1), if:
- (a) a person has sold a substance; and
 - (b) a law of the Commonwealth or of a State or Territory required the sale to be authorised (however described); and
 - (c) the sale was not so authorised;
- the person is taken to have sold the substance believing that the person to whom it was sold, or another person, intended to use some or all of the substance to manufacture a controlled drug.
- (2) Subsection (1) does not apply if the person proves that he or she did not have that belief.

Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

306.6 Presumptions for pre-trafficking controlled precursors— manufacture for drug manufacture

- (1) For the purposes of proving an offence against subsection 306.4(1), if:
- (a) a person has manufactured a substance; and
 - (b) a law of the Commonwealth or of a State or Territory required the manufacture to be authorised (however described); and
 - (c) the manufacture was not so authorised;
- the person is taken to have manufactured the substance with the intention of using some or all of it to manufacture a controlled drug.
- (2) Subsection (1) does not apply if the person proves that he or she did not have that intention.

Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

- (3) For the purposes of proving an offence against subsection 306.4(1), if a person has manufactured a marketable quantity of a substance with the intention of using some or all of it to manufacture a

controlled drug, the person is taken to have done so with the intention of selling some or all of the drug so manufactured, or believing that another person intended to sell some or all of the drug so manufactured.

- (4) Subsection (3) does not apply if the person proves that he or she had neither that intention nor belief.

Note: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4).

306.7 Presumptions for pre-trafficking controlled precursors— manufacture for sale

- (1) For the purposes of proving an offence against subsection 306.4(1), if a person has manufactured a marketable quantity of a substance, the person is taken to have done so with the intention of selling some or all of it to another person.

- (2) Subsection (1) does not apply if the person proves that he or she did not have that intention.

Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

- (3) For the purposes of proving an offence against subsection 306.4(1), if:

- (a) a person has manufactured a substance with the intention of selling some or all of it to another person; and
- (b) a law of the Commonwealth or of a State or Territory required the manufacture to be authorised (however described); and
- (c) the manufacture was not so authorised;

the person is taken to have manufactured the substance believing that the other person intended to use some or all of the substance to manufacture a controlled drug.

- (4) Subsection (3) does not apply if the person proves that he or she did not have that belief.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

306.8 Presumptions for pre-trafficking controlled precursors— possession

- (1) For the purposes of proving an offence against subsection 306.4(1), if:
- (a) a person possessed a substance; and
 - (b) a law of the Commonwealth or of a State or Territory required the possession to be authorised (however described); and
 - (c) the possession was not so authorised;
- the person is taken to have possessed the substance with the intention of using some or all of it to manufacture a controlled drug.

- (2) Subsection (1) does not apply if the person proves that he or she did not have that intention.

Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

- (3) For the purposes of proving an offence against subsection 306.4(1), if a person possessed a marketable quantity of a substance with the intention of using some or all of it to manufacture a controlled drug, the person is taken to have done so with the intention of selling some or all of the drug so manufactured, or believing that another person intended to sell some or all of the drug so manufactured.

- (4) Subsection (3) does not apply if the person proves that he or she had neither that intention nor belief.

Note: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4).

Division 307—Import-export offences

Subdivision A—Importing and exporting border controlled drugs or border controlled plants

307.1 Importing and exporting commercial quantities of border controlled drugs or border controlled plants

- (1) A person commits an offence if:
-

- (a) the person imports or exports a substance; and
- (b) the substance is a border controlled drug or border controlled plant; and
- (c) the quantity imported or exported is a commercial quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

- (2) The fault element for paragraph (1)(b) is recklessness.
- (3) Absolute liability applies to paragraph (1)(c).

307.2 Importing and exporting marketable quantities of border controlled drugs or border controlled plants

- (1) A person commits an offence if:
 - (a) the person imports or exports a substance; and
 - (b) the substance is a border controlled drug or border controlled plant; and
 - (c) the quantity imported or exported is a marketable quantity.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

- (2) The fault element for paragraph (1)(b) is recklessness.
- (3) Absolute liability applies to paragraph (1)(c).
- (4) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.

Note: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4).

307.3 Importing and exporting border controlled drugs or border controlled plants

- (1) A person commits an offence if:
 - (a) the person imports or exports a substance; and
 - (b) the substance is a border controlled drug or border controlled plant.

Penalty: Imprisonment for 10 years or 2,000 penalty units, or both.

- (2) The fault element for paragraph (1)(b) is recklessness.
- (3) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.

Note: A defendant bears a legal burden in relation to the matters in subsection (3) (see section 13.4).

307.4 Importing and exporting border controlled drugs or border controlled plants—no defence relating to lack of commercial intent

- (1) A person commits an offence if:
 - (a) the person imports or exports a substance; and
 - (b) the substance is a border controlled drug or border controlled plant.

Penalty: Imprisonment for 2 years, or 400 penalty units, or both.

- (2) The fault element for paragraph (1)(b) is recklessness.

Subdivision B—Possessing unlawfully imported border controlled drugs or border controlled plants

307.5 Possessing commercial quantities of unlawfully imported border controlled drugs or border controlled plants

- (1) A person commits an offence if:
 - (a) the person possesses a substance; and
 - (b) the substance was unlawfully imported; and
 - (c) the substance is a border controlled drug or border controlled plant; and
 - (d) the quantity possessed is a commercial quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

- (2) Absolute liability applies to paragraphs (1)(b) and (d).
 - (3) The fault element for paragraph (1)(c) is recklessness.
-

- (4) Subsection (1) does not apply if the person proves that he or she did not know that the border controlled drug or border controlled plant was unlawfully imported.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

307.6 Possessing marketable quantities of unlawfully imported border controlled drugs or border controlled plants

- (1) A person commits an offence if:
- (a) the person possesses a substance; and
 - (b) the substance was unlawfully imported; and
 - (c) the substance is a border controlled drug or border controlled plant; and
 - (d) the quantity possessed is a marketable quantity.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

- (2) Absolute liability applies to paragraphs (1)(b) and (d).
- (3) The fault element for paragraph (1)(c) is recklessness.
- (4) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.
- (5) Subsection (1) does not apply if the person proves that he or she did not know that the border controlled drug or border controlled plant was unlawfully imported.

Note: A defendant bears a legal burden in relation to the matters in subsections (4) and (5) (see section 13.4).

307.7 Possessing unlawfully imported border controlled drugs or border controlled plants

- (1) A person commits an offence if:
- (a) the person possesses a substance; and
 - (b) the substance was unlawfully imported; and
 - (c) the substance is a border controlled drug or border controlled plant.

Penalty: Imprisonment for 2 years or 400 penalty units, or both.

- (2) Absolute liability applies to paragraph (1)(b).
- (3) The fault element for paragraph (1)(c) is recklessness.
- (4) Subsection (1) does not apply if the person proves that he or she did not know that the border controlled drug or border controlled plant was unlawfully imported.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

Subdivision C—Possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported

307.8 Possessing commercial quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported

- (1) A person commits an offence if:
 - (a) the person possesses a substance; and
 - (b) the substance is reasonably suspected of having been unlawfully imported; and
 - (c) the substance is a border controlled drug or border controlled plant; and
 - (d) the quantity possessed is a commercial quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

- (2) Absolute liability applies to paragraphs (1)(b) and (d).
- (3) The fault element for paragraph (1)(c) is recklessness.
- (4) Subsection (1) does not apply if the person proves that the border controlled drug or border controlled plant was not unlawfully imported.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

307.9 Possessing marketable quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported

- (1) A person commits an offence if:
- (a) the person possesses a substance; and
 - (b) the substance is reasonably suspected of having been unlawfully imported; and
 - (c) the substance is a border controlled drug or border controlled plant; and
 - (d) the quantity possessed is a marketable quantity.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

- (2) Absolute liability applies to paragraphs (1)(b) and (d).
- (3) The fault element for paragraph (1)(c) is recklessness.
- (4) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.
- (5) Subsection (1) does not apply if the person proves that the border controlled drug or border controlled plant was not unlawfully imported.

Note: A defendant bears a legal burden in relation to the matters in subsections (4) and (5) (see section 13.4).

307.10 Possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported

- (1) A person commits an offence if:
- (a) the person possesses a substance; and
 - (b) the substance is reasonably suspected of having been unlawfully imported; and
 - (c) the substance is a border controlled drug or border controlled plant.

Penalty: Imprisonment for 2 years or 400 penalty units, or both.

- (2) Absolute liability applies to paragraph (1)(b).
- (3) The fault element for paragraph (1)(c) is recklessness.
- (4) Subsection (1) does not apply if the person proves that the border controlled drug or border controlled plant was not unlawfully imported.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

Subdivision D—Importing and exporting border controlled precursors

307.11 Importing and exporting commercial quantities of border controlled precursors

- (1) A person commits an offence if:
 - (a) the person imports or exports a substance; and
 - (b) either or both of the following apply:
 - (i) the person intends to use any of the substance to manufacture a controlled drug;
 - (ii) the person believes that another person intends to use any of the substance to manufacture a controlled drug; and
 - (c) the substance is a border controlled precursor; and
 - (d) the quantity imported or exported is a commercial quantity.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

- (2) The fault element for paragraph (1)(c) is recklessness.
- (3) Absolute liability applies to paragraph (1)(d).

307.12 Importing and exporting marketable quantities of border controlled precursors

- (1) A person commits an offence if:
 - (a) the person imports or exports a substance; and
 - (b) either or both of the following apply:
 - (i) the person intends to use any of the substance to manufacture a controlled drug;

- (ii) the person believes that another person intends to use any of the substance to manufacture a controlled drug; and
- (c) the substance is a border controlled precursor; and
- (d) the quantity imported or exported is a marketable quantity.

Penalty: Imprisonment for 15 years or 3,000 penalty units, or both.

- (2) The fault element for paragraph (1)(c) is recklessness.
- (3) Absolute liability applies to paragraph (1)(d).
- (4) Subsection (1) does not apply if:
 - (a) in relation to conduct covered by subparagraph (1)(b)(i)—the person proves that he or she neither intended, nor believed that another person intended, to sell any of the controlled drug so manufactured; or
 - (b) in relation to conduct covered by subparagraph (1)(b)(ii)—the person proves that, although he or she believed that the other person intended to use the substance to manufacture a controlled drug, he or she did not intend to sell any of the substance to the other person.

Note: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4).

307.13 Importing and exporting border controlled precursors

- (1) A person commits an offence if:
 - (a) the person imports or exports a substance; and
 - (b) either or both of the following apply:
 - (i) the person intends to use any of the substance to manufacture a controlled drug;
 - (ii) the person believes that another person intends to use any of the substance to manufacture a controlled drug; and
 - (c) the substance is a border controlled precursor.

Penalty: Imprisonment for 7 years or 1,400 penalty units, or both.

- (2) The fault element for paragraph (1)(c) is recklessness.

- (3) Subsection (1) does not apply if:
- (a) in relation to conduct covered by subparagraph (1)(b)(i)—the person proves that he or she neither intended, nor believed that another person intended, to sell any of the controlled drug so manufactured; or
 - (b) in relation to conduct covered by subparagraph (1)(b)(ii)—the person proves that, although he or she believed that the other person intended to use the substance to manufacture a controlled drug, he or she did not intend to sell any of the substance to the other person.

Note: A defendant bears a legal burden in relation to the matters in subsection (3) (see section 13.4).

307.14 Presumptions for importing and exporting border controlled precursors

- (1) For the purposes of proving an offence against this Subdivision, if:
- (a) a person has imported or exported a substance; and
 - (b) a law of the Commonwealth required the import or export to be authorised (however described); and
 - (c) the import or export was not so authorised;
- the person is taken to have imported or exported the substance with the intention of using some or all of the substance to manufacture a controlled drug.

- (2) Subsection (1) does not apply if the person proves that he or she did not have that intention.

Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

- (3) For the purposes of proving an offence against this Subdivision, if:
- (a) a person has imported or exported a substance; and
 - (b) a law of the Commonwealth required the import or export to be authorised (however described); and
 - (c) the import or export was not so authorised;
- the person is taken to have imported or exported the substance believing that another person intends to use some or all of the substance to manufacture a controlled drug.

- (4) Subsection (3) does not apply if the person proves that he or she did not have that belief.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

Division 308—Possession offences

308.1 Possessing controlled drugs

- (1) A person commits an offence if:
- (a) the person possesses a substance; and
 - (b) the substance is a controlled drug.

Penalty: Imprisonment for 2 years or 400 penalty units, or both.

- (2) The fault element for paragraph (1)(b) is recklessness.
- (3) If:
- (a) a person is charged with, or convicted of, an offence against subsection (1); and
 - (b) the offence is alleged to have been, or was, committed in a State or Territory;

the person may be tried, punished or otherwise dealt with as if the offence were an offence against the law of the State or Territory that involved the possession or use of a controlled drug (however described).

Note: Subsection (3) allows for drug users to be diverted from the criminal justice system to receive the same education, treatment and support that is available in relation to drug offences under State and Territory laws.

- (4) However, a person punished under subsection (3) must not be:
- (a) sentenced to a period of imprisonment that exceeds the period set out in subsection (1); or
 - (b) fined an amount that exceeds the amount set out in subsection (1).
- (5) Subsection (3) does not limit:
- (a) Part 1B of the *Crimes Act 1914*; or
 - (b) section 68 or 79 of the *Judiciary Act 1903*; or
 - (c) any other law that provides for a law of a State or Territory to apply in relation to the exercise of federal jurisdiction.

308.2 Possessing controlled precursors

- (1) A person commits an offence if:
- (a) the person possesses a substance; and
 - (b) the person intends to use any of the substance to manufacture a controlled drug; and
 - (c) the substance is a controlled precursor.

Penalty: Imprisonment for 2 years or 400 penalty units, or both.

- (2) The fault element for paragraph (1)(c) is recklessness.
- (3) For the purposes of proving an offence against subsection (1), if:
- (a) a person possessed a substance; and
 - (b) a law of the Commonwealth or of a State or Territory required the possession to be authorised (however described); and
 - (c) the possession was not so authorised;
- the person is taken to have possessed the substance with the intention of using some or all of the substance to manufacture a controlled drug.
- (4) Subsection (3) does not apply if the person proves that he or she did not have that intention.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

308.3 Possessing plant material, equipment or instructions for commercial cultivation of controlled plants

A person commits an offence if:

- (a) the person possesses a plant, a product of a plant, any equipment or any document containing instructions for growing a plant; and
- (b) the person intends to use the plant, product, equipment or document to cultivate a controlled plant; and
- (c) the person intends to sell, or believes that another person intends to sell, any of the plant so cultivated or any of its products.

Penalty: Imprisonment for 7 years or 1,400 penalty units, or both.

308.4 Possessing substance, equipment or instructions for commercial manufacture of controlled drugs

- (1) A person commits an offence if:
- (a) the person possesses any substance (other than a controlled precursor), any equipment or any document containing instructions for manufacturing a controlled drug; and
 - (b) the person intends to use the substance, equipment or document to manufacture a controlled drug; and
 - (c) the person intends to sell, or believes that another person intends to sell, any of the drug so manufactured.

Penalty: Imprisonment for 7 years or 1,400 penalty units, or both.

- (2) For the purposes of proving an offence against subsection (1), if:
- (a) a person possessed a tablet press; and
 - (b) a law of the Commonwealth or of a State or Territory required the possession to be authorised (however described); and
 - (c) the possession was not so authorised;
- the person is taken to have possessed the tablet press with the intention of using it to manufacture a controlled drug.
- (3) Subsection (2) does not apply if the person proves that he or she did not have that intention.

Note: A defendant bears a legal burden in relation to the matter in subsection (3) (see section 13.4).

Division 309—Drug offences involving children

309.1 Children not criminally responsible for offences against this Division

A child is not criminally responsible for an offence against this Division.

Note: For the purposes of this Part, a *child* is an individual under 18 years of age (see section 300.2).

309.2 Supplying controlled drugs to children

- (1) A person commits an offence if:
-

- (a) the person supplies a substance to an individual; and
- (b) the individual is a child; and
- (c) the substance is a controlled drug.

Penalty: Imprisonment for 15 years or 3,000 penalty units, or both.

- (2) Strict liability applies to paragraph (1)(b).
- (3) The fault element for paragraph (1)(c) is recklessness.

309.3 Supplying marketable quantities of controlled drugs to children for trafficking

- (1) A person commits an offence if:
 - (a) the person supplies a substance to an individual; and
 - (b) the individual is a child; and
 - (c) the substance is a controlled drug; and
 - (d) the quantity supplied is a marketable quantity; and
 - (e) the person supplies the controlled drug believing that the child intends to sell any of it.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

- (2) Strict liability applies to paragraph (1)(b).
- (3) The fault element for paragraph (1)(c) is recklessness.
- (4) Absolute liability applies to paragraph (1)(d).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

309.4 Supplying controlled drugs to children for trafficking

- (1) A person commits an offence if:
 - (a) the person supplies a substance to an individual; and
 - (b) the individual is a child; and
 - (c) the substance is a controlled drug; and
 - (d) the person supplies the controlled drug believing that the child intends to sell any of it.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

- (2) Strict liability applies to paragraph (1)(b).
- (3) The fault element for paragraph (1)(c) is recklessness.

309.5 Presumption where trafficable quantities are involved

- (1) For the purposes of proving an offence against section 309.3 or 309.4, if a person has supplied a trafficable quantity of a substance to a child, the person is taken to have done so believing that the child intended to sell some or all of it.
- (2) Subsection (1) does not apply if the person proves that he or she did not have that belief.

Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

309.6 Meaning of *procures an individual to traffic*

- (1) For the purposes of this Part, a person *procures an individual to traffic* in a substance if:
 - (a) the person procures the individual to sell the substance; or
 - (b) the person, with the intention of selling any of the substance or believing that another person intends to sell any of the substance, procures the individual to prepare the substance for supply or to transport the substance; or
 - (c) the person, with the intention of selling any of the substance or assisting another person to sell any of the substance, procures the individual to guard or conceal the substance.
- (2) For the purposes of paragraph (1)(b), preparing a substance for supply includes packaging the substance or separating the substance into discrete units.

309.7 Procuring children for trafficking marketable quantities of controlled drugs

- (1) A person commits an offence if:
 - (a) the person procures an individual to traffic in a quantity of a substance; and

- (b) the individual is a child; and
- (c) the substance is a controlled drug; and
- (d) the quantity is a marketable quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

- (2) Strict liability applies to paragraph (1)(b).
- (3) The fault element for paragraph (1)(c) is recklessness.
- (4) Absolute liability applies to paragraph (1)(d).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

309.8 Procuring children for trafficking controlled drugs

- (1) A person commits an offence if:
 - (a) the person procures an individual to traffic in a substance; and
 - (b) the individual is a child; and
 - (c) the substance is a controlled drug.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

- (2) Strict liability applies to paragraph (1)(b).
- (3) The fault element for paragraph (1)(c) is recklessness.

309.9 Meaning of *procures an individual to pre-traffic*

For the purposes of this Part, a person *procures an individual to pre-traffic* in a substance if the person procures the individual to sell the substance believing that the person to whom the substance is sold intends to use any of the substance to manufacture a controlled drug.

309.10 Procuring children for pre-trafficking marketable quantities of controlled precursors

- (1) A person commits an offence if:
 - (a) the person procures an individual to pre-traffic in a quantity of a substance; and

- (b) the individual is a child; and
- (c) the substance is a controlled precursor; and
- (d) the quantity is a marketable quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

- (2) Strict liability applies to paragraph (1)(b).
- (3) The fault element for paragraph (1)(c) is recklessness.
- (4) Absolute liability applies to paragraph (1)(d).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

309.11 Procuring children for pre-trafficking controlled precursors

- (1) A person commits an offence if:
 - (a) the person procures an individual to pre-traffic in a substance; and
 - (b) the individual is a child; and
 - (c) the substance is a controlled precursor.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

- (2) Strict liability applies to paragraph (1)(b).
- (3) The fault element for paragraph (1)(c) is recklessness.

309.12 Procuring children for importing or exporting marketable quantities of border controlled drugs or border controlled plants

- (1) A person commits an offence if:
 - (a) the person procures an individual to import or export a substance; and
 - (b) the individual is a child; and
 - (c) the substance is a border controlled drug or border controlled plant; and
 - (d) the quantity imported or exported is a marketable quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

- (2) Strict liability applies to paragraph (1)(b).
- (3) The fault element for paragraph (1)(c) is recklessness.
- (4) Absolute liability applies to paragraph (1)(d).
 - Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).
- (5) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.
 - Note 1: A defendant bears a legal burden in relation to the matters in subsection (5) (see section 13.4).
 - Note 2: A person who does not commit an offence against this section because he or she proves the matters in subsection (5) may, however, have committed an offence against section 309.2 (supplying controlled drugs to children).

309.13 Procuring children for importing or exporting border controlled drugs or border controlled plants

- (1) A person commits an offence if:
 - (a) the person procures an individual to import or export a substance; and
 - (b) the individual is a child; and
 - (c) the substance is a border controlled drug or border controlled plant.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.
 - (2) Strict liability applies to paragraph (1)(b).
 - (3) The fault element for paragraph (1)(c) is recklessness.
 - (4) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.
 - Note 1: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4).
 - Note 2: A person who does not commit an offence against this section because he or she proves the matters in subsection (4) may, however, have
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committed an offence against section 309.2 (supplying controlled drugs to children).

309.14 Procuring children for importing or exporting marketable quantities of border controlled precursors

- (1) A person commits an offence if:
- (a) the person procures an individual to import or export a substance; and
 - (b) either or both of the following apply:
 - (i) the person intends to use any of the substance to manufacture a controlled drug;
 - (ii) the person believes that another person intends to use any of the substance to manufacture a controlled drug; and
 - (c) the individual is a child; and
 - (d) the substance is a border controlled precursor; and
 - (e) the quantity imported or exported is a marketable quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

- (2) Strict liability applies to paragraph (1)(c).
- (3) The fault element for paragraph (1)(d) is recklessness.
- (4) Absolute liability applies to paragraph (1)(e).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(e).

- (5) Subsection (1) does not apply if:
- (a) in relation to conduct covered by subparagraph (1)(b)(i)—the person proves that he or she neither intended, nor believed that another person intended, to sell any of the controlled drug so manufactured; or
 - (b) in relation to conduct covered by subparagraph (1)(b)(ii)—the person proves that, although he or she believed that the other person intended to use the substance to manufacture a controlled drug, he or she did not intend to sell any of the substance to the other person.

Note: A defendant bears a legal burden in relation to the matters in subsection (5) (see section 13.4).

309.15 Procuring children for importing or exporting border controlled precursors

- (1) A person commits an offence if:
- (a) the person procures an individual to import or export a substance; and
 - (b) either or both of the following apply:
 - (i) the person intends to use any of the substance to manufacture a controlled drug;
 - (ii) the person believes that another person intends to use any of the substance to manufacture a controlled drug; and
 - (c) the individual is a child; and
 - (d) the substance is a border controlled precursor.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

- (2) Strict liability applies to paragraph (1)(c).
- (3) The fault element for paragraph (1)(d) is recklessness.
- (4) Subsection (1) does not apply if:
- (a) in relation to conduct covered by subparagraph (1)(b)(i)—the person proves that he or she neither intended, nor believed that another person intended, to sell any of the controlled drug so manufactured; or
 - (b) in relation to conduct covered by subparagraph (1)(b)(ii)—the person proves that, although he or she believed that the other person intended to use the substance to manufacture a controlled drug, he or she did not intend to sell any of the substance to the other person.

Note: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4).

Division 310—Harm and danger to children under 14 from serious drug offences

310.1 Children not criminally responsible for offences against this Division

A child is not criminally responsible for an offence against this Division.

Note: For the purposes of this Part, a *child* is an individual under 18 years of age (see section 300.2).

310.2 Danger from exposure to unlawful manufacturing

- (1) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct gives rise to a danger of serious harm to an individual; and
 - (c) the individual is under 14 years of age; and
 - (d) the danger exists because the individual is exposed to the manufacture of a controlled drug or a controlled precursor; and
 - (e) the manufacture is an offence against this Part, or would be an offence against this Part if the manufacture were for a commercial purpose (see section 305.2).

Penalty: Imprisonment for 9 years or 1,800 penalty units, or both.

Note: A person can commit an offence against subsection (1) without being involved in the unlawful manufacture of controlled drugs or controlled precursors. The person need only expose a child under 14 to the danger of serious harm from such manufacture.

- (2) Strict liability applies to paragraphs (1)(c) and (e).
- (3) For the purposes of subsection (1), if a person's conduct exposes another person to the risk of catching a disease that may give rise to a danger of serious harm to the other person, the conduct is taken to give rise to a danger of serious harm to the other person.
- (4) For the purposes of subsection (1), a person's conduct gives rise to a danger of serious harm if the conduct is ordinarily capable of creating a real, and not merely a theoretical, danger of serious harm.

- (5) For the purposes of subsection (1), a person's conduct may give rise to a danger of serious harm whatever the statistical or arithmetical calculation of the degree of risk of serious harm involved.
- (6) In a prosecution for an offence against subsection (1), it is not necessary to prove:
 - (a) that a person was actually placed in danger of serious harm by the conduct concerned; or
 - (b) that a particular person committed the offence mentioned in paragraph (1)(e).
- (7) If, in a prosecution for an offence against subsection (1), the conduct of the defendant for the purposes of paragraph (1)(a) is alleged to be an omission, the fault element for that omission is recklessness.

310.3 Harm from exposure to unlawful manufacturing

- (1) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct causes harm to an individual; and
 - (c) the individual is under 14 years of age; and
 - (d) the harm is caused because the individual is exposed to the manufacture of a controlled drug or a controlled precursor; and
 - (e) the manufacture is an offence against this Part, or would be an offence against this Part if the manufacture were for a commercial purpose (see section 305.2).

Penalty: Imprisonment for 9 years or 1,800 penalty units, or both.

Note: A person can commit an offence against this section without being involved in the unlawful manufacture of controlled drugs or controlled precursors. The person need only cause harm to a child under 14 by exposing the child to such manufacture.

- (2) Strict liability applies to paragraphs (1)(c) and (e).
- (3) In a prosecution for an offence against subsection (1), it is not necessary to prove that a particular person committed the offence mentioned in paragraph (1)(e).

- (4) If, in a prosecution for an offence against subsection (1), the conduct of the defendant for the purposes of paragraph (1)(a) is alleged to be an omission, the fault element for that omission is recklessness.

310.4 Aggravated offences—manufacturing controlled drugs and controlled precursors

- (1) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.
- (2) For the purposes of this Part, an offence against section 305.4 or 305.5 is an *aggravated offence* if:
- (a) the commission of the offence exposes an individual to the manufacture of a controlled drug; and
 - (b) the individual is under 14 years of age.
- (3) For the purposes of this Part, an offence against section 306.2, 306.3 or 306.4 is an *aggravated offence* if:
- (a) the commission of the offence exposes an individual to:
 - (i) a controlled precursor intended to be used for the manufacture of a controlled drug; or
 - (ii) the manufacture of a controlled precursor; and
 - (b) the individual is under 14 years of age.
- (4) The fault element for paragraphs (2)(a) and (3)(a) is recklessness.
- (5) Strict liability applies to paragraphs (2)(b) and (3)(b).
- (6) Subsections (2) and (3) do not apply if the commission of the offence does not give rise to a danger of harm to the individual.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3)).

- (7) For the purposes of this section, if the commission of an offence exposes a person to the risk of catching a disease that may give rise to a danger of harm to the person, the commission of the offence is taken to give rise to a danger of harm to the person.
- (8) For the purposes of this section, the commission of an offence gives rise to a danger of harm if the commission of the offence is ordinarily capable of creating a real, and not merely a theoretical, danger of harm.

- (9) For the purposes of this section, the commission of an offence may give rise to a danger of harm whatever the statistical or arithmetical calculation of the degree of risk of harm involved.

Division 311—Combining quantities of drugs, plants or precursors

Subdivision A—Combining different parcels on the same occasion

311.1 Combining different parcels on the same occasion

- (1) If, on the same occasion, a person:
- (a) traffics in different parcels of controlled drugs (Division 302); or
 - (b) cultivates different parcels of controlled plants (Division 303); or
 - (c) sells different parcels of controlled plants (Division 304); or
 - (d) manufactures different parcels of controlled drugs (Division 305); or
 - (e) pre-traffics in different parcels of controlled precursors (Division 306); or
 - (f) imports or exports different parcels of border controlled drugs or border controlled plants (Subdivision A of Division 307); or
 - (g) possesses different parcels of unlawfully imported border controlled drugs or border controlled plants (Subdivision B of Division 307); or
 - (h) possesses different parcels of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported (Subdivision C of Division 307); or
 - (i) imports or exports different parcels of border controlled precursors (Subdivision D of Division 307); or
 - (j) supplies different parcels of controlled drugs to a child for trafficking (sections 309.3 and 309.4); or
 - (k) procures a child to traffic in different parcels of controlled drugs (sections 309.7 and 309.8); or
 - (l) procures a child to pre-traffic in different parcels of controlled precursors (sections 309.10 and 309.11); or

- (m) procures a child to import or export different parcels of border controlled drugs or border controlled plants (sections 309.12 and 309.13); or
 - (n) procures a child to import or export different parcels of border controlled precursors (sections 309.14 and 309.15);
the person may be charged with a single offence against this Part in respect of all or any of the different parcels of drugs, plants or precursors.
- (2) The quantity of the drugs, plants or precursors for the purposes of the offence is the sum of the quantities of the drugs, plants or precursors in the different parcels.
- Note: See section 312.2 for working out quantities where different kinds of controlled or border controlled drugs, plants or precursors are involved.
- (3) If the prosecution intends to rely on this Subdivision, particulars of each parcel of drugs, plants or precursors must be set out in the charge.
- (4) This Subdivision does not prevent a person being charged with separate offences in respect of different parcels of drugs, plants or precursors.

Subdivision B—Combining parcels from organised commercial activities

311.2 Business of trafficking controlled drugs

- (1) In proceedings for an offence against:
- (a) section 302.2 (trafficking commercial quantities of controlled drugs); or
 - (b) section 302.3 (trafficking marketable quantities of controlled drugs);
- the prosecution may prove the element of the offence relating to the quantity of controlled drug by proving:
- (c) that the defendant was engaged in an organised commercial activity that involved repeated trafficking in controlled drugs; and
 - (d) that the relevant quantity of a controlled drug, or of a combination of controlled drugs, was trafficked in the course of that activity.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

- (2) For the purposes of subsection (1) it is not necessary for the prosecution to specify or prove:
 - (a) the exact date of each occasion of trafficking; or
 - (b) the exact quantity trafficked on each occasion.
- (3) Section 302.5 (presumption where trafficable quantities are involved) does not apply to an offence prosecuted in accordance with subsection (1).

311.3 Business of pre-trafficking by selling controlled precursors

- (1) In proceedings for an offence against:
 - (a) section 306.2 (pre-trafficking commercial quantities of controlled precursors); or
 - (b) section 306.3 (pre-trafficking marketable quantities of controlled precursors);

where the alleged conduct of the defendant involves pre-trafficking by selling controlled precursors, the prosecution may prove the element of the offence relating to the quantity of controlled precursor by proving:

- (c) that the defendant was engaged in an organised commercial activity that involved repeated pre-trafficking by selling controlled precursors; and
- (d) that the relevant quantity of a controlled precursor, or of a combination of controlled precursors, was pre-trafficked by sale in the course of that activity.

Note 1: See section 312.2 for working out quantities where different kinds of controlled precursors are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

- (2) For the purposes of subsection (1) it is not necessary for the prosecution to specify or prove:
 - (a) the exact date of each occasion of pre-trafficking; or
 - (b) the exact quantity pre-trafficked on each occasion.

311.4 Business of importing or exporting border controlled drugs or border controlled plants

- (1) In proceedings for an offence against:
- (a) section 307.1 (importing and exporting commercial quantities of border controlled drugs or border controlled plants); or
 - (b) section 307.2 (importing and exporting marketable quantities of border controlled drugs or border controlled plants);
- the prosecution may prove the element of the offence relating to the quantity of border controlled drug or border controlled plant by proving:
- (c) that the defendant was engaged in an organised commercial activity that involved repeated importing or exporting of border controlled drugs or border controlled plants, or both; and
 - (d) that the relevant quantity of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was imported or exported in the course of that activity.

Note: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.

- (2) For the purposes of subsection (1) it is not necessary for the prosecution to specify or prove:
- (a) the exact date of each occasion of import or export; or
 - (b) the exact quantity imported or exported on each occasion.

311.5 Business of importing or exporting border controlled precursors

- (1) In proceedings for an offence against:
- (a) section 307.11 (importing and exporting commercial quantities of border controlled precursors); or
 - (b) section 307.12 (importing and exporting marketable quantities of border controlled precursors);
- the prosecution may prove the element of the offence relating to the quantity of border controlled precursor by proving:

- (c) that the defendant was engaged in an organised commercial activity that involved repeated importing or exporting of border controlled precursors; and
- (d) that the relevant quantity of a border controlled precursor, or of a combination of border controlled precursors, was imported or exported in the course of that activity.

Note: See section 312.2 for working out quantities where different kinds of border controlled precursors are involved.

- (2) For the purposes of subsection (1) it is not necessary for the prosecution to specify or prove:
 - (a) the exact date of each occasion of import or export; or
 - (b) the exact quantity imported or exported on each occasion.

311.6 Business of supplying controlled drugs to children

- (1) In proceedings for an offence against section 309.3 (supplying marketable quantities of controlled drugs to children for trafficking), the prosecution may prove the element of the offence relating to the quantity of controlled drug by proving:
 - (a) that the defendant was engaged in an organised commercial activity that involved repeated supplying of drugs to children for trafficking; and
 - (b) that the relevant quantity of a controlled drug, or of a combination of controlled drugs, was supplied to children in the course of that activity.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(b).

- (2) For the purposes of subsection (1) it is not necessary for the prosecution to specify or prove:
 - (a) the exact date of each occasion of supply; or
 - (b) the exact quantity supplied on each occasion.
- (3) Section 309.5 (presumption where trafficable quantities are involved) does not apply to an offence prosecuted in accordance with subsection (1).

311.7 General rules—combining parcels from organised commercial activities

- (1) If, in proceedings for an offence, the prosecution intends to rely on section 311.2, 311.3, 311.4, 311.5 or 311.6:
 - (a) the fact that it intends to do so must be set out in the charge; and
 - (b) a description of the conduct alleged for the purposes of that section must be set out in the charge or provided to the accused within a reasonable time before the proceedings.
- (2) If:
 - (a) an occasion of trafficking, pre-trafficking, importing or exporting or supplying is alleged in proceedings against a person for an offence prosecuted in accordance with section 311.2, 311.3, 311.4, 311.5 or 311.6; and
 - (b) the person is convicted or acquitted of the offence;that occasion must not be alleged in proceedings against the person for another offence against this Part.
- (3) If:
 - (a) an occasion of trafficking, pre-trafficking, importing or exporting or supplying is alleged in proceedings against a person for an offence against this Part; and
 - (b) the person is convicted or acquitted of the offence;that occasion must not be alleged in proceedings against the person for an offence prosecuted in accordance with section 311.2, 311.3, 311.4, 311.5 or 311.6.
- (4) Subject to subsections (2) and (3), this Subdivision does not prevent a person being charged with separate offences in respect of conduct on different occasions.

Subdivision C—Combining parcels from multiple offences

311.8 Multiple offences—trafficking controlled drugs

The prosecution may prove an offence against Division 302 (trafficking controlled drugs) by proving:

- (a) that the defendant committed offences against that Division on different occasions; and

- (b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and
- (c) that the relevant quantity (in sum) of a controlled drug, or of a combination of controlled drugs, was trafficked during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.9 Multiple offences—cultivating controlled plants

The prosecution may prove an offence against Division 303 (commercial cultivation of controlled plants) by proving:

- (a) that the defendant committed offences against that Division on different occasions; and
- (b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and
- (c) that the relevant quantity (in sum) of a controlled plant, or of a combination of controlled plants, was cultivated during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled plants are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.10 Multiple offences—selling controlled plants

The prosecution may prove an offence against Division 304 (selling controlled plants) by proving:

- (a) that the defendant committed offences against that Division on different occasions; and
- (b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and
- (c) that the relevant quantity (in sum) of a controlled plant, or of a combination of controlled plants, was sold during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled plants are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.11 Multiple offences—manufacturing controlled drugs

The prosecution may prove an offence against Division 305 (commercial manufacture of controlled drugs) by proving:

- (a) that the defendant committed offences against that Division on different occasions; and
- (b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and
- (c) that the relevant quantity (in sum) of a controlled drug, or of a combination of controlled drugs, was manufactured during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.12 Multiple offences—pre-trafficking controlled precursors

The prosecution may prove an offence against Division 306 (pre-trafficking controlled precursors) by proving:

- (a) that the defendant committed offences against that Division on different occasions; and
- (b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and
- (c) that the relevant quantity (in sum) of a controlled precursor, or of a combination of controlled precursors, was pre-trafficked during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled precursors are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.13 Multiple offences—importing or exporting border controlled drugs or border controlled plants

The prosecution may prove an offence against Subdivision A of Division 307 (importing and exporting border controlled drugs or border controlled plants) by proving:

- (a) that the defendant committed offences against that Subdivision on different occasions; and

- (b) that each of those offences was committed within a period of not more than 30 days from another of those offences; and
- (c) that the relevant quantity (in sum) of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was imported or exported during the commission of those offences.

Note: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.

311.14 Multiple offences—possessing unlawfully imported border controlled drugs or border controlled plants

The prosecution may prove an offence against Subdivision B of Division 307 (possessing unlawfully imported border controlled drugs or border controlled plants) by proving:

- (a) that the defendant committed offences against that Subdivision on different occasions; and
- (b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and
- (c) that the relevant quantity (in sum) of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was possessed by the defendant during the commission of those offences.

Note: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.

311.15 Multiple offences—possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported

The prosecution may prove an offence against Subdivision C of Division 307 (possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported) by proving:

- (a) that the defendant committed offences against that Subdivision on different occasions; and
- (b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

- (c) that the relevant quantity (in sum) of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was possessed by the defendant during the commission of those offences.

Note: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.

311.16 Multiple offences—importing or exporting border controlled precursors

The prosecution may prove an offence against Subdivision D of Division 307 (importing and exporting border controlled precursors) by proving:

- (a) that the defendant committed offences against that Subdivision on different occasions; and
- (b) that each of those offences was committed within a period of not more than 30 days from another of those offences; and
- (c) that the relevant quantity (in sum) of a border controlled precursor, or of a combination of border controlled precursors, was imported or exported during the commission of those offences.

Note: See section 312.2 for working out quantities where different kinds of border controlled precursors are involved.

311.17 Multiple offences—supplying controlled drugs to children for trafficking

The prosecution may prove an offence against section 309.3 (supplying marketable quantities of controlled drugs to children for trafficking) by proving:

- (a) that the defendant committed offences against section 309.4 (supplying controlled drugs to children for trafficking) on different occasions; and
- (b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and
- (c) that the relevant quantity (in sum) of a controlled drug, or of a combination of controlled drugs, was supplied during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.18 Multiple offences—procuring children for trafficking controlled drugs

The prosecution may prove an offence against section 309.7 (procuring children for trafficking marketable quantities of controlled drugs) by proving:

- (a) that the defendant committed offences against section 309.8 (procuring children for trafficking controlled drugs) on different occasions; and
- (b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and
- (c) that the relevant quantity (in sum) of a controlled drug, or of a combination of controlled drugs, was trafficked during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.19 Multiple offences—procuring children for pre-trafficking controlled precursors

The prosecution may prove an offence against section 309.10 (procuring children for pre-trafficking marketable quantities of controlled precursors) by proving:

- (a) that the defendant committed offences against section 309.11 (procuring children for pre-trafficking controlled precursors) on different occasions; and
- (b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and
- (c) that the relevant quantity (in sum) of a controlled precursor, or of a combination of controlled precursors, was pre-trafficked during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled precursors are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.20 Multiple offences—procuring children for importing or exporting border controlled drugs or border controlled plants

The prosecution may prove an offence against section 309.12 (procuring children for importing or exporting marketable quantities of border controlled drugs or border controlled plants) by proving:

- (a) that the defendant committed offences against section 309.13 (procuring children for importing or exporting border controlled drugs or border controlled plants) on different occasions; and
- (b) that each of those offences was committed within a period of not more than 30 days from another of those offences; and
- (c) that the relevant quantity (in sum) of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was imported or exported during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.21 Multiple offences—procuring children for importing or exporting border controlled precursors

The prosecution may prove an offence against section 309.14 (procuring children for importing or exporting marketable quantities of border controlled precursors) by proving:

- (a) that the defendant committed offences against section 309.15 (procuring children for importing or exporting border controlled precursors) on different occasions; and
- (b) that each of those offences was committed within a period of not more than 30 days from another of those offences; and
- (c) that the relevant quantity (in sum) of a border controlled precursor, or of a combination of border controlled precursors, was imported or exported during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of border controlled precursors are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.22 General rules—combining parcels from multiple offences

- (1) If the prosecution intends to rely on a section of this Subdivision, the particulars of the offences alleged to have been committed on the different occasions must be set out in the charge.
- (2) The same parcel of controlled drugs, controlled plants, controlled precursors, border controlled drugs, border controlled plants or border controlled precursors must not be counted more than once for the purposes of this Subdivision.

Example: A person is in possession of a quantity of a controlled drug for sale on one day (the first occasion) and sells that particular quantity the next day (the second occasion). Only the quantity trafficked on one of those occasions may be counted.

- (3) This Subdivision does not prevent a person being charged with separate offences in respect of conduct on different occasions.

Division 312—Working out quantities of drugs, plants or precursors

312.1 Working out quantities of drugs and precursors in mixtures

- (1) If an alleged offence against this Part involves a quantity of a controlled drug in a mixture of substances, the prosecution may prove the quantity of the controlled drug involved:
 - (a) by proving that the mixture contains that quantity of the pure form of the controlled drug; or
 - (b) if such a quantity is specified in Division 314 for the controlled drug in a mixture—by proving that quantity of the mixture.
- (2) If an alleged offence against this Part involves a quantity of a controlled precursor in a mixture of substances, the prosecution may prove the quantity of the controlled precursor involved by proving that the mixture contains that quantity of the pure form of the controlled precursor.

- (3) If an alleged offence against this Part involves a quantity of a border controlled drug in a mixture of substances, the prosecution may prove the quantity of the border controlled drug involved:
 - (a) by proving that the mixture contains that quantity of the pure form of the border controlled drug; or
 - (b) if such a quantity is specified in Division 314 for the border controlled drug in a mixture—by proving that quantity of the mixture.

- (4) If an alleged offence against this Part involves a quantity of a border controlled precursor in a mixture of substances, the prosecution may prove the quantity of the border controlled precursor involved by proving that the mixture contains that quantity of the pure form of the border controlled precursor.

312.2 Working out quantities where different kinds of drugs, plants or precursors are involved

- (1) This section applies if a person is charged with a single offence against this Part that involves:
 - (a) trafficking in more than one kind of controlled drug; or
 - (b) cultivating more than one kind of controlled plant; or
 - (c) selling more than one kind of controlled plant; or
 - (d) manufacturing more than one kind of controlled drug; or
 - (e) pre-trafficking in more than one kind of controlled precursor; or
 - or
 - (f) importing or exporting more than one kind of border controlled drug or border controlled plant; or
 - (g) possessing more than one kind of unlawfully imported border controlled drug or border controlled plant; or
 - (h) possessing more than one kind of border controlled drug or border controlled plant reasonably suspected of having been unlawfully imported; or
 - (i) importing or exporting more than one kind of border controlled precursor; or
 - (j) supplying more than one kind of controlled drug to a child for trafficking; or
 - (k) procuring a child to traffic in more than one kind of controlled drug; or

- (l) procuring a child to pre-traffic in more than one kind of controlled precursor; or
 - (m) procuring a child to import or export more than one kind of border controlled drug or border controlled plant; or
 - (n) procuring a child to import or export more than one kind of border controlled precursor.
- (2) The following apply for the purposes of working out the quantity of controlled drugs, controlled plants, controlled precursors, border controlled drugs, border controlled plants or border controlled precursors involved in the offence:
- (a) the quantity of the drugs or plants is a trafficable quantity if the sum of the requisite fractions of the trafficable quantity of each of those drugs or plants is equal to or greater than one;
 - (b) the quantity of drugs, plants or precursors is a marketable quantity if the sum of the requisite fractions of the marketable quantity of each of those drugs, plants or precursors is equal to or greater than one;
 - (c) the quantity of drugs, plants or precursors is a commercial quantity if the sum of the requisite fractions of the commercial quantity of each of those drugs, plants or precursors is equal to or greater than one.
- (3) For the purposes of this Part, ***requisite fraction*** means:
- (a) in relation to a trafficable quantity of a controlled drug or controlled plant, the actual quantity of the drug or plant divided by the smallest trafficable quantity of the drug or plant; or
 - (b) in relation to a marketable quantity of a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor, the actual quantity of the drug, plant or precursor divided by the smallest marketable quantity of the drug, plant or precursor; or
 - (c) in relation to a commercial quantity of a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor, the actual quantity of the drug, plant or precursor divided by the smallest commercial quantity of the drug, plant or precursor.

- (4) If this section applies in relation to a controlled drug in a mixture of substances, the requisite fraction of a trafficable, marketable or commercial quantity of the controlled drug may be calculated:
- (a) on the basis of the quantity of the controlled drug in pure form; or
 - (b) if such a quantity is specified in Division 314 for the controlled drug in a mixture—on the basis of the quantity of the mixture.
- (5) If this section applies in relation to a border controlled drug in a mixture of substances, the requisite fraction of a marketable or commercial quantity of the border controlled drug may be calculated:
- (a) on the basis of the quantity of the border controlled drug in pure form; or
 - (b) if such a quantity is specified in Division 314 for the border controlled drug in a mixture—on the basis of the quantity of the mixture.

Division 313—Defences and alternative verdicts

313.1 Defence—conduct justified or excused by or under a law of a State or Territory

This Part, other than Division 307, does not apply in relation to conduct if:

- (a) a person engages in the conduct in a State or Territory; and
- (b) the conduct is justified or excused by or under a law of that State or Territory.

Note 1: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3)).

Note 2: A person is not criminally responsible for an offence against this Part if the person's conduct is justified or excused by or under another Commonwealth law (see section 10.5). In 2005, Commonwealth laws that authorised importation, possession or use of controlled drugs, controlled plants, controlled precursors, border controlled drugs, border controlled plants or border controlled precursors included the *Customs Act 1901*, the *Narcotic Drugs Act 1967* and the *Crimes Act 1914*.

313.2 Defence—reasonable belief that conduct is justified or excused by or under a law

A person is not criminally responsible for an offence against this Part if:

- (a) at the time of the conduct constituting the offence, the person was under a mistaken but reasonable belief that the conduct was justified or excused by or under a law of the Commonwealth or of a State or Territory; and
- (b) had the conduct been so justified or excused—the conduct would not have constituted the offence.

Note: A defendant bears an evidential burden in relation to the matter in paragraph (a) (see subsection 13.3(3)).

313.3 Alternative verdict—offence not proved

If:

- (a) in a prosecution for an offence against this Part, the trier of fact:
 - (i) is not satisfied that the defendant is guilty of the alleged offence; but
 - (ii) is satisfied, beyond reasonable doubt, that the defendant is guilty of another offence against this Part; and
- (b) the maximum penalty for the other offence is not greater than the maximum penalty for the alleged offence;

the trier of fact may find the defendant not guilty of the alleged offence but guilty of the other offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

313.4 Alternative verdict—mistake as to quantity of drug, plant or precursor

- (1) This section applies if:
 - (a) an offence against this Part (other than Division 307) is prosecuted; and
 - (b) the offence involves a commercial quantity or a marketable quantity of a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor; and

(c) the trier of fact would, apart from this section, have found the defendant guilty of the offence.

(2) If:

(a) the defendant proves that, at the time of the alleged offence, he or she was under a mistaken belief about the quantity of the drug, plant or precursor; and

(b) if the mistaken belief had been correct, the defendant would have been guilty of another offence against this Part; and

(c) the maximum penalty for the other offence is less than the maximum penalty for the alleged offence;

the trier of fact may find the defendant:

(d) not guilty of the alleged offence; but

(e) guilty of the other offence.

Note: A defendant bears a legal burden in relation to the matter in paragraph (2)(a) (see section 13.4).

313.5 Alternative verdict—mistake as to identity of drug, plant or precursor

(1) This section applies if:

(a) an offence against this Part (other than Division 307) is prosecuted; and

(b) the offence involves a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor; and

(c) the trier of fact would, apart from this section, have found the defendant guilty of the offence.

(2) If:

(a) the defendant proves that, at the time of the alleged offence, he or she was under a mistaken belief about the identity of the drug, plant or precursor; and

(b) if the mistaken belief had been correct, the defendant would have been guilty of another offence against this Part; and

(c) the maximum penalty for the other offence is less than the maximum penalty for the alleged offence;

the trier of fact may find the defendant:

(d) not guilty of the alleged offence; but

(e) guilty of the other offence.

Note: A defendant bears a legal burden in relation to the matter in paragraph (2)(a) (see section 13.4).

Division 314—Drugs, plants, precursors and quantities

314.1 Controlled drugs

(1) The following table lists controlled drugs and sets out quantities:

Controlled drugs and quantities				
	Controlled drug	Trafficable quantity (grams)	Marketable quantity (grams)	Commercial quantity (kilograms)
1	Amphetamine	2.0	250.0	0.75
2	Cannabis (in any form, including flowering or fruiting tops, leaves, seeds or stalks, but not including Cannabis resin or Cannabis fibre)	250.0	25,000.0	125.0
3	Cannabis resin	20.0	25,000.0	125.0
4	Cocaine	2.0	250.0	2.0
5	Gammabutyrolactone (GBL)	0.5	250.0	1.0
6	4-Hydroxybutanoic acid (GHB)	0.5	250.0	1.0
7	Heroin (diacetylmorphine)	2.0	250.0	1.5
8	Lysergide (LSD)	0.002	0.05	0.002
9	Methamphetamine	2.0	250.0	0.75
10	3,4-Methylenedioxyamphetamine (MDA)	0.5	100.0	0.75
11	3,4-Methylenedioxymethamphetamine (MDMA)	0.5	100.0	0.5
12	Opium	20.0	10,000.0	20.0
13	Psilocine	2.0	1,000.0	2.0
14	Psilocybine	2.0	1,000.0	2.0
15	Tetrahydrocannabinol (THC)	2.0	1,000.0	5.0

- (2) A substance is a controlled drug if the substance (the *drug analogue*) is, in relation to a controlled drug listed in subsection (1) (or a stereoisomer, a structural isomer (with the same constituent groups) or an alkaloid of such a controlled drug):
- (a) a stereoisomer; or
 - (b) a structural isomer having the same constituent groups; or
 - (c) an alkaloid; or
 - (d) a structural modification obtained by the addition of one or more of the following groups:
 - (i) alkoxy, cyclic diether, acyl, acyloxy, mono-amino or dialkylamino groups with up to 6 carbon atoms in any alkyl residue;
 - (ii) alkyl, alkenyl or alkynyl groups with up to 6 carbon atoms in the group, where the group is attached to oxygen (for example, an ester or an ether group), nitrogen, sulphur or carbon;
 - (iii) halogen, hydroxy, nitro or amino groups; or
 - (e) a structural modification obtained in one or more of the following ways:
 - (i) by the replacement of up to 2 carbocyclic or heterocyclic ring structures with different carbocyclic or heterocyclic ring structures;
 - (ii) by the addition of hydrogen atoms to one or more unsaturated bonds;
 - (iii) by the replacement of one or more of the groups specified in paragraph (d) with another such group or groups;
 - (iv) by the conversion of a carboxyl or an ester group into an amide group; or
 - (f) otherwise a homologue, analogue, chemical derivative or substance substantially similar in chemical structure; however obtained, except where the drug analogue is separately listed in subsection (1).
- (3) The trafficable quantity for a drug analogue described in subsection (2) is:
- (a) unless paragraph (b) applies—the trafficable quantity set out in the table in subsection (1) for the controlled drug to the which the drug analogue relates (whether directly or indirectly); or
-

- (b) if the drug analogue relates to more than one controlled drug listed in the table in subsection (1)—the smallest trafficable quantity set out in the table in subsection (1) for any of those controlled drugs.
- (4) The marketable quantity for a drug analogue described in subsection (2) is:
 - (a) unless paragraph (b) applies—the marketable quantity set out in the table in subsection (1) for the controlled drug to which the drug analogue relates (whether directly or indirectly); or
 - (b) if the drug analogue relates to more than one controlled drug listed in the table in subsection (1)—the smallest marketable quantity set out in the table in subsection (1) for any of those controlled drugs.
- (5) The commercial quantity for a drug analogue described in subsection (2) is:
 - (a) unless paragraph (b) applies—the commercial quantity set out in the table in subsection (1) for the controlled drug to which the drug analogue relates (whether directly or indirectly); or
 - (b) if the drug analogue relates to more than one controlled drug listed in the table in subsection (1)—the smallest commercial quantity set out in the table in subsection (1) for any of those controlled drugs.

314.2 Controlled plants

The following table lists controlled plants and sets out quantities:

Controlled plants and quantities				
	Controlled plant	Trafficable quantity	Marketable quantity	Commercial quantity
1	Any plant of the genus Cannabis	250 g or 10 plants	25 kg or 100 plants	250 kg or 1,000 plants

314.3 Controlled precursors

- (1) The following table lists controlled precursors and sets out quantities:
-

Controlled precursors and quantities			
	Controlled precursor	Marketable quantity (grams)	Commercial quantity (kilograms)
1	Ephedrine	400.0	1.2
2	Ergometrine	0.15	0.006
3	Ergotamine	0.25	0.01
4	Isosafrole	290.0	1.45
5	Lysergic acid	0.075	0.003
6	3,4-Methylenedioxyphenylacetic acid	300.0	1.5
7	3,4-Methylenedioxyphenyl-2-propanone	150.0	0.75
8	Phenylacetic acid	1,350.0	4.05
9	Phenyl-2-propanone	675.0	2.03
10	Piperonal	320.0	1.6
11	Pseudoephedrine	400.0	1.2
12	Safrole	570.0	2.85

(2) A substance is a controlled precursor if the substance is a salt or ester of a precursor listed in the table in subsection (1).

314.4 Border controlled drugs

(1) The following table lists border controlled drugs and sets out quantities:

Border controlled drugs and quantities			
	Border controlled drugs	Marketable quantity (grams)	Commercial quantity (kilograms)
1	Acetorphine	2.0	2.0
2	Acetyl-alpha-methylfentanyl	0.005	0.005
3	Acetylcodeine	2.0	2.0
4	Acetyldihydrocodeine	2.0	2.0
5	Acetylmethadol	2.0	2.0
6	Allylprodine	2.0	2.0
7	Alphacetylmethadol	10.0	10.0
8	Alphameprodine	0.2	0.2

Border controlled drugs and quantities			
	Border controlled drugs	Marketable quantity (grams)	Commercial quantity (kilograms)
9	Alphamethadol	0.2	0.2
10	alpha-Methylfentanyl	0.005	0.005
11	alpha-Methylthiofentanyl	0.005	0.005
12	Alphaprodine	25.0	25.0
13	Amphecloral	2.0	2.0
14	3-(2-Aminopropyl)indole (alpha-methyltryptamine (AMT))	2.0	2.0
15	Amphetamine	2.0	0.75
16	Anileridine	25.0	25.0
17	Barbiturates	50.0	5.0
18	Benzethidine	10.0	10.0
19	Benzoylcegonine	2.0	2.0
20	Benzylmorphine	5.0	5.0
21	Betacetylmethadol	5.0	5.0
22	beta-Hydroxyfentanyl	0.005	0.005
23	beta-Hydroxy-3-methylfentanyl	0.005	0.005
24	Betameprodine	5.0	5.0
25	Betamethadol	5.0	5.0
26	Betaprodine	5.0	5.0
27	Bezitramide	5.0	5.0
28	4-Bromo-2,5-dimethoxyamphetamine	0.5	0.5
29	Bufotenine	2.0	2.0
30	Cannabinoids (other than a Cannabinoid of a kind that can be obtained from a plant that is not a Cannabis plant)	2.0	2.0
31	Cannabis (in any form, including flowering or fruiting tops, leaves, seeds or stalks, but not including Cannabis resin or Cannabis fibre)	25,000.0	100.0
32	Cannabis resin	20.0	50.0
33	Chlorphentermine	2.0	2.0
34	Clonitazene	5.0	5.0

Border controlled drugs and quantities			
	Border controlled drugs	Marketable quantity (grams)	Commercial quantity (kilograms)
35	Cocaine	2.0	2.0
36	Codeine	10.0	10.0
37	Codeine-N-oxide	10.0	10.0
38	Codoxime	10.0	10.0
39	Desomorphine	2.0	2.0
40	Dexamphetamine	2.0	2.0
41	Dextromoramide	2.0	2.0
42	2,5-Dimethoxy-4-n-propylthiophenethylamine (2C-T-7)	0.5	0.5
43	2,5-Dimethoxy-4-ethylthiophenethylamine (2C-T-2)	0.5	0.5
44	2,5-Dimethoxy-4-iodophenethylamine (2C-I)	0.5	0.5
45	Diampromide	5.0	5.0
46	Diethylpropion	5.0	5.0
47	Diethylthiambutene	5.0	5.0
48	N,N-Diethyltryptamine	2.0	2.0
49	Difenoxin	2.0	2.0
50	Dihydrocodeine	10.0	10.0
51	Dihydromorphine	10.0	10.0
52	Dimenoxadol	10.0	10.0
53	Dimepheptanol	10.0	10.0
54	2,5-Dimethoxy-4-methylamphetamine	2.0	0.75
55	1-Dimethylamino-1,2-diphenylethane	5.0	5.0
56	Dimethylthiambutene	20.0	20.0
57	N,N-Dimethyltryptamine	2.0	2.0
58	Dioxaphetyl butyrate	2.0	2.0
59	Diphenoxylate	2.0	2.0
60	Dipipanone	10.0	10.0
61	Drotebanol	2.0	2.0
62	Ecgonine	10.0	10.0
63	Ethchlorvynol	50.0	50.0

Border controlled drugs and quantities			
	Border controlled drugs	Marketable quantity (grams)	Commercial quantity (kilograms)
64	Ethinamate	50.0	50.0
65	Ethylmethylthiambutene	10.0	10.0
66	Ethylmorphine	2.0	2.0
67	Etonitazene	5.0	5.0
68	Etorphine	5.0	5.0
69	Etoxidine	5.0	5.0
70	Fentanyl	0.005	0.005
71	Furethidine	1.0	1.0
72	Gammabutyrolactone (GBL)	2.0	1.0
73	Glutethimide	50.0	50.0
74	Harmaline	2.0	5.0
75	Harmine	2.0	5.0
76	Heroin (diacetylmorphine)	2.0	1.5
77	Hydrocodone	2.0	2.0
78	Hydromorphanol	2.0	2.0
79	Hydromorphone	2.0	2.0
80	Hydroxyamphetamine	2.0	2.0
81	4-Hydroxybutanoic acid (GHB)	2.0	1.0
82	Hydroxypethidine	5.0	5.0
83	Isomethadone	2.0	2.0
84	Ketobemidone	2.0	2.0
85	Levophenacymorphan	2.0	2.0
86	Levomethorphan, but not including dextromethorphan	2.0	2.0
87	Levorphanol, but not including dextrorphan	1.0	1.0
88	Lysergamide	0.1	0.01
89	Lysergide (LSD)	0.002	0.002
90	Meprobamate	50.0	50.0
91	Mescaline	7.5	7.5
92	Metazocine	7.0	7.0
93	Methadone	2.0	2.0

Border controlled drugs and quantities			
	Border controlled drugs	Marketable quantity (grams)	Commercial quantity (kilograms)
94	Methaqualone	50.0	5.0
95	Methcathinone		
96	Methorphan, but not including dextromethorphan	2.0	2.0
97	5-Methoxy-alpha-methyltryptamine (5-MeO-AMT)	2.0	2.0
98	5-Methoxy-N,N-diisopropyltryptamine (5-MeO-DiPT)	2.0	2.0
99	Methamphetamine	2.0	0.75
100	3,4-Methylenedioxyamphetamine (MDA)	0.5	0.75
101	3,4-Methylenedioxymethamphetamine (MDMA)	0.5	0.5
102	Methylodesorphine	2.0	2.0
103	Methyldihydromorphine	2.0	2.0
104	3-Methylfentanyl	0.005	0.005
105	Methylphenidate	2.0	2.0
106	1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP)	2.0	2.0
107	3-Methylthiofentanyl	0.005	0.005
108	Methyprylon	50.0	50.0
109	Metopon	2.0	2.0
110	Monoacetylmorphines	2.0	2.0
111	Moramide	2.0	2.0
112	Morphan, but not including dextrorphan	2.0	2.0
113	Morpheridine	2.0	2.0
114	Morphine	2.0	1.5
115	Morphine-N-oxide	2.0	2.0
116	Myrophine	20.0	20.0
117	Nicocodine	2.0	2.0
118	Nicodicodine	2.0	2.0
119	Nicomorphine	2.0	2.0
120	Noracymethadol	2.0	2.0

Border controlled drugs and quantities			
	Border controlled drugs	Marketable quantity (grams)	Commercial quantity (kilograms)
121	Norcodeine	2.0	2.0
122	Norlevorphanol	2.0	2.0
123	Normethadone	5.0	5.0
124	Normorphine	20.0	20.0
125	Norpipanone	10.0	10.0
126	Opium	20.0	20.0
127	Oxycodone	5.0	5.0
128	Oxymorphone	2.0	2.0
129	para-Fluorofentanyl	0.005	0.005
130	Pentazocine	20.0	20.0
131	Pethidine	10.0	10.0
132	Phenadoxone	10.0	10.0
133	Phenampromide	10.0	10.0
134	Phenazocine	1.0	1.0
135	Phencyclidine	2.0	2.0
136	Phendimetrazine	5.0	5.0
137	Phenmetrazine	5.0	5.0
138	Phenomorphan	5.0	5.0
139	Phenoperidine	1.0	1.0
140	Phentermine	5.0	5.0
141	1-Phenylethyl-4-phenyl-4-acetoxypiperidine (PEPAP)	2.0	2.0
142	Pholcodine	5.0	5.0
143	Piminodine	10.0	10.0
144	Pipradrol	1.0	1.0
145	Piritramide	1.0	1.0
146	Proheptazine	1.0	1.0
147	Properidine	25.0	25.0
148	Propiram	10.0	10.0
149	Psilocine	0.1	0.1
150	Psilocybine	0.1	0.1

Border controlled drugs and quantities			
	Border controlled drugs	Marketable quantity (grams)	Commercial quantity (kilograms)
151	Tetrahydrocannabinols	2.0	5.0
152	Thebacon	2.0	2.0
153	Thebaine	2.0	2.0
154	Thiofentanyl	0.005	0.005
155	Trimeperidine	10.0	10.0

- (2) A substance is also a border controlled drug if the substance (the *drug analogue*) is, in relation to a border controlled drug listed in subsection (1) (or a stereoisomer, a structural isomer (with the same constituent groups) or an alkaloid of such a border controlled drug):
- (a) a stereoisomer; or
 - (b) a structural isomer having the same constituent groups; or
 - (c) an alkaloid; or
 - (d) a structural modification obtained by the addition of one or more of the following groups:
 - (i) alkoxy, cyclic diether, acyl, acyloxy, mono-amino or dialkylamino groups with up to 6 carbon atoms in any alkyl residue;
 - (ii) alkyl, alkenyl or alkynyl groups with up to 6 carbon atoms in the group, where the group is attached to oxygen (for example, an ester or an ether group), nitrogen, sulphur or carbon;
 - (iii) halogen, hydroxy, nitro or amino groups; or
 - (e) a structural modification obtained in one or more of the following ways:
 - (i) by the replacement of up to 2 carbocyclic or heterocyclic ring structures with different carbocyclic or heterocyclic ring structures;
 - (ii) by the addition of hydrogen atoms to one or more unsaturated bonds;
 - (iii) by the replacement of one or more of the groups specified in paragraph (d) with another such group or groups;

- (iv) by the conversion of a carboxyl or an ester group into an amide group; or
 - (f) otherwise a homologue, analogue, chemical derivative or substance substantially similar in chemical structure; however obtained, except where the drug analogue is separately listed in subsection (1).
- (3) The marketable quantity for a drug analogue described in subsection (2) is:
- (a) unless paragraph (b) applies—the marketable quantity specified in the table in subsection (1) for the border controlled drug to which the drug analogue relates (whether directly or indirectly); or
 - (b) if the drug analogue relates to more than one border controlled drug listed in the table in subsection (1)—the smallest marketable quantity specified in the table in subsection (1) for any of those border controlled drugs.
- (4) The commercial quantity for a drug analogue described in subsection (2) is:
- (a) unless paragraph (b) applies—the commercial quantity specified in the table in subsection (1) for the border controlled drug to which the drug analogue relates (whether directly or indirectly); or
 - (b) if the drug analogue relates to more than one border controlled drug listed in the table in subsection (1)—the smallest commercial quantity specified in the table in subsection (1) for any of those border controlled drugs.

314.5 Border controlled plants

The following table lists border controlled plants and sets out quantities:

Border controlled plants and quantities			
	Border controlled plants	Marketable quantity	Commercial quantity
1	Any plant of the genus Cannabis	25 kg or 100 plants	250 kg or 1,000 plants

Border controlled plants and quantities

	Border controlled plants	Marketable quantity	Commercial quantity
2	Any plant of the genus Erythroxyton (also known as Erythroxytonum) from which cocaine can be extracted either directly or by chemical transformation	80 kg	
3	Any plant of the genus Lophophora		
4	Any plant of the species Papaver bracteatum	10 kg	
5	Any plant of the species Papaver somniferum	10 kg	
6	Any plant of the species Piptagenia peregrine		
7	Any plant of the species Psilocybe		

314.6 Border controlled precursors

(1) The following table lists border controlled precursors and sets out quantities:

Border controlled precursors and quantities

	Border controlled precursors	Marketable quantity (grams)	Commercial quantity (kilograms)
1	N-Acetylanthranilic acid		
2	Any plant of the species Ephedra		
3	Ephedrine	3.2	1.2
4	Ergometrine	0.006	0.006
5	Ergotamine	0.01	0.01
6	Isosafrole	1.45	1.45
7	Lysergic acid	0.003	0.003
8	3,4-Methylenedioxyphenyl-2-propanone	0.75	0.75
9	Phenylacetic acid	10.8	4.05
10	Phenylpropanolamine		
11	Phenyl-2-propanone	5.4	2.03
12	Piperonal	1.6	1.6
13	Pseudoephedrine	3.2	1.2

Border controlled precursors and quantities

	Border controlled precursors	Marketable quantity (grams)	Commercial quantity (kilograms)
14	Safrole	2.85	2.85

- (2) A substance is a border controlled precursor if the substance is a salt or ester of a precursor listed in the table in subsection (1).
- (3) A substance is a border controlled precursor if the substance is a chemical or compound, other than a chemical or compound that is listed in a table in this Division, that, in the manufacture by a chemical process of a chemical or compound referred to in the table in subsection (1), is an immediate precursor of that chemical or compound.

Part 2—Consequential and transitional provisions

Crimes Act 1914

2 Subsection 3(1)

Insert:

controlled substance means:

- (a) a controlled drug or border controlled drug within the meaning of Part 9.1 of the *Criminal Code*; or
- (b) a controlled plant or border controlled plant within the meaning of Part 9.1 of the *Criminal Code*; or
- (c) a controlled precursor or border controlled precursor within the meaning of Part 9.1 of the *Criminal Code*.

3 Paragraph 15HB(a)

Omit “illegal drug dealings”, substitute “controlled substances”.

4 Paragraph 22(1)(a)

Omit “narcotics”, substitute “drug”.

5 Subsection 22(7) (definition of *narcotic substance*)

Repeal the definition.

6 Subsection 22(7) (definition of *possession*)

Repeal the definition.

7 Subsection 22(7) (definition of *production*)

Repeal the definition.

8 Subsection 22(7)

Insert:

serious drug offence means an offence:

- (a) involving, or relating to, controlled substances; and
- (b) punishable by a maximum penalty of imprisonment for 2 years or more.

9 Subsection 22(7) (definition of *serious narcotics offence*)

Repeal the definition.

10 Subsection 22(7) (definition of *trafficable quantity*)

Repeal the definition.

11 Paragraph 22A(1)(a)

Omit “narcotics”, substitute “drug”.

12 Subsection 22A(2)

Insert:

serious drug offence has the same meaning as in section 22.

13 Subsection 22A(2) (definition of *serious narcotics offence*)

Repeal the definition.

Customs Act 1901

14 Subsection 4(1) (definition of *Cannabinoids*)

Repeal the definition.

15 Subsection 4(1) (definition of *Cannabis*)

Repeal the definition.

16 Subsection 4(1) (definition of *Cannabis fibre*)

Repeal the definition.

17 Subsection 4(1) (definition of *Cannabis plant*)

Repeal the definition.

18 Subsection 4(1) (definition of *Cannabis resin*)

Repeal the definition.

19 Subsection 4(1) (definition of *Commercial quantity*)

Repeal the definition.

20 Subsection 4(1)

Insert:

border controlled drug has the same meaning as in Part 9.1 of the *Criminal Code*.

21 Subsection 4(1)

Insert:

border controlled plant has the same meaning as in Part 9.1 of the *Criminal Code*.

22 Subsection 4(1) (definition of *Narcotic substance*)

Repeal the definition, substitute:

narcotic substance means a border controlled drug or a border controlled plant.

23 Subsection 4(1) (definition of *Suspicious substance*)

Repeal the definition, substitute:

suspicious substance means a narcotic substance that would, or would be likely to, assist in the proof of the commission by any person of an offence against Division 307 of the *Criminal Code* that is punishable by imprisonment for a period of 7 years or more.

24 Subsection 4(1) (definition of *Trafficable quantity*)

Repeal the definition.

25 Subsection 4(4)

Repeal the subsection.

26 Before subsection 4(5)

Insert:

(4A) To avoid doubt, if narcotic goods are:

- (a) imported into Australia in breach of a prohibition under section 50; or
- (b) exported from Australia in breach of a prohibition under section 112;

the goods are imported or exported, as the case may be, in contravention of this Act.

Note: Most offences dealing with the importation and exportation of narcotic goods are located in Part 9.1 of the *Criminal Code*.

27 Section 4B (after paragraph (b) of the definition of *Customs-related law*)

Insert:

(ba) Division 307 of the *Criminal Code*; or

28 At the end of subsection 50(7)

Add:

Penalty: Imprisonment for 2 years or 20 penalty units, or both.

29 Subsection 50(8)

Repeal the subsection.

30 At the end of Division 1 of Part IV

Add:

51A Certain controlled substances taken to be prohibited imports

- (1) This section applies if a substance or plant is determined, under section 301.8 or 301.9 of the *Criminal Code*, to be a border controlled drug, a border controlled plant or a border controlled precursor.
- (2) For the period during which the determination has effect, Schedule 4 to the *Customs (Prohibited Imports) Regulations 1956* has effect as if the substance or plant were described as a drug in that Schedule.

31 At the end of subsection 112(2BC)

Add:

Penalty: Imprisonment for 2 years or 20 penalty units, or both.

32 Subsection 112(2BD)

Repeal the subsection.

33 At the end of Division 1 of Part VI

Add:

112A Certain controlled substances taken to be prohibited exports

- (1) Subsection (2) applies if a substance or plant is determined, under section 301.8 of the *Criminal Code*, to be a border controlled drug or a border controlled plant.
- (2) For the period during which the determination has effect, Part 1 of Schedule 8 to the *Customs (Prohibited Exports) Regulations 1958* has effect as if the substance or plant were described as a drug in that Part.
- (3) Subsection (4) applies if a substance is determined, under section 301.9 of the *Criminal Code*, to be a border controlled precursor.
- (4) For the period during which the determination has effect, Part 1 of Schedule 9 to the *Customs (Prohibited Exports) Regulations 1958* has effect as if the substance were described as a precursor substance in that Part.

34 Subsection 183UA(1) (at the end of the definition of offence)

Add:

; or (c) an offence against Division 307 of the *Criminal Code*.

35 After subsection 183UA(2)

Insert:

- (2A) For the purposes of this Part, an offence against section 6 of the *Crimes Act 1914* that relates to an offence against Division 307 of the *Criminal Code* is taken to be an offence against that Division.

36 Subsection 183UA(3)

Omit all the words after “purposes of”, substitute:

this Part:

- (a) an offence against section 141.1, 142.1, 142.2 or 149.1 of the *Criminal Code* that relates to this Act is taken to be an offence against this Act; and
- (b) an offence against section 141.1, 142.1, 142.2 or 149.1 of the *Criminal Code* that relates to Division 307 of the *Criminal Code* is taken to be an offence against that Division.

37 Subsection 184A(2)

Omit all the words after “make the request”, substitute:

if:

- (a) the master’s ship is a foreign ship; and
- (b) the master’s ship is on the landward side of the outer edge of Australia’s territorial sea; and
- (c) either:
 - (i) the commander makes the request for the purposes of this Act or an Act prescribed by the regulations consistently with UNCLOS, or for the purposes of determining whether a contravention, or an attempted contravention, in Australia of Division 307 of the *Criminal Code* is occurring; or
 - (ii) the commander reasonably suspects that the master’s ship is, will be or has been involved in a contravention, or an attempted contravention, in Australia of Division 307 of the *Criminal Code*.

38 Subparagraph 184A(4)(c)(ii)

After “this Act”, insert “, Division 307 of the *Criminal Code*”.

39 Paragraph 184A(5)(c)

After “this Act”, insert “, Division 307 of the *Criminal Code*”.

40 At the end of paragraph 184D(3)(b)

Add “or Division 307 of the *Criminal Code*”.

41 Subparagraph 185(2)(c)(iii)

After “this Act”, insert “or Division 307 of the *Criminal Code*”.

42 Subparagraph 185(2)(d)(i)

After “this Act”, insert “, Division 307 of the *Criminal Code*”.

43 Sub-subparagraph 185(2)(d)(ii)(A)

After “this Act”, insert “, Division 307 of the *Criminal Code*”.

44 Subparagraph 185(2)(d)(iii)

After “this Act”, insert “or Division 307 of the *Criminal Code*”.

45 Paragraph 185(3)(a)

After “this Act”, insert “, Division 307 of the *Criminal Code*”.

46 Subparagraph 185(3)(c)(i)

After “this Act”, insert “, Division 307 of the *Criminal Code*”.

47 At the end of paragraph 185(3)(d)

Add “or Division 307 of the *Criminal Code*”.

48 Subsection 185B(1)

After “this Act”, insert “, Division 307 of the *Criminal Code*”.

49 Paragraph 185B(2)(b)

After “this Act”, insert “, Division 307 of the *Criminal Code*”.

50 Subparagraph 185B(2)(c)(i)

After “this Act”, insert “, Division 307 of the *Criminal Code*”.

51 Paragraph 210(1)(a)

Omit “, or attempting to commit, or of being concerned in the commission of, any”, substitute “an”.

52 Paragraph 210(1)(b)

Omit “against section 233B or”.

53 At the end of subsection 210(1)

Add:

- ; or (c) committing an offence against Division 307 of the *Criminal Code*; or
- (d) committing an offence against section 308.2 of the *Criminal Code* where the substance involved in the offence is reasonably suspected of:
 - (i) having been imported into Australia in contravention of this Act; or
 - (ii) being intended for export from Australia in contravention of this Act.

54 At the end of Part XII

Add:

Division 3—Evidence

227AA Evidence may be used in prosecutions etc.

To avoid doubt, if, when exercising powers under this Act, an officer obtains evidence of the commission of an offence against Part 9.1 of the *Criminal Code*, then that evidence may be used, or given to another body for use, in:

- (a) investigating the offence; or
- (b) proceedings for the prosecution for the offence.

55 At the end of subsection 229A(2)

Add:

Note: Goods are imported or exported in contravention of this Act if they are imported or exported in breach of a prohibition under this Act: see subsection 4(4A).

56 Subsection 231(1)

Omit all the words after “punishable”, substitute “upon conviction by imprisonment for a period not exceeding 2 years.”.

57 Subsection 231(2)

Repeal the subsection, substitute:

- (2) This section does not apply to, or in relation to, narcotic goods.

58 Subsection 231(3)

Omit “to which paragraph (1)(d) applies”.

59 At the end of section 231

Add:

Note: Most offences dealing with the importation and exportation of narcotic goods are located in Part 9.1 of the *Criminal Code*.

60 At the end of subsection 233A(1A)

Add:

Note: Most offences dealing with the importation and exportation of narcotic goods are located in Part 9.1 of the *Criminal Code*.

Note: The heading to section 233A is altered by omitting “—goods that are not narcotic goods”.

61 Sections 233AC and 233B

Repeal the sections.

62 At the end of subsection 233BA(1)

Add “or Part 9.1 of the *Criminal Code*”.

63 Subsection 233BA(2)

Omit “section 233B or 233BAA”, substitute “section 233BAA or Part 9.1 of the *Criminal Code*”.

64 Section 235

Repeal the section.

65 At the end of subsection 243A(3)

Add:

Note: Goods are imported or exported in contravention of this Act if they are imported or exported in breach of a prohibition under this Act: see subsection 4(4A).

66 Schedule VI

Repeal the Schedule.

Proceeds of Crime Act 2002

67 Section 338 (after subparagraph (a)(i) of the definition of *serious offence*)

Insert:

(ia) unlawful conduct constituted by or relating to a breach of Part 9.1 of the *Criminal Code* (serious drug offences); or

Surveillance Devices Act 2004

68 Subparagraph 30(1)(a)(i)

Repeal the subparagraph.

69 Subparagraph 30(1)(a)(iv)

After “1990”, insert “ or an offence against Part 9.1 of the *Criminal Code* (other than section 308.1 or 308.2)”.

Telecommunications (Interception) Act 1979

70 Subsection 5(1) (paragraph (c) of the definition of *class 1 offence*)

Repeal the paragraph, substitute:

(c) an offence against Division 307 of the *Criminal Code*; or

71 Subsection 5(1) (definition of *narcotics offence*)

Repeal the definition.

72 Subsection 5(1) (definition of *prescribed substance*)

Repeal the definition, substitute:

prescribed substance means:

- (a) a substance that is a narcotic drug or psychotropic substance for the purposes of the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*; or
- (b) a controlled drug or border controlled drug within the meaning of Part 9.1 of the *Criminal Code*; or
- (c) a controlled plant or border controlled plant within the meaning of Part 9.1 of the *Criminal Code*; or
- (d) a controlled precursor or border controlled precursor within the meaning of Part 9.1 of the *Criminal Code*.

73 After subsection 5D(5)

Insert:

Serious drug offences

- (5A) An offence is also a ***class 2 offence*** if it is an offence against Part 9.1 of the *Criminal Code* (other than Division 307 or section 308.1 or 308.2).

74 Paragraph 6K(a)

Omit “a narcotics offence; and”, substitute:

an offence against:

- (i) subsection 50(7) or subsection 112(2BC) of the *Customs Act 1901*; or
- (ii) Division 307 of the *Criminal Code*; and

75 Application of amendments to conduct before and after commencement

(1) In this item:

earlier conduct means conduct engaged in before the commencement of this Schedule.

engage in conduct has the same meaning as in the *Criminal Code*.

later conduct means conduct engaged in after the commencement of this Schedule.

new law means Part 9.1 of the *Criminal Code* as in force from time to time.

old law means:

- (a) the provisions of Division 2 of Part XIII of the *Customs Act 1901* as in force from time to time before the commencement of this Schedule to the extent to which those provisions related to narcotic substances; and
- (b) any law related to those provisions.

(2) The amendments made by this Schedule do not apply in relation to earlier conduct.

(3) Despite the amendments made by this Schedule, the old law continues to apply in relation to later conduct if:

- (a) the later conduct is related to earlier conduct; and
- (b) because of that relationship, the later conduct would have constituted a physical element (or a part of a physical element) of an offence against the old law, had the old law remained in force.

(4) If later conduct is alleged against a person in a prosecution for an offence against the old law, that conduct must not be alleged against the person in a prosecution for:

- (a) an offence against the new law; or
- (b) an offence related to an offence against the new law.

76 Transitional regulations

- (1) The regulations may make provision for matters of a transitional nature (including any saving or application provisions) arising from the amendments or repeals made by this Schedule.
- (2) The Governor-General may make regulations for the purposes of subitem (1).

Schedule 2—Involvement of children in armed conflict

Criminal Code Act 1995

1 Paragraph 268.68(1)(a) of the *Criminal Code*

After “hostilities”, insert “as members of the national armed forces”.

Note: The following heading to subsection 268.68(1) of the *Criminal Code* is inserted “*National armed forces*”.

2 Subsection 268.68(3) of the *Criminal Code* (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 10 years.

3 At the end of section 268.68 of the *Criminal Code*

Add:

Other armed forces and groups

- (4) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator uses one or more persons to participate actively in hostilities other than as members of the national armed forces; and
 - (b) the person or persons are under the age of 18 years; and
 - (c) the perpetrator’s conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

- (5) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator conscripts one or more persons into an armed force or group other than the national armed forces; and
 - (b) the person or persons are under the age of 18 years; and
 - (c) the perpetrator’s conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

- (6) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator enlists one or more persons into an armed force or group other than the national armed forces; and
 - (b) the person or persons are under the age of 18 years; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 10 years.

4 Paragraph 268.88(1)(a) of the *Criminal Code*

After "hostilities", insert "as members of the national armed forces".

Note: The following heading to subsection 268.88(1) of the *Criminal Code* is inserted "*National armed forces*".

5 Paragraph 268.88(1)(c) of the *Criminal Code*

Repeal the paragraph.

6 Paragraph 268.88(2)(a) of the *Criminal Code*

Omit "an armed force or group", substitute "the national armed forces".

7 Paragraph 268.88(2)(c) of the *Criminal Code*

Repeal the paragraph.

8 Paragraph 268.88(3)(a) of the *Criminal Code*

Omit "an armed force or group", substitute "the national armed forces".

9 Paragraph 268.88(3)(c) of the *Criminal Code*

Repeal the paragraph.

10 Subsection 268.88(3) of the *Criminal Code* (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 10 years.

11 At the end of section 268.88 of the *Criminal Code*

Add:

Other armed forces and groups

- (4) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator uses one or more persons to participate actively in hostilities other than as members of the national armed forces; and
 - (b) the person or persons are under the age of 18 years; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

- (5) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator conscripts one or more persons into an armed force or group other than the national armed forces; and
 - (b) the person or persons are under the age of 18 years; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 15 years.

- (6) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator enlists one or more persons into an armed force or group other than the national armed forces; and
 - (b) the person or persons are under the age of 18 years; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 10 years.

Schedule 3—Proceeds of crime orders

Proceeds of Crime Act 2002

1 After paragraph 17(2)(a)

Insert:

(aa) all or specified *bankruptcy property of the suspect;

2 After paragraph 17(2)(b)

Insert:

(ba) all bankruptcy property of the suspect other than specified bankruptcy property;

3 Paragraph 17(3)(b)

After “other than the suspect”, insert “but not to restrain *bankruptcy property of the suspect”.

4 After paragraph 18(2)(a)

Insert:

(aa) all or specified *bankruptcy property of the suspect;

5 After paragraph 18(2)(b)

Insert:

(ba) all bankruptcy property of the suspect other than specified bankruptcy property;

6 Paragraph 18(3)(b)

After “other than the suspect”, insert “but not to restrain *bankruptcy property of the suspect”.

7 After paragraph 20(2)(a)

Insert:

(aa) all or specified *bankruptcy property of the suspect;

8 After paragraph 20(2)(b)

Insert:

- (ba) all bankruptcy property of the suspect other than specified bankruptcy property;

9 Paragraph 20(3)(d)

After “other than the suspect”, insert “but not to restrain *bankruptcy property of the suspect”.

10 Section 338

Insert:

bankruptcy property of a person means property that:

- (a) is vested in another person under subsection 58(1) of the *Bankruptcy Act 1966* but immediately before being so vested was:
- (i) property of the person; or
 - (ii) subject to the *effective control of the person; or
- (b) is vested in another person under subsection 249(1) of the *Bankruptcy Act 1966* but immediately before being so vested was:
- (i) property of the person’s estate; or
 - (ii) subject to the effective control of the executors of the person’s estate.

11 Application

The amendments made by this Part apply in relation to bankruptcy property whether vested in a person under the *Bankruptcy Act 1966* before, on or after the commencement of this item.

Schedule 4—Australian Federal Police Act 1979

Australian Federal Police Act 1979

1 Subsection 4(1)

Insert:

intelligence or security agency means an authority or person responsible for intelligence gathering for, or the security of, a country or a part of a country.

2 Subsection 4(1)

Insert:

law enforcement agency means an authority or person responsible for the enforcement of laws.

3 Subsection 4(1)

Insert:

police support services means services related to:

- (a) the provision of police services by an Australian or foreign law enforcement agency; or
- (b) the provision of services by an Australian or foreign intelligence or security agency; or
- (c) the provision of services by an Australian or foreign regulatory agency.

4 Subsection 4(1)

Insert:

regulatory agency means an authority or person who performs regulatory functions for a country or part of a country.

5 After paragraph 8(1)(be)

Insert:

- (bf) the provision of police services and police support services for the purposes of assisting, or cooperating with, an Australian or foreign:
 - (i) law enforcement agency; or
 - (ii) intelligence or security agency; or
 - (iii) government regulatory agency; and
- (bg) the provision of police services and police support services in relation to establishing, developing and monitoring peace, stability and security in foreign countries; and

6 Subsection 60A(2A)

Repeal the subsection, substitute:

- (2A) This section does not apply to:
 - (a) a divulgence or communication of prescribed information that is authorised by the Commissioner under subsection (2B); or
 - (b) a divulgence or communication of personal information that is authorised by the Commissioner under subsection (2C).

7 After subsection 60A(2B)

Insert:

- (2C) The Commissioner may authorise a person to whom this section applies to divulge or communicate an individual's personal information if the individual requests, or gives consent to, that divulgence or communication.
- (2D) Subsection (2C) does not require the Commissioner to authorise a divulgence or communication of personal information that is otherwise required or authorised under this Act.

8 Subsection 60A(3)

Insert:

personal information has the same meaning as in the *Privacy Act 1988*.

9 At the end of subsection 60A(3)

Add:

Note: The *Privacy Act 1988* contains provisions relevant to the use and disclosure of information divulged or communicated under this Act.

Schedule 5—Mutual Assistance in Business Regulation Act 1992

Mutual Assistance in Business Regulation Act 1992

1 Paragraph 7(1)(a)

Omit “Attorney-General”, substitute “Minister”.

2 Subsection 8(1)

Omit “Attorney-General” (wherever occurring), substitute “Minister”.

Note: The heading to section 8 is altered by omitting “**Attorney-General’s**” and substituting “**Minister’s**”.

3 Subsection 8(2)

Omit “Attorney-General”, substitute “Minister”.

4 Paragraphs 9(1)(a) and (b)

Omit “Attorney-General”, substitute “Minister”.

5 Subsections 9(2) and 10(1)

Omit “Attorney-General”, substitute “Minister”.

6 Section 22

Omit “Attorney-General”, substitute “Minister”.

Note: The heading to section 22 is altered by omitting “**Attorney-General**” and substituting “**Minister**”.

Schedule 6—Reports of Financial Transactions

Financial Transaction Reports Act 1988

1 At the end of subsection 20A(1)

Add:

Example: A solicitor administered the estate of a deceased person who held an account with an identifying cash dealer. The cash dealer carried out the prescribed verification procedure to identify the solicitor when the solicitor closed the deceased person's account.

The solicitor is now administering the estate of another deceased person who also held an account with the cash dealer. If the cash dealer has a record of the verification procedure used to identify the solicitor in relation to the first deceased person's account, it also has an identification record for the solicitor in relation to the other deceased person's account.

Schedule 7—Defence (Transitional Provisions) Act 1950

Defence (Transitional Provisions) Act 1950

1 The whole of the Act

Repeal the Act.

Schedule 8—Customs Act detention

Customs Act 1901

1 Subparagraph 219ZJC(1)(c)(ii)

Repeal the subparagraph, substitute:

- (ii) the person is on bail in relation to a Commonwealth offence or a prescribed State or Territory offence and subject to a bail condition (however expressed) that, if complied with, prevents the person from leaving Australia.

Schedule 9—Freedom of Information Act 1982

Part 1—Exemption of certain AUSTRAC documents

Freedom of Information Act 1982

1 Division 1 of Part II of Schedule 2 (after item dealing with the Australian Trade Commission)

Insert:

Australian Transaction Reports and Analysis Centre, in relation to documents concerning information communicated to it under section 16 of the *Financial Transaction Reports Act 1988*

2 Application

The amendment made by item 1 applies in relation to a document that is a document of an agency before, on or after the commencement of that item.

Part 2—Technical corrections

Freedom of Information Act 1982

3 Division 1 of Part II of Schedule 2 (item dealing with the Australian Trade Commission)

Repeal the item, substitute:

Australian Trade Commission, in relation to documents
concerning the carrying out, in whole or in part, of overseas
development projects

Note: This item removes unnecessary quotation marks.

4 Division 1 of Part II of Schedule 2 (item dealing with the National Health and Medical Research Council)

Repeal the item, substitute:

National Health and Medical Research Council, in relation to
documents in the possession of members of the National
Health and Medical Research Council who are not persons
appointed or engaged under the *Public Service Act 1999*

Note: This item removes unnecessary quotation marks.

*[Minister's second reading speech made in—
House of Representatives on 26 May 2005
Senate on 5 September 2005]*

(40/05)