



Discussion Paper

Tablet Press Import Control

Introduction

The Department of Home Affairs (Home Affairs) seeks comment from members of the public, industry, government departments and law enforcement agencies about the effectiveness of the import control for tablet presses under regulation 4G of the *Customs (Prohibited Imports) Regulations 1956* (the Prohibited Imports Regulations)¹. Specifically, Home Affairs seeks comment on whether the import control is fit-for-purpose in its current form or whether amendments should be made to improve the regulation, such as by including encapsulators in the control, defining what a tablet is, explicitly referencing incomplete tablet presses, and considering the impacts of amending the regulation.

Background

Regulation 4G of the Prohibited Imports Regulations was introduced on 14 December 2009 and commenced on 1 March 2010. The intent of the regulation was to prohibit the import of tablet presses unless permission had been granted by the Minister for Home Affairs or a person authorised by the Minister to grant permission.

The rationale behind the introduction of the import control was linked to concerns about the increased usage and domestic production of amphetamine-type stimulants such as MDMA (ecstasy) in tablet form. In June 2009, the then Minister for Home Affairs issued a media release announcing that an import control would be introduced, which stated²:

Tablet presses are equipment which are highly sought after by criminal organisations for use in the domestic manufacture of MDMA (ecstasy).

Per capita, Australia has the highest consumption of ecstasy in the world and the second highest consumption of amphetamines while an Australian Crime Commission Illicit Drug Data Report released last week shows arrests for amphetamine-type stimulants have increased steadily over the past decade.

¹ The *Customs (Prohibited Imports) Regulations 1956* can be accessed on the Federal Register of Legislation at <https://www.legislation.gov.au/Series/F1996B03651>.

² Brendan O'Connor MP Minister for Home Affairs, *Australian Government to Ban the Importation of Tablet Presses*, http://pandora.nla.gov.au/pan/100941/20100721-1458/www.ministerhomeaffairs.gov.au/www.ministers/oconnor.nsf/page/MediaReleases_2009_SecondQuarter_19June2009-AustralianGovernmenttobantheImportationofTabletPresses.html.

Following public consultation, the Australian Government introduced regulation 4G of the Prohibited Imports Regulations. Under regulation 4G, a tablet press is defined as:

Any manual, semi-automatic or fully automatic equipment which can be used for the compaction or moulding of powdered or granular solids, or semi-solid material to produce coherent solid tablets.

The definition of tablet press does not extend to encapsulators equipment, as described later in this paper.

The Explanatory Statement³ accompanying the introduction of regulation 4G provides further information about why the regulation was introduced, which included:

The purpose of the amending regulations is to introduce a new import control on tablet presses. Tablet presses are key equipment in the domestic manufacture of illicit synthetic drugs. The Australian Government's Organised Crime Strategic Framework recognises the manufacture and supply of amphetamine-type stimulants as one of three priority areas for combating organised crime.

The new import control is consistent with Australia's National Drug Strategy supply reduction policy and will reduce the ability of criminals to access tablet presses to domestically manufacture illicit synthetic drugs.

The import control at the federal level complemented state and territory controls that prohibited the possession of tablet presses without a legitimate reason. This meant that a level of consistency was achieved when the import control was introduced.

The import control provides the Australian Border Force (ABF) the power to seize tablet presses that are imported into Australia without permission, and also to prosecute persons caught importing tablet presses without permission. Under the *Customs Act 1901*, where a court can determine the value of the goods, the offence associated with importing a tablet press without permission is a penalty not exceeding the greater of either 3 times the value of the goods or 1,000 penalty units⁴. If a court cannot determine the value of the goods, then a penalty not exceeding 1,000 penalty units may be applied.

Under the *Criminal Code Act 1995*⁵, a person commits an offence if they possess substance, equipment or instructions for the commercial manufacture of controlled drugs without the proper authorisation under Commonwealth law. The penalty is imprisonment for 7 years or 1,400 penalty units, or both.

Granting permission to import tablet presses may occur, providing a legitimate use is established, and that there is a low diversion risk of usage of the tablet press for illicit purposes. An application for permission to import a tablet press can take up to eight weeks, taking into account checks conducted by law enforcement agencies to inform the decision-maker.

Home Affairs processes fewer than 25 tablet press import applications per year, on average.

³ *Customs (Prohibited Imports) Amendment Regulations 2009 (No. 6)*, Explanatory Statement, <https://www.legislation.gov.au/Details/F2009L04502/Explanatory%20Statement/Text>.

⁴ Under the *Crimes Act 1914*, 1 penalty unit is \$210.

⁵ *Criminal Code Act 1995*, section 308.4, <https://www.legislation.gov.au/Series/C2004A04868>

Tablet Presses and Encapsulators in the Drug Market

Availability of Tablet Presses

The commencement of the import control for tablet presses appears to have had an impact on the number of seizures of tablet presses domestically. According to data compiled by the Australian Criminal Intelligence Commission (ACIC) through its Annual Illicit Drug Data Report (IDDR) series, the number of domestic tablet press seizures decreased from 60 in 2010–11 to 17 in 2011–12, with the number of reported seizures in subsequent reporting periods remaining under 20 per annum.

Table 1: Australian Criminal Intelligence Commission annual Illicit Drug Data Report Tablet Press Statistics, 2008–09 to 2016–17^{6,7,8}

Year	Tablet Press Detections (Border)	Tablet Press Seizures (Domestic)
2016–17	No Data	13
2015–16	No Data	No Data
2014–15	34	3
2013–14	20	7
2012–13	28	19
2011–12	20	17
2010–11	No Data	60
2009–10*	No Data	57
2008–09^	No Data	26

Notes: *Regulation 4G of the Prohibited Imports Regulations commenced on 1 March 2010
^Reporting of domestic tablet press seizure statistics in the IDDR commenced in 2008–09

While aiming to retain legitimate access, such controls seek to prevent this equipment being used in domestic illicit drug manufacture. They are proactive measures that are intended to remove them from the environment before they have an opportunity to be used in illicit production.

Discussion Question 1a: *Has the availability of tablet presses within Australia decreased since the commencement of regulation 4G in the Prohibited Imports Regulations?*

Discussion Question 1b: *If the availability of tablet presses within Australia has decreased since 2010, has this had an impact on the availability of illicit drugs in tablet form?*

⁶ Australian Criminal Intelligence Commission, *Illicit Drug Data Report 2016-17*, <https://www.acic.gov.au/publications/intelligence-products/illicit-drug-data-report-0>.

⁷ Australian Criminal Intelligence Commission, *Previous Illicit Drug Data Reports 2015-16 and 2014-15*, <https://www.acic.gov.au/previous-illicit-drug-data-reports>.

⁸ Australian Crime Commission, *Publications: Illicit Drug Data Reports*, <http://webarchive.nla.gov.au/gov/20160615100434/http://www.crimecommission.gov.au/publications/intelligence-products/illicit-drug-data-report>.

Drug Usage Trends

The drug usage landscape is continuously changing due to a range of factors, such as pricing, availability, societal trends etc. The National Drug and Alcohol Research Centre (NDARC) within the University of New South Wales conducts research on drug usage trends to identify emerging patterns in substance use in Australia. NDARC's *Key Findings from the National Ecstasy and Related Drugs Reporting System Interviews 2018*⁹ (the EDRS Report) provides significant insight into the ecstasy market within Australia, capturing data on usage since 2003.

According to the EDRS Report, the ecstasy market has diversified over time with the use of capsules and crystal substances increasing, and tablet usage decreasing. The data included in the EDRS Report suggests that these changes to the usage trends of ecstasy commenced in 2010, but have accelerated from 2014 onwards. Ecstasy usage is now to the point where, in 2018, it is almost as prevalent in capsule form as it is in pill form (72 per cent to 75 per cent) and capsules are the most common form of ecstasy usage in New South Wales, Victoria and South Australia. In contrast, in 2010 national ecstasy usage for capsules was around 45 per cent while for tablet it was around 98 per cent, and in 2015 capsule usage was around 60 per cent and pill usage around 85 per cent.

The EDRS Report states that ecstasy users perceive the purity of ecstasy capsules as greater than pills, but capsules were not perceived to be as pure as crystal. The median price of capsules and pills were equal in 2018 and respondents in the EDRS Report claimed that capsules are slightly easier to access than pills.

These factors combine to make ecstasy capsules appealing for users to pursue, and widely available for those wishing to use ecstasy capsules.

In addition to the changing trends in ecstasy usage, the EDRS Report identified an increasing trend of consumption of capsules with unknown contents since 2015. In 2015 the reported recent use of these capsules was less than 10 per cent, but increased to 20 per cent in 2017 and 18 per cent in 2018.

Discussion Question 2a: *What is the impact of increasing capsule usage for drugs such as ecstasy?*

Discussion Question 2b: *Are the findings of the EDRS Report corroborated by law enforcement and the experiences of others within the community?*

⁹ Peacock, A., Gibbs, D., Karlsson, A., Uporova, J., Sutherland, R., Bruno, R., Dietze, P., Lenton, S., Alati, R., Degenhardt, L., & Farrell, M. (2018). Australian Drug Trends 2018. *Key findings from the National Ecstasy and Related Drugs Reporting System (EDRS) Interviews*. Sydney, National Drug and Alcohol Research Centre, UNSW Australia, <https://ndarc.med.unsw.edu.au/resource/australian-drug-trends-2018-key-findings-national-ecstasy-and-related-drugs-reporting>.

Encapsulator Seizures

Encapsulators, also known as capsule filling machines, are machines that are used to fill empty soft or hard gelatin capsules of various sizes with powders, granules, semi-solids or liquids. They are primarily used for industrial or pharmaceutical purposes. These machines have similar uses to that of tablet presses both, in terms of the product manufactured by the machine but also the level of output that can be generated by high end products (for example, some machines are capable of producing 70,000 capsules per hour).

Encapsulators are generally controlled domestically with owners required to have permission or authorisation to possess these goods from state or territory police or other regulatory bodies¹⁰. However, there are currently no controls at the border for encapsulators.

In addition to tablet press seizures, the ACIC's annual *Illicit Drug Data Report* series includes available data on domestic encapsulator seizures. The table below summarises these seizures.

Table 2: Australian Criminal Intelligence Commission annual *Illicit Drug Data Report* Encapsulator Seizure Statistics, 2010–11 to 2016–17

Year	Domestic Encapsulator Seizures
2016–17	6
2015–16	No Data
2014–15	2
2013–14	0
2012–13	1
2011–12	13
2010–11	6

Note: Reporting of domestic encapsulator seizure statistics in the IDDR commenced in 2010–11.

The ACIC data shows that encapsulators are being seized by domestic law enforcement agencies, which suggests these machines are being used in the domestic manufacture of illicit drugs. The data, however, fluctuates year on year with no real trend emerging.

A response to the increased usage of ecstasy in capsule form, as discussed in the previous section, may be to broaden the scope of regulation 4G to include encapsulators in the import control. Such reform would align the border treatment of encapsulators with that of tablet presses, creating a coherent regime for both types of devices. Similar to when regulation 4G was introduced in 2009, regulating the import of encapsulators would be consistent with the supply reduction pillar of the *National Drug Strategy 2017–2026*¹¹, specifically by employing the following strategy “*Regulate the legitimate trade of pharmaceuticals, precursors and equipment used in the manufacture of illicit drugs*”.

¹⁰ See examples: section 24A *Drug Misuse and Trafficking Act 1985 (NSW)*, <https://www.legislation.nsw.gov.au/#/>, section 33LA *Controlled Substances Act 1984 (SA)*, <https://www.legislation.sa.gov.au/index.aspx>; section 71A, *Drugs, Poisons and Controlled Substances Act 1981 (VIC)*, http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/.

¹¹ Commonwealth of Australia as represented by the Department of Health 2017, *National Drug Strategy 2017–2026*, [http://www.health.gov.au/internet/main/publishing.nsf/Content/55E4796388E9EDE5CA25808F00035035/\\$File/National-Drug-Strategy-2017-2026.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/55E4796388E9EDE5CA25808F00035035/$File/National-Drug-Strategy-2017-2026.pdf)

Discussion Question 3a: *Are encapsulators becoming more widely used in the manufacture of illicit drugs, and if so, should Home Affairs consider further restrictions on their possession, such as an import control?*

Discussion Question 3b: *If a border control was to be considered, what should be included? How could the control best describe and/or define encapsulator equipment?*

Legitimate Use of Encapsulators

Home Affairs recognises legitimate tablet press usage in the pharmaceutical, confectionery and industrial manufacturing sectors as well as by research institutions, through its processing of import applications. It is highly likely that some of the same industries use encapsulators in their operations, such as the manufacturing of pharmaceuticals.

In considering the introduction of any additional regulation of encapsulators, it is necessary to determine the possible impact of any such change. This includes the potential impact on entities (such as businesses, researchers etc.) at the individual level, but also the breadth of the impact across a variety of industries to determine the total impact of any such change.

Discussion Question 4a: *What sectors currently use encapsulators in their operations?*

Discussion Question 4b: *Are these encapsulators manufactured in Australia, or are they imported to Australia?*

Definition of ‘Tablet’

Regulation 4G does not define ‘tablet’, creating ambiguity when distinguishing application of the regulation between tablets intended for human consumption compared to large tablets, such as bath bombs, urinal cakes or dishwashing tablets. As such, Home Affairs requires importers of tablet presses that manufacture any types of tablets to apply for permission to import these presses. The ABF may seize these goods if there is no permission to import.

The purpose of this approach results from tablet presses that manufacture large tablets having a level of interchangeability with tablet presses that manufacture small tablets for human consumption. This is why regulation 4G remains broad in its application.

Prior to the introduction of a definition of ‘tablet’ it is necessary to determine the possible impacts of such a change. This includes potential unintended consequences resulting from introducing a definition (e.g. too broad or too narrow), understanding the ease of converting a tablet press machine that produces large tablets to one that produces small tablets for human consumption, and any increased risk of diversion to the illicit drug market.

Discussion Question 5a: *What are the benefits/risks associated with introducing a definition of ‘tablet’ in regulation 4G of the Prohibited Imports Regulations?*

Discussion Question 5b: *Is there a need to either include or exclude tablet presses that produce large tablets?*

Incomplete Machines

Regulation 4G does not explicitly state whether the import control for tablet presses includes parts, components or incomplete machines. As such, there is a level of uncertainty in applying the import control for the ABF, but also for industry, which may seek to import an incomplete tablet press and have it restored so that it can produce tablets.

Many parts and components of tablet presses are ordinary parts for use with a range of other industrial machines, such as motors, pulleys, punches etc. Regulation 4G is silent on the control of parts for tablet presses because of the difficulty in determining that parts are specifically and exclusively for use with a tablet press. Rather, the focus of the control is on the machine itself as the additional parts and components do not have utility without the primary machine in which to attach those parts and components.

While regulation 4G may not explicitly state that incomplete tablet presses are controlled on import to Australia, the ABF will intercept incomplete tablet presses that are imported without permission. There is sufficient grounds within the regulation for this approach, as an incomplete tablet press can still meet the definition of a tablet press in the regulation. Specifically an incomplete tablet press can be “*equipment which can be used for the compaction or moulding of powered or granular solids, or semi-solid material to produce coherent solid tablets*” as it can have parts and components fitted so that it can function as a tablet press.

Notwithstanding the current grounds for intercepting and prosecuting importers of incomplete tablet presses, there may be benefit in introducing further clarity in regulation 4G to explicitly state that incomplete tablet presses are prohibited from import unless permission has been granted. The Prohibited Imports Regulations contain similar examples, such as in regulation 4F which controls the import of firearms, firearm parts, firearm accessories, ammunition and other goods. Under regulation 4F, the definition of a firearm magazine is:

A magazine designed or intended for use with a firearm, whether or not complete, damaged, temporarily or permanently inoperable, or unfinished.

Discussion Question 6: Is there a benefit to explicitly including incomplete tablet presses as controlled goods under regulation 4G of the Prohibited Imports Regulations, and for encapsulators if there is support to introduce a border control?