

Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill  
2014

The Committee's response

Available for your perusal :  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Psychoactive\\_Substances\\_Bill/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Psychoactive_Substances_Bill/Report)

The committee released their findings into the inquiry on the 2<sup>nd</sup> of September. They recommend that plants and their extracts be exempted.

The terms '*psychoactive effect*' & '*psychoactive substance*' were items of interest as they are broadly defined. The committee believe that the broad reaching terminology is appropriate if prosecutorial discretion is maintained, which it is expected to be.

The Law Council of Australia directed the committee to Policy Statement: Rule of Law Principles.

*"The state should be required to prove, beyond reasonable doubt, every element of a criminal offence, particularly any element of the offence which is central to the question of culpability for the offence. Only where a matter is peculiarly within the defendant's knowledge and not available to the prosecution, should the defendant bear the onus of establishing that matter. Even then the defendant should ordinarily bear an evidential, as opposed to legal burden."*

Due to the emerging nature of '*untested and potentially harmful substances*', the committee accepts that reversing the onus of proof is appropriate. The evidentiary burden only requires a defendant point to some evidence that suggests a reasonable possibility that the product will be exempted or does not fit the category of '*psychoactive substance*'.

The committee's recommendations have been tabled and we await any amendments to the Bill.

For more information contact:

Fiona: [fiona@eros.org.au](mailto:fiona@eros.org.au)

Nick: [nick@eros.org.au](mailto:nick@eros.org.au)

(03) 9347 2332