

DRUG MISUSE AND TRAFFICKING BILL 1985

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Miscellaneous Acts (Drug Misuse and Trafficking) Amendment Bill 1985 is cognate with this Bill.

The objects of this Bill are—

- (a) to prohibit the cultivation, supply and possession of certain narcotic plants, such as cannabis and opium plants, which are referred to in the Bill as “prohibited plants”;
 - (b) to prohibit the manufacture, supply, possession and use of certain drugs of addiction, which are referred to in the Bill as “prohibited drugs”;
 - (c) to distinguish between offences which are to be prosecuted summarily and offences which are to be prosecuted on indictment;
 - (d) to provide for graduated penalties related to the number of prohibited plants or the quantity of prohibited drug involved in the commission of the offence; and
 - (e) to enact other related provisions.
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PART I—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day appointed by the Governor-in-Council.

Clause 3 consists of an interpretation provision for the purposes of the proposed Act.

Clause 4 is an interpretation provision which extends the meaning of prohibited drug so as to include a preparation or admixture which contains any proportion of the prohibited drug.

Clause 5 is an interpretation provision which extends the meanings of "use" and "administer" in relation to prohibited drugs.

Clause 6 defines the meaning of the expression "take part in" when used in relation to the cultivation or supply of a prohibited drug.

Clause 7 provides that a prohibited plant or prohibited drug in the order or disposition of a person shall be deemed to be in the possession of the person.

Clause 8 provides that nothing in the proposed Act affects the Poisons Act 1966 or anything done under that Act.

PART II—OFFENCES

DIVISION 1—*Summary offences*

Clause 9 provides that an offence under the proposed Division shall be prosecuted summarily before a Local Court.

Clause 10 makes it an offence, subject to certain exceptions, to have possession of a prohibited drug.

Clause 11 makes it an offence, subject to certain exceptions, to have possession of an item of equipment for use in the administration of a prohibited drug.

Clause 12 makes it an offence, subject to an exception, to use a prohibited drug.

Clause 13 makes it an offence, subject to certain exceptions, to administer a prohibited drug to another person.

Clause 14 makes it an offence, subject to an exception, for a person to allow another person to administer a prohibited drug to him or her.

Clause 15 makes it an offence to forge a prescription for a prohibited drug.

Clause 16 makes it an offence to fraudulently obtain a prescription for a prohibited drug from a doctor or veterinary surgeon, to induce a chemist to dispense a forged or fraudulently altered prescription for a prohibited drug or to have possession of any such prescription.

Clause 17 makes it an offence to obtain a prohibited drug from a doctor, chemist or veterinary surgeon by means of a wilfully false representation.

Clause 18 makes it an offence to obtain a prohibited drug from a doctor without first informing the doctor of the quantity of prohibited drugs obtained from other doctors during the previous 2 months where the failure to inform the doctor occurs with intent to deceive.

Clause 19 makes it an offence to aid or abet the commission of an offence under the proposed Division.

Clause 20 makes it an offence to aid or abet in New South Wales the commission of an offence at a place outside New South Wales, being an offence punishable under a law in force in that place which corresponds to an offence under the proposed Division.

Clause 21 specifies the penalties for offences under the proposed Division.

DIVISION 2—*Indictable offences*

Clause 22 provides that an offence under the proposed Division shall be prosecuted on indictment.

Clause 23 (1) makes it an offence to cultivate or supply, or to knowingly take part in the cultivation or supply of, or to have possession of, a prohibited plant. Clause 23 (2) makes it an offence to cultivate or supply, or to knowingly take part in the cultivation or supply of, or to have possession of, a number of prohibited plants which is not less than the number prescribed by the proposed Act to be the commercial quantity. Clause 23 (3) enables the conviction, under clause 23 (1), of a person charged with an offence under clause 23 (2) where the jury are not satisfied that the number of prohibited plants involved is equal to or more than the commercial quantity. Clause 23 (4) and (5) specify defences to a prosecution under clause 23.

Clause 24 (1) makes it an offence to manufacture or produce, or to knowingly take part in the manufacture or production of, a prohibited drug. Clause 24 (2) makes it an offence to manufacture or produce, or to knowingly take part in the manufacture or production of an amount of a prohibited drug which is not less than the amount prescribed by the proposed Act to be the commercial quantity. Clause 24 (3) enables the conviction, under clause 24 (1), of a person charged with an offence under clause 24 (2) where the jury are not satisfied that the amount of the prohibited drug involved is equal to or more than the commercial quantity. Clause 24 (4) specifies defences to a prosecution under clause 24.

Clause 25 (1) makes it an offence to supply, or to knowingly take part in the supply of, a prohibited drug. Clause 25 (2) makes it an offence to supply, or to knowingly take part in the supply of an amount of a prohibited drug which is not less than the amount prescribed by the proposed Act to be the commercial quantity. Clause 25 (3) enables the conviction, under clause 25 (1), of a person charged with an offence under clause 25 (2) where the jury are not satisfied that the amount of the prohibited drug involved is equal to or more than the commercial quantity. Clause 25 (4) specifies defences to a prosecution under clause 25.

Clause 26 makes it an offence to conspire to commit an offence under the proposed Division.

Clause 27 makes it an offence to aid or abet the commission of an offence under the proposed Division.

Clause 28 makes it an offence to conspire to commit in New South Wales, or to aid or abet in New South Wales, the commission of an offence at a place outside New South Wales, being an offence punishable under a law in force in that place which corresponds to an offence under the proposed Division.

Clause 29 provides that a person who has possession of an amount of a prohibited drug which is not less than the amount prescribed by the proposed Act to be the traffickable quantity shall, for the purposes of the proposed Division, be deemed to have possession of the prohibited drug for the purpose of supply, subject to certain defences.

Clause 30 specifies those indictable offences which are punishable summarily without the consent of the accused and also specifies the penalties for offences so dealt with.

Clause 31 specifies those indictable offences which are punishable summarily with the consent of the accused and also specifies the penalties for offences so dealt with.

Clause 32 specifies the penalties for offences dealt with on indictment where the number of the prohibited plants or the amount of the prohibited drug involved is less than the commercial quantity.

Clause 33 specifies the penalties for offences where the number of the prohibited plants or the amount of the prohibited drug involved is not less than the commercial quantity.

DIVISION 3—Supplementary

Clause 34 enables a court of summary jurisdiction to order that a term of imprisonment for non-payment of a fine for an offence may commence at the expiration of any term of imprisonment imposed on the defendant for the same offence in addition to the fine.

Clause 35 enables a court to order the forfeiture of prohibited plants, prohibited drugs and certain other articles.

Clause 36 provides for the liability of directors of corporations where the corporation commits an offence under the proposed Act.

PART III—ENFORCEMENT

Clause 37 enables certain senior members of the police force to detain and search vessels and aircraft and any member of the police force to stop, search and detain persons reasonably suspected of being in possession of prohibited plants or prohibited drugs.

Clause 38 enables the Director-General of Agriculture, on a warrant issued by a Magistrate, to enter land or buildings for the purpose of destroying prohibited plants.

Clause 39 provides for the seizure by a member of the police force and forfeiture to the Crown of heroin.

PART IV—MISCELLANEOUS

Clause 40 provides that a substance, not being a prohibited drug, or a plant, not being a prohibited plant, which is represented to be a prohibited drug or a prohibited plant shall, for the purposes of the proposed Act, be deemed to be a prohibited drug or prohibited plant, as the case requires.

Clause 41 makes provision with respect to the granting of authorisations under the proposed Act by the Secretary of the Department of Health.

Clause 42 provides for the admissibility and evidentiary value of certificates of the Secretary of the Department of Health as to the existence or otherwise of certain authorisations under the Poisons Act 1966.

Clause 43 provides for the admissibility and evidentiary value of certificates of analysts as to the identity and result of analysis of substances.

Clause 44 enables the amendment, by regulation, of Schedule 1 to the proposed Act, being a Schedule which lists prohibited plants and prohibited drugs and specifies certain numbers or amounts in relation to those prohibited plants and prohibited drugs for the purposes of the proposed Act.

Clause 45 enables the Governor-in-Council to make regulations for the purposes of the proposed Act.

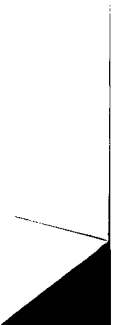
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NEW SOUTH WALES

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