

DRUGS MISUSE ACT AMENDMENT ACT

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Queensland



ANNO TRICESIMO OCTAVO

ELIZABETHAE SECUNDAE REGINAE

No. 34 of 1989

An Act to amend the Drugs Misuse Act 1986-1987 in certain particulars

[ASSENTED TO 28TH APRIL, 1989]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title. This Act may be cited as the *Drugs Misuse Act Amendment Act 1989*.

2. Commencement. (1) Section 1 and this section shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), this Act or the provisions of this Act specified in the Proclamation shall commence on the day or days appointed by Proclamation for the commencement of this Act or, as the case may be, those provisions.

3. Citation. (1) In this Act the *Drugs Misuse Act 1986-1987* is referred to as the Principal Act.

(2) The Principal Act as amended by this Act may be cited as the *Drugs Misuse Act 1986-1989*.

4. Amendment of s. 4. Interpretation. Section 4 of the Principal Act is amended by—

(a) in subsection (1)—

(i) inserting after the definition “analyst” the following definition:—

“ “correctional institution” means a prison or community corrections centre within the meaning of the *Corrective Services Act 1988*;”;

(ii) inserting after the definition “drug dependent person” the following definitions:—

“ “educational institution” means a primary, secondary or special school within the meaning of the *Education Act 1964-1988* or any other similar institution which may from time to time be established: the term does not include an educational institution solely conducting tertiary or adult education;

“ “intellectually handicapped citizen” means an intellectually handicapped citizen within the meaning of the *Intellectually Handicapped Citizens Act 1985*;”;

(iii) inserting after the definition “medical practitioner” the following definition:—

“ “pharmacist” means a person registered at the material time as a pharmacist under the *Pharmacy Act 1976-1987*;”;

(iv) omitting the definition “police officer” and substituting the following definition:—

“ “police officer” includes a person referred to in section 49 of the *National Crime Authority Act 1984* of the Commonwealth whose services are made available to the National Crime

Authority but does not include a special constable appointed under Part III of the *Police Act 1937-1987*”;

- (v) inserting after the definition “vehicle” the following definition:—
 - ““visual surveillance device” means any instrument, apparatus, equipment or device capable of being used to record and monitor images simultaneously with their taking place;”;
- (b) in subsection (3), omitting the words “attempt or”.

5. Amendment of s. 5. Trafficking in dangerous drugs. Section 5 of the Principal Act is amended by—

- (a) numbering the existing provision as subsection (1);
- (b) adding after the existing provision the following subsection:—
 - “(2) Where a person is charged with the commission of a crime defined in this section no further step in the proceedings shall be taken in relation to that crime (other than remanding the person in custody or on bail) until the consent of the Crown Law Officer has been obtained.”.

6. Repeal of and new s. 6. Section 6 of the Principal Act is repealed and the following section substituted:—

“6. Supplying dangerous drugs. A person who unlawfully supplies a dangerous drug to another, whether or not such other person is in Queensland, is guilty of a crime.

Penalty:

- (a) if the dangerous drug is a thing specified in the First Schedule and the offence is one of aggravated supply, imprisonment for life which cannot be mitigated or varied by a court;
- (b) If the dangerous drug is a thing specified in the First Schedule and the provisions of paragraph (a) do not apply, imprisonment for life;
- (c) If the dangerous drug is a thing specified in the Second Schedule and the offence is one of aggravated supply, imprisonment for life;
- (d) If the dangerous drug is a thing specified in the Second Schedule and the provisions of paragraph (c) do not apply, imprisonment for 15 years.

For the purposes of this section an offence is one of aggravated supply if the offender is an adult and—

- (i) the person to whom the thing is supplied is a minor;
- (ii) the person to whom the thing is supplied is an intellectually handicapped citizen;
- (iii) the person to whom the thing is supplied is within an educational institution;
- (iv) the person to whom the thing is supplied is within a correctional institution;

or

- (v) the person to whom the thing is supplied does not know he is being supplied with the thing.”.

7. Amendment of s. 8. Producing dangerous drugs. Section 8 of the Principal Act is amended by—

- (a) omitting paragraph (c) and substituting the following paragraph:—

“(c) In any other case where the dangerous drug is a thing specified in the First Schedule, imprisonment for life.”;

- (b) omitting paragraph (e) and substituting the following paragraph:—

“(e) In any other case where the dangerous drug is a thing specified in the Second Schedule, imprisonment for 15 years.”.

8. Amendment of s. 9. Possessing dangerous drugs. Section 9 of the Principal Act is amended by omitting paragraph (d) and substituting the following paragraph:—

“(d) In any other case where the dangerous drug is a thing specified in the First or Second Schedule, imprisonment for 15 years.”.

9. Amendment of s. 10. Possessing things. Section 10 of the Principal Act is amended by—

- (a) in subsection (2)—

(i) inserting after the words “any thing” the words “(not being a hypodermic syringe or needle)”;

(ii) omitting the words from and including the words “unless he is” to and including the words “subsections (3) and (4)”;

- (iii) omitting the last paragraph;

(b) omitting subsections (3) and (4) and substituting the following subsections:—

“(3) A person (other than a medical practitioner, pharmacist or person or member of a class of persons authorized so to do by the Minister for Health on the recommendation of the Director-General of Health and Medical Services) who supplies a hypodermic syringe or needle to another, whether or not such other person is in Queensland, for use in connexion with the administration of a dangerous drug commits an offence against this Act.

Penalty: Imprisonment for 2 years.

(4) (a) A person who has in his possession a thing being a hypodermic syringe or needle who fails to use all reasonable care and take all reasonable precautions in respect of such thing so as to avoid danger to the life, safety or health of another commits an offence against this Act.

Penalty: Imprisonment for 2 years.

(b) A person who has in his possession a hypodermic syringe or needle that has been used in connexion with the administration of a dangerous drug who fails to dispose of such hypodermic syringe or needle in accordance with the procedures prescribed by regulation commits an offence against this Act.

Penalty: Imprisonment for 2 years.

(5) A person found committing an offence defined in this section may be arrested without warrant by a police officer.”.

10. New s. 10A. The Principal Act is amended by inserting after section 10 the following section:—

“10A. Possessing suspected property. (1) A person who has in his possession any property (other than a dangerous drug, hypodermic syringe or needle) reasonably suspected of—

- (a) having been acquired for the purpose of committing an offence defined in this Part;
 - (b) having been used in connexion with the commission of such an offence;
 - (c) having been furnished or intended to be furnished for the purpose of committing such an offence;
 - (d) being the proceeds of such an offence;
 - (e) having been acquired with the proceeds of such an offence;
- or
- (f) being property into which the proceeds of such an offence have, in some other manner, been converted,

who does not give an account satisfactory to the court of how he lawfully came by or had such property in his possession commits an offence against this Act.

Penalty: Imprisonment for 2 years.

A person found committing an offence defined in this subsection may be arrested without warrant by a police officer.

(2) Where the person declares that he received the property from some other person or that he was employed as a carrier, agent or servant to convey the property to some other person, the court may cause every such person and also, if necessary, every other person through whose possession the property has passed to be brought to the same or another court and examined concerning the property.

(3) A person brought to the court pursuant to subsection (2) who appears to the court to have had possession of the property and to have had reasonable cause to believe the same—

- (a) to have been acquired for the purpose of committing an offence defined in this Part;
 - (b) to have been used in connexion with the commission of such an offence;
 - (c) to have been furnished or intended to be furnished for the purpose of committing such an offence;
 - (d) to be the proceeds of such an offence;
 - (e) to have been acquired with the proceeds of such an offence;
- or
- (f) to be property into which the proceeds of such an offence have, in some other manner, been converted,

commits an offence against this Act.

Penalty: Imprisonment for 2 years.

(4) For the purpose of proving the possession of any property it is sufficient to show that the defendant has, either alone or jointly with some other person, aided in concealing the property or disposing of it.”

11. Amendment of s. 13. Certain offences may be dealt with summarily. Section 13 of the Principal Act is amended by—

(a) in subsection (1), inserting after the word and expression “or 12” the words “or an attempt to commit any such crime”;

(b) in subsection (2)—

(i) inserting after the word and expression “section 7” the words “or an attempt to commit any such crime”;

(ii) inserting after the words “charge of the crime” the words “or an attempt to commit any such crime”.

12. Amendment of s. 25. Interception warrant. Section 25 of the Principal Act is amended by—

(a) in paragraph (a), inserting after the words “listening device” the words “or a visual surveillance device or both”;

(b) in paragraph (b), inserting after the words “listening device” the words “or record and monitor visual images by means of the visual surveillance device, or both”.

13. Amendment of s. 26. Emergency permit. Section 26 of the Principal Act is amended by—

(a) in paragraph (a), inserting after the words “listening device” the words “or a visual surveillance device or both”;

(b) in paragraph (b), inserting after the words “listening device” the words “or record and monitor visual images by means of the visual surveillance device, or both”.

14. Amendment of s. 27. Power of entry. Section 27 of the Principal Act is amended by inserting after the words “listening device” the words “or a visual surveillance device or both”.

15. New s. 29A. The Principal Act is amended by inserting after section 29 the following section:—

“**29A. Commissioner to report.** Where a judge of the Supreme Court orders that there be issued an interception warrant or emergency permit the police officer who made the application shall, at the first reasonable opportunity, furnish a written report upon the exercise of the power and the circumstances in which it was exercised to the Commissioner of Police and the Commissioner shall, at the first reasonable opportunity, bring the report to the notice of the Minister.”.

16. Amendment of s. 30. Interpretation. Section 30 of the Principal Act is amended in subsection (1), in paragraph (b), by omitting the words from and including the words “in relation to” to and including the expression “\$25 000” and substituting the words “in relation to an application either for the forfeiture of dangerous drugs to any value or for the forfeiture or restraint of personal property (other than an estate or interest in land) not exceeding \$25 000 or to both such applications”.

17. Amendment of s. 32. Forfeiture of dangerous drugs. Section 32 of the Principal Act is amended in subsection (1) by inserting after the words “made to it” the words “(which application may be made ex parte)”.

18. New s. 44A. The Principal Act is amended by inserting after section 44 the following section:—

“**44A. Attempt to commit offence.** (1) In lieu of section 536 of *The Criminal Code* the following provision shall apply:—

“A person who attempts to commit a crime defined in Part II is deemed to be guilty of the intended crime and is liable to the same punishment and forfeiture as a person who commits the intended crime.”.

(2) Where a person is charged summarily with a crime defined in Part II that person may be convicted in those summary proceedings of attempting to commit that crime.”.

19. Amendment of s. 47. Source of information not to be disclosed. Section 47 of the Principal Act is amended in subsection (1) by—

(a) omitting the words from and including the words “In any proceedings” to and including the words “in Part II” and substituting the words “Where an informer supplies information to a police officer in respect of the commission of an offence defined in Part II then in any proceedings whether under this Act or otherwise”;

