

DRUGS MISUSE ACT AMENDMENT ACT

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Queensland



ANNO TRICESIMO NONO

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No. 9 of 1990

An Act to amend the Drugs Misuse Act 1986-1989 to vary
punishment, and for related purposes

[ASSENTED TO 25TH MAY, 1990]

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 1990*.

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

(2) Except as provided by subsection (1), the provisions of this Act, or those provisions as may be specified, commence on a day or days to be appointed by Proclamation.

3. Citation. (1) In this Act the *Drugs Misuse Act 1986-1989* is referred to as the Principal Act.

(2) The Principal Act, as amended by this Act, may be cited as the *Drugs Misuse Act 1986-1990*.

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

(a) in subsection (1) inserting after the definition “medical practitioner” the following definition—

““Minister” means the Minister of the Crown who is charged with the administration of this Act: The term includes a Minister of the Crown who is temporarily performing the duties of the Minister;”;

(b) deleting subsection (4).

5. Amendment of s. 5. Trafficking in dangerous drugs. Section 5 of the Principal Act is amended in subsection (1) by—

(a) deleting from paragraph (a) the words “life which cannot be mitigated or varied by a court” and inserting the words “25 years”;

(b) deleting from paragraph (b) the word “life” and inserting the words “20 years”.

6. Amendment of s. 6. Supplying dangerous drugs. Section 6 of the Principal Act is deleted and the following section is inserted:—

“**6. Supplying dangerous drugs.** (1) 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 25 years;
 - (b) if the dangerous drug is a thing specified in the First Schedule and the provisions of paragraph (a) do not apply, imprisonment for 20 years;
 - (c) if the dangerous drug is a thing specified in the Second Schedule and the offence is one of aggravated supply, imprisonment for 20 years;
 - (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.
- (2) For the purposes of this section, an offence is one of aggravated supply if the offender is an adult and—
- (a) the person to whom the thing is supplied is a minor;
or
 - (b) the person to whom the thing is supplied is an intellectually handicapped citizen;
or
 - (c) the person to whom the thing is supplied is within an educational institution;
or
 - (d) the person to whom the thing is supplied is within a correctional institution;
or
 - (e) the person to whom the thing is supplied does not know he is being supplied with the thing.”.

7. Amendment of s. 7. Receiving or possessing property obtained from trafficking or supplying. Section 7 of the Principal Act is amended by—

- (a) in subsection (1) deleting the word “life” and inserting the words “20 years”;
- (b) in subsection (2) deleting the word “life” and inserting the words “20 years”.

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

- (a) in paragraph (a) deleting the words “life, which cannot be mitigated or varied by a court” and inserting the words “25 years”;
- (b) in paragraph (b) deleting from subparagraph (i) the word “life” and inserting the words “20 years” and deleting from subparagraph (ii) the words “life, which cannot be mitigated or varied by a court” and inserting the words “25 years”;

(c) in paragraph (c) deleting the word “life” and inserting the words “20 years”;

(d) in paragraph (d) deleting the word “life” and inserting the words “20 years”.

9. Amendment of s. 9. Possessing dangerous drugs. Section 9 of the Principal Act is amended by—

(a) in paragraph (a) deleting the words “life, which cannot be mitigated or varied by a court” and inserting the words “25 years”;

(b) in paragraph (b) deleting from subparagraph (i) the word “life” and inserting the words “20 years” and in subparagraph (ii) deleting the words “life, which cannot be mitigated or varied by a court” and inserting the words “25 years”;

(c) in paragraph (c) deleting the word “life” and inserting the words “20 years”.

10. Amendment of s. 19. Police officers to supply information. Section 19 of the Principal Act is amended by inserting after subsection (3) the following subsection—

“(4) Where a police officer removes, seizes or retains any thing pursuant to the provisions of this Part he shall, wherever practical, deliver or cause to be delivered within a reasonable time to—

(i) the owner of the thing;

or

(ii) if the owner of the thing is unknown, the person from whose possession the thing was removed, seized or retained;

a written receipt containing details of—

(iii) the name, rank, station and number (if any) in the Police Force of the police officer removing, seizing or retaining the thing;

(iv) the address of the police establishment or other place in which the thing removed, seized or retained is or is to be held;

(v) a brief description of the thing.”.

11. Amendment of s. 25. Interception warrant. Section 25 of the Principal Act is amended by deleting the word “life” and inserting the words “20 years”.

12. Amendment of s. 32. Forfeiture of dangerous drugs. Section 32 of the Principal Act is amended by inserting after subsection (5) the following subsection—

“(6) Upon forfeiture to the Crown in accordance with this section such thing is freed from all other claims of title, property or interest and may be

(a) destroyed or disposed of;

or

(b) retained by any person

in accordance with the written direction of the Minister.”.

13. Amendment of s. 49. Certain proceedings relating to sentence may be determined in chambers. Section 49 of the Principal Act is amended in subsection (1) by deleting the words “(other than an offence punishable by imprisonment for life which punishment cannot be mitigated or varied by a court)”.

14. Amendment of s. 54. Power to fine. Section 54 of the Principal Act is amended by deleting subsections (1) and (2) and inserting the following subsections—

“(1) A person liable to imprisonment for an offence defined in this Act may be ordered to pay a fine in addition to or instead of the imprisonment to which he is liable.

(2) A fine to which a person is liable under subsection (1) shall not exceed—

(a) 5 000 penalty units where the offence is one of which the person is convicted on indictment;

or

(b) 100 penalty units where the offence is one of which the person is convicted in summary proceedings.”.

15. New s. 61. The Principal Act is amended by inserting after section 60 the following section—

“**61. Previously sentenced persons.** (1) Where a person has been convicted of an offence under the *Drugs Misuse Act 1986-1989* and sentenced to imprisonment for life, then, as from the date of commencement of the *Drugs Misuse Act Amendment Act 1990*, such person may, within a period of 3 months from such date of commencement or with special leave of the court, lodge an application with the Supreme Court to be resentenced on the offence for which that person was convicted.

(2) Upon such application being lodged the Supreme Court must sentence such person under the Criminal Code as if they had been convicted for the same or substantially the same offence under the *Drugs Misuse Act 1986-1990* and in so doing the Court is to act upon—

(a) all relevant material admitted before the court during the previous trial, conviction and sentence of that person;

and

- (b) such other material, relevant to the question of sentence, as may then be led before the court either by that person or the Crown.

(3) Upon the court pronouncing sentence under this section, such new sentence is to be treated as if it had commenced upon the date upon which the person was originally convicted and that person is then to be eligible for any remission of sentence or right to apply for parole or other release from imprisonment under the *Corrective Services Act 1988* as if that person had originally been sentenced on that date to such new sentence.

Provided that no cause of action or suit exists against the Crown in relation to any period of imprisonment which that person may then have actually served in excess of the period of imprisonment that person would have served if originally sentenced under the new sentence.

(4) Upon the new sentence being determined in accordance with this section, the convicted person and the Attorney-General possess at the date of such determination all rights of appeal under the Criminal Code in relation to that new sentence as if the new sentence was the sentence originally imposed on that convicted person.”