

# **DRUGS MISUSE AMENDMENT BILL 1995**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **OBJECTIVES OF THE LEGISLATION**

The objective of the legislation is to amend the *Drugs Misuse Act 1986* to allow recording of particulars of persons and companies purchasing chemicals which can be used to manufacture illicit drugs. This will enable police and environmental health officers to identify the purchasers of certain prescribed chemicals. The recording of identification particulars will assist in tracing the supply of chemicals and will provide a deterrent to their purchase by persons involved in illicit drug manufacture.

#### **REASONS FOR THE BILL**

The abuse of amphetamine drugs is a growing problem throughout Australia. In addressing this increase in drug abuse, the National Working Party on Amphetamine Control recommended that a uniform approach be adopted by all Australian States and Territories in relation to the implementation of legislation to control chemicals which can be used to produce illicit drugs. Such chemicals are referred to as controlled substances.

#### **CONSULTATION**

Consultation has been undertaken with Queensland representatives of several relevant industry organisations; the Australian Veterinary Association Ltd; the Pharmacy Guild of Australia (Queensland Branch); the Australian Medical Association (Queensland Branch); and relevant government departments.

In general, all parties to the consultation process have indicated their support for the proposed amendments.

## NOTES ON PROVISIONS

This is a Bill for an Act to amend the *Drugs Misuse Act 1986* and for other purposes.

*Clause 1* provides for the short title of the Bill.

*Clause 2* provides for the commencement of the Bill.

*Clause 3* states the *Drugs Misuse Act 1986* is the principal legislation amended by this Act.

*Clause 4* applies sections 43K and 43L (procedure after thing seized) to anything removed, seized or retained under “Part 3—Powers to Search etc.” of the *Drugs Misuse Act 1986*. Basically, Part 3 provides, amongst other things, a police officer with the power to search any vehicle and any thing found in a vehicle, on a person, or in a place, and seize anything that may afford evidence of an offence under Part 2, or be liable for forfeiture under Part 5.

This clause allows a person who would be entitled to the seized thing if it was not in a police officer’s possession, to inspect it and, if it is a document, to take extracts from or make copies of it. The police officer may also make copies or extracts of documents which are seized. The police officer must return the seized thing at the end of 6 months unless prosecution proceedings have commenced, or immediately if the officer stops being satisfied that its retention is required as evidence.

This clause does not however apply to sections 14(7), 15(8), 15(9), and 18(5) of the *Drugs Misuse Act 1986*. These provisions relate to return of seized items, where grounds of seizure was possible forfeiture under Part 5, and secondly circumstances where clothing may be seized for examination.

*Clause 5* inserts a new Part 5A—“Controlled Substances Information Requirements” and provides for new sections 43A to 43V.

## **PART 5A—CONTROLLED SUBSTANCES INFORMATION REQUIREMENTS**

Section 43A defines the terms for the Part. Those terms are “authorised officer”, “controlled substance”, “environmental health officer”, “executive officer”, “obstruct”, “official identity card”, “prescribed documents”, “register”, “relevant transaction”, and “supply”.

Section 43B limits the application of the provisions of Part 5A to the supply of a controlled substance under a relevant transaction.

“Controlled substance” is defined in section 43A to mean a substance listed in Schedule 6. The substance loses its character as a controlled substance when it is compounded with other substances not included in Schedule 6.

“Relevant transaction” is defined in section 43A. This definition refers to the meaning given under section 43C.

Section 43C provides a relevant transaction for the supply of a controlled substance is a transaction for the supply of the substance by a person to anyone else in the ordinary course of the person’s business. The meaning of a relevant transaction may also be expanded by Regulation.

Section 43D sets out the requirements the supplier of a controlled substance under a relevant transaction must satisfy when supplying a controlled substance to a recipient. These requirements include: the obtaining and keeping of prescribed documents; the obtaining of evidence of the recipient’s identity; and the keeping of a register of the supply, or any loss or theft of a controlled substance. However, this section is subject to section 43F, which deals with the liability of an employee of the supplier. Section 43D in effect allows for the monitoring of relevant transactions.

Section 43E provides that the owner or a person in possession of a controlled substance, for the purpose of supply under a relevant transaction, must report a loss or theft of that substance to a police officer within 2 days of discovery. However this section is subject to section 43F, which deals with liability of an employees.

Section 43F sets out the employee’s liability for an intentional breach or recklessness in providing controlled substance information requirements, when committed in the ordinary course of that persons employment.

Controlled substance information requirements refer to the supply of controlled substances under relevant transactions (section 43D), and reporting loss or theft of controlled substances (section 43E).

To be an employee to whom this section applies, the employee must be a person who in the ordinary course of employment, has the task of complying with the controlled substance information requirements for their employer.

In effect, this section places liability upon the person who is physically responsible for ensuring that the necessary details are recorded when a relevant transaction takes place. The employee will not be liable if the failure to record details was the result of an honest and reasonable mistake.

Section 43G provides for an offence, to give in an order for supply, a false name or address, or to give false evidence of the identity of the person to be supplied.

This section is aimed at the non-legitimate purchaser who provides false information in order to escape the monitoring requirements of this Part.

Section 43H requires the authorised officer when exercising power under this Part, to produce an official identity card for inspection, or to display the official identity card so that it is clearly visible. Where production or display of an official identity card is impractical, it must be done at the first reasonable opportunity. This section does not apply to a police officer in uniform.

This will enable suppliers of controlled substances to satisfy themselves that the person is in fact an authorised officer under the Act.

Section 43I sets out the authorised officer's powers of entry and inspection. Entry may be made into parts of the business premises open to the public at a time when that part is in fact open to the public, or with the consent of the person to any other part of the premises. The power of entry does not bestow any greater power of entry upon an authorised officer than that which exists for any other member of the public.

When on the supplier's premises, the authorised officer may require the production of the register or other prescribed document, and may inspect, take extracts from, and make copies of the register or prescribed documents. The authorised officer may also inspect, examine, photograph or film anything stored at the premises that may be a controlled substance. In the process of exercising powers under this Part an authorised officer

may require reasonable help from the supplier. Failure by the supplier to comply with this section without reasonable excuse constitutes an offence.

Section 43J provides when an authorised officer may seize things that are evidence of the commission of an offence against this Part.

Section 43K requires that an authorised officer who seizes a thing, give a receipt which generally describes each thing seized and the condition of each thing, to the person from whom the thing was seized as soon as practicable after the seizure of the thing. The section further provides that if it is not practical for the authorised officer to give a receipt to the person from whom the thing was seized, then the officer must leave the receipt in a conspicuous and secure place at the place of seizure.

Section 43L permits a person who would normally be entitled to a thing, except for its seizure under section 43J, to inspect it. If it is a document, the person normally entitled to the document may take extracts from or make copies of it.

The authorised officer may also make copies or extracts of documents which are seized.

The authorised officer must return the seized thing at the end of 6 months unless prosecution proceedings have commenced, or immediately if the officer stops being satisfied that its retention as evidence, is required.

Section 43M provides that if the owner of a seized thing (pursuant to section 43J) is convicted of an offence for which the thing seized was retained as evidence, the court may order its forfeiture to the State.

Section 43N provides that a thing forfeited under section 43L may be destroyed or disposed of as directed by the Commissioner.

Section 43O provides that an authorised officer may require a person found committing an offence against this Part, or a person suspected on reasonable grounds of having committed an offence against this Part, to state that person's name and address.

The authorised officer must caution the person, that failure to state name or address without reasonable excuse is an offence. The authorised officer may also require evidence of correctness of name or address, if it is suspected on reasonable grounds, that the name or address is false. It will be a defence, if the person has a reasonable excuse for not complying with

the requirement to state name or address or provide evidence of correctness thereof.

If the person required to give a name or address is also charged with other offences under this Part for which they are later exonerated, then they will also be exculpated from an offence under this section.

Section 43P provides that a police officer may arrest a person when that person fails to provide evidence of the correctness thereof, but only where a proceeding against the person by way of complaint and summons would not be effective.

Section 43Q provides for an offence when an authorised officer is obstructed in the execution of duty. This section does not restrict the use of powers by a police officer for “Assault, etc.” under the *Police Service Administration Act*.

Section 43R relates to responsibilities for acts or omissions of representatives of suppliers.

“Representatives” and “State of Mind” are defined in the provision. “Representatives” means an executive officer, employee or agent of the corporation, or an employee or agent of an individual. “State of mind” is defined to include the person’s knowledge, intention, opinion, belief or purpose and the person’s reasons for the intention, opinion, belief or purpose.

Where in a proceeding for an offence against this Part it is relevant to show a person’s state of mind for an act or omission, it is enough to show that the act or omission was done within the scope of the representative’s actual or apparent authority and the representative had the state of mind.

Actual and apparent authority are given their ordinary meaning. For example actual authority may be shown by expressed verbal or written authority to do something on behalf of the corporation or individual. It would also extend to incidental powers of the expressed power. Apparent authority is where the corporation or individual by their conduct represents to a third party that the representative has authority, for example, to sell the corporation’s or individual’s controlled substances.

The corporation or individual would be estopped from denying to that third party the representatives “apparent” authority, unless the corporation or individual took all reasonable steps to prevent the act or omission.

Section 43S requires executive officers of a body corporate to take action to ensure that the corporation complies with this Part.

The corporation's executive officers become liable when the corporation fails to comply with this Part.

Evidence that a corporation has been convicted for an offence against a provision in this Part is evidence that the corporation's executive officers have committed an offence of failing to ensure the corporation complies with the relevant provision. This would usually mean that a successful prosecution of the corporation would be obtained before pursuing a prosecution of the corporation's executive officers.

A defence is available to an executive officer should that person, being in a position to influence the conduct of the corporation in relation to the offence, take all reasonable steps to ensure that the corporation complies with the provisions in this Part.

It is also a defence if the executive officer where that person is not in a position to influence the corporation in relation to the offence.

In effect an executive officer who is in a position to do something about preventing the corporation from committing an offence against this Part will have a defence if this person takes such action. Likewise should the executive officer not be in a position to do something about preventing the corporation from committing an offence against this Part, then that person too will have a defence.

Section 43T provides for compensation from the State, where the exercise of a power under this Part has caused an expense or loss. Compensation must be just in the particular case before it is ordered by a court of competent jurisdiction.

Section 43U provides an evidentiary provision to assist with the identification of controlled substances. Where the container containing the substance has a label upon it indicating that substance is a the controlled substance and an authorised officer believes (and the court considers such belief reasonable) that the container contained a controlled substance, then in the absence of evidence to the contrary or the notice served under section 43U, the substance will be proved to be a controlled substance.

This saves the costly and time consuming procedure of having to analyse a substance prior to a court proceeding and having to call the analyst to give evidence of the character of the substance.

Section 43V relates to a notice to challenge the evidentiary provision (section 43T) relating to identification of the a controlled substance. The section sets out the procedure to be adopted to inform the person charged or summonsed with an offence under this Part of the action which that person must take, should they intend to challenge that a substance claimed in the charge to be a controlled substance was a controlled substance.

*Clause 6* inserts an amendment to section 56 (Analyst's certificate) to include an application made under section 32(1) (Forfeiture of dangerous drugs) in "proceedings" for an offence. This will enable an analyst's certificate to be used in a application for forfeiture of a dangerous drug.

*Clause 7* provides for power to make regulations.

*Clause 8* inserts a new Schedule 6 in the *Drugs Misuse Act 1986*, which provides the list of controlled substances for the purposes of Part 5A.

## **SCHEDULE 6—CONTROLLED SUBSTANCES**

*Clause 9* repeals the *Drugs Misuse Act Amendment Act 1990*.



**SCHEDULE—MINOR AMENDMENTS**

*Clause 1* omits redundant definitions of “medical practitioner”, “Minister” and “police officer” from section 4(1) of the *Drugs Misuse Act 1986*. These terms are defined in section 36 of the *Acts Interpretation Act 1954*.

*Clause 2* provides for the definition of the terms “approved form” and “police officer” in section 4(1) of the *Drugs Misuse Act 1986*.

*Clause 3* omits from section 10(3) of the *Drugs Misuse Act 1986* the “Minister for Health on the recommendation of the Director-General of Health and Medical Services” and inserts “Minister administering the *Health Act 1937*”, in accordance with modern drafting practices.

*Clauses 4 and 5* are consequential amendments to the amendment in *Clause 13*. They omit references to the term “form prescribed by regulation” and insert the term “approved form”.

*Clause 6* amends the classes of persons who may issue certificates relating to court orders on forfeiture of property to include the registrar of a Children’s Court constituted by a Judge, should that court makes the order. This reflects the structure under the *Childrens Court Act 1992*.

*Clauses 7 to 10* replace penalty provisions in various offence provisions in the Act to reflect section 181A of the *Penalties and Sentences Act 1992*.

*Clause 11* amends section 52A of the *Drugs Misuse Act 1986* (Prescribed persons permitted to receive and dispose of dangerous drugs). Under the Act, a prescribed person or class of persons are authorised by the Minister for Health. The amendment will in effect substitute the Minister for Health with the Minister administering the *Health Act 1937*. This reflects modern drafting practice.

*Clause 12* amends section 54(4)(a) and (b) of the *Drugs Misuse Act 1986* with respect to persons that may issue court orders for fines to include the register of the court if the court making the order is a District Court or a Children’s Court constituted by a Judge. This reflects the structure under the *Childrens Court Act 1992*.

*Clause 13* inserts a provision into the *Drugs Misuse Act 1986* which allows the Chief Executive to approve forms. This reflects modern drafting practice.

*Clause 14* omits section 61 of the *Drugs Misuse Act 1986*. This section referred to re-sentencing of persons who have been convicted and given life sentences. The section effectively had a life of 3 months from 9 August 1990.