

DRUGS MISUSE AMENDMENT BILL 1996

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The legislation seeks to amend the *Drugs Misuse Act 1986* (the Act). The necessity for these amendments became apparent as a result of a recent incident on the Gold Coast in which a number of drug users were hospitalised. These persons had ingested the drug “Fantasy”, which is in fact Gamma Hydroxybutyrate (GHB). This drug is not presently listed as a dangerous drug under the Act.

This incident highlighted the fact that the Act has some problems in respect to newly identified ‘designer drugs’ and the culture which surround their use.

For instance GHB, while clearly a dangerous substance, is not recognised in the Act as a dangerous drug. Its illicit production and possession is therefore not regulated by the Act. Other recently identified drugs popular in the dance party culture are ‘nexus’ (4-bromo-2,5-dimethoxyphenethylamine) and ‘Ketamine’. These drugs are in a similar position under the Act to GHB.

It has also been recently identified that the chemical hypophosphorous acid is now being widely used in the production of amphetamines. When part 5A of the Act was originally drafted it was not generally known that this chemical could be used as an amphetamine precursor.

The circumstances of this matter have also highlighted the limitations on government to urgently nominate a newly identified substance as a dangerous drug. In its present construction, the Act includes a number of schedules which list substances which are recognised as dangerous drugs. In this format an amendment to the Act is required to include a newly identified substance as a dangerous drug.

This creates a difficulty in urgent circumstances, and the legislation seeks to overcome this problem. The mechanism to be used to achieve this will be to remove the schedules from the Act and place them in the *Drugs Misuse Regulation 1987* (the regulation).

A final objective relates to the proliferation of designer drugs and their use among young people. This appears particularly the case among the dance party and rave party culture. A range of reasons have been offered in explanation of this, including the comparative ease with which these drugs can be produced, and the relatively small costs involved in their production. For example, the means of producing certain designer drugs have recently appeared on the internet and became available to any computer user who has access to the internet.

In summary, the policy objectives pursued by this legislation are to:

- recognise GHB, ‘nexus’ and ketamine as dangerous drugs;
- recognise hypophosphorous acid as a controlled substance;
- create an offence to distribute or have possession of the instructions for producing a dangerous drug;
- create an ability to add, as a matter of urgency, newly identified substances to the schedules of dangerous drugs.

Means of Achieving Policy Objectives

The objectives sought will be achieved entirely by legislative amendment. In the case of recognising substances as dangerous drugs or a controlled substance the amendment will entail inserting the substances in the relevant schedules to the Act.

In the case of creating an offence for distributing or possessing the instructions for producing a drug, the amendment will entail the insertion of a new section in the Act.

The ability to quickly add substances to the schedules will be achieved by moving the schedules out of the Act to the Regulation.

Alternative Means of Achieving Policy Objectives

All objectives sought may only be achieved by legislative solutions. No alternative means of achieving the policy objectives presents itself.

Consistency with Fundamental Legislative Principles

The proposed legislation has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

Consultation Conducted in Development of the Bill

Due to the urgency which accompanies this legislation, consultation has, of necessity, been limited. Consultation has been undertaken with the Police Service Drug Investigation Squad and the Government Chemical Laboratory.

NOTES ON PROVISIONS**Short title**

Clause 1. Specifies the short title of the proposed Act.

Act amended

Clause 2. Identifies the Act being amended as the *Drugs Misuse Act 1986*. In these notes this is referred to as the principal Act.

Amendment of Section 4 (Interpretation)

Clause 3 (1). Inserts the words “Drugs Misuse Regulation 1987” into the definition of dangerous drug. This has the effect of changing the term “...a thing specified in Schedule 1 or 2 ...” to “...a thing specified in the Drugs Misuse Regulation 1987, Schedule 1 or 2”.

A later amendment in this Bill relocates the schedules from the principal Act and places them in the Regulation. The reasons for this are discussed elsewhere. Doing so, however, creates a minor difficulty.

In Queensland legislation the term ‘schedule’ commonly refers to schedules found in an Act. For this reason it is necessary to make it quite clear that the schedules referred to in the principal Act are in fact the schedules which now appear in the Regulation. The insertion of the words

“the Drugs Misuse Regulation 1987” before each occurrence of the word ‘schedule’ achieves this end.

Clause 3(2). Inserts the term “Drugs Misuse Regulation 1987” before a mention of the schedules. See note to clause 3(1).

Amendment of s 5 (Trafficking in dangerous drugs)

Clause 4 . Inserts the term “Drugs Misuse Regulation 1987” before a mention of the schedules. See note to clause 3(1).

Amendment of s 6 (Supplying dangerous drugs)

Clause 5. Inserts the term “Drugs Misuse Regulation 1987” before a mention of the schedules. See note to clause 3(1).

Amendment of s8 (Producing dangerous drugs)

Clause 6. Inserts the term “Drugs Misuse Regulation 1987” before a mention of the schedules. See note to clause 3(1).

Insertion of new s 8A (Publishing or possessing instructions for producing dangerous drug)

Clause 7. Inserts a new section which creates an offence of publishing or possessing the instructions for producing a dangerous drug. In this section wide definitions of the terms “document and “publish” are used so as to encompass any means of passing information from one person to another.

The offence created in this section is a crime but may be dealt with summarily by virtue of amendments to section 13 of the principal Act.

Amendment of s 9 (Possessing dangerous drugs)

Clause 8. Inserts the term “Drugs Misuse Regulation 1987” before a mention of the schedules. See note to clause 3(1).

Amendment of s 13 (Certain offences may be dealt with summarily)

Clause 9(1). Amends the provisions of section 13(1) and (2)(c) of the principal Act to clarify the meaning of the two sections. The sections are intended to allow crimes which carry no more than a 15 year penalty to be dealt with in a Magistrates Court. When this occurs, the offender becomes liable to a penalty of only two years imprisonment. As the sections are presently worded it is unclear if the intent of the provision is to provide for a 15 year maximum or minimum. This amendment is included in order to clarify this.

Clause 9(2). Removes a phrase which becomes unnecessary as a result of the creation of the new section 13(4) of the principal Act. (see notes to clause 9(4)).

Clause 9(3). Removes a phrase which becomes unnecessary as a result of the creation of the new section 13(4) of the principal Act. (see notes to clause 9(4)).

Clause 9(4). Inserts two new subsections into section 13 of the principal Act. New subsection (3) allows that when a person is charged with an offence under section 8A, proceedings can be taken in a Magistrates Court, rather than in the Supreme Court. This is the section creating the offence of publishing or possessing the instructions for the production of a dangerous drug.

New subsection (4) provides that when a person is dealt with summarily for one of the crimes defined in this section, the maximum penalty becomes 2 years imprisonment.

Amendment of s 43A (Definitions)

Clause 10. Inserts the term “Drugs Misuse Regulation 1987” before a mention of the schedules. See note to clause 3(1).

Amendment of s 51 (Defence of supply of lawfully prescribed drug in a small quantity)

Clause 11. Inserts the term “Drugs Misuse Regulation 1987” before a mention of the schedules. See note to clause 3(1).

Amendment of s 52A (Prescribed persons permitted to receive and dispose of dangerous drugs)

Clause 12. Inserts the term “Drugs Misuse Regulation 1987” before a mention of the schedules. See note to clause 3(1).

Amendment of s 59 (Regulations)

Clause 13(1). Changes the heading of section 59 of the principal Act to conform with the heading which is now customarily used in Queensland statutes for provisions of this type.

Clause 13(2). The schedules which now form part of the principal Act will be relocated to the Drugs Misuse Regulation 1987. The present regulation making power would not be sufficient to amend the regulation in its proposed format to the extent of adding or removing substances from the schedules. This clause inserts three new subsections which provide the authority to do this.

Clause 13(3). Renumbers section 59(2)(d) of the principal Act in consequence of the sections inserted by clause 13(2).

Insertion of new ss 60 and 61

Clause 14. Inserts a new section 60 which exempts the Regulation from part 7 of the *Statutory Instruments Act 1992*. Part 7 of that Act provides for the staged automatic expiry of subordinate legislation. In the normal course of events, this part would cause the Regulation to automatically expire 10 years after its commencement. This amendment prevents this from occurring.

This clause also inserts a new section 61 which declares that the schedules, once relocated to the Regulation, form part of the Regulation. This provision is included so as to make absolutely clear that the schedules no longer form part of the principal Act.

Amendment of sch 1

Clause 15. Amends schedule 1 to clarify that the sections identified therein are sections of the principal Act, not of the Regulation.

Amendment of sch 2

Clause 16(1). Amends schedule 2 to clarify that the sections identified therein are sections of the principal Act, not of the Regulation.

Clause 16(2). Inserts the substances 4-bromo-2,5-dimethoxyphenethylamine, gamma hydroxybutyric acid and ketamine into schedule 2. This has the effect of listing those substances as dangerous drugs. They are inserted in schedule 2 so as to give them a status similar to drugs such as amphetamines, barbiturates and morphine.

Amendment of sch 3

Clause 17(1). Amends schedule 3 to clarify that the sections identified therein are sections of the principal Act, not of the Regulation.

Clause 17(2). Inserts 4-bromo-2,5-dimethoxyphenethylamine and gamma hydroxybutyric acid into schedule 3 and indicates a weight of 2.0 grams for each. This has the effect of subjecting persons to a greater penalty when the offence committed involves an amount of the drug in excess of 2.0 grams. For example a person convicted of an offence of unlawfully possessing gamma hydroxybutyric acid becomes liable to a penalty of 15 years imprisonment. If the amount exceeds 2.0 grams, the penalty becomes 20 years imprisonment.

Amendment of sch 4

Clause 18. Amends schedule 4 to clarify that the sections identified therein are sections of the principal Act, not of the Regulation.

Amendment of sch 5

Clause 19(1). Amends schedule 5 to clarify that the section identified therein is a section of the principal Act, not of the Regulation.

Clause 19(2). Inserts ketamine into schedule 5. This has the effect of bringing the drug into the scheme of section 51 of the principal Act. This means that possession of ketamine under some limited circumstances, such as by prescription, will be lawful.

Amendment of sch 6

Clause 20(1). Amends schedule 6 to clarify that the section identified therein is a section of the principal Act, not of the Regulation.

Clause 20(2). Inserts hypophosphorous acid into schedule 6. This has the effect of bringing this chemical into the list of amphetamine precursors and subjecting its sale and supply to reporting requirements.

Relocation of schs 1-6

Clause 21. Relocates schedules 1 to 6 from the principal Act to the Drugs Misuse Regulation 1987.