

DRUGS MISUSE AMENDMENT BILL 2000

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The proposed Bill seeks to establish a new legislative scheme for unlawful activity with Performance and Image Enhancing Drugs (PIEDs), principally Anabolic Androgenic Steroids, Flunitrazepam (commonly known as Rohypnol) and Ephedrine. The Bill does this by including these drugs in a new schedule 2A of the *Drugs Misuse Act 1986* (DMA).

Reasons for the objective

The misuse of PIEDs has become a topical issue for discussion with the onset of the Sydney 2000 Olympic Games. The Australian Olympic Committee and the Model Criminal Code Officers Committee (MCCOC) both recommended the inclusion of PIEDs in similar legislation to that dealing with dangerous or controlled drugs. It was also considered that the introduction of offences of trafficking, manufacture and possession of Rohypnol and Ephedrine are necessary to deter offenders using Rohypnol as a 'date rape' drug before an offence is committed, reduce the trade and use of Ephedrine as a stimulant in the transport industry and provide a scheme for the confiscation of profits gained from the illegal sale of Ephedrine.

Means of Achieving Policy Objectives

The objectives are achieved by amending relevant provisions of the DMA, *Drugs Misuse Regulation 1987* (Drugs Regulation) and *Health (Drugs and Poisons) Regulation 1996* (Health Regulation).

Estimated Cost of Implementation for Government

There are no significant financial considerations. However, there will be some general financial implications arising from increased prosecutions, evidentiary analysis of 2A drugs and the possibility of increased numbers of offenders receiving a custodial sentence. It is expected that the impact of these issues will be minimal due to the limited size of the user groups, the inclusion of Schedule 2A drugs in the evidentiary provisions of the DMA and the effect of the Government's drug diversion strategies.

Consistency with Fundamental Legislative Principles

This Bill does not breach fundamental legislative principles.

Consultation conducted in Development of the Bill

Consultation has been undertaken with relevant industry organisations including the Australian Veterinary Association Ltd, the Pharmacy Guild of Australia (Queensland Branch) and the Australian Medical Association (Queensland Branch) as well as relevant Government departments.

There was agreement by all parties consulted with respect to the amendments. In particular, the veterinary and medical associations were very supportive of the introduction of increased penalties for persons misusing Schedule 2A drugs.

NOTES ON PROVISIONS**Short title**

Clause 1 specifies the short title of the proposed Act.

Act amended

Clause 2 identifies the DMA as the Act being amended.

Amendment of s 4 (Definitions)

Clause 3 amends section 4 definition of "dangerous drug" by including the drugs specified in Schedule 2A of the Drugs Regulation.

This clause also provides new definitions.

"Authorised health officer", with reference to the meaning in section 14.

"Official Identity card" means an identity card issued by the chief executive for health to an authorised officer which contains that officer's recent photograph and which identifies that person as an officer under the Health Act.

"Prescribed substances" means dangerous drugs specified in schedule 2A or controlled substances.

Amendment of s 4A (Salts, derivatives and stereo-isomers)

Clause 4 amends section 4A by including the dangerous drugs specified in Schedule 2A.

Amendment of s 5 (Trafficking in dangerous drugs)

Clause 5 provides a maximum penalty of five years imprisonment for an offence of unlawfully trafficking in a dangerous drug specified in Schedule 2A.

Amendment of s 6 (Supplying dangerous drugs)

Clause 6 provides a maximum penalty of five years imprisonment for an offence of unlawfully supplying a dangerous drug specified in Schedule 2A.

Amendment of s 7 (Receiving or possessing property obtained from trafficking or supplying)

Clause 7 amends both penalty provisions within section 7 of the DMA to provide a maximum penalty of five years imprisonment where an offence or act mentioned in subsection (1) relates to a dangerous drug that is a thing specified in Schedule 2A. A new term 'offence property' has been included for drafting purposes.

Amendment of s 8 (Producing dangerous drugs)

Clause 8 provides a maximum penalty of five years imprisonment for an offence for unlawfully producing a dangerous drug specified in Schedule 2A.

Amendment of s 8A (Publishing or possessing instructions for producing dangerous drugs)

Clause 9 provides a maximum penalty of two years imprisonment where the instructions relate to a thing specified in Schedule 2A.

Amendment of s 9 (Possessing dangerous drugs)

Clause 10 provides a maximum penalty of two years imprisonment for an offence for unlawfully possessing a dangerous drug specified in Schedule 2A.

Amendment of s 10 (Possessing things)

Clause 11 provides a maximum penalty of two years imprisonment in circumstances where possession of the thing relates to a dangerous drug specified in Schedule 2A. The amendment is not intended to affect the operation of the offence section, only to introduce a lower penalty where the offence relates to the new schedule of dangerous drugs contained in schedule 2A of the Drugs Regulation.

A new subsection (6) clarifies subsection (1) in respect to determining which schedule of dangerous drug is relevant by identifying the link between the dangerous drug and the commission of a crime or purpose referred to in subsection (1).

This is included as, in some cases, the crimes contained in Part 2 of the DMA do not specifically refer to a dangerous drug but rather, to a crime that (generally for the application of a relevant penalty) involves a schedule of dangerous drug. An example is also included to further clarify this issue.

Amendment of s 11 (Permitting use of place)

Clause 12 provides a maximum penalty of two years imprisonment where the commission of a crime relates to a dangerous drug specified in Schedule 2A. The amendment is not intended to affect the operation of the offence section, only to introduce a lower penalty where the offence relates to the new schedule of dangerous drugs contained in schedule 2A of the Drugs Regulation.

A new subsection (2) clarifies subsection (1) in respect to determining which schedule of dangerous drug is relevant by identifying the link between the dangerous drug and the commission of a crime referred to in subsection (1).

This is included as, in some cases, the crimes contained in Part 2 of the DMA do not specifically refer to a dangerous drug but rather, to a crime that (generally for the application of a relevant penalty) involved a schedule of dangerous drug. An example is also included to further clarify this issue.

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

Clause 13 allows for all offences relating to a dangerous drug specified in Schedule 2A to be dealt with summarily.

Insertion of new pt 3

Clause 14 inserts a new Part 3 -Enforcement Powers of Authorised Health Officers and provides new sections 14 and 15.

Section 14 allows officers authorised in writing by the chief executive for health to enforce the provisions of section 9 of the DMA where it relates to a thing specified in Schedule 2A using the powers conferred upon them under section 132 of the Health Act. This provision is necessary as a consequence of the transfer of Schedule 2A drugs from the Health Regulation and the subsequent loss of ability for authorised health officers to investigate the unlawful possession of Schedule 2A drugs.

Section 15 provides that an authorised officer can exercise a power under part 3 only if that officer produces an official identity card for inspection and that identity card is displayed and clearly visible for the person to view. It further provides that where it is not practicable to comply with this requirement for any reason the authorised officer must produce the official identity card for inspection by the person at the first reasonable opportunity.

Amendment of s 43A (Definitions)

Clause 15 is a consequential amendment to the amendment in clause 14. It omits the terms "authorised officer" and "official identity card" from section 43A and relocates the terms "chief executive for health", "controlled substance" and "environmental health officer" to section 4.

Replacement of s 43H

Clause 16 omits the present section and, for consistency, replaces it with a complementary provision to that provided in section 15.

Amendment of ss 43I, 43J, 43K, 43L, 43O, 43Q, and 43T

Clauses 17 through 23 inclusive replace the term 'authorised' with 'environmental health'. This is a consequential amendment following the removal by the *Police Powers and Responsibilities Act 2000* of police officers from the provisions.

Omission of ss 43U and 43V

Clause 24 omits sections 43U and 43V. These sections are replaced by sections 57A and 57B.

Insertion of new ss 57A and 57B

Clause 25 is a consequential amendment to clause 24. Sections 57A (Evidence of prescribed substance by label) and 57B (Evidence of prescribed substance-notice of challenge required) replicate the omitted sections 43U and V except they now apply to the new term 'prescribed substances'. The definition of 'prescribed substances' has been included in section 4 (Definitions).

Section 57A provides an evidentiary provision to assist with the identification of prescribed substances. Where a container containing a substance has a label upon it indicating that substance is a prescribed substance and an authorised officer believes (and the court considers such belief reasonable) that the container contained a prescribed substance, then in the absence of evidence to the contrary or the notice served under section 57A, the substance will be proved to be a prescribed 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 on every occasion.

Section 57B relates to a notice to challenge the evidentiary provision (section 57A) relating to identification of the prescribed substance. The section sets out the procedure to be adopted to inform the person charged, summonsed or served with a notice to appear of the action which that person must take should they intend to challenge that a substance claimed in the charge to be a prescribed substance was a prescribed substance.

Regulations amended

Clause 26 introduces Schedule 1 which amends:

- the Drugs Regulation by including a new Schedule 2A. This schedule lists by name the drugs removed from the Health Regulation; and
- sections 94 and 204 of the Health Regulation to identify that the sections do not apply to those controlled and restricted drugs removed to Schedule 2A of the Drugs Regulation.