

Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Bill 2012

Replacement Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Jarrod Bleijie MP

Title of the Bill

Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Bill 2012

Objectives of the Amendments

The objectives of the amendments are to:

1. Amend section 346A(2) of the *Crime and Misconduct Act 2001* to extend the day up to which the protection in the section will operate, from 8 May 2013 to 8 November 2013. Section 346A was enacted earlier this year to provide urgent temporary protection to certain documents relating to the Fitzgerald Commission of Inquiry that were released under the *Public Records Act 2002* during the period 1 February 2012 to 5 March 2013.

The long title of the Bill will be consequently amended to include the *Crime and Misconduct Act 2001*.

2. Extend the definition of 'dangerous drug' in section 4 of the *Drugs Misuse Act 1986* (DMA) to target the speed with which new synthetic drugs are entering the unlawful drug market.

This further amendment will extend the definition to ensure that offenders who package, market and supply substances, intending that the substance has a substantially similar pharmacological effect on the user to that of a prohibited dangerous drug, will be caught within the offence provisions of the DMA.

3. A further minor amendment corrects a drafting anomaly in the Bill.

Achievement of the Objectives

The objectives are achieved by way of amendments to the Bill as described below.

Alternative Ways of Achieving Policy Objectives

There is no alternative way to achieve these objectives.

Estimated Cost for Government Implementation

Any costs in relation to the amendments will be met from existing agency resources.

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles.

Consultation

Consultation was not undertaken with external stakeholders on the proposed amendments.

NOTES ON PROVISIONS

Clause 1 inserts a new part 2A to amend the *Crime and Misconduct Act 2001*, which includes new clauses 11A and 11B into the Bill:

Clause 11A provides that part 2A amends the *Crime and Misconduct Act 2001*.

Clause 11B amends section 346A(2) of the *Crime and Misconduct Act 2001* to extend the date the protection afforded by the section will be provided, from 8 May 2013 to 8 November 2013.

Clause 2 amends the transitional provision inserted by the new Chapter 91 into the Criminal Code to correct a drafting anomaly. Section 730 in the new Chapter 91 erroneously refers to section 17 of the *Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Act 2012*. This is amended to refer to the correct provision of the Act, section 26.

Clause 3 amends the definition of ‘dangerous drug’ in section 4 of the DMA by omitting the phrase ‘that has a chemical structure’ in order to accommodate the amendment reflected in clause 4.

Clause 4 amends the definition of ‘dangerous drug’ in section 4 of the DMA. Paragraph (c) of the definition is amended to provide that a dangerous drug is a thing that has a chemical structure that is substantially similar to the chemical structure of a

thing referred to in paragraphs (a) and (b) or that has a substantially similar pharmacological effect (meaning that only one of the two limbs needs to be satisfied to come within the paragraph (c) definition). The paragraph (c) definition is further amended to extend the definition to the circumstance where the substance is intended to have a substantially similar pharmacological effect to the pharmacological effect of an already scheduled substance. This new limb is inserted at paragraph (c) (iii) of the section 4 definition.

Clause 5 amends the definition of ‘dangerous drug’ in section 4 of the DMA by the insertion of an editor’s note to refer to new section 4BA.

Clause 6 inserts into the DMA a new section 4BA, an evidentiary provision to clarify the application of the definition of ‘dangerous drug’ pursuant to new paragraph (c) (iii) of section 4. A thing is proved to be a dangerous drug under that provision if the accused person intended the thing to have a substantially similar pharmacological effect to the pharmacological effect of a scheduled drug.

Clause 7 amends the long title of the Bill to insert ‘*Crime and Misconduct Act 2001*’.