



New South Wales

Disorderly Houses Amendment (Commercial Supply of Prohibited Drugs) Act 2002 No 131

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New South Wales

Disorderly Houses Amendment (Commercial Supply of Prohibited Drugs) Act 2002 No 131

Act No 131, 2002

An Act to amend the *Disorderly Houses Act 1943* with respect to declarations under that Act and the closure of commercial premises on grounds relating to the illegal supply of prohibited drugs; to amend various other Acts consequentially; and for other purposes. [Assented to 17 December 2002]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Disorderly Houses Amendment (Commercial Supply of Prohibited Drugs) Act 2002*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Disorderly Houses Act 1943 No 6

The *Disorderly Houses Act 1943* is amended as set out in Schedule 1.

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Disorderly Houses Act 1943 (Section 3)

[1] Long title

Omit “closing of disorderly houses”.

Insert instead “declaration of premises and the closure of premises on which certain illegal activities are suspected of being carried on”.

[2] Section 1 Name of Act

Omit “*Disorderly Houses*”.

Insert instead “*Restricted Premises*”.

[3] Section 2 Definitions

Insert in alphabetical order:

appropriate Court, in relation to a declaration under Part 2, means the Court that made the declaration.

senior police officer means a police officer of or above the rank of sergeant.

[4] Section 3 Declaration by Supreme Court or District Court in relation to premises

Omit “Upon a Superintendent or Inspector of Police” from section 3 (1).

Insert instead “On a senior police officer”.

[5] Section 3 (1) (d) (ii)

Omit “declared to be a disorderly house under this Act”.

Insert instead “the subject of a declaration under this Part”.

[6] Section 3 (1)

Insert “or the District Court” after “Supreme Court”.

[7] Section 3 (1)

Omit “a disorderly house” where secondly occurring.

Insert instead “premises to which this Part applies”.

[8] Section 4 Rescission of declaration

Omit “Supreme Court” from section 4 (1).

Insert instead “appropriate Court”.

[9] Section 4

Omit “Superintendent or Inspector of Police” wherever occurring.

Insert instead “senior police officer”.

[10] Section 6

Omit the section. Insert instead:

6 Notice given of declaration

- (1) A senior police officer is to cause notice of the making of a declaration under this Part to be served on the owner or occupier of the premises to which the declaration relates:
 - (a) personally, or
 - (b) if personal service cannot be effected promptly, by causing a copy of the notice to be fixed at or near to the entrance of the premises.
- (2) A person must not deface, destroy, cover or remove a copy of a notice fixed under this section at or near the entrance to premises unless the person is a police officer or the owner or occupier of the premises.

Maximum penalty (subsection (2)): 20 penalty units.

[11] Section 7 Person found in premises declared a disorderly house

Omit the section.

[12] Section 8

Omit the section. Insert instead:

8 Offence by owner of premises

- (1) After the service of a notice under section 6 on the owner of premises of the making of a declaration, the owner is guilty of an offence if any of the conditions referred to in section 3 (1) apply to the premises while the declaration is in force.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

- (2) An owner of premises is not guilty of an offence under this section if the owner proves that he or she has taken all reasonable steps to prevent the conditions referred to in section 3 (1) applying to the premises.
- (3) An owner of premises that are occupied by a person other than the owner is not guilty of an offence under this section if the owner proves that he or she has taken all reasonable steps to evict the occupier from the premises.

[13] Section 9

Omit the section. Insert instead:

9 Offence by occupier of premises

- (1) After the service of a notice under section 6 on the occupier of premises of the making of a declaration, the occupier is guilty of an offence if any of the conditions referred to in section 3 (1) apply to the premises while the declaration is in force.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

- (2) An occupier of premises is not guilty of an offence under this section if the occupier proves that he or she has taken all reasonable steps to prevent the conditions referred to in section 3 (1) applying to the premises.

[14] Section 11 Obstructing police

Omit “shall be liable on summary conviction to a penalty not exceeding 0.5 penalty unit”.

Insert instead “is liable to a penalty not exceeding 50 penalty units or imprisonment for 6 months, or both”.

[15] Section 15A

Insert after section 15:

15A Rules of the District Court

- (1) Rules may be made under the *District Court Act 1973* for or with respect to any matters that by or under the provisions of this Part are required or permitted to be prescribed for carrying out or giving effect to those provisions.
- (2) Subsection (1) does not limit the rule-making powers conferred by the *District Court Act 1973*.

[16] Part 2A

Insert before Part 3:

Part 2A Special provisions relating to closure of premises

15B Definition

In this Part, *prohibited drug* has the same meaning as in the *Drug Misuse and Trafficking Act 1985*.

15C Order by Magistrate for temporary closure of premises

- (1) A Magistrate may, on application made by a senior police officer, order the owner or occupier of any premises to close the premises from a time specified in the order until a later specified time.
- (2) An order may only be made under subsection (1) if the senior police officer provides reasonable grounds for suspecting that the premises are being used by the owner or occupier (or with the knowledge of the owner or occupier) for a commercial purpose in order:

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- (a) to supply prohibited drugs unlawfully to persons, or
 - (b) to keep prohibited drugs to enable their unlawful supply to persons, or
 - (c) to make arrangements for the unlawful supply of prohibited drugs to persons at another place.
- (3) An order must not require the closure of premises for a period longer than 72 hours.
 - (4) An order may require the closure of premises until specified conditions are met but must not require closure for a period longer than 72 hours.
 - (5) An order under this section must be served on the owner or occupier of the premises concerned or on the person apparently in charge of the premises.
 - (6) A person must not fail to comply with an order under this section.
Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.
 - (7) Two or more orders closing the same premises may not be made under this section in any period of one week.

15D Revocation of closure order

- (1) The owner or occupier of premises the subject of an order under section 15C may apply to a Magistrate for the revocation of the order.
- (2) A Magistrate may revoke an order under section 15C if the Magistrate is satisfied that:
 - (a) the premises concerned are not being used for a purpose referred to in section 15C (2), or
 - (b) the applicant for revocation of the order has no knowledge that the premises are being used for a purpose referred to in section 15C (2).

[17] Section 18A

Insert before section 19:

18A Proceedings for offences

Proceedings for offences against this Act are to be dealt with summarily before a Local Court.

[18] Section 21

Insert after section 20:

21 Savings, transitional and other provisions

Schedule 1 has effect.

[19] Schedule 1

Insert at the end of the Act:

Schedule 1 Savings, transitional and other provisions

(Section 21)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
Disorderly Houses Amendment (Commercial Supply of Prohibited Drugs) Act 2002
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

2 Existing declarations

A declaration under this Act of premises as a disorderly house in force at the commencement of this clause is taken to be a declaration under Part 2 of the premises as premises to which that Part applies.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Land and Environment Court Act 1979 No 204

Section 20 Class 4—environmental planning and protection and development contract civil enforcement

Omit “*Disorderly Houses Act 1943*” from section 20 (1) (da).

Insert instead “*Restricted Premises Act 1943*”.

2.2 Police Powers (Drug Premises) Act 2001 No 30

Section 18 Application of other laws

Omit “*Disorderly Houses Act 1943*”.

Insert instead “*Restricted Premises Act 1943*”.

2.3 Search Warrants Act 1985 No 37

Section 10 Definitions

Omit “*Disorderly Houses Act 1943*” from the definition of *search warrant*.

Insert instead “*Restricted Premises Act 1943*”.

[Second reading speech made in—

Legislative Council on 20 November 2002

Legislative Assembly on 11 December 2002 pm]

BY AUTHORITY