

DRUG MISUSE AND TRAFFICKING (AMENDMENT) BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Drug Misuse and Trafficking Act 1985 so as—

- (a) to redefine the term “cannabis resin” for the purposes of that Act by restricting it to separated resin; and
- (b) to increase penalties for indictable offences under that Act when they are dealt with by Local Courts; and
- (c) to provide graded penalties for offences involving commercial quantities of prohibited plants or drugs; and
- (d) to permit suitably qualified persons to give certificate evidence of the identity and quantity of cannabis plants and cannabis leaf; and
- (e) to vary the quantities of prohibited plants and drugs in different categories, the result generally being to increase the “traffickable”, “small” and “indictable” quantities and to reduce the “commercial” quantities of those plants and drugs for the purposes of that Act; and
- (f) to establish an additional category of “large commercial quantity” for prohibited plants and drugs for the purpose of the graded penalties referred to above.

The proposed “commercial quantity” of a prohibited plant or drug will be a considerably smaller amount than that presently fixed. The present “commercial quantity” will become the new “large commercial quantity”.

The Bill also makes minor amendments for the purpose of statute law revision.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 defines the term “Principal Act”.

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Clause 4 is a formal provision giving effect to the Schedule of amendments.

Clause 5 declares that amendments to be made by the proposed Act do not apply to offences alleged to have been committed before the amendments commence. The only exception will allow certificate evidence to be given under amended provisions for the purpose of identifying substances or plants concerned in offences.

SCHEDULE 1—AMENDMENTS

“Cannabis resin” redefined

The Bill restricts the meaning of “cannabis resin” in the Principal Act to separated resin obtained from cannabis leaf by substituting the definition of that term in section 3 (Definitions) of that Act. The effect of the amendment is to exclude plants and parts of plants which contain more than 3% of tetrahydrocannabinol from being cannabis resin. They will continue to be cannabis plant or cannabis leaf for the purposes of that Act. (Schedule 1 (1) (a)).

Increased penalties for indictable offences when dealt with by Local Courts

The Bill amends section 30 (Indictable offences punishable summarily without consent of accused) and section 31 (Indictable offences punishable summarily with consent of accused) of the Principal Act so as to increase the maximum fine that may be imposed for those offences when dealt with by Local Courts from \$2,000 to \$5,000 and from \$5,000 to \$10,000 respectively. The increased penalties are expressed in penalty units, each of which is equivalent to \$100. (Schedule 1 (3) and (4)).

Graded penalties for offences related to commercial quantities

The Bill replaces section 33 of the Principal Act (Penalties for offences involving commercial quantities).

The penalties for an offence under that Act involving the proposed new commercial quantity of a prohibited drug or prohibited plant will be respectively a fine of up to \$350,000 or imprisonment for up to 20 years, or both, and (where cannabis is involved) a fine of up to that amount or imprisonment for up to 15 years, or both. (Because of changes to be made to that Act by Schedule 1 (9), the new commercial quantities will be considerably lower than the present commercial quantities.)

The penalties for an offence under that Act involving what is referred to in the proposed section as the “large commercial quantity” of a prohibited drug or prohibited plant will be respectively a fine of up to \$500,000 or imprisonment for life, or both, and (where cannabis is involved) a fine of up to \$500,000 or imprisonment for 20 years, or both. (These penalties apply to offences involving the present commercial quantities which will be equivalent to the proposed large commercial quantities.) (Schedule 1 (6)). The proposed monetary penalties are each expressed in penalty units.

Evidence of cannabis plant and cannabis leaf

The Bill amends section 43 (Certificate evidence) of the Principal Act so that analysts, who may now give certificate evidence of the identification of substances, will be able to give certificate evidence of the identification of plants.

The Bill will also amend that section so as to provide for the appointment (by the Director-General of the Department of Agriculture and Fisheries) of suitably qualified persons who will be able to give certificates which may be used as evidence of the identification of cannabis plant or cannabis leaf (Schedule 1 (8)).

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Variation of quantities of plants and drugs in different categories

The Bill substitutes Schedule 1 to the Principal Act in which are set out the quantities of a prohibited plant or drug treated for the purposes of that Act as the “traffickable”, “small”, “indictable” and “commercial” quantities. The most important effects of the proposed Schedule 1 to that Act will be to increase traffickable, small and indictable quantities and to reduce commercial quantities (Schedule 1 (9)).

Large commercial quantities

The proposed Schedule 1 to the Principal Act introduces a new category of “large commercial quantity” as Column 5 of that Schedule. That category is essentially the same as the present “commercial quantity” category and is required so that courts can establish which penalty is applicable in sentencing for an offence involving prohibited plants or drugs in excess of the proposed new commercial quantities (Schedule 1 (9)).

Because of the consequential re-numbering of Column 6 of Schedule 1 to the Principal Act, a minor change is made to the definition of “discrete dosage unit” in section 3 (1) of that Act (Schedule 1 (1) (b)).

Minor statute law revision

The Bill updates the reference to the Director-General of Agriculture in section 38 of the Principal Act (Schedule 1 (7)) and changes into penalty units the penalties expressed in sections 21 and 32 of the Principal Act as amounts of money. (A penalty unit is the equivalent of \$100.) (Schedule 1 (2) and (5)).
