

Passed by both Houses



New South Wales

Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006

Act No , 2006

An Act to amend the *Drug Misuse and Trafficking Act 1985* to make provision with respect to prohibiting the indoor cultivation of certain prohibited plants by enhanced means (such as the hydroponic cultivation of cannabis); and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Act 2006*.

2 Commencement

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

3 Amendment of Drug Misuse and Trafficking Act 1985 No 226

The *Drug Misuse and Trafficking Act 1985* 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.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Drug Misuse and Trafficking Act 1985

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

cultivation by enhanced indoor means, in relation to a prohibited plant, means cultivation of the plant:

- (a) that occurs inside a building or structure, and
- (b) that involves any one or more of the following:
 - (i) the nurture of the plant in nutrient-enriched water (with or without mechanical support),
 - (ii) the application of an artificial source of light or heat,
 - (iii) suspending the plant's roots and spraying them with nutrient solution.

[2] Section 3 (1), definition of "drug premises"

Omit the definition.

[3] Section 3 (1), definition of "prohibited plant"

Omit paragraph (a) of the definition. Insert instead:

- (a) a cannabis plant cultivated by enhanced indoor means, or
- (a1) a cannabis plant cultivated by any other means, or

[4] Section 3 (1), definition of "prohibited plant"

Omit "paragraph (a)". Insert instead "paragraph (a), (a1)".

[5] Section 23 Offences with respect to prohibited plants

Insert after section 23 (1):

- (1A) A person who:
 - (a) cultivates by enhanced indoor means, or knowingly takes part in the cultivation by enhanced indoor means of, a number of prohibited plants which is:
 - (i) not less than the small quantity applicable to the prohibited plants, and
 - (ii) less than the commercial quantity applicable to those prohibited plants, and

- (b) cultivates, or knowingly takes part in the cultivation of, those prohibited plants for a commercial purpose, is guilty of an offence.
- (1B) If, on the trial of a person for an offence under subsection (1A), the jury is not satisfied that the number of prohibited plants involved is equal to or more than the small quantity applicable to the prohibited plants, the jury may acquit the person of the offence charged and find the person guilty of an offence under subsection (1) (a), and the person is liable to punishment accordingly.
- (1C) If, on the trial of a person for an offence under subsection (1A), the jury is not satisfied that the person cultivated, or knowingly took part in the cultivation of, a prohibited plant for a commercial purpose, the jury may acquit the person of the offence charged and find the person guilty of an offence under subsection (1) (a), and the person is liable to punishment accordingly.

[6] Section 23 (3) and (3A)

Omit section 23 (3). Insert instead:

- (3) If, on the trial of a person for an offence under subsection (2) (other than in relation to the cultivation of prohibited plants by enhanced indoor means), the jury is not satisfied that the number of prohibited plants involved is equal to or more than the commercial quantity applicable to the prohibited plants, the jury may acquit the person of the offence charged and find the person guilty of an offence under subsection (1), and the person is liable to punishment accordingly.
- (3A) If, on the trial of a person for an offence under subsection (2) in relation to the cultivation of prohibited plants by enhanced indoor means, the jury is not satisfied that the number of prohibited plants involved is equal to or more than the commercial quantity applicable to the prohibited plants, the jury may acquit the person of the offence charged and find the person guilty of:
 - (a) an offence under subsection (1A), if the jury is satisfied that the person contravened subsection (1A), or
 - (b) an offence under subsection (1) (a), if the jury is not satisfied that the person contravened subsection (1A), but is satisfied that the person contravened subsection (1) (a),and the person is liable to punishment accordingly.

[7] Section 23 (6)

Insert after section 23 (5):

- (6) In this section and section 23A, *cultivating a prohibited plant for a commercial purpose* includes cultivating the plant:
 - (a) with the intention of selling it or any of its products, or
 - (b) with the belief that another person intends to sell it or any of its products.

[8] Section 23A

Insert after section 23:

23A Offences with respect to enhanced indoor cultivation of prohibited plants in presence of children

- (1) A person who:
 - (a) cultivates, or knowingly takes part in the cultivation of, a prohibited plant by enhanced indoor means, and
 - (b) exposes a child to that cultivation process, or to substances being stored for use in that cultivation process,is guilty of an offence.
- (2) A person who:
 - (a) cultivates, or knowingly takes part in the cultivation of, a number of prohibited plants by enhanced indoor means which is not less than the commercial quantity applicable to those plants, and
 - (b) exposes a child to that cultivation process, or to substances being stored for use in that cultivation process,is guilty of an offence.
- (3) A person who:
 - (a) cultivates by enhanced indoor means, or knowingly takes part in the cultivation by enhanced indoor means of, a number of prohibited plants which is:
 - (i) not less than the small quantity applicable to the prohibited plants, and
 - (ii) less than the commercial quantity applicable to those prohibited plants, and
 - (b) cultivates, or knowingly takes part in the cultivation of, those prohibited plants for a commercial purpose, and

- (c) exposes a child to that cultivation process, or to substances being stored for use in that cultivation process,
is guilty of an offence.
- (4) If, on the trial of a person for an offence under subsection (2), the jury is not satisfied that the number of prohibited plants involved is equal to or more than the commercial quantity applicable to the prohibited plants, the jury may acquit the person of the offence charged and find the person guilty of:
- (a) an offence under subsection (3), if the jury is satisfied that the person contravened subsection (3), or
- (b) an offence under subsection (1), if the jury is not satisfied that the person contravened subsection (3), but is satisfied that the person contravened subsection (1),
and the person is liable to punishment accordingly.
- (5) If, on the trial of a person for an offence under subsection (3), the jury is not satisfied that the person cultivated, or knowingly took part in the cultivation of, a prohibited plant for a commercial purpose, the jury may acquit the person of the offence charged and find the person guilty of an offence under subsection (1), and the person is liable to punishment accordingly.
- (6) It is a defence to a prosecution for an offence under subsection (1), (2) or (3) if the defendant establishes that the exposure of the child to the prohibited plant cultivation process, or to substances being stored for use in that process, did not endanger the health or safety of the child.
- (7) If, on the trial of a person for an offence under subsection (1), (2) or (3), the jury:
- (a) is not satisfied that a child was exposed to the cultivation of a prohibited plant by enhanced indoor means, or to substances being stored for use in such a cultivation process, or
- (b) is satisfied that the defence referred to in subsection (6) has been made out,
the jury may acquit the person of the offence charged and find the person guilty of an offence under section 23 (1) (a), (2) (a) or (1A), respectively, and the person is liable to punishment accordingly.
- (8) In this section, *child* means a person who is under the age of 16 years.

[9] Sections 30 (1) (a) and 31 (1) (a)

Insert “or 23A (1)” after “23 (1)” wherever occurring.

[10] Sections 30 (1) (e) and 31 (1) (e)

Insert “, 23A (1)” after “23 (1)” wherever occurring.

[11] Section 33 Penalties for offences involving commercial quantities or cultivation for a commercial purpose

Insert “(1A) or” after “section 23” wherever occurring in section 33 (1) (a) and (d).

[12] Section 33AD

Insert as section 33AD:

33AD Penalties for offences with respect to enhanced indoor cultivation of prohibited plants in presence of children

- (1) This section applies to the following offences:
 - (a) an offence under section 23A (1), (2) or (3),
 - (b) an offence under section 26 of conspiring to commit an offence referred to in paragraph (a),
 - (c) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a),
 - (d) an offence under section 28 of conspiring to commit, or of aiding, abetting, counselling, procuring, soliciting or inciting the commission of, an offence under a law in force outside New South Wales which corresponds to section 23A (1), (2) or (3).
- (2) Except as provided by sections 30 and 31, the penalty for an offence under section 23A (1), or an offence referred to in subsection (1) (b)–(d) that relates to an offence under section 23A (1), is a fine of 2,400 penalty units or imprisonment for 12 years, or both.
- (3) The penalty for an offence under section 23A (2) or (3), or an offence referred to in subsection (1) (b)–(d) that relates to an offence under section 23A (2) or (3), is a fine of 4,200 penalty units or imprisonment for 18 years, or both.

- (4) Despite subsection (3), if the court is satisfied that an offence referred to in that subsection involved not less than the large commercial quantity of the prohibited plant concerned, the penalty for the offence is a fine of 6,000 penalty units or imprisonment for 24 years, or both.
- (5) In this section:
large commercial quantity, in relation to a prohibited plant, means the number or amount, if any, specified opposite the plant in Column 5 of Schedule 1.

[13] Section 36TA

Insert before section 36U:

36TA Definitions

In this Part:

commercial cultivation, in relation to prohibited plants, means:

- (a) the cultivation of a number of prohibited plants which is not less than the commercial quantity applicable to those plants, or
- (b) the cultivation of a number of prohibited plants which is:
- (i) not less than the small quantity applicable to those plants, and
 - (ii) less than the commercial quantity applicable to those plants,

where the plants or their products are intended by any person for sale.

drug premises means any premises that are used for either or both of the following:

- (a) the unlawful supply or manufacture of prohibited drugs,
- (b) the unlawful commercial cultivation of prohibited plants by enhanced indoor means.

[14] Section 36V Possession or presence of prohibited drugs or prohibited plants on premises

Insert “or a prohibited plant” after “prohibited drug” wherever occurring.

[15] Section 36W Evidence that premises are drug premises

Omit “were being used for the unlawful supply or manufacture of any prohibited drug.” from section 36W (1).

Insert instead:

were being used for either or both of the following:

- (a) the unlawful supply or manufacture of any prohibited drug,
- (b) the unlawful commercial cultivation by enhanced indoor means of any prohibited plant.

[16] Section 36W (3)

Insert after section 36W (2):

- (3) Without limiting matters to which regard may be had in determining whether premises involved in the offence were being used for the commercial cultivation by enhanced indoor means of any prohibited plant, regard may be had to any or all of the following:
 - (a) evidence that a police officer authorised by law to enter the premises was wilfully prevented from, or obstructed or delayed in, entering or re-entering those premises or any part of those premises,
 - (b) evidence of the external or internal construction of the premises, including any external or internal door of, or means of access to, those premises that is found to be likely to have been fitted with a bolt, bar, chain, or any means or device for the purpose of preventing, delaying or obstructing the entry or re-entry into those premises of such a police officer or any other person, or for giving an alarm in case of such entry or re-entry,
 - (c) evidence of a person acting as a lookout to warn persons on the premises of the approach of police officers or other persons,
 - (d) evidence that there was found on those premises equipment such as:
 - (i) electric lights of 250 watts or higher, or
 - (ii) fluorescent lights that combine the red and blue part of the light spectrum, or
 - (iii) light units comprising high intensity discharge lamps, ballasts, lamp mounts and reflectors (also called ballast boxes), or

- (iv) growing chambers with spray arm manifolds, hydro-controls and digital timers,
- (e) evidence that there was found on those premises, or in the possession of a person on the premises, documents or literature concerned with hydroponic or other enhanced indoor cultivation methods or with cannabis cultivation or both,
- (f) evidence that there was found on those premises, or in the possession of a person on the premises, cannabis seeds, cut cannabis leaf, cannabis plants or plant clones,
- (g) evidence that there was found on those premises, or in the possession of a person on the premises, minerals, chemicals or nutrients, or their packaging, typically used in enhanced indoor cultivation of cannabis plants,
- (h) evidence that there was abnormally high or low electricity consumption for those premises in relation to other premises of that type not used for such cultivation,
- (i) evidence of an apparently unauthorised connection to, or bypass of, the electricity supply to those premises,
- (j) evidence that there was found on those premises blacked out or boarded up windows or condensation on windows,
- (k) evidence that there was found on those premises air vents, fan systems or exhaust fans in unusual places or in unusual numbers,
- (l) evidence that generators were continuously running on those premises,
- (m) evidence that security devices (such as security cameras) have been installed on those premises,
- (n) evidence that draft excluders have been fitted to any external doors or those premises,
- (o) evidence that there was found on those premises any documents or other records, including any computer records, that appear to have been kept or used in connection with the unlawful cultivation by enhanced indoor means of a prohibited plant,
- (p) evidence that there was found on those premises any large amount of money that is not accounted for by the owner or occupier of those premises,

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- (q) evidence that there were found on those premises persons who appeared to be affected by a prohibited drug manufactured from the prohibited plant concerned,
 - (r) any other matters as are prescribed by the regulations.

[17] Schedule 1

Omit the matter relating to Cannabis plant. Insert instead:

Cannabis plant cultivated by enhanced indoor means	—	5	50	50	200	—
Cannabis plant—other	—	5	50	250	1 000	—

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Electricity Supply Act 1995 No 94

Sections 64–70

Omit the maximum penalty wherever occurring.

Insert instead:

Maximum penalty:

- (a) in the case of a corporation—2,000 penalty units, or
- (b) in any other case—100 penalty units or imprisonment for 2 years (or both).

2.2 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

[1] Section 139 Definitions

Insert in alphabetical order in section 139 (1):

cultivation by enhanced indoor means, in relation to a prohibited plant, has the same meaning as in the *Drug Misuse and Trafficking Act 1985*.

[2] Section 139 (1)

Omit the definition of *drug premises*. Insert instead:

drug premises means any premises that are used for either or both of the following:

- (a) the unlawful supply or manufacture of prohibited drugs,
- (b) the unlawful cultivation of prohibited plants by enhanced indoor means.

[3] Section 140 Issue of search warrant—suspected drug premises

Insert “, or the unlawful cultivation of prohibited plants by enhanced indoor means,” after “prohibited drug” in section 140 (1).

[4] Section 142 Search and arrest of persons pursuant to search warrant

Insert “, prohibited plant” after “prohibited drug” in section 142 (1) (d).