

[Act 2001 No 30]



New South Wales

Police Powers (Drug Premises) Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

The *Police Powers (Internally Concealed Drugs) Bill 2001* is cognate with this Bill.

Overview of Bill

The object of this Bill is to confer on police officers wider powers with respect to persons using premises for the unlawful supply or manufacture of prohibited drugs (other than cannabis leaf, oil and resin) so as to enable more effective enforcement of drug misuse and trafficking laws.

The Bill also:

- (a) amends the *Bail Act 1978*:
 - (i) to exclude a person who is charged with an offence of unauthorised possession or use of a pistol or prohibited firearm from the presumption in favour of bail that would otherwise apply to the person, and

* Amended in committee—see table at end of volume.

- (ii) to require a court making a determination as to the grant of bail to an accused person to have regard to whether the offence involves the possession or use of an offensive weapon or instrument in determining whether the offence is a serious offence or whether the person will commit one or more serious offences while at liberty and to require any prior criminal record of the person involving such offences to be taken into account, and
- (b) amends the *Criminal Assets Recovery Act 1990* to make second or subsequent offences under section 13 of the proposed Act a serious criminal offence for the purposes of the definition of *serious crime related activity* in that Act so that the criminal asset confiscation provisions of that Act will operate in relation to the criminal offence relating to drug premises, and
- (c) amends the *Drug Misuse and Trafficking Act 1985* to make it explicit that deemed possession as referred to in section 7 of that Act extends to joint possession, and
- (d) amends the *Summary Offences Act 1988* to enable a police officer to give reasonable directions to a person in a public place if the police officer has reasonable grounds to believe the person is in the public place for the purpose of unlawfully supplying, or soliciting others to supply, prohibited drugs or to obtain, procure or purchase prohibited drugs that the person could not lawfully possess.

The Bill also contains consequential amendments to the *Criminal Procedure Act 1986* and the *Search Warrants Act 1985*.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. *Drug premises* are defined as premises that are being used for the unlawful supply or manufacture of prohibited drugs. A *prohibited drug* is defined as a substance that is a prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985* but so as not to include cannabis leaf, cannabis oil or cannabis resin.

Clause 4 provides that notes included in the Act do not form part of the Act.

Part 2 Search of suspected drug premises

Clause 5 provides for the issue by an authorised justice of a search warrant authorising the entry into and search of premises on the application of a police officer of or above the rank of sergeant who has reasonable grounds for believing that the premises are being used for the unlawful supply or manufacture of prohibited drugs.

Clause 6 authorises a police officer executing a search warrant issued under the proposed Part to do various acts that may be necessary to enter and search the premises.

Clause 7 authorises a police officer to search persons and do certain other things in executing a search warrant issued under the proposed Part.

Clause 8 applies Part 3 of the *Search Warrants Act 1985* to search warrants issued under the proposed Part. Part 3 contains provisions relating to matters such as the way in which applications are to be made for search warrants, the execution of search warrants and the expiry of warrants.

Clause 9 creates various offences relating to the obstruction of a police officer's entry to premises pursuant to a search warrant issued under the proposed Part. It also makes it an offence for a person on the premises to fail, without reasonable excuse, to comply with a police officer's requirement to state his or her full name or address.

Part 3 Offences involving drug premises

Clause 10 makes it clear that in proceedings for offences involving drug premises created by the proposed Part it is not necessary to prove that any person had a prohibited drug in his or her possession on the premises or that any prohibited drug was found on the premises.

Clause 11 requires the prosecution to establish beyond a reasonable doubt that premises involved in an offence against the proposed Act were drug premises at the time the offence was committed. Clause 11 (2) sets out examples of matters to which the court may have regard in determining whether premises were drug premises when an offence was committed.

Clause 12 makes it an offence for a person to be found on, or to be found entering or leaving, drug premises. A person will not be guilty of an offence if the person proves that he or she was on, or was entering or leaving the premises for a lawful purpose or with a lawful excuse.

Clause 13 makes it an offence for the owner or occupier of premises to knowingly allow the premises to be used as drug premises.

Clause 14 makes it an offence to organise or conduct, or assist in organising or conducting, drug premises. The clause makes it clear that a person who acts as a lookout, door attendant or guard is assisting in the organising or conduct of premises unless he or she proves that he or she did not know, and could not reasonably be expected to have known, that the premises concerned were drug premises.

Part 4 Miscellaneous

Clause 15 provides for offences generally under the proposed Act to be dealt with summarily by Local Courts, although some second or subsequent offences which attract a high penalty are to be dealt with on indictment.

Clause 16 deals with offences under the proposed Act that are committed by corporations.

Clause 17 provides for certain money, equipment and other things seized in relation to offences to be forfeited to the Crown.

Clause 18 makes it clear that the Act is not intended to limit the operation of the *Disorderly Houses Act 1943* and certain other laws.

Clause 19 is a general regulation-making power.

Clause 20 gives effect to the Schedules containing amendments to other Acts.

Clause 21 provides for the Ombudsman to keep under scrutiny the exercise of functions conferred on police officers under the proposed Act for a period of 2 years after the commencement of the proposed section.

Clause 22 provides for review of the proposed Act after 2 years.

Schedule 1 Amendment of Bail Act 1978 No 161

Schedule 1 contains the amendments to the *Bail Act 1978* described in paragraph (a) of the Overview of the Bill.

Schedule 2 Amendment of Criminal Assets Recovery Act 1990 No 23

Schedule 2 contains the amendments to the *Criminal Assets Recovery Act 1990* described in paragraph (b) of the Overview of the Bill.

Schedule 3 Amendment of Drug Misuse and Trafficking Act 1985 No 226

Schedule 3 contains the amendment to the *Drug Misuse and Trafficking Act 1985* described in paragraph (c) of the Overview of the Bill.

Schedule 4 Amendment of Summary Offences Act 1988 No 25

Schedule 4 contains the amendments to the *Summary Offences Act 1988* described in paragraph (d) of the Overview of the Bill.

Schedule 5 Consequential amendment of other Acts

Schedule 5 amends the *Criminal Procedure Act 1986* so that second or subsequent offences under section 12, 13 or 14 of the proposed Act will be dealt with summarily unless the prosecuting authority or person charged elects otherwise. It also amends the *Search Warrants Act 1985* as a consequence of the application of Part 3 of that Act to search warrants issued under the proposed Act.