



New South Wales

# Drugs and Poisons Legislation Amendment (New Psychoactive and Other Substances) Bill 2013

## Explanatory note

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

## Overview of Bill

The objects of this Bill are to amend:

- (a) the *Poisons and Therapeutic Goods Act 1966* (the *Poisons Act*) to provide for the addition of a ninth schedule to the Poisons List containing the substances that are in the current Poisons Standard within the meaning of Part 6-3 of the *Therapeutic Goods Act 1989* of the Commonwealth (*Schedule 9 substances*), and
- (b) the *Drug Misuse and Trafficking Act 1985* (the *Drug Misuse Act*):
  - (i) to prohibit the possession, manufacture, production or supply (or taking part in the manufacture, production or supply) of Schedule 9 substances other than prohibited drugs unless authorised under the Poisons Act, and
  - (ii) to prohibit the manufacture (or the knowingly taking part in the manufacture) of a psychoactive substance for human consumption or supply of such a substance, and
  - (iii) to prohibit the publication or display of an advertisement knowing or being reckless as to whether it promotes the consumption or sale of a substance for its psychoactive effects and providing information on how or where it may be acquired, and
  - (iv) to remove the requirement in determining whether a drug is an analogue of a prohibited drug that the drug have psychotropic properties.

## Outline of provisions

**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.

## **Schedule 1      Amendment of Drug Misuse and Trafficking Act 1985 No 226**

Schedule 1 [4] inserts proposed section 25B into the Drug Misuse Act to achieve the object described in paragraph (b) (i) of the Overview above. Schedule 1 [3] is a consequential amendment.

Schedule 1 [5] inserts proposed Part 2C (proposed sections 36ZD–36ZG) into the Drug Misuse Act to achieve the objects described in paragraph (b) (ii) and (iii) of the Overview above.

Proposed section 36ZD contains definitions of words and expressions used in the proposed Part. A *psychoactive substance* is defined as being any substance (other than a substance to which the proposed Part does not apply) that, when consumed by a person, has the capacity to induce a psychoactive effect.

Proposed section 36ZE lists the substances to which the proposed Part does not apply.

Proposed section 36ZF makes it an offence to manufacture or supply a psychoactive substance knowing that it is being supplied to or acquired for a person primarily for human consumption or being reckless as to whether it is being supplied or acquired for human consumption.

Proposed section 36ZG makes it an offence to publish or display an advertisement knowing or being reckless as to whether it promotes the consumption or sale of a substance for its psychoactive effects and providing information on how or where it may be acquired.

Schedule 1 [6] amends section 40 of the Drug Misuse Act so that if a substance is represented as being a psychoactive substance for the purpose of supply it will be taken to be a psychoactive substance.

Schedule 1 [1], [2] and [7] make associated amendments to insert or amend definitions for the purpose of the proposed Part and to enable regulations to be made exempting persons from the provisions of the Drug Misuse Act relating to psychoactive substances.

Schedule 1 [8] amends Schedule 1 to the Drug Misuse Act to achieve the object described in paragraph (b) (iv) of the Overview above.

## **Schedule 2      Amendment of Poisons and Therapeutic Goods Act 1966 No 31**

Schedule 2 [2]–[4] make the amendments to the Poisons Act described in paragraph (a) of the Overview above. The amendments incorporate by reference Schedule 9 of the Commonwealth Standard for the Uniform Scheduling of Medicines and Poisons into the Poisons List. Any new substances added to the Commonwealth Schedule will automatically be included in the Poisons List. It will be an offence under the proposed amendments to the Drug Misuse Act made by Schedule 1 [4] to sell, supply, manufacture or possess such a substance unless authorised by or under the Poisons Act.

Schedule 2 [5] inserts proposed section 17D into the Poisons Act to enable the Director-General of the Ministry of Health to authorise a specified person or class of persons to manufacture, supply or possess a specified Schedule 9 substance (not being a prohibited drug within the meaning of the Drug Misuse Act) for medical or scientific research, analytical, teaching or training purposes or for industrial or commercial purposes.

Schedule 2 [1] and [6] are associated amendments to insert a definition and provide for evidence in prosecutions that a substance is a Schedule 9 substance.