

First print



New South Wales

Drug Misuse and Trafficking Amendment (Ongoing Dealing) Bill 1998

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Drug Misuse and Trafficking Act 1985* to create a new wholly indictable offence of supplying prohibited drugs on an ongoing basis. Under the proposed section, a person will be guilty of an offence if the person supplies a prohibited drug (other than cannabis) for financial or material reward on 3 or more separate occasions over any period of 30 consecutive days. It does not matter whether the same drug is supplied on each of those occasions, and the amount that is supplied (whether on each such occasion or in total) is not relevant to the offence.

The term *supply* currently has an extended meaning under the *Drug Misuse and Trafficking Act 1985*, and accordingly the new offence will cover the sale of prohibited drugs (*sell* is also widely defined at present to include barter, exchange or dealing in) as well as any other act of supply so long as it is for financial or material reward.

Explanatory note

The new offence can only be prosecuted on indictment, and the penalty for the offence is 3,500 penalty units (currently \$385,000) or imprisonment for 20 years, or both. This penalty is the same as for an offence under section 25 (2) of the Act for supplying a commercial quantity of a prohibited drug (eg 250g of heroin).

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.

Clause 3 is a formal provision giving effect to the amendment to the *Drug Misuse and Trafficking Act 1985* as set out in Schedule 1.

Clause 4 is a formal provision giving effect to the consequential amendments to the Acts specified in Schedule 2.

Schedule 1 amends the *Drug Misuse and Trafficking Act 1985* as described in the above overview.

Schedule 2 amends certain Acts consequentially. The *Bail Act 1978* is amended to include the new offence described in the above overview in the list of offences in respect of which there is neither a presumption for, nor a presumption against, the granting of bail. Both the *Confiscation of Proceeds of Crime Act 1989* and the *Criminal Assets Recovery Act 1990* are amended to bring the new offence within the reach of those Acts.

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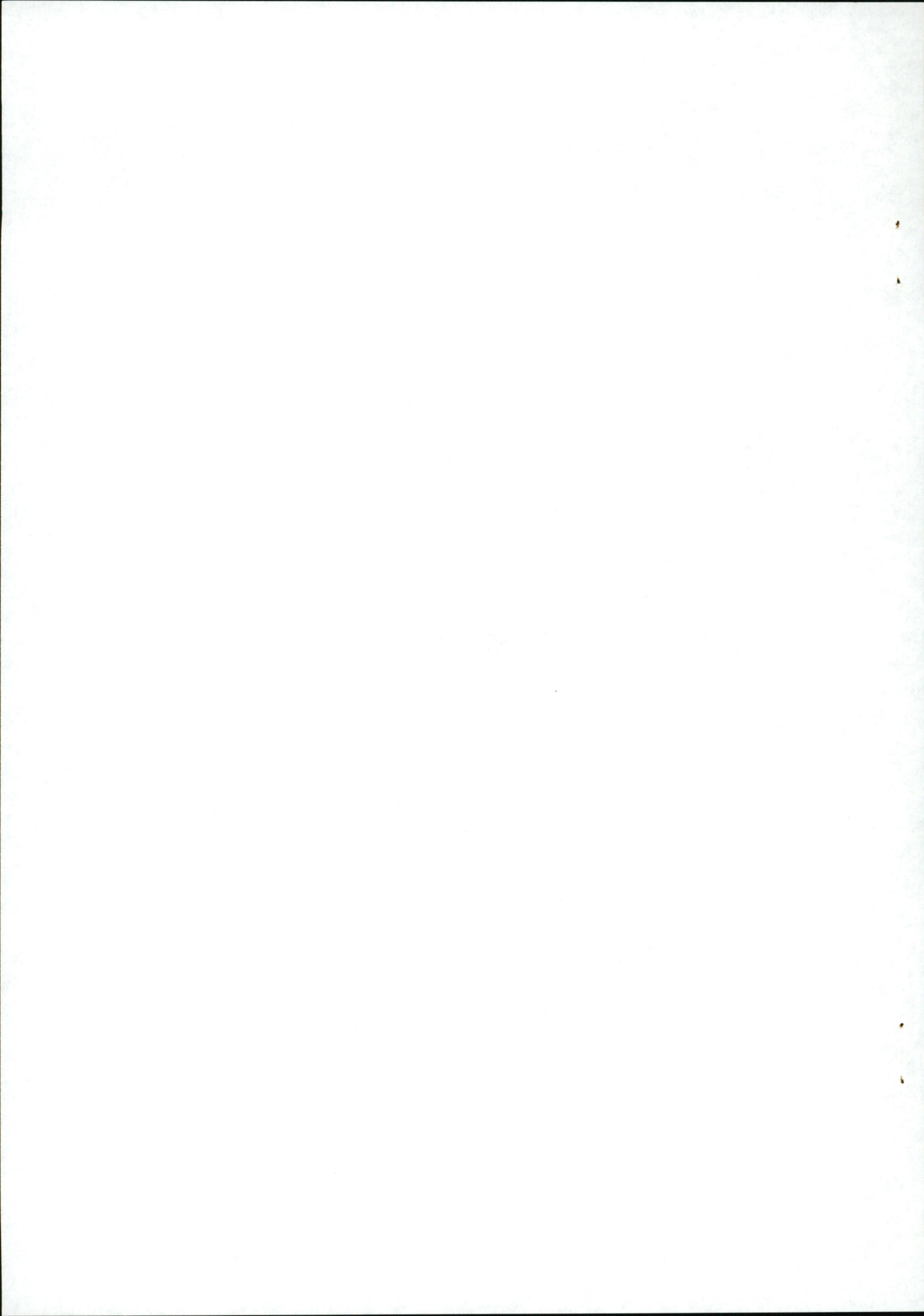
Drug Misuse and Trafficking Amendment (Ongoing Dealing) Bill 1998

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New South Wales

Drug Misuse and Trafficking Amendment (Ongoing Dealing) Bill 1998

No. , 1998

A Bill for

An Act to amend the *Drug Misuse and Trafficking Act 1985* to create an indictable offence of supplying prohibited drugs on an ongoing basis; to amend certain other Acts consequentially; and for related purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Drug Misuse and Trafficking Amendment (Ongoing Dealing) Act 1998*.

2 Commencement

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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.

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4 Consequential amendments to other Acts

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

Schedule 1 Amendment of Drug Misuse and Trafficking Act 1985

(Section 3)

Section 25A

Insert after section 25:

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25A Offence of supplying prohibited drugs on an ongoing basis

(1) **Offence provision**

A person who, on 3 or more separate occasions during any period of 30 consecutive days, supplies a prohibited drug (other than cannabis) for financial or material reward is guilty of an offence.

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Maximum penalty: 3,500 penalty units or imprisonment for 20 years, or both.

(2) **Same prohibited drug not necessary**

A person is liable to be convicted of an offence under this section whether or not the same prohibited drug is supplied on each of the occasions relied on as evidence of commission of the offence.

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(3) **Jury must be satisfied as to same 3 occasions of supply**

If, on the trial of a person for an offence under this section, more than 3 occasions of supplying a prohibited drug are relied on as evidence of commission of the offence, all the members of the jury must be satisfied as to the same 3 occasions in order to find the person guilty of the offence.

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(4) **Alternative verdict—relevant supply offences**

If, on the trial of a person for an offence under this section, the jury is not satisfied that the offence is proven but is satisfied that the person has, in respect of any of the occasions relied on as evidence of commission of the offence under this section, committed a relevant supply offence, the jury may acquit the person of the offence charged and find the person guilty of the relevant supply offence, and the person is liable to punishment accordingly.

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- (5) **Double jeopardy provisions**
A person who has been convicted of an offence under this section is not liable to be convicted:
- (a) of a relevant supply offence, or
 - (b) of a separate offence under this section, 5
- on the same, or substantially the same, facts as those relied on as evidence of commission of the offence in respect of which the person has been convicted.
- (6) A person who has been acquitted of an offence under this section is not liable to be convicted: 10
- (a) except as provided by subsection (4)—of a relevant supply offence, or
 - (b) of a separate offence under this section,
- on the same, or substantially the same, facts as those relied on as evidence of commission of the offence in respect of which the person has been acquitted. 15
- (7) A person who has been:
- (a) convicted of a relevant supply offence, or
 - (b) acquitted of a relevant supply offence,
- is not liable to be convicted for an offence under this section on the same, or substantially the same, facts as those relied on as evidence of commission of the relevant supply offence. 20
- (8) **Liability for relevant supply offences not affected by offence under this section** 25
Subject to subsections (5) and (6), this section does not:
- (a) remove the liability of any person to be convicted of a relevant supply offence, or
 - (b) affect the punishment that may be imposed for any such offence. 30

(9) **Exemption—lawful supply**

Nothing in this section renders unlawful the supply of a prohibited drug by:

- (a) a person licensed or authorised to do so under the *Poisons and Therapeutic Goods Act 1966*, or 5
- (b) a person acting in accordance with an authority granted by the Director-General of the Department of Health where the Director-General is satisfied that the supply of the prohibited drug is for the purpose of scientific research, instruction, analysis or study. 10

(10) **Definitions**

In this section:

cannabis means cannabis leaf, cannabis oil, cannabis plant and cannabis resin. 15

relevant supply offence means any offence under this Act (other than under this section) relating to the supply of a prohibited drug.

Schedule 2 Consequential amendments to other Acts

(Section 4)

2.1 Bail Act 1978 No 161

Section 9 Presumption in favour of bail for certain offences— exceptions 5

Insert after section 9 (1) (d):

- (d1) the following offences under the *Drug Misuse and Trafficking Act 1985*:
 - (i) an offence under section 25A of that Act (Offence of supplying prohibited drugs on an ongoing basis), 10
 - (ii) an offence under section 26 of that Act of conspiring to commit an offence referred to in subparagraph (i), 15
 - (iii) an offence under section 27 of that Act of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in subparagraph (i),
 - (iv) an offence under section 28 of that Act of conspiring to commit, or of aiding, abetting, counselling or procuring the commission of, an offence under the provisions of a law in force outside New South Wales that corresponds to section 25A of that Act, 25

2.2 Confiscation of Proceeds of Crime Act 1989 No 90

Section 4 Definitions

Insert after paragraph (c) of the definition of *drug trafficking offence* in section 4 (1):

- (c1) section 25A (offence of supplying prohibited drugs on an ongoing basis), 30

2.3 Criminal Assets Recovery Act 1990 No 23

[1] Section 6 Meaning of “serious crime related activity”

Insert after paragraph (c) of the definition of *drug trafficking offence* in section 6 (3):

(c1) section 25A (Offence of supplying prohibited drugs on an ongoing basis), 5

[2] Section 6 (3), definition of “drug trafficking offence”

Omit “or (c)” wherever occurring in paragraphs (d)–(f).
Insert instead “, (c) or (c1)”.

