



New South Wales

Crimes Legislation Further Amendment Bill 2000

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Drug Misuse and Trafficking Act 1985* to make it an offence to possess a drug precursor intended for use in the manufacture or production of a prohibited drug, subject to certain appropriate exceptions, and
- (b) to amend the *Poisons and Therapeutic Goods Regulation 1994* to require chemical supply companies to supply drug precursors only to account customers, and
- (c) to amend the *Crimes (Forensic Procedures) Act 2000* to enable both authorised officers and Magistrates to make interim orders for the carrying out of certain forensic procedures.

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 amendments to the *Drug Misuse and Trafficking Act 1985* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendment to the *Criminal Procedure Act 1986* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendment to the *Poisons and Therapeutic Goods Regulation 1994* set out in Schedule 3.

Clause 6 is a formal provision giving effect to the amendments to the *Crimes (Forensic Procedures) Act 2000* set out in Schedule 4.

Schedule 1 Amendment of Drug Misuse and Trafficking Act 1985

Schedule 1 [1] inserts proposed section 24A into the *Drug Misuse and Trafficking Act 1985*. The proposed section makes it an indictable offence to have possession of a precursor with the intention of using it in the manufacture or production of a prohibited drug. **Precursor** is defined to be a substance specified or described in the regulations as a precursor for the purposes of the proposed section. The proposed section will not render unlawful the manufacture or production of a prohibited drug by a person who has authority to do so either under the *Poisons and Therapeutic Goods Act 1966* or from the Director-General of the Department of Health.

Schedule 1 [3] provides that the penalty for the offence created by proposed section 24A is a fine of 2,000 penalty units or imprisonment for a term of 10 years, or both.

Schedule 1 [2] enables the summary disposal of the offence unless the prosecution or the accused elects otherwise. If the offence is dealt with summarily, the maximum penalty is a fine of 100 penalty units or imprisonment for 2 years, or both.

Schedule 2 Amendment of Criminal Procedure Act 1986

Schedule 2 makes a consequential amendment to the *Criminal Procedure Act 1986* in relation to the summary prosecution of the offence created by proposed section 24A of the *Drugs Misuse and Trafficking Act 1985*.

Schedule 3 Amendment of Poisons and Therapeutic Goods Regulation 1994

Schedule 3 inserts proposed clause 131A into the *Poisons and Therapeutic Goods Regulation 1994*. The proposed clause makes it an offence for a person to supply a restricted quantity (as defined in the Regulation) of a drug precursor (as so defined) to a person who does not have an account with the supplier. The proposed clause also requires payment for the supply to be made through the account.

Schedule 4 Amendment of Crimes (Forensic Procedures) Act 2000

Part 5 of the Crimes (Forensic Procedures) Act 2000 provides for the making of orders for the carrying out of certain forensic procedures. Both final orders and interim orders must be obtained from a Magistrate. However, Magistrates are not available on a 24 hour basis.

Schedule 4 [1]–[15] and **[17]** of the proposed amendments provide for both Magistrates and other authorised justices to make interim orders. Authorised justices are available 24 hours per day.

Schedule 4 [18] of the proposed amendments makes a consequential amendment.

Schedule 4 [16] of the proposed amendments ensures that section 91 of the Act is consistent with section 93. Currently section 91 allows forensic material taken from a suspect to be entered on a DNA database system only where the suspect is subsequently convicted of the offence. However, section 93 allows profiles taken from suspects to be matched against various indices of the database created pursuant to the Act, including the crime scene index, regardless of whether the suspect is subsequently convicted of the offence. The proposed amendment of section 91 would make it consistent with section 93 regarding taking forensic material from suspects.



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New South Wales

Crimes Legislation Further Amendment Bill 2000

No. , 2000

A Bill for

An Act to amend the *Drug Misuse and Trafficking Act 1985* in relation to the possession of drug precursors; to make a consequential amendment to the *Criminal Procedure Act 1986*; to amend the *Poisons and Therapeutic Goods Regulation 1994*; to amend the *Crimes (Forensic Procedures) Act 2000* to make further provision with respect to interim orders; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes Legislation Further Amendment Act 2000</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Drug Misuse and Trafficking Act 1985 No 226	7
The <i>Drug Misuse and Trafficking Act 1985</i> is amended as set out in Schedule 1.	8 9
4 Amendment of Criminal Procedure Act 1986 No 209	10
The <i>Criminal Procedure Act 1986</i> is amended as set out in Schedule 2.	11
5 Amendment of Poisons and Therapeutic Goods Regulation 1994	12
The <i>Poisons and Therapeutic Goods Regulation 1994</i> is amended as set out in Schedule 3.	13 14
6 Amendment of Crimes (Forensic Procedures) Act 2000 No 59	15
The <i>Crimes (Forensic Procedures) Act 2000</i> is amended as set out in Schedule 4.	16 17

Schedule 1	Amendment of Drug Misuse and Trafficking Act 1985	1
		2
	(Section 3)	3
[1]	Section 24A	4
	Insert after section 24:	5
	24A Possession of precursors for manufacture or production of prohibited drugs	6
		7
	(1) A person who has possession of a precursor intended by the person for use in the manufacture or production, by that person or another person, of a prohibited drug is guilty of an offence.	8
		9
		10
	(2) Nothing in this section renders unlawful the manufacture or production of a prohibited drug by:	11
		12
	(a) a person licensed or authorised to do so under the <i>Poisons and Therapeutic Goods Act 1966</i> , or	13
		14
	(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 manufacture or production of the prohibited drug is for the purpose of scientific research, instruction, analysis or study,	15
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	or renders unlawful the taking part by any other person in the manufacture or production of a prohibited drug by a person to whom paragraph (a) or (b) applies.	21
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		23
	(3) In this section, <i>precursor</i> means a substance specified or described in the regulations as a precursor for the purposes of this section.	24
		25
		26
[2]	Section 31 Indictable offences—summary disposal of unless prosecution or accused elects otherwise	27
		28
	Insert after section 31 (1):	29
	(1A) This section also applies to an offence under section 24A.	30

[3] Section 33AB	1
Insert after section 33AA:	2
33AB Penalty for offence involving possession of precursors for manufacture or production of prohibited drugs	3 4
The penalty for an offence under section 24A is a fine of 2,000 penalty units or imprisonment for a term of 10 years, or both, except as provided by section 31.	5 6 7

Schedule 2	Amendment of Criminal Procedure Act 1986	1
		2
	(Section 4)	3
Schedule 1	Indictable offences triable summarily	4
	Insert after paragraph 30 in Part 6 of Table 1:	5
31	Offence involving possession of precursors for manufacture or production of prohibited drugs	6
		7
	<i>An offence referred to in section 24A of the <i>Drug Misuse and Trafficking Act 1985</i>.</i>	8
		9

Schedule 3	Amendment of Poisons and Therapeutic Goods Regulation 1994	1
		2
	(Section 5)	3
Clause 131A		4
Insert after clause 131:		5
131A	Prohibition on cash sales	6
	A person must not supply a restricted quantity of a drug precursor to a person who does not have an account with the supplier and payment for the supply must be made through the account.	7
		8
		9
		10
	Maximum penalty: 15 penalty units.	11

Schedule 4	Amendment of Crimes (Forensic Procedures) Act 2000	1
		2
	(Section 6)	3
[1]	Section 3 Interpretation	4
	Insert in alphabetical order in section 3 (1):	5
	<i>authorised justice</i> has the same meaning as in section 3 of the	6
	<i>Search Warrants Act 1985</i> .	7
	Note. <i>Authorised justice</i> is defined in section 3 of the <i>Search Warrants Act 1985</i> to mean:	8
	(a) a Magistrate, or	9
	(b) a justice of the peace who is a Clerk of a Local Court or the registrar of the Drug Court, or	10
	(c) a justice of the peace who is employed in the Attorney General's Department and who is declared (whether by name or by reference to the holder of a particular office), by the Attorney General by instrument in writing or by order published in the Gazette, to be an authorised justice for the purposes of that Act.	11
		12
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		17
[2]	Section 3 (1), definition of "order"	18
	Omit "a Magistrate" from paragraph (c) of the definition.	19
	Insert instead "an authorised justice".	20
[3]	Section 3 (1), definition of "time out"	21
	Omit "or Magistrate" from paragraph (k) of the definition.	22
	Insert instead "or a Magistrate or other authorised justice".	23
[4]	Sections 5 and 6	24
	Insert "or an authorised justice" after "Magistrate" wherever occurring in the Tables to the sections.	25
		26
[5]	Sections 13 (4), (5), (6) and (7), 14 (b), 39, 40 (1), 41 (1), (3) and (4), 42 (1) (a) and 98 (2) (c)	27
	Insert "or other authorised justice" after "Magistrate" wherever occurring.	28
		29

[6] Part 5, heading	1
Insert “or other authorised justice” after “Magistrate”.	2
[7] Section 22 Forensic procedure may be carried out by order of Magistrate or other authorised justice	3 4
Omit “by order of a Magistrate under section 24, 27 or 32”.	5
Insert instead “by order of a Magistrate under section 24 or 27, or by order of an authorised justice under section 32”.	6 7
[8] Section 23 Circumstances in which Magistrate or other authorised justice may order forensic procedure	8 9
Omit “A Magistrate may, under section 24 or 32, order”.	10
Insert instead “An order may be made by a Magistrate under section 24, or by an authorised justice under section 32, for”	11 12
[9] Sections 32 (1) and 35 (1) and (3)	13
Omit “A Magistrate” wherever occurring.	14
Insert instead “An authorised justice”.	15
[10] Sections 32 (1), 34 and 36 (2)	16
Omit “the Magistrate” wherever occurring.	17
Insert instead “the authorised justice”.	18
[11] Section 33 Application for interim order	19
Omit “a Magistrate” from section 33 (1).	20
Insert instead “an authorised justice”.	21
[12] Section 35 Making of interim order	22
Omit “the Magistrate” from section 35 (3). Insert instead “a Magistrate”.	23
[13] Section 36 Records of application and interim order	24
Omit “Magistrate’s” wherever occurring in section 36 (1) (e), (3), (4), (5) and (6).	25 26
Insert instead “authorised justice’s”.	27

[14] Sections 36 (3) and (4)	1
Omit “Magistrate” wherever occurring. Insert instead “authorised justice”.	2
[15] Part 5, Division 4, heading	3
Insert “or other authorised justice” after “Magistrate”.	4
[16] Section 91 Supply of forensic material for DNA database system purposes	5 6
Omit “and who is subsequently convicted of the offence” from paragraph (b) of the definition of <i>permitted forensic material</i> in section 91 (3).	7 8
[17] Section 107 Liability for forensic procedures	9
Omit “or Magistrate” from section 107 (b).	10
Insert instead “or a Magistrate or other authorised justice”.	11
[18] Schedule 1 Amendments	12
Insert “(other than an interim order)” after “order” in section 104 (6) (a) of the <i>Justices Act 1902</i> (as proposed to be inserted by Schedule 1.2).	13 14