

First print



New South Wales

Drug Misuse and Trafficking Amendment Bill 1997

Explanatory note

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

Overview of Bill

The object of this Bill is to remove the penalty of imprisonment, and in some cases to reduce pecuniary penalties, for certain offences under the *Drug Misuse and Trafficking Act 1985* involving not more than a small quantity of cannabis. *Small quantity* is defined in section 3 of, and Schedule 1 to, the Act to be:

cannabis plants	5 plants
cannabis leaf	30g
cannabis oil	2g
cannabis resin	5g

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.

Schedule 1 Amendments

Schedule 1 [1] creates a new section, section 18A, so as to distinguish offences involving small quantities of cannabis plants from other offences involving prohibited plants.

Schedule 1 [2] amends the penalty regime of the Act with respect to offences involving not more than a small quantity of cannabis. This is effected by the substitution of section 21.

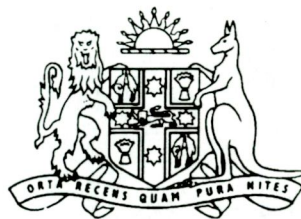
Schedule 1 [3] and [4] amend section 23 so as to distinguish offences involving small quantities of cannabis plants from other offences involving prohibited plants.

Schedule 1 [5] makes an amendment by way of statute law revision to correct a typographical error.

Schedule 1 [6], [7] and [8] make amendments to sections 32 and 33 to make it clear that penalties imposed by the Act are maximum penalties and to create consistency of expression with the other provisions of the Act by which penalties are imposed.

Schedule 1 [9] and [10] enable the regulations under the Act to make any relevant savings and transitional provisions consequent on the enactment of the proposed Act. They also apply the new penalty regime only to offences that are committed after the amendments made by the proposed Act come into force.

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New South Wales

Drug Misuse and Trafficking Amendment Bill 1997

No. , 1997

A Bill for

An Act to amend the *Drug Misuse and Trafficking Act 1985* with respect to penalties and proceedings for offences involving small quantities of cannabis, and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Drug Misuse and Trafficking Amendment Act 1997*.

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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Schedule 1 Amendments

(Section 3)

[1] Section 18A

Insert after section 18:

- 18A Offences with respect to small quantities of cannabis plants** 5
- (1) A person who:
- (a) cultivates, or knowingly takes part in the cultivation of, not more than the small quantity of cannabis plants, or 10
 - (b) has not more than the small quantity of cannabis plants in his or her possession,
- is guilty of an offence.
- (2) Nothing in this section renders unlawful any act relating to the cultivation or possession of a cannabis plant by: 15
- (a) a person:
 - (i) who informs the court before which the person is prosecuted that the person proposes to adduce evidence as referred to in subparagraph (ii), and 20
 - (ii) who adduces evidence which satisfies the court that, having regard to all the circumstances, including the person's conduct, in which the act constituting the offence was done or preparatory to the doing of the act, the person did not know or suspect and could not reasonably be expected to have known or suspected that the cannabis plant was a cannabis plant, or 25
 - (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 cultivation or possession of the cannabis plant is for the purpose of scientific research, instruction, analysis or study. 30
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- (3) Where a person informs a court as referred to in subsection (2) (a) (i), evidence of any previous conviction of the person for any offence, being evidence which may tend to rebut the evidence referred to in subsection (2) (a) (ii), may, with the leave of the court, be adduced by the prosecutor. 5

[2] Section 21

Omit the section. Insert instead:

21 Penalties

- (1) The maximum penalty for an offence under this Division is a fine of 20 penalty units or imprisonment for a term of 2 years, or both, except as provided by subsection (2) or (3). 10
- (2) The maximum penalty for the following offences is a fine of 20 penalty units: 15
- (a) an offence against section 10 (1) where the prohibited drug concerned in the commission of the offence is cannabis leaf, cannabis oil or cannabis resin, and the court is satisfied on the balance of probabilities that the amount of the prohibited drug concerned is not more than the small quantity applicable to the prohibited drug, 20
- (b) an offence against section 11 (1) where the item of equipment concerned is a waterpipe within the meaning of section 11A, 25
- (c) an offence against section 11A (2) or (3),
- (d) an offence against section 12 (1) where the prohibited drug concerned in the commission of the offence is cannabis leaf, cannabis oil or cannabis resin. 30
- (3) The maximum penalty for an offence against section 18A (1) is a fine of 50 penalty units.

[3] Section 23 Offences with respect to prohibited plants

Insert “(not being the small quantity of cannabis plants or less)” after “plant” in section 23 (1) (a).

[4] Section 23 (1) (c)

Insert “(not being the small quantity of cannabis plants or less)” after “possession”. 5

[5] Section 23 (5)

Omit “intend”. Insert instead “tend”.

[6] Section 32 Penalty for offences dealt with on indictment not involving commercial quantities 10

Insert “maximum” before “penalty” where firstly occurring in section 32 (1).

[7] Section 33 Penalties for offences involving commercial quantities

Insert “maximum” before “penalty” where firstly occurring in section 33 (2). 15

[8] Section 33 (3)

Insert “maximum” before “penalty” where firstly occurring.

[9] Section 46

Insert after section 45: 20

46 Savings, transitional and other provisions

Schedule 2 has effect.

[10] Schedule 2

Insert after Schedule 1:

Schedule 2 Savings, transitional and other provisions

(Section 46) 5

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 10

Drug Misuse and Trafficking Amendment Act 1997

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: 15
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 20
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 25

**Part 2 Provisions consequent on enactment of
Drug Misuse and Trafficking Amendment
Act 1997**

**2 Reduction in penalties for certain offences involving
small quantities of cannabis**

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An amendment made by the *Drug Misuse and Trafficking Amendment Act 1997* does not apply to an offence committed before the amendment takes effect.

