



New South Wales

Drug Misuse and Trafficking Amendment (Dangerous Exhibits) Bill 2002

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 provide for the destruction or other disposal of exhibits that have been seized in connection with proceedings for drug-related offences if the exhibits are a threat to health or safety.

Outline of provisions

The *Drug Misuse and Trafficking Act 1985* allows orders to be obtained from Magistrates for the disposal of exhibits retained for the purpose of proceedings for drug-related offences, both before and after trial of the offence.

The proposed Act will provide for police officers of or above the rank of Superintendent to make orders for the destruction or other disposal of exhibits if analysts certify that is required to be done in the interest of health or safety.

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 to be appointed by proclamation.

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

Schedule 1 Amendment

Schedule 1 makes provision for orders allowing the destruction or other disposal of exhibits as described above.

Before that is done, any person charged with an offence to which the exhibit relates will need to be given at least 35 days' notice of the proposal and samples of any substance concerned will be set aside, if practicable.

A court that may make an order for the restitution or disposal of the exhibit concerned may delay the carrying out of, or revoke, an order made under the proposed provisions.

First print



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New South Wales

Drug Misuse and Trafficking Amendment (Dangerous Exhibits) Bill 2002

No. , 2002

A Bill for

An Act to amend the *Drug Misuse and Trafficking Act 1985* so as to provide for the disposal of dangerous exhibits; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Drug Misuse and Trafficking Amendment (Dangerous Exhibits) Act 2002</i> .	3 4
2 Commencement	5
This Act commences on a day to be appointed by proclamation.	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

Schedule 1 Amendment

(Section 3)

Part 3A, Division 2A

Insert after Division 2 of Part 3A:

Division 2A Order for disposal of dangerous exhibit

39PA Order for disposal of dangerous exhibit

- (1) At any time, a police officer of or above the rank of Superintendent may order in writing that any substance or article (whether or not it consists of or includes a prohibited drug or prohibited plant) is to be destroyed or otherwise disposed of if:
 - (a) the substance or article has been seized and is being retained for the purpose of proceedings for an offence relating to the manufacture, production, supply or use of a prohibited drug or the cultivation of a prohibited plant, and
 - (b) an analyst has certified in writing that, in the interest of health or safety, the substance or article is required to be destroyed or otherwise disposed of.
- (2) Before any substance or article is destroyed or otherwise disposed of in accordance with such an order:
 - (a) evidence of the substance or article is to be recorded, whether by photographing or otherwise, and
 - (b) where practicable in the case of a substance, two samples of the substance are to be taken and retained, each of a sufficient quantity to allow its analysis, and
 - (c) the owner or occupier of the premises at which the substance or article was seized, and any person charged with an offence to which the substance or article relates, are to be given at least 35 days' written notice (by post or otherwise) of the proposal to destroy or otherwise dispose of it. However, such a notice need not be given if an analyst certifies in writing that, in the interest of health or safety, it needs to be destroyed immediately.

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- (3) A court may defer the carrying out of, or revoke, an order under this section in the course of any proceedings in which it may make an order for the restitution or disposal of property under section 126 or 134 of the *Criminal Procedure Act 1986*. 1
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- (4) Subject to subsections (2) and (3), any substance or article (whether seized before or after the commencement of this section) may be destroyed or otherwise disposed of in accordance with an order under this section. 5
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- (5) In this section, **analyst** means: 9
- (a) any person employed by the Government of New South Wales, or by an area health service, as an analyst, or 10
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 - (b) any person who is an analyst within the meaning of the *Poisons and Therapeutic Goods Act 1966*, or 12
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 - (c) any person prescribed as an analyst for the purposes of this section by the regulations. 14
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