



NSW Legislative Assembly Hansard

Drug Misuse and Trafficking Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Thursday 9 June 2005.

Mr BOB DEBUS (Blue Mountains—Attorney General, and Minister for the Environment) [4.56 p.m.]: I move:

That this bill be now read a second time.

The Drug Misuse and Trafficking Amendment Bill addresses the changing patterns of drug crime and is part of the Government's plan to respond to developments in drug crime as they emerge. In particular, the bill addresses the proliferation of chemical or so-called designer drugs and the methods used by those who distribute and manufacture them. The measures in the bill largely result from the work of the Drug Misuse and Trafficking Act Working Group convened by my department, which deliberated on various proposals for reform in the course of 2003 and 2004. The working group included representatives of a wide range of agencies with knowledge and expertise in drug crime, including police, pharmacological and scientific analysis, criminal prosecution and defence.

Schedule 1 amends the Drug Misuse and Trafficking Act 1985. The Government continues to monitor the drug market to identify dangerous new drugs introduced by entrepreneurial criminal drug dealers. In 2002 the Government listed the substance known as GHB, or GBH, as a prohibited drug. GHB is a central nervous system depressant that is suspected of being used as a drink-spiking agent as well as a recreational drug. The use of GHB has unpredictable effects, including coma, convulsions, severe respiratory depression and death, especially when combined with other depressants such as alcohol. It is dangerous because of the very fine line between the amount required for a high and the amount that may result in unconsciousness.

Other chemicals are chemical precursors to GHB—which means that they can be used to manufacture GHB. Some of these chemicals are also metabolic precursors to GHB in that they metabolise into GHB after ingestion and are known to be used as drugs in New South Wales. These two chemicals are commonly known as GBL and 14BD, which drug dealers have taken to peddling since the prohibition of GHB. Items [25] and [26] will operate to list these two chemicals as prohibited drugs in schedule 1 of the Drug Misuse and Trafficking Act. Similar action was taken in New Zealand in 2003. The use of 14BD, in particular, is known to be related to deaths, including that of a man in Kings Cross in 2003. These chemicals are known to have a variety of legitimate uses in industry. Items [17], [21] and [23] provide that it is not unlawful to possess, manufacture, produce and supply these substances or take part in their manufacture, production and supply for legitimate purposes in industry. This will cover all stages of the legitimate industrial process.

The trend towards the use of high purity crystal methamphetamine—or ice—is another emerging drug threat. This dangerous substance has been accompanied by the use of ice pipes. These are instruments that crystals are placed in, heated and inhaled. Ice pipes are designed for that purpose and have no other uses. It is already an offence to have possession of an ice pipe for use in the administration of a drug. Items [2] to [4] create a new offence of sale, commercial supply or display of ice pipes in a shop for a commercial purpose, which will carry a maximum penalty of two years imprisonment. The bill is part of a broader package containing practical and effective measures to choke off the diversion and supply of precursor chemicals and apparatus to those who manufacture prohibited drugs in clandestine laboratories.

In 2000 the Government created an offence of possession of a prescribed precursor with intent to use for the manufacture or production of prohibited drugs. The Government also prescribed requirements to be complied with on the cash sale of those precursors resulting in an offence being committed in cases of non-compliance. The Drug Misuse and Trafficking Regulation will soon be amended to strengthen requirements for sale and storage of precursors. Item [10] will allow the regulation to deal with storage of precursors in addition to sale. Item [24] increases the maximum penalties that offences under the regulation may carry in the case of individuals and corporations. The trend toward the manufacturing of chemical drugs in clandestine backyard drug laboratories has been a very concerning development that poses significant risk to children.

The environment of an illegal laboratory is dangerous. The chemicals used are susceptible to fire and explosion. Chemical fumes pose serious health risks, as do remnants of chemicals in powder form. In recent years there has been an increase in backyard drug laboratory explosions, which in at least one case has been fatal. For those reasons the Government will increase penalties for criminals who endanger the health or safety of children in this way by creating an aggravated offence of manufacturing or producing a prohibited drug. Item [6] contains an offence where a person manufactures or produces a prohibited drug or takes part in such manufacture or production and exposes a child to that manufacturing process or to chemicals stored for the purpose of manufacturing.

Item [8] contains a defence to be available if the health and safety of a child was not in fact endangered. Item

[11] creates an offence where a person over the age of 18 years procures a child to supply or take part in supply of a prohibited drug, other than cannabis leaf. This further protects children from the trade in illicit drugs. Although the definitions of "supply" and "taking part in supply" include a wide range of activities prior to the actual supply of a drug, the ambit of criminal responsibility will be extended even further where children are involved. It will not be necessary for a child to have committed an offence of supply or taking part in supply to secure a conviction under the new procuring offence. Items [9] and [11] define "child" as a person under the age of 16 years for purposes of the offences of procuring a child for supply offences and manufacturing aggravated by exposure of a child.

Items [7] and [11] create corresponding offences with higher maximum penalties in each case where the amount of drug involved exceeds the commercial quantity. Item [16] contains the maximum penalties for these new offences which will be an increase on the existing offences in subsections (1) and (2) of section 24 and subsections (1) and (3) of section 25 of the Drug Misuse and Trafficking Act by 20 to 25 per cent and adopts the same penalty structure as supplying a prohibited drug to a child under subsections (1A) and (2A) of section 25 of that Act. That means that the penalty for an offence not involving a commercial quantity on indictment will increase from 2,000 penalty units or 15 years imprisonment or both to 2,400 penalty units or 18 years imprisonment or both. The maximum penalties for offences involving the commercial quantity will increase from 3,500 penalty units or 20 years imprisonment to 4,200 penalty units or 25 years imprisonment or both.

The bill also amends the Drug Misuse and Trafficking Act in various ways to improve the operation of drug law enforcement and prosecution in New South Wales. Items [25] and [27] operate to amend the quantities in schedule 1 to the Act for methadone prepared in oral liquid form for therapeutic use. Single doses of methadone are distributed in a diluted form to be taken by drinking. Because of the admixture provision in the Act, the dilutants added to the methadone are currently counted as part of the drug's weight. This means offences involving a single standard oral liquid dose must be dealt with on indictment in the District Court as it exceeds the indictable quantity for methadone in the Act. This must happen even though the oral liquid dose only contains 25 milligrams of methadone—far less than the 5 gram indictable quantity.

It is agreed that these matters involving a single oral liquid dose are more appropriately dealt with in the Local Court. The power of the Director of Public Prosecutions to elect to proceed on indictment in any case remains as a safeguard in relation to more serious cases. The quantities for methadone in other forms, such as tablet form, remain unchanged. Item [1] amends the Drug Misuse and Trafficking Act to exempt from the offence provisions of the Act persons holding authorities issued by chief executive of NSW Health for the conduct of clinical trials. This extends the current scheme of exemptions for persons complying with an authority issued by the chief executive for scientific research, instruction, analysis or study.

Item [19] amends the Act to allow senior police of or above the rank of superintendent to order destruction of substances which are or are reasonably suspected to be prohibited drugs and plants, under the relevant trafficable quantity, where no person has been charged or is likely to be charged. This measure has been requested by NSW Police and will reduce pressure on analytical resources as analysis will not be required in those cases to prove that the substance is a drug in order to obtain a destruction order from a court. That will reduce pressure on resources for exhibit storage, analysis and courts and ensure that drugs are destroyed at the earliest opportunity. There will be a record keeping requirement as a safeguard. Item [18] will amend section 39A of the Drug Misuse and Trafficking Act to ensure that the minimum amount is the same for all prohibited drugs.

The minimum amount equals the trafficable quantity for all other drugs but heroin, which is one gram. Equating the minimum amount and the trafficable quantity in all cases will standardise procedures in practice for destruction of drugs under the Act. Item [20] amends section 39RA of the Drug Misuse and Trafficking Act by extending the ability of the Commissioner of Police to delegate the power to direct that seized drugs be retained for use in a controlled operation or integrity testing program. At present the power of delegation extends to a deputy commissioner. The Act will be amended to allow the power to be delegated to a member of NSW Police senior executive service with power to authorise a controlled operation. The senior executive service includes deputy commissioners, assistant commissioners and officers at commander and superintendent level.

Officers able to authorise controlled operations are two deputy commissioners and three other members of the senior executive service of or above the rank of superintendent nominated by the Commissioner of Police. This measure has been requested by NSW Police and will reduce the administrative burden on the commissioner and the deputies. The power of delegation will be strictly limited to a maximum of five officers only at a very high level in the police hierarchy. Item [20] amends the Act so that evidence to be given in New South Wales courts of prohibited drug or plant analysis occurring outside New South Wales can be given in the same manner as for New South Wales analysts. This will only apply to analysts prescribed in the regulation. For New South Wales analysts the Act dispenses with certain procedural requirements so that a certificate can be tendered as prima facie evidence of the matters contained therein without the analyst having to be called to give oral evidence in every case.

Items [1] and [2] of schedule 2 amend section 8 of the Young Offenders Act to formalise in that Act the contents

of clause 16 of the existing Young Offenders Regulation 2004. The amendment will clarify that, for the purposes of the Act, which include cautioning of juvenile offenders, eligibility for offences involving cannabis plant and leaf is the same and as set out in section 8 (3) of the Young Offenders Act. That is, relevant offences involving cannabis plant or leaf are not covered by the Young Offenders Act if the amount exceeds half the small quantity prescribed in the Drug Misuse and Trafficking Act, or in exceptional circumstances, where the amount does not exceed the small quantity and it is in the interests of the rehabilitation of the child and appropriate in all of the circumstances to deal with the matter under the Young Offenders Act. In summary, the measures contained in the bill are modest in nature but important to protect the community from dangerous trends in the drug trade particularly where children, the most vulnerable members of the community, are concerned and to ensure the efficient allocation of resources in enforcing the drug law in New South Wales. I commend the bill to the House.