



New South Wales

Disorderly Houses Amendment (Commercial Supply of Prohibited Drugs) 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 *Disorderly Houses Act 1943* (the ***Principal Act***):

- (a) to change the title of the Act, and
- (b) to enable applications for declarations under that Act to be made by senior police officers to the District Court or to the Supreme Court, and
- (c) to remove the requirement that notice of a declaration has to be published in a newspaper, and
- (d) to remove the offence of being on premises in respect of which a declaration is in force, and
- (e) to enable senior police officers to apply to a Magistrate for an order to close premises for up to 72 hours if it can be shown that there is a reasonable suspicion that certain activities relating to the illegal commercial supply of prohibited drugs is taking place, and

(f) to increase penalties for offences under the Act.

The Bill also makes minor consequential amendments to various other Acts.

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 that gives effect to the amendments to the *Disorderly Houses Act 1943* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to consequential amendments to other Acts set out in Schedule 2.

Schedule 1 Amendment of Disorderly Houses Act 1943

Schedule 1 [2] changes the name of the *Disorderly Houses Act 1943* to the *Restricted Premises Act 1943*.

Currently, Part 2 of the Principal Act enables applications to be made by a Superintendent or Inspector of Police to the Supreme Court for premises to be declared a disorderly house. For an application to be granted it has to be shown that there are reasonable grounds for suspecting that certain conditions apply to the premises (for example, that liquor or a drug is being unlawfully sold or supplied from the premises).

Schedule 1 [4] enables a senior police officer (defined as a police officer of or above the rank of sergeant) to apply to the Supreme Court or the District Court for a declaration that Part 2 of the Principal Act applies to specified premises. **Schedule 1 [3], [6], [8], [9] and [15]** contain consequential amendments.

Schedule 1 [1], [5] and [7] remove references to “disorderly house” as it is considered that this expression is outdated and does not reflect the circumstances in which Part 2 of the Principal Act is mainly used, namely, in relation to premises from which drugs are illegally sold.

Schedule 1 [10] removes the current requirement that notice of the making of a declaration under Part 2 of the Principal Act must be published in a newspaper. The current requirement that the notice also be served personally on the owner or occupier of the premises concerned (or, if this cannot be achieved promptly, by fixing the notice near the entrance to the premises) remains. However, it is an offence for someone other than a police officer or the owner or occupier of the premises to remove a notice that has been fixed to the premises.

Schedule 1 [11] removes the offence of being on premises the subject of a declaration under Part 2 of the Principal Act.

Schedule 1 [12] increases the penalty for an offence by the owner of premises the subject of a declaration under Part 2 of the Principal Act to allow the conditions that constituted the grounds on which the declaration was made to continue to exist in relation to the premises.

Schedule 1 [13] increases the penalty for an offence by the occupier of premises the subject of a declaration under Part 2 of the Principal Act to allow the conditions that constituted the grounds on which the declaration was made to continue to exist in relation to the premises.

Schedule 1 [14] increases the penalty for an offence of obstructing or aiding in the obstruction of a police officer in the exercise of his or her powers under the Principal Act.

Schedule 1 [16] inserts a new Part 2A (proposed sections 15B–15D) into the Principal Act which enables a senior police officer to apply to a Magistrate for the closure of premises for a period of up to 72 hours if the police officer provides reasonable grounds for suspecting that the premises are being used by the owner or occupier (or with the knowledge of the owner or occupier) for a commercial purpose in order:

- (a) to supply prohibited drugs unlawfully to persons, or
- (b) to keep prohibited drugs to enable their unlawful supply to persons, or
- (c) to make arrangements for the unlawful supply of prohibited drugs to persons at another place.

The owner or occupier of the premises may apply for revocation of the order.

Schedule 1 [17] provides for offences under the Principal Act to be dealt with summarily by a Local Court.

Schedule 1 [18] and [19] contain savings and transitional provisions.

Schedule 2 Amendment of other Acts

Schedule 2 contains consequential amendments to other Acts.



New South Wales

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New South Wales

Disorderly Houses Amendment (Commercial Supply of Prohibited Drugs) Bill 2002

No , 2002

A Bill for

An Act to amend the *Disorderly Houses Act 1943* with respect to declarations under that Act and the closure of commercial premises on grounds relating to the illegal supply of prohibited drugs; to amend various other Acts consequentially; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Disorderly Houses Amendment (Commercial Supply of Prohibited Drugs) Act 2002*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Disorderly Houses Act 1943 No 6

The *Disorderly Houses Act 1943* is amended as set out in Schedule 1.

4 Amendment of other Acts

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

Schedule 1 Amendment of Disorderly Houses Act 1943
(Section 3)

[1] Long title

Omit “closing of disorderly houses”.

Insert instead “declaration of premises and the closure of premises on which certain illegal activities are suspected of being carried on”.

[2] Section 1 Name of Act

Omit “*Disorderly Houses*”.

Insert instead “*Restricted Premises*”.

[3] Section 2 Definitions

Insert in alphabetical order:

appropriate Court, in relation to a declaration under Part 2, means the Court that made the declaration.

senior police officer means a police officer of or above the rank of sergeant.

[4] Section 3 Declaration by Supreme Court or District Court in relation to premises

Omit “Upon a Superintendent or Inspector of Police” from section 3 (1).

Insert instead “On a senior police officer”.

[5] Section 3 (1) (d) (ii)

Omit “declared to be a disorderly house under this Act”.

Insert instead “the subject of a declaration under this Part”.

[6] Section 3 (1)

Insert “or the District Court” after “Supreme Court”.

Disorderly Houses Amendment (Commercial Supply of Prohibited Drugs)
Bill 2002

Schedule 1 Amendment of Disorderly Houses Act 1943

[7] Section 3 (1)	1
Omit “a disorderly house” where secondly occurring.	2
Insert instead “premises to which this Part applies”.	3
[8] Section 4 Rescission of declaration	4
Omit “Supreme Court” from section 4 (1).	5
Insert instead “appropriate Court”.	6
[9] Section 4	7
Omit “Superintendent or Inspector of Police” wherever occurring.	8
Insert instead “senior police officer”.	9
[10] Section 6	10
Omit the section. Insert instead:	11
6 Notice given of declaration	12
(1) A senior police officer is to cause notice of the making of a	13
declaration under this Part to be served on the owner or	14
occupier of the premises to which the declaration relates:	15
(a) personally, or	16
(b) if personal service cannot be effected promptly, by	17
causing a copy of the notice to be fixed at or near to the	18
entrance of the premises.	19
(2) A person must not deface, destroy, cover or remove a copy of	20
a notice fixed under this section at or near the entrance to	21
premises unless the person is a police officer or the owner or	22
occupier of the premises.	23
Maximum penalty (subsection (2)): 20 penalty units.	24
[11] Section 7 Person found in premises declared a disorderly house	25
Omit the section.	26

[12] Section 8

Omit the section. Insert instead:

8 Offence by owner of premises

- (1) After the service of a notice under section 6 on the owner of premises of the making of a declaration, the owner is guilty of an offence if any of the conditions referred to in section 3 (1) apply to the premises while the declaration is in force.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

- (2) An owner of premises is not guilty of an offence under this section if the owner proves that he or she has taken all reasonable steps to prevent the conditions referred to in section 3 (1) applying to the premises.

- (3) An owner of premises that are occupied by a person other than the owner is not guilty of an offence under this section if the owner proves that he or she has taken all reasonable steps to evict the occupier from the premises.

[13] Section 9

Omit the section. Insert instead:

9 Offence by occupier of premises

- (1) After the service of a notice under section 6 on the occupier of premises of the making of a declaration, the occupier is guilty of an offence if any of the conditions referred to in section 3 (1) apply to the premises while the declaration is in force.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

- (2) An occupier of premises is not guilty of an offence under this section if the occupier proves that he or she has taken all reasonable steps to prevent the conditions referred to in section 3 (1) applying to the premises.

[14] Section 11 Obstructing police	1
Omit “shall be liable on summary conviction to a penalty not exceeding 0.5 penalty unit”.	2 3
Insert instead “is liable to a penalty not exceeding 50 penalty units or imprisonment for 6 months, or both”.	4 5
[15] Section 15A	6
Insert after section 15:	7
15A Rules of the District Court	8
(1) Rules may be made under the <i>District Court Act 1973</i> for or with respect to any matters that by or under the provisions of this Part are required or permitted to be prescribed for carrying out or giving effect to those provisions.	9 10 11 12
(2) Subsection (1) does not limit the rule-making powers conferred by the <i>District Court Act 1973</i> .	13 14
[16] Part 2A	15
Insert before Part 3:	16
Part 2A Special provisions relating to closure of premises	17 18
15B Definition	19
In this Part, <i>prohibited drug</i> has the same meaning as in the <i>Drug Misuse and Trafficking Act 1985</i> .	20 21
15C Order by Magistrate for temporary closure of premises	22
(1) A Magistrate may, on application made by a senior police officer, order the owner or occupier of any premises to close the premises from a time specified in the order until a later specified time.	23 24 25 26
(2) An order may only be made under subsection (1) if the senior police officer provides reasonable grounds for suspecting that the premises are being used by the owner or occupier (or with the knowledge of the owner or occupier) for a commercial purpose in order:	27 28 29 30 31

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- | | | |
|------------|--|----------------|
| (a) | to supply prohibited drugs unlawfully to persons, or | 1 |
| (b) | to keep prohibited drugs to enable their unlawful supply to persons, or | 2
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| (c) | to make arrangements for the unlawful supply of prohibited drugs to persons at another place. | 4
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| (3) | An order must not require the closure of premises for a period longer than 72 hours. | 6
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| (4) | An order may require the closure of premises until specified conditions are met but must not require closure for a period longer than 72 hours. | 8
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| (5) | An order under this section must be served on the owner or occupier of the premises concerned or on the person apparently in charge of the premises. | 11
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| (6) | A person must not fail to comply with an order under this section. | 14
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| | Maximum penalty: 50 penalty units or imprisonment for 6 months, or both. | 16
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| (7) | Two or more orders closing the same premises may not be made under this section in any period of one week. | 18
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| 15D | Revocation of closure order | 20 |
| (1) | The owner or occupier of premises the subject of an order under section 15C may apply to a Magistrate for the revocation of the order. | 21
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| (2) | A Magistrate may revoke an order under section 15C if the Magistrate is satisfied that: | 24
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| (a) | the premises concerned are not being used for a purpose referred to in section 15C (2), or | 26
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| (b) | the applicant for revocation of the order has no knowledge that the premises are being used for a purpose referred to in section 15C (2). | 28
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Disorderly Houses Amendment (Commercial Supply of Prohibited Drugs)
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Schedule 1 Amendment of Disorderly Houses Act 1943

[17] Section 18A	1
Insert before section 19:	2
18A Proceedings for offences	3
Proceedings for offences against this Act are to be dealt with summarily before a Local Court.	4 5
[18] Section 21	6
Insert after section 20:	7
21 Savings, transitional and other provisions	8
Schedule 1 has effect.	9
[19] Schedule 1	10
Insert at the end of the Act:	11
Schedule 1 Savings, transitional and other provisions	12 13
	(Section 21) 14
1 Regulations	15
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	16 17 18
this Act	19
<i>Disorderly Houses Amendment (Commercial Supply of Prohibited Drugs) Act 2002</i>	20 21
(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	22 23 24
(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:	25 26 27
(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	28 29 30

(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.

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2 Existing declarations

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A declaration under this Act of premises as a disorderly house
in force at the commencement of this clause is taken to be a
declaration under Part 2 of the premises as premises to which
that Part applies.

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Schedule 2 Amendment of other Acts

(Section 4)

2.1 Land and Environment Court Act 1979 No 204

Section 20 Class 4—environmental planning and protection and development contract civil enforcement

Omit “*Disorderly Houses Act 1943*” from section 20 (1) (da).

Insert instead “*Restricted Premises Act 1943*”.

2.2 Police Powers (Drug Premises) Act 2001 No 30

Section 18 Application of other laws

Omit “*Disorderly Houses Act 1943*”.

Insert instead “*Restricted Premises Act 1943*”.

2.3 Search Warrants Act 1985 No 37

Section 10 Definitions

Omit “*Disorderly Houses Act 1943*” from the definition of ***search
warrant***.

Insert instead “*Restricted Premises Act 1943*”.