

Passed by both Houses



New South Wales

Drug Summit Legislative Response Bill 1999

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council

1999

Clerk of the Parliaments



Drug Summit Legislative Response Bill 1999

Act No , 1999

An Act to amend the *Drug Misuse and Trafficking Act 1985* to enable the licensing and operation of a medically supervised injecting centre for a trial period of 18 months; to make related amendments to other Acts; to repeal the *Drug Offensive Act 1987*; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Drug Summit Legislative Response Act 1999*.

2 Commencement

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 Schedules 1 and 2.

4 Amendment of other Acts

Each Act specified in Schedule 3 is amended as set out in that Schedule.

5 Repeal of Drug Offensive Act 1987 No 119

The *Drug Offensive Act 1987* is repealed.

6 Savings, transitional and other provisions

Schedule 4 has effect.

**Schedule 1 Amendment of Drug Misuse and
 Trafficking Act 1985 in relation to licensed
 injecting centres**

(Section 3)

Part 2A (secs 36A–36S)

Insert after Part 2:

Part 2A Medically supervised injecting centres

Division 1 Preliminary

36A Limited operation of Part 2A

- (1) Despite any other provision of this Part, this Part operates to allow the responsible authorities to issue only one licence, in respect of only one premises, to have effect only during a trial period of 18 months starting on a day to be fixed by proclamation as the start of the trial period.
- (2) However, nothing in this Part prevents the responsible authorities:
 - (a) from issuing a further licence to a person other than the holder of an earlier licence, or
 - (b) from issuing a further licence in respect of premises other than those specified in an earlier licence,so long as the earlier licence has been revoked or has otherwise ceased to have effect.
- (3) A licence must not be issued after the end of the trial period.

36B Review during trial period

- (1) The responsible authorities are to arrange for a review to be conducted of:
 - (a) the operation and use of the licensed injecting centre operating during the trial period, and
 - (b) the provisions of this Part and of any regulations made for the purposes of this Part,in order to ascertain whether the provisions of this Part (or any other provisions of this Act or the regulations) should be amended.
- (2) The review is to commence as soon as practicable after the start of the trial period, but may be completed during or after the trial period.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament as soon as practicable after its completion.

36C Expiry of Part

- (1) This Part (except for this section), and any licence issued under this Part, expire at the end of the trial period.
- (2) The expiry of this Part does not affect the operation of Division 4, or section 36R, in relation to matters arising before this Part expired.

36D Definitions

In this Part:

child means a person who is under the age of 18 years.

director, in relation to a licensed injecting centre, means a medical practitioner appointed as director of the centre, and includes any other medical practitioner appointed to act as director of the centre during the illness or absence of the director or during a vacancy in the office of the director.

internal management protocols, in relation to a licensed injecting centre, means the protocols finalised for the centre as referred to in section 36F or, if the protocols are amended or replaced as referred to in section 36M, the protocols as so amended or replaced.

law includes common law.

licence means a licence in force under this Part.

licensed injecting centre means the premises that are the subject of a licence.

prescribed drug means a prohibited drug or a substance prescribed by the regulations for the purposes of this definition.

qualified health professional means a medical practitioner, a nurse or a person having qualifications or experience specified or described by order of the Minister published in the Gazette.

responsible authorities means the Commissioner of Police and the Director-General of the Department of Health.

staff, in relation to a licensed injecting centre, includes:

- (a) all persons engaged to provide services at the centre, whether under a contract of employment or otherwise, and
- (b) all persons authorised to provide voluntary assistance at the centre in accordance with the centre's licence conditions and internal management protocols.

The employer of a person referred to in paragraph (a) or (b) is the person by or on whose behalf the person so referred to is engaged to provide services or authorised to provide voluntary assistance, as the case requires.

supervisor, in relation to a licensed injecting centre, means the director of the centre or a qualified health professional nominated by the director to supervise the centre.

trial period means the trial period of 18 months referred to in section 36A (1).

Division 2 Licensing of injecting centres

36E Licence

- (1) The responsible authorities may issue a licence authorising the holder of the licence to conduct specified premises as an injecting centre.

- (2) Nothing in this Part entitles a person to be issued with a licence, and the responsible authorities may refuse an application for a licence if the requirements of section 36F are not satisfied or for any other reason.

36F Restrictions on issue of licence

- (1) A licence for the conduct of premises as an injecting centre must not be issued unless the responsible authorities are of the opinion:
- (a) that the internal management protocols for the proposed centre have been finalised and are of a satisfactory standard, and
 - (b) that there is a sufficient level of acceptance, at community and local government level, for the establishment of an injecting centre at the premises, and
 - (c) that the premises are suitable for use as an injecting centre, having regard to all relevant matters including the following:
 - (i) public health and safety,
 - (ii) the visibility of the premises from the street,
 - (iii) the proximity of the premises to schools, child care centres and community centres,
 - (iv) any matters prescribed by the regulations for the purposes of this section.
- (2) If a community drug action plan is in force in relation to the area within which the premises of the proposed injecting centre are situated, the responsible authorities must have regard to that plan in forming an opinion as to the matters referred to in subsection (1) (b) and (c).
- (3) Without limiting subsection (1), a licence for the conduct of premises as an injecting centre must not be issued unless the responsible authorities are of the opinion:
- (a) that any building work that is carried out for the purposes of the centre will be carried out in accordance with the *Building Code of Australia*, and
 - (b) that any building that is used for the purposes of the centre will comply with the *Building Code of Australia*.

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- (4) In subsection (3), *building*, *Building Code of Australia* and *building work* have the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.

36G Duration of licence

- (1) Unless sooner surrendered or revoked, a licence has effect for the period specified in it.
- (2) The holder of a licence may, after consultation with the responsible authorities or their representatives, surrender the licence.

36H Conditions of licences generally

- (1) A licence is subject to such conditions as may be imposed from time to time by the responsible authorities, either in the licence or in a separate order in writing served on the holder of the licence.
- (2) Conditions of the kind referred to in subsection (1) may not be imposed without prior consultation with the holder or proposed holder of the licence.
- (3) A licence is also subject to such conditions as are imposed by or under this Part or the regulations.

36I Statutory conditions of licences

The following provisions are conditions of a licence for an injecting centre:

- (a) No child is to be admitted to that part of the centre that is used for the purpose of the administration of prescribed drugs.
- (b) The centre's internal management protocols are to be observed.

36J Contraventions

- (1) A contravention of this Division or the regulations in relation to a licensed injecting centre, or of the licence conditions for a licensed injecting centre, may be dealt with:

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Schedule 1 Amendment of Drug Misuse and Trafficking Act 1985 in relation to
licensed injecting centres

- (a) by one or more of the following:
 - (i) a warning or reprimand administered in writing by the responsible authorities,
 - (ii) a fine (not exceeding an amount equal to 100 penalty units) imposed by the responsible authorities,
 - (iii) suspension of the licence by the responsible authorities for a specified period or until further notice, or
 - (b) by revocation of the licence by the responsible authorities.
- (2) If the contravention also gives rise to an offence:
- (a) the fact that action has been taken under this section in relation to the contravention does not prevent a penalty from being imposed for the offence, and
 - (b) the fact that a penalty has been imposed for the offence does not prevent action from being taken under this section in relation to the contravention.
- (3) A fine imposed under this section is payable to either responsible authority within the period specified by the responsible authorities, and is to be paid into the Consolidated Fund.
- (4) If a licensee fails to pay a fine imposed under this section (in whole or in part), the responsible authorities may suspend or revoke the licence.
- (5) Nothing in this section prevents the responsible authorities from amending or imposing a condition as a consequence of a contravention referred to in subsection (1).
- (6) The responsible authorities are authorised to suspend or revoke a licence for the purposes of this section.
- (7) A contravention referred to in subsection (1):
- (a) does not limit the operation of section 36O, except to the extent that the contravention gives rise to an offence under the regulations made for the purposes of this Part, and
 - (b) does not limit the operation of section 36P.

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- (8) A contravention relating to the admission of a child to a licensed injecting centre is not committed if the licensee establishes that, having regard to the relevant provisions of the centre's internal management protocols, it was not apparent to the centre's staff that the person concerned was a child.

36K Reviews

The responsible authorities are to arrange for the ongoing or periodical review of any licensed injecting centre.

Division 3 Internal management protocols

36L Matters for consideration in relation to internal management protocols

In considering the internal management protocols for a proposed injecting centre for the purposes of section 36F, the responsible authorities must have regard to whether provision needs to be made to ensure that any or all of the following requirements are met:

- (a) The centre must be under the supervision of a supervisor.
- (b) The supervisor must have a general overseeing role of the centre's clinical operations and responsibility for ensuring the adequacy of the clinical procedures used in the centre. This paragraph does not prevent the supervisor from being personally involved in clinical activities in the centre.
- (c) All staff directly supervising injecting activities in the centre must be qualified health professionals.
- (d) The centre must contain or have satisfactory access to:
 - (i) primary health care services, including medical consultation and medical assessment services, and
 - (ii) drug and alcohol counselling services, and
 - (iii) health education services, and
 - (iv) drug and alcohol detoxification and rehabilitation services, and
 - (v) the services of a methadone provider, and

- (vi) services for testing for blood-borne and sexually transmissible diseases, and
- (vii) services involving a needle and syringe exchange program.
- (e) Procedures are to be established to enable staff to ascertain in appropriate cases whether a person seeking admission to the centre is a child.
- (f) At least one member of staff:
 - (i) must be a person with satisfactory qualifications or experience in child protection and youth support, and
 - (ii) must be in attendance at the centre, or available on call to attend the centre, at all times while it is being used as an injecting centre.
- (g) The health and safety of staff and users of the centre are to be protected, having regard to the design and services of the centre.
- (h) Services are to be available and procedures established to ensure compliance or ability to comply, at or in connection with the centre, with the relevant requirements of:
 - (i) this Part, and
 - (ii) the regulations, and
 - (iii) the centre's licence conditions, and
 - (iv) any other provisions of the centre's internal management protocols.
- (i) Any requirements prescribed by the regulations for the purposes of this section.

36M Amendment and replacement of internal management protocols

A licensed injecting centre's internal management protocols may be amended or replaced, subject to the regulations and the centre's licence conditions.

Division 4 Exemptions from liability

36N Exemption from criminal liability for users of licensed injecting centre

(1) In this section:

exempt quantity, in relation to a prescribed drug, means:

- (a) in the case of a prohibited drug, a small quantity of the drug (subject to paragraph (b)), or
- (b) in any case, such quantity of the drug as is prescribed by the regulations.

(2) Despite any other provision of this Act or of any other Act or law (other than a provision prescribed by the regulations):

- (a) it is not unlawful for a person at a licensed injecting centre:
 - (i) to be in possession of (otherwise than for supply) no more than an exempt quantity of a prescribed drug, or
 - (ii) to be in possession of an item of equipment for use in the administration of a prescribed drug, or
 - (iii) to administer or attempt to administer to himself or herself no more than an exempt quantity of a prescribed drug, and
- (b) in particular, a person at a licensed injecting centre:
 - (i) who has in his or her possession (otherwise than for supply) no more than an exempt quantity of a prescribed drug, or
 - (ii) who has in his or her possession an item of equipment for use in the administration of a prescribed drug, or
 - (iii) who administers or attempts to administer to himself or herself no more than an exempt quantity of a prescribed drug,

does not commit an offence under section 10, 11 or 12, or any other offence prescribed by the regulations, just because of that fact.

- (3) Subsection (2) does not affect the operation of:
- (a) the conditions of any recognizance to which a person is subject (whether under the *Crimes Act 1900* or otherwise), or
 - (b) any bail conditions to which a person is subject under the *Bail Act 1978*, or
 - (c) the conditions of any program to which a person is subject under the *Drug Court Act 1998*.
- (4) Nothing in this section prevents a police officer from exercising a discretion not to charge a person with an offence under section 10 or 11:
- (a) in respect of the possession of a prescribed drug, or
 - (b) in respect of the possession of an item of equipment for use in the administration of a prescribed drug,
- while the person is travelling to or from, or is in the vicinity of, a licensed injecting centre.
- (5) The reference in subsection (4) to a discretion includes a reference to a discretion referred to in any guidelines applicable to police discretions.

360 Exemption from criminal liability for persons engaged in conduct of licensed injecting centre

Despite any other provision of this Act or of any other Act or law (other than a provision prescribed by the regulations):

- (a) it is not unlawful for a person to engage, participate or otherwise be involved in the conduct of a licensed injecting centre, and
- (b) in particular, a person who is engaged, participates or is otherwise involved in the conduct of a licensed injecting centre does not commit an offence under section 14 or 19, or any other offence prescribed by the regulations, just because of that fact.

36P Exemption from civil liability in connection with conduct of licensed injecting centre

- (1) Anything done or omitted to be done in connection with the conduct of a licensed injecting centre does not subject:
 - (a) the person by whom that thing was done or omitted, or
 - (b) any other person (including the licensee, the State and any Minister of the Crown in right of the State),to any action, liability, claim or demand if the thing was done or omitted to be done in good faith for the purpose of executing this Part, and was not done or omitted to be done in a reckless or grossly negligent manner.
- (2) This section does not affect any rights or obligations as between a member of the staff of a licensed injecting centre and his or her employer.

Division 5 Miscellaneous

36Q Application of Environmental Planning and Assessment Act 1979

- (1) Development for the purposes of a licensed injecting centre is permissible during the trial period without the need for development consent under the *Environmental Planning and Assessment Act 1979*.
- (2) Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply to or in respect of development during the trial period for the purposes of a licensed injecting centre.

36R Certificate evidence

In any legal proceedings under this Act, a certificate purporting to be signed by either of the responsible authorities:

- (a) that premises specified in the certificate were or were not, on a date so specified, a licensed injecting centre, or
- (b) that a person specified in the certificate was or was not, on a date so specified, engaged in the conduct of a licensed injecting centre,

is prima facie evidence of the fact stated in the certificate without proof of the signature or of the official character of the person purporting to have signed the certificate.

36S Regulations

Without limiting section 45, the regulations may make provision, for the purposes of this Part, for or with respect to any of the following matters:

- (a) the standards for a licensed injecting centre, including the elaboration of internal management protocols for a licensed injecting centre,
- (b) the provisions to be observed in the operation of a licensed injecting centre,
- (c) the rules of conduct to be observed by persons using a licensed injecting centre,
- (d) the qualifications of persons engaged in the conduct of a licensed injecting centre,
- (e) the functions of persons engaged in the conduct of a licensed injecting centre,
- (f) the preparation, form and content of a community drug action plan,
- (g) the maintenance and amendment of a community drug action plan,
- (h) the public and community consultation processes to be undertaken with respect to the development and review of a community drug action plan.

Schedule 2 Amendment of Drug Misuse and Trafficking Act 1985 in relation to other matters

(Section 3)

Section 18A

Insert after section 18:

18A Advertising or holding out that premises are available for use for unlawful administration of prohibited drugs

- (1) A person responsible for any premises is guilty of an offence if:
 - (a) the person advertises or holds out in any way that the premises are available for use for the administration of prohibited drugs (whether or not for financial or material reward), or
 - (b) the person causes, suffers or permits any other person to advertise or hold out in any way that the premises are available for use for the administration of prohibited drugs (whether or not for financial or material reward).
- (2) For the purposes of this section, a person is responsible for premises if the person is the owner, lessee or occupier of the premises, or if the person participates in the management of the premises.
- (3) This section does not apply to or in respect of a licensed injecting centre within the meaning of Part 2A.

Schedule 3 Amendment of other Acts

(Section 4)

3.1 Bail Act 1978 No 161

[1] Section 4 Definitions

Insert “or 36A” after “36” in the definition of *bail condition* in section 4 (1).

[2] Section 4 (3) (a)

Insert “or section 36A (2) (a) or (b)” after “(c) or (d)”.

[3] Section 36 Conditions of bail

Insert “and other than requirements of the kind referred to in section 36A (2)” after “otherwise)” in section 36 (2) (a).

[4] Section 36A

Insert after section 36:

36A Additional bail conditions for persons requiring drug or alcohol assessment, treatment or rehabilitation

- (1) This section applies in circumstances in which the authorised officer or court to whom an application for the granting of bail is made is of the opinion that the person to whom the application relates would benefit from undergoing assessment, treatment or rehabilitation for drug or alcohol misuse.
- (2) In circumstances in which this section applies, either or both of the following conditions may be imposed on the grant of bail:
 - (a) that the person enter into an agreement to subject himself or herself to an assessment of the person’s capacity and prospects for drug or alcohol treatment or rehabilitation,
 - (b) that the person enter into an agreement to participate in a drug or alcohol treatment or rehabilitation program.

- (3) Conditions of the kind referred to in subsection (2) may be imposed in addition to, or instead of, any condition imposed under section 36.
- (4) An agreement under this section must be in writing.
- (5) A condition or agreement under this section may be entered into in respect of more than one offence.

[5] Section 39 Entry into agreement and acceptance of acknowledgment or security

Insert “or 36A” after “section 36”.

3.2 Correctional Centres Act 1952 No 9

Section 45A Use of dogs in maintaining good order and security

Insert after section 45A (2):

- (2A) At the request of the Director-General of the Department of Juvenile Justice, a correctional officer may use a dog to assist in the detection of drugs in a detention centre within the meaning of the *Children (Detention Centres) Act 1987*.

3.3 Young Offenders Act 1997 No 54

[1] Section 8 Offences covered by Act

Insert after section 8 (2) (e):

- (e1) the offence is an offence under Division 1 of Part 2 of the *Drug Misuse and Trafficking Act 1985* that, in the opinion of the investigating official or prosecuting authority, involves more than a small quantity of a prohibited drug within the meaning of that Act, or

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Schedule 3 Amendment of other Acts

[2] Section 8 (2) (f)

Omit “the offence is an offence under the *Drug Misuse and Trafficking Act 1985*”.

Insert instead “the offence is an offence under Division 2 of Part 2 of the *Drug Misuse and Trafficking Act 1985*”.

Schedule 4 Savings, transitional and other provisions

(Section 6)

1 Definitions

In this Schedule:

instrument means any Act or statutory instrument, or any other instrument, or any contract or agreement.

New South Wales Health Foundation means the New South Wales Health Foundation constituted by section 16 of the *Health Administration Act 1982*.

New South Wales Health Foundation Fund means the New South Wales Health Foundation Fund established under section 19 of the *Health Administration Act 1982*.

repealed Act means the *Drug Offensive Act 1987*, as in force immediately before its repeal by this Act.

statutory instrument means an instrument made under an Act or under an instrument made under an Act, and includes a regulation, by-law or ordinance made under an Act.

2 Abolition of New South Wales Drug Offensive Council

- (1) The New South Wales Drug Offensive Council established under the repealed Act, and any committees established by the Council, are abolished and their members removed from office.
- (2) No compensation is payable to any member of the Council, or any member of a committee established by the Council, who is removed from office under this clause.

3 Abolition of New South Wales Drug Offensive Foundation

- (1) The New South Wales Drug Offensive Foundation constituted under the repealed Act is abolished.
- (2) The assets, rights and liabilities of the New South Wales Drug Offensive Foundation, as at the date of its abolition by this clause, become the assets, rights and liabilities of the New South Wales Health Foundation.
- (3) Subject to subclause (4), the transfer of assets effected by subclause (2) does not affect any trust to which those assets are subject.

- (4) In any instrument, a reference to the New South Wales Drug Offensive Foundation is to be read as or as including, as appropriate, a reference to the New South Wales Health Foundation.

4 Abolition of Drug Offensive Foundation Fund

- (1) The Drug Offensive Foundation Fund established under the repealed Act is abolished.
- (2) Without limiting clause 3, all money that is in the Drug Offensive Foundation Fund, as at the date of its abolition by this clause, is to be paid into the New South Wales Health Foundation Fund.

5 Annual report of the Department of Health in relation to the Foundation

There is to be included in the annual report of the Department of Health for the 1999–2000 financial year a report of the work and activities of the New South Wales Drug Offensive Foundation up to the time of its abolition by clause 3.

6 Savings and transitional regulations

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the repeal of the repealed Act.
- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.
- (3) To the extent to which such a 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:
- (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 that publication, or
 - (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 that publication.