



New South Wales

Drug Misuse and Trafficking Amendment (Drug Exhibits) Bill 2016

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Drug Misuse and Trafficking Act 1985* (the ***Principal Act***) and the *Drug Misuse and Trafficking Regulation 2011* to update and streamline the system for the retention, analysis and destruction of prohibited plants, prohibited drugs, Schedule 9 substances (that is, substances set out in Schedule 9 of the Poisons List under the *Poisons and Therapeutic Goods Act 1966*) and psychoactive substances (***relevant substances***), and suspected relevant substances, that are seized or otherwise come into the possession of the NSW Police Force,
- (b) to make other consequential amendments and to enact provisions of a savings and transitional nature consequential on the enactment of the proposed Act.

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 proclaimed.

Schedule 1 **Amendment of Drug Misuse and Trafficking Act 1985 No 226**

Schedule 1 [1] inserts a definition of *analyst*. **Schedule 1 [9]** makes a consequential amendment.

Schedule 1 [3] substitutes the provisions of Part 3A of the Principal Act relating to exhibits with a new Part 3A containing a new system for dealing with, and destroying, relevant substances that are in the custody of a member of the NSW Police Force and that a member of the NSW Police Force knows or suspects to be relevant substances.

The new Part does the following things:

- (a) defines expressions used in the new Part,
- (b) enables a member of the NSW Police Force to retain a relevant substance for the purpose of dealing with it under the new Part and the regulations to be made under the new Part,
- (c) enables regulations to be made with respect to related matters, including the retention, weighing, testing and analysis of relevant substances, the recording, handling, storage and transport and return of relevant substances and evidentiary certificates,
- (d) forfeits a relevant substance to the Crown if an order is made for its destruction,
- (e) enables the destruction of a relevant substance on the order of a police officer of or above the rank of superintendent (a *qualified police officer*), after giving 21 days written notice, if no person has been charged or is likely to be charged with respect to an offence relating to the substance,
- (f) enables the destruction of prohibited plants on the order of a qualified police officer if a certificate of identification has been issued and evidence of the plants and other particulars have been recorded,
- (g) enables the destruction of a relevant substance (other than a prohibited plant) on the order of a qualified police officer, after giving 28 days written notice, if samples have been taken and a certificate of analysis has been issued for one sample,
- (h) enables the destruction of a prohibited drug or suspected prohibited drug on the order of a qualified police officer, after giving 28 days written notice, if the amount of the drug is less than the traffickable quantity for the drug,
- (i) enables the destruction of a relevant substance, or other substance connected with a drug-related offence, on the order of a qualified police officer, after giving 28 days written notice (if destruction is not required earlier for health or safety reasons), if an analyst certifies that it is required to be destroyed in the interests of health or safety,
- (j) enables a qualified police officer to order a relevant substance to be destroyed at any time if the substance cannot reasonably be securely retained,
- (k) enables a defendant or accused person to seek an order from the Local Court that the mass of a substance in police custody be re-determined before the substance is destroyed,
- (l) provides that the particulars as to the nature and quantity or mass of a relevant substance set out in a court attendance notice are presumed to be true for the purposes of an appeal if the substance is destroyed pursuant to an order before the appeal is heard,
- (m) subject to the provision that provides for the forfeiture of certain substances, enables a person who is lawfully entitled to a relevant substance to apply to a court for the return of the substance if it is not destroyed or for the substance to be returned by a member of the NSW Police Force to the person entitled to it,
- (n) re-enacts the provision that enables the Commissioner of Police to order that a seized relevant substance be retained for use in connection with a controlled operation or an integrity testing program.

Schedule 1 [4]–[8] update references to Government Departments and officers.

Schedule 1 [10] enables regulations containing savings and transitional provisions to be made consequent on the enactment of any Acts that amend the Principal Act and also inserts savings and transitional provisions consequent on the amendments made by the proposed Act.

Schedule 2 Amendment of Drug Misuse and Trafficking Regulation 2011

The Schedule substitutes the provisions of Part 3 of the *Drug Misuse and Trafficking Regulation 2011* relating to exhibits with a new Part 3 setting out requirements for analysis of relevant substances and related matters.

The new Part does the following things:

- (a) prescribes interstate analysts as analysts for the purposes of the Principal Act,
- (b) requires a relevant substance to be weighed after it first comes into the custody of any member of the NSW Police Force, or sent to an analyst for that purpose, before a sample of the substance is first taken for analysis,
- (c) requires the member or analyst to provide a certificate as to the initial quantity or mass of the substance to the defendant or accused person in proceedings relating to the substance,
- (d) requires an amount of a relevant substance that is a plant to be given to a person (approved by the Secretary of the Department of Industry, Skills and Regional Development) for identification as soon as practicable after it first comes into NSW Police Force custody,
- (e) requires an amount of a relevant substance that is not a plant to be retained for samples for analysis,
- (f) if the relevant substance is a Schedule 9 substance or a psychoactive substance or the amount of a prohibited drug is not less than the traffickable quantity for the substance, requires a sample to be given to an analyst for analysis as soon as practicable after it first comes into the custody of the NSW Police Force,
- (g) if the amount of a relevant substance that is a prohibited drug is less than the traffickable quantity for the substance, requires the substance to be given to an analyst for analysis as soon as practicable after it is known that the identity of the substance will be in dispute in criminal proceedings,
- (h) provides for a defendant or accused person to request a qualified police officer to arrange an independent analysis of a second sample of a relevant substance not later than 28 days after a certificate of analysis of a sample is served on the defendant or accused person,
- (i) sets out the matters to be determined by an analyst and requires an analyst to provide a certificate of analysis,
- (j) requires information about significant differences in analyses of the same drug exhibit to be forwarded to the Director of Public Prosecutions,
- (k) enables relevant substances to be transported to analysts or plant identifiers by a courier approved by the Commissioner of Police and exempts couriers acting under the legislation from certain drug-related offences,
- (l) sets out the particulars required to be recorded by officers in relation to relevant substances and requires particulars of a relevant substance to be entered into the NSW Police Force exhibits management system when the substance comes into the custody of a member of the NSW Police Force or when a drug exhibit bag containing a relevant substance is opened or changes location,
- (m) requires a relevant substance to be placed in a sealed and labelled drug exhibit bag when it first comes into the custody of any member of the NSW Police Force and to be stored in a locked vault or cabinet with a dual locking mechanism or a facility approved by the Commissioner of Police,
- (n) enables a senior analyst or qualified police officer to authorise the destruction of any part of a substance given to an analyst for analysis that is not required and any sample for which a certificate of analysis has been provided,
- (o) requires a drug exhibit bag to be inspected before destruction to determine whether it has been opened or tampered with,

- (p) requires a relevant substance to be destroyed in the presence of specified persons,
- (q) provides for the use of police exhibits management system sheets as evidence of transactions in court proceedings and for evidentiary certificates as to the mass of substances,
- (r) provides for evidentiary certificates relating to the initial determination of the quantity or mass of a relevant substance and the continuity of dealings with a particular relevant substance.

Schedule 3 Consequential amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

The Schedule amends the *Law Enforcement (Powers and Responsibilities) Act 2002* to exclude relevant substances and certain articles from the provisions of that Act dealing with property that is in police custody.