

Passed by both Houses



New South Wales

Police Powers (Drug Premises) Bill 2001

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

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2001*



New South Wales

Police Powers (Drug Premises) Bill 2001

Act No , 2001

An Act with respect to the unlawful use of premises for the supply or manufacture of certain prohibited drugs; to amend the *Bail Act 1978* to make further provision with respect to the grant of bail in relation to offences involving firearms and prohibited weapons; to amend the *Criminal Assets Recovery Act 1990* to make provision with respect to criminal activity in respect of such unlawful use of premises; to amend the *Drug Misuse and Trafficking Act 1985* with respect to joint possession; to amend the *Summary Offences Act 1988* to make further provision with respect to police powers to give directions to persons in public places; and for other purposes.

See also *Police Powers (Internally Concealed Drugs) Act 2001*.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

Clause 1 Police Powers (Drug Premises) Bill 2001

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Police Powers (Drug Premises) Act 2001*.

2 Commencement

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

3 Definitions

(1) In this Act:

authorised justice has the same meaning as it has in the *Search Warrants Act 1985*.

drug premises means any premises that are used for the unlawful supply or manufacture of prohibited drugs.

exercise a function includes perform a duty.

firearm has the same meaning as it has in the *Firearms Act 1996*.

function includes a duty.

lookout, in relation to premises, means a person who is in the vicinity of the premises for the purpose of communicating to any person on the premises to warn the person of impending police action.

manufacture has the same meaning as it has in the *Drug Misuse and Trafficking Act 1985*.

money includes any valuable thing or security for money.

occupier of premises includes the lessee or sublessee who is not the owner of the premises.

owner of premises includes any person:

- (a) who is entitled to freehold possession of the premises, or
- (b) who is in actual receipt of, or entitled to receive, or if the premises were let to a tenant, would be entitled to receive, the rents and profits of the premises.

premises includes any structure, building, aircraft, vehicle, vessel or place (whether built upon or not), and any part of any such structure, building, aircraft, vehicle, vessel or place.

prohibited drug means a substance that is a prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*, but does not include cannabis leaf, cannabis oil or cannabis resin.

Note. Prohibited drugs are substances (other than prohibited plants) specified in Schedule 1 to the *Drug Misuse and Trafficking Act 1985*. The substances include, for example, cocaine and heroin but do not include prohibited plants such as cannabis.

prohibited weapon has the same meaning as it has in the *Weapons Prohibition Act 1998*.

supply has the same meaning as it has in the *Drug Misuse and Trafficking Act 1985*.

- (2) For the purposes of this Act, a thing is connected with a particular offence if it is:
- (a) a thing with respect to which the offence has been committed, or
 - (b) a thing that will afford evidence of the commission of the offence, or
 - (c) a thing that was used, or is intended to be used, for the purpose of committing the offence.
- (3) A reference in this Act to an offence includes a reference to an offence that there are reasonable grounds for believing has been, or is to be, committed.

4 Notes

Notes included in this Act do not form part of this Act.

Part 2 Search of suspected drug premises

5 Issue of search warrant—suspected drug premises

- (1) A police officer of or above the rank of sergeant who has reasonable grounds for believing that any premises are being used for the unlawful supply or manufacture of any prohibited drug may apply to an authorised justice for a search warrant.
- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any police officer to enter and search the premises.

6 Execution of search warrant

For the purposes of executing a search warrant issued under this Part in respect of premises, a police officer may:

- (a) pass through, from, over or along any other land or building for the purpose of entering the premises, and
- (b) break open doors, windows or partitions, and
- (c) do such other acts as may be necessary.

7 Search and arrest of persons pursuant to search warrant

- (1) A police officer executing a search warrant issued under this Part may:
 - (a) search any person on the premises, and
 - (b) arrest or otherwise proceed against any person on the premises, and
 - (c) seize any firearm or other thing found on the premises that the police officer has reasonable grounds for believing is connected with an offence, and
 - (d) without limiting paragraph (c), seize any prohibited drug and money found on the premises and any syringe or other thing that is kept or used in connection with, or that relates to, any activity prohibited by or under the *Drug Misuse and Trafficking Act 1985*, and
 - (e) require any person on the premises to state his or her full name and residential address.

- (2) The power conferred by subsection (1) to seize a thing includes:
- (a) power to remove the thing from the premises where it is found, and
 - (b) power to guard the thing in or on those premises.

8 Provisions relating to issue of search warrants under this Part

Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this Part.

Note. Part 3 of the *Search Warrants Act 1985* contains provisions relating to, for example, the way in which an application is to be made for a search warrant, the execution of the warrant and the expiry of the warrant.

9 Obstructing police officer executing search warrant

- (1) If a police officer is authorised under this Part to enter any premises, a person must not:
- (a) wilfully prevent the officer from entering or re-entering those premises or any part of those premises, or
 - (b) wilfully obstruct or delay the officer from entering or re-entering those premises or any part of those premises, or
 - (c) give an alarm or cause an alarm to be given for the purpose of:
 - (i) notifying another person of the presence of the officer, or
 - (ii) obstructing or delaying the officer from entering or re-entering those premises or any part of those premises.

Maximum penalty: 50 penalty units or imprisonment for 12 months (or both).

- (2) A person on premises who, without reasonable excuse, fails to comply with a requirement to state his or her full name and residential address made by a police officer authorised under this Part to enter the premises is guilty of an offence.

Maximum penalty: 50 penalty units.

Part 3 Offences involving drug premises

10 Possession of prohibited drugs, or presence of prohibited drugs, on premises

In proceedings for an offence against this Part, it is not necessary to prove that the person had a prohibited drug in his or her possession or that a prohibited drug was found on any premises involved in the offence.

11 Evidence that premises are drug premises

- (1) A court must not find a person guilty of an offence against this Part unless the prosecution satisfies the court beyond a reasonable doubt that at the time the offence is alleged to have been committed any premises involved in the offence were being used for the unlawful supply or manufacture of any prohibited drug.
- (2) Without limiting matters to which regard may be had in determining whether premises involved in the offence were being used for the unlawful supply or manufacture of any prohibited drug, regard may be had to any or all of the following:
 - (a) evidence that a police officer authorised by law to enter the premises was wilfully prevented from, or obstructed or delayed in, entering or re-entering those premises or any part of those premises,
 - (b) evidence of the external or internal construction of the premises, including any external or internal door of, or means of access to, those premises that is found to be likely to have been fitted with a bolt, bar, chain, or any means or device for the purpose of preventing, delaying or obstructing the entry or re-entry into those premises of such a police officer or any other person, or for giving an alarm in case of such entry or re-entry,
 - (c) evidence of a person acting as a lookout to warn persons on the premises of the approach of police officers or other persons,
 - (d) evidence that there was found on those premises, or in the possession of a person on those premises, any syringe or other means or device used in the supply, manufacture or use of a prohibited drug,

- (e) evidence that there was found on the premises, or in the possession of a person on the premises, a firearm or prohibited weapon the possession of which is unlawful,
- (f) evidence that there was found on those premises any documents or other records, including any computer records, that appear to have been kept or used in connection with the unlawful supply or manufacture of a prohibited drug,
- (g) evidence that there was found on the premises any large amount of money that is not accounted for by the owner or occupier of the premises,
- (h) evidence that there were found on those premises persons who appeared to be affected by a prohibited drug.

12 Offence of entering, or being on, drug premises

- (1) A person who is found on, or who is found entering or leaving, drug premises is guilty of an offence.

Maximum penalty:

- (a) for a first offence—50 penalty units or imprisonment for 12 months (or both), and
 - (b) for a second or subsequent offence—500 penalty units or imprisonment for 5 years (or both).
- (2) A person is not guilty of an offence under this section if the person satisfies the court that he or she was on, or was entering or leaving, the drug premises for a lawful purpose or with a lawful excuse.

13 Allowing use of premises as drug premises—offence by owner or occupier

A person who is the owner or occupier of any premises must not knowingly allow the premises to be used as drug premises.

Maximum penalty:

- (a) for a first offence—50 penalty units or imprisonment for 12 months (or both), and
- (b) for a second or subsequent offence—500 penalty units or imprisonment for 5 years (or both).

14 Offence of organising drug premises

- (1) A person must not organise or conduct, or assist in organising or conducting, any drug premises.

Maximum penalty:

- (a) for a first offence—50 penalty units or imprisonment for 12 months (or both), and
- (b) for a second or subsequent offence—500 penalty units or imprisonment for 5 years (or both).
- (2) For the purposes of this section, a person assists in organising or conducting drug premises if, for example, the person acts as a lookout, door attendant or guard in respect of any premises that are organised or conducted as drug premises.
- (3) A person is not guilty of an offence under this section of organising or conducting drug premises or of assisting in organising or conducting drug premises if the person satisfies the court that he or she did not know, and could not reasonably be expected to have known, that the premises were being organised or conducted as drug premises.

Part 4 Miscellaneous

15 Proceedings for offences

- (1) Except as provided by subsection (2), proceedings for an offence under this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- (2) A second or subsequent offence under section 12, 13 or 14 is to be prosecuted on indictment.

Note. However, Division 3 of Part 2 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of any such second or subsequent offence.

- (3) If proceedings for an offence under this Act are dealt with summarily before a Local Court, the maximum penalty that may be imposed is 100 penalty units or imprisonment for 2 years (or both), or the maximum penalty provided for the offence, whichever is the lesser.

16 Offences by corporations

- (1) If a corporation contravenes (whether by act or omission) any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision, unless the person satisfies the court that:
 - (a) the corporation contravened the provision without the actual, imputed or constructive knowledge of the person, or
 - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
 - (c) the person, if in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

- (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular intention, is evidence that the corporation had that intention.

17 Forfeiture to Crown

- (1) If a person is convicted of an offence under this Act:
- (a) any money or thing that is kept or used in connection with, or that relates to, any activity prohibited by or under the *Drug Misuse and Trafficking Act 1985*, that is seized in relation to the offence, and
 - (b) any documents or other records, including any computer records, devices or programs, that are kept or used in connection with, or that relate to, any activity prohibited under that Act and that are seized in relation to the offence, and
 - (c) any firearm or prohibited weapon that is seized on the premises connected with an offence under any other Act,
- is or are forfeited to the Crown.
- (2) If a person is convicted of an offence under this Act, the court may order the forfeiture to the Crown of any money or thing, and any such documents or other records in the person's possession at the time of the offence if the court is satisfied that the prohibited drug, or such thing, were used by the person for or in connection with the commission of the offence.
- (3) A police officer may seize and carry away any thing that may reasonably be suspected to be liable to forfeiture under this section.

18 Application of other laws

This Act is not intended to limit the operation of the *Disorderly Houses Act 1943* or any other law of the State relating to the entry into, and carrying out of searches on, premises.

19 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act.

- (2) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

20 Amendment of Acts

Each Act specified in Schedule 1, 2, 3, 4 or 5 is amended as set out in that Schedule.

21 Monitoring of Act by Ombudsman

- (1) For the period of 2 years after the commencement of this section the Ombudsman is to keep under scrutiny the operation of the provisions of this Act and the regulations.
- (2) For that purpose, the Ombudsman may require any public authority to provide information concerning the authority's participation in the operation of this Act and the regulations.
- (3) The Ombudsman must, as soon as practicable after the expiration of that 2-year period, prepare a report of the Ombudsman's work and activities under this section and furnish a copy of the report to the Minister, the Minister for Police and the Commissioner of Police.
- (4) The Ombudsman may identify, and include recommendations in the report to be considered by the Minister about, amendments that might appropriately be made to this Act with respect to the operation of this Act and the regulations.
- (5) The Ombudsman may at any time make a special report on any matter arising out of the operation of this Act and the regulations to the Minister.
- (6) The Minister is to lay (or cause to be laid) a copy of any report made or furnished to the Minister under this section before both Houses of Parliament as soon as practicable after the Minister receives the report.
- (7) If a House of Parliament is not sitting when the Minister seeks to furnish a report to it, the Minister may present copies of the report to the Clerk of the House concerned.
- (8) The report:
- (a) on presentation and for all purposes is taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and

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Part 4 Miscellaneous

- (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and
- (d) is to be recorded:
 - (i) in the case of the Legislative Council in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

22 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 2 years from the date of assent to this Act.
- (3) In reviewing the Act, the Minister is to have regard to any report furnished to the Minister under section 21.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the Ombudsman furnishes a report to the Minister under section 21.

Schedule 1 Amendment of Bail Act 1978 No 161

(Section 20)

[1] Section 9 Presumption in favour of bail for certain offences—exceptions

Insert after section 9 (1) (e):

- (e1) an offence under section 7 of the *Firearms Act 1996* relating to the unauthorised possession or use of a firearm that is a prohibited firearm, or a pistol, within the meaning of that Act,

[2] Section 32 Criteria to be considered in bail applications

Insert “or involves the possession or use of an offensive weapon or instrument within the meaning of the *Crimes Act 1900*” after “violent nature” in section 32 (1) (c) (i).

[3] Section 32 (1) (c) (vi)

Insert at the end of section 32 (1) (c):

- , and
- (vi) if the offence for which bail is being considered is an offence that involves the possession or use of an offensive weapon or instrument within the meaning of the *Crimes Act 1900*, any prior criminal record (if known) of the person in respect of such an offence.

[4] Section 32 (2A) (a)

Insert “or involves the possession or use of an offensive weapon or instrument within the meaning of the *Crimes Act 1900*” after “violent nature”.

**Schedule 2 Amendment of Criminal Assets Recovery
Act 1990 No 23**

(Section 20)

[1] Section 6 Meaning of “serious crime related activity”

Insert before section 6 (2) (f):

(e1) a drug premises offence, or

[2] Section 6 (2) (f)

Omit “or (d)”. Insert instead “or any other paragraph of this subsection”.

[3] Section 6 (4)

Insert after section 6 (3):

(4) In subsection (2) (e1):

drug premises offence means a second or subsequent offence under section 13 (Allowing use of premises as drug premises—offence by owner or occupier) of the *Police Powers (Drug Premises) Act 2001*.

**Schedule 3 Amendment of Drug Misuse and
 Trafficking Act 1985 No 226**

(Section 20)

Section 7 Deemed possession of prohibited drug etc

Insert “, or that is in the order or disposition of the person jointly with another person by agreement between the persons,” after “disposition of a person”.

Schedule 4 Amendment of Summary Offences Act 1988 No 25

(Section 20)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

prohibited drug has the same meaning as it has in the *Drug Misuse and Trafficking Act 1985*.

[2] Section 28F Power to give reasonable directions in public places

Insert at the end of section 28F (1):

, or

- (d) is for the purpose of unlawfully supplying, or intending to unlawfully supply, or soliciting another person or persons to unlawfully supply, any prohibited drug, or
- (e) is for the purpose of obtaining, procuring or purchasing any prohibited drug that it would be unlawful for the person to possess.

[3] Section 28F (3)

Omit the subsection. Insert instead:

- (3) Such a direction must be reasonable in the circumstances for the purpose of:
 - (a) reducing or eliminating the obstruction, harassment, intimidation or fear, or
 - (b) stopping the supply, or soliciting to supply, of the prohibited drug, or
 - (c) stopping the obtaining, procuring or purchasing of the prohibited drug.

[4] Section 28F (9)

Insert after section 28F (8):

(9) In this section:

supply has the same meaning as it has in the *Drug Misuse and Trafficking Act 1985*.

Schedule 5 Consequential amendment of other Acts

(Section 20)

5.1 Criminal Procedure Act 1986 No 209

Schedule 1 Indictable offences triable summarily

Insert after item 23 in Part 4 of Table 1:

23A Police Powers (Drug Premises) Act 2001

A second or subsequent offence under section 12, 13 or 14 of the *Police Powers (Drug Premises) Act 2001*.

5.2 Search Warrants Act 1985 No 37

Section 10 Definitions

Insert in alphabetical order in the definition of *search warrant*:

section 5 of the *Police Powers (Drug Premises) Act 2001*,