

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

Overview of Bill

The object of this Bill is to make amendments to the Drug Misuse and Trafficking Act 1985 (the Principal Act) and other legislation to make further provision relating to the cultivation of prohibited plants (being cannabis, coca and opium poppy plants) by enhanced indoor means (that is, hydroponics and similar indoor cultivation) as set out in the Outline below.

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 Drug Misuse and Trafficking Act 1985 set out in Schedule 1.

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

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Drug Misuse and Trafficking Act 1985

General amendments relating to cultivation of prohibited plants by enhanced indoor means

Schedule 1 [1] inserts a proposed definition of cultivation by enhanced indoor means into section 3 (1) of the Principal Act. The definition provides that cultivation by enhanced indoor means, in relation to a prohibited plant, means cultivation of the plant:

- (a) that occurs inside a building or structure, and
- (b) that involves any one or more of the following:
 - (i) the nurture of the plant in nutrient-enriched water (with or without mechanical support),
 - (ii) the application of an artificial source of light or heat,
 - (iii) suspending the plant's roots and spraying them with nutrient solution.

Schedule 1 [3] and [4] make consequential amendments to the definition of prohibited plant in section 3 (1) of the Principal Act.

Schedule 1 [17] amends Schedule 1 to the Principal Act to provide that, in relation to cannabis plants cultivated by enhanced indoor means, for the purposes of that Act:

- (a) the small quantity applicable to those plants is 5 plants (the same number as is applicable to other cannabis plants), and
- (b) the indictable quantity applicable to those plants is 50 plants (the same number as is applicable to other cannabis plants), and
- (c) the commercial quantity applicable to those plants is 50 plants (where the commercial quantity applicable to other cannabis plants is 250 plants), and
- (d) the large commercial quantity applicable to those plants is 200 plants (where the large commercial quantity applicable to other cannabis plants is 1,000 plants).

New offence relating to cultivation of certain quantities of prohibited plants by enhanced indoor means for a commercial purpose

Schedule 1 [5] amends section 23 (Offences with respect to prohibited plants) of the Principal Act to create a new offence. Proposed section 23 (1A) provides that a person who:

- (a) cultivates by enhanced indoor means, or knowingly takes part in the

cultivation by enhanced indoor means of, a number of prohibited plants which is:

(i) not less than the small quantity applicable to the prohibited plants (that is, not less than 5 plants), and

(ii) less than the commercial quantity applicable to those prohibited plants (that is, in relation to cannabis plants, less than 50 plants and, in relation to other prohibited plants, 250 plants), and

(b) cultivates, or knowingly takes part in the cultivation of, those prohibited plants for a commercial purpose, is guilty of an offence.

Schedule 1 [7] inserts proposed section 23 (6) into the Principal Act to provide that in section 23 and proposed section 23A of the Principal Act (see below), cultivating a prohibited plant for a commercial purpose includes cultivating the plant:

(a) with the intention of selling it or any of its products, or

(b) with the belief that another person intends to sell it or any of its products.

Schedule 1 [5] also inserts proposed section 23 (1B) and (1C), and Schedule 1 [6] substitutes section 23 (3) and inserts proposed section 23 (3A), into the Principal Act as consequential amendments. The proposed subsections are alternative verdict provisions and enable juries that are not satisfied that a person has committed the offence the person is charged with to convict the person of a lesser offence (if they are satisfied the person has committed that offence).

Schedule 1 [11] amends section 33 (which deals with penalties for offences involving commercial quantities) of the Principal Act to provide that the maximum penalties relating to the offence under proposed section 23 (1A) are the same as the penalties relating to other section 23 offences dealing with commercial quantities of prohibited drugs, that is:

(a) a fine of 3,500 penalty units (currently \$385,000) or imprisonment for 15 years, or both, or

(b) if the court is satisfied that the offence involved not less than the large commercial quantity applicable to the prohibited plant (that is not less than 200 plants)—a fine of 5,000 penalty units (currently \$550,000) or imprisonment for 20 years, or both.

Offences relating to enhanced indoor cultivation of prohibited plants in presence of children

Schedule 1 [8] inserts proposed section 23A (Offences with respect to enhanced indoor cultivation of prohibited plants in presence of children) into the Principal Act.

Proposed section 23A (1) prohibits a person, who cultivates, or knowingly takes part in the cultivation of, a prohibited plant by enhanced indoor means, exposing a child to that cultivation process, or to substances being stored for use in that cultivation process. **Proposed section 23A (8)** provides that in the proposed section child means a person who is under the age of 16 years. Proposed section 23A (2) creates an aggravated form of the offence under proposed section 23A (1) where the number of prohibited plants cultivated is not less than the commercial quantity applicable to those plants (that is, not less than 50 plants). Proposed section 23A (3) creates an aggravated form of the new offence under proposed section 23 (1A) (see above). The subsection provides that it is an offence if a person:

(a) cultivates by enhanced indoor means, or knowingly takes part in the cultivation by enhanced indoor means of, a number of prohibited plants which is:

(i) not less than the small quantity applicable to the prohibited plants (that is, not less than 5 plants), and

(ii) less than the commercial quantity applicable to those prohibited plants

(that is, in relation to cannabis plants, less than 50 plants and, in relation to other prohibited plants, 250 plants), and

(b) cultivates, or knowingly takes part in the cultivation of, those prohibited plants for a commercial purpose, and

(c) exposes a child to that cultivation process, or to substances being stored for use in that cultivation process.

The remaining subsections of proposed section 23A provide:

- (a) for alternative verdicts of lesser offences if certain elements of the new offences are not made out during a trial, and
- (b) that it is a defence to a prosecution for an offence under proposed section 23A (1), (2) or (3) if the defendant establishes that the exposure of the child to the prohibited plant cultivation process, or to substances being stored for use in that process, did not endanger the health or safety of the child.

Schedule 1 [9] and [10] amend sections 30 (Indictable offences—summary disposal of unless prosecution elects otherwise) and 31 (Indictable offences—summary disposal of unless prosecution or accused elects otherwise) of the Principal Act to provide that the offence under proposed section 23A (1) may be dealt with summarily under those sections and that the maximum penalties relating to that offence when so dealt with summarily are the same as the penalties relating to section 23 (1). Those penalties are:

- (a) a fine of 50 penalty units (currently \$5,500) or imprisonment for 2 years, or both where the court is satisfied on the balance of probabilities that the number of prohibited plants concerned in the commission of the offence is not more than the small quantity applicable to the prohibited plants (that is, 5 plants), or
- (b) a fine of 100 penalty units (currently \$11,000) or imprisonment for 2 years, or both where the court is satisfied on the balance of probabilities that the number of prohibited plants concerned in the commission of the offence is not more than the indictable quantity applicable to the prohibited plants (that is, 50 plants).

Schedule 1 [12] inserts proposed section 33AD into the Principal Act to provide for maximum penalties for the new offences under proposed section 23A. The penalty for an offence under proposed section 23A (1) is a fine of 2,400 penalty units (currently \$264,000) or imprisonment for 12 years, or both. The penalty for an offence under section 23A (2) or (3) is a fine of 4,200 penalty units (currently \$462,000) or imprisonment for 18 years, or both. However, if the court concerned is satisfied that an offence under section 23A (2) or (3) involved not less than the large commercial quantity of the prohibited plant concerned (that is, not less than 200 plants), the penalty for the offence is a fine of 6,000 penalty units (currently \$660,000) or imprisonment for 24 years, or both.

Amendments relating to drug premises provisions

Part 2B (sections 36U–36ZC) of the Principal Act contains special provisions relating to drug premises. Currently, drug premises are defined in section 3 (1) of the Principal Act to mean any premises that are used for the unlawful supply or manufacture of prohibited drugs. (Prohibited plants do not come within the definition of prohibited drugs).

Schedule 1 [2] repeals that definition of drug premises from section 3 (1) of the **Principal Act** and **Schedule 1 [13]** inserts a new section (proposed section 36TA) to (a) drug premises means any premises that are used for either or both of the following:

- (i) the unlawful supply or manufacture of prohibited drugs,
- (ii) the unlawful commercial cultivation of prohibited plants by enhanced indoor means.

(b) commercial cultivation, in relation to prohibited plants, means:

- (i) the cultivation of a number of prohibited plants which is not less than the commercial quantity applicable to those plants (that is, in relation to cannabis plants cultivated by enhanced indoor means, 50 plants), or
- (ii) the cultivation of a number of prohibited plants which is:
 - (A) not less than the small quantity applicable to those plants (that is, in relation to cannabis plants cultivated by enhanced indoor means, 5 plants), and
 - (B) less than the commercial quantity applicable to those plants, where the plants or their products are intended by any person for sale.

Consequently, the provisions of Part 2B of the Principal Act will apply to premises that are used for the unlawful commercial cultivation of prohibited plants by

enhanced indoor means.

Schedule 1 [15] makes a corresponding amendment to section 36W (1) (Evidence that premises are drug premises) of the Principal Act. The amendment will provide that a court must not find a person guilty of an offence against Part 2B of the Principal Act 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 either or both of the following:

- (a) the unlawful supply or manufacture of prohibited drugs,
- (b) the unlawful commercial cultivation of prohibited plants by enhanced indoor means.

Schedule 1 [16] inserts proposed section 36W (3) into the Principal Act. In a parallel manner to current section 36W (2) (which relates to premises used for the unlawful supply or manufacture of prohibited drugs), proposed section 36W (3) sets out a number of matters that a court may have regard to when determining whether premises involved in the offence were being used for the unlawful commercial cultivation of prohibited plants by enhanced indoor means (without limiting any other matters to which the court may have regard). Amongst those matters are the following:

- (a) evidence that there was found on those premises equipment such as:
 - (i) electric lights of 250 watts or higher, or
 - (ii) fluorescent lights that combine the red and blue part of the light spectrum, or
 - (iii) light units comprising high intensity discharge lamps, ballasts, lamp mounts and reflectors (also called ballast boxes), or
 - (iv) growing chambers with spray arm manifolds, hydro-controls and digital timers,
- (b) evidence that there was found on those premises, or in the possession of a person on the premises, documents or literature concerned with hydroponic or other enhanced indoor cultivation methods or with cannabis cultivation or both,
- (c) evidence that there was found on those premises, or in the possession of a person on the premises, cannabis seeds, cut cannabis leaf, cannabis plants or plant clones,
- (d) evidence that there was found on those premises, or in the possession of a person on the premises, minerals, chemicals or nutrients, or their packaging, typically used in enhanced indoor cultivation of cannabis plants,
- (e) evidence that there was abnormally high or low electricity consumption for those premises in relation to other premises of that type not used for such cultivation,
- (f) evidence of an apparently unauthorised connection to, or bypass of, the electricity supply to those premises,
- (g) 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 cultivation by enhanced indoor means of a prohibited plant,
- (h) any other matters as are prescribed by the regulations under the Principal Act.

Schedule 1 [14] makes a consequential amendment to section 36V of the Principal Act.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends sections 64 to 70 of the Electricity Supply Act 1995 to increase the maximum penalties for the offences contained in those sections from 200 penalty units (currently \$22,000) in the case of a corporation and 50 penalty units (currently \$5,500) in any other case to 2,000 penalty units (currently \$220,000) in the case of a corporation and 100 penalty units (currently \$11,000) or imprisonment for two years, or both in any other case.

The amended sections are as follows:

- (a) section 64—Theft of electricity,
- (b) section 65—Interference with electricity works,
- (c) section 66—Interference with electricity meters,
- (d) section 67—Interference with distribution network service provider's seals,

- (e) section 68—Unauthorised connections,
- (f) section 69—Unauthorised increase in capacity of connections,
- (g) section 70—Unauthorised alterations and additions to electrical installations.

Schedule 2.2 makes amendments to certain provisions in Division 1 (Drug premises) of Part 11 (Drug detection powers) of the Law Enforcement (Powers and Responsibilities) Act 2002 that parallel the amendments to Part 2B of the Principal Act outlined above. The Division contains special provisions that deal with the issue and execution of search warrants relating to drug premises.

Schedule 2.2 [2] replaces the definition of drug premises in section 139 (1) (which provides definitions for the purposes of Division 1 of Part 11) of the Law Enforcement (Powers and Responsibilities) Act 2002 to provide that drug premises means any premises that are used for either or both of the following:

- (a) the unlawful supply or manufacture of prohibited drugs,
- (b) the unlawful cultivation of prohibited plants by enhanced indoor means.

Consequently, the provisions of Division 1 of Part 11 of that Act will apply to premises that are used for the unlawful cultivation of prohibited plants by enhanced indoor means.

Schedule 2.2 [1] inserts a definition of cultivation by enhanced indoor means into section 139 (1) of the Law Enforcement (Powers and Responsibilities) Act 2002 (which is the same definition as the one that is to be inserted into the Principal Act).

Schedule 2.2 [3] and [4] make consequential amendments.