



NSW Legislative Council Hansard

Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill

Extract from NSW Legislative Council Hansard and Papers Thursday 8 June 2006.

Second Reading

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [2.45 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

This bill addresses the cultivation of prohibited plants by hydroponic or other enhanced indoor means and is directed towards organised commercial production using residential premises. In recent years NSW Police have detected a significant increase in the number of hydroponic cannabis operations conducted in domestic dwellings, as well as an increasing tendency for these operations to involve organised crime syndicates. Cannabis plants cultivated by hydroponic and other enhanced indoor means grow much faster than plants grown by traditional outdoor methods, and produce between five and seven times the yield. The current quantity amounts in the *Drug Misuse and Trafficking Act* at which maximum penalties apply for cannabis cultivation offences are based upon the yield, harvest patterns and profitability of outdoor, or "bush grown" cannabis. They are not an accurate reflection of the commerciality of hydroponic cannabis operations. This bill addresses this inequity.

Schedule 1 amends the *Drug Misuse and Trafficking Act 1985*. Item [1] inserts into the Act a definition of "cultivation by enhanced indoor means" in relation to a prohibited plant. The two leading methods of enhanced indoor cannabis cultivation—hydroponics and aeroponics—are covered by the definition.

Item [16] inserts a new plant category into schedule 1 of the Act entitled "Cannabis plant cultivated by enhanced indoor means", with the commercial and large commercial quantities being set at levels five times lower than for outdoor cannabis, to reflect the much higher yields produced by this method. This means that existing maximum penalties for cultivation offences involving commercial and large commercial quantities will cut in at these lower levels in respect of cannabis cultivated by enhanced indoor means in order to reflect the commerciality of operations of this size.

The bill makes no change to existing small and indictable cannabis quantities, with current maximum penalties continuing to apply in these cases.

Item [5] creates a new offence targeting the enhanced indoor cultivation of a prohibited plant for a commercial purpose. The offence will be available in cases involving not less than the small quantity and less than the new commercial quantity for enhanced indoor cultivated cannabis (5-49 plants). The new offence recognises that there may be enhanced indoor operations within this range that produce commercial yields for the purpose of sale, but that there may also be home growers who cultivate this number of plants for their own personal use. As a result, the offence will require the prosecution to prove a 'commercial purpose', which will require proof of intention to sell any of the plants or its products, or proof of a belief that another person intends to do so. The new offence will carry the same maximum penalty as a cultivation offence involving a commercial quantity—that is, \$385,000 and/or 15 yrs imprisonment.

Item [8] introduces offences into the Act with respect to the enhanced indoor cultivation of prohibited plants in the presence of children. The aggravated offences take the same form as those included in the recent *Drug Misuse and Trafficking Amendment Bill 2005*, and recognise the inherent risks to children of exposure to the hydroponic process, such as fire, electrocution, extreme heat, dangerous chemicals, insecticides and fumes as well as toxic gases and airborne bacteria. Maximum penalties for the aggravated offences will be 20 per cent higher than for existing offences.

The bill also amends the drug premises provisions of the *Drug Misuse and Trafficking Act 1985* and the *Law Enforcement (Powers and Responsibilities) Act 2002* to enable police to respond effectively to the clandestine and highly organised criminal activity associated with commercial hydroponic cannabis operations. Item [13] extends the definition of "drug premises" to include "premises used for the unlawful commercial cultivation by enhanced indoor means of any prohibited plant". The current indicia in section 36W of the *Drug Misuse and Trafficking Act* that assists the court in determining whether a particular premises is in fact a drug premises will also be amended to include items specific to the enhanced indoor cultivation of cannabis and other prohibited

plants.

Due to the widespread practice among organisers of hydroponic cannabis operations of stealing electricity from the grid to operate their lights, ventilators and other equipment, the bill also amends the *Electricity Supply Act 1995* to increase maximum penalties associated with this practice.

In summary, the measures contained in the bill constitute yet another decisive response by the Government to developments in drug crime as they emerge. The new laws have been designed in a such a way as to specifically target the **commercial** cultivation of prohibited plants through hydroponic and other enhanced indoor means, and will ensure that maximum penalties for these offences accurately reflect the level of commerciality and criminality involved. They will also provide law enforcement with the necessary armoury to infiltrate the clandestine and highly organised criminal activity associated with operations of this nature, sending a clear message that "out of sight" will not necessarily mean "out of reach" from the law for these criminals.

I commend the bill to the House.