

EXPLANATORY MEMORANDUM

MISUSE OF DRUGS AMENDMENT BILL 2003

The purpose of this Bill is threefold:

1. to place legislative controls on the sale and supply of chemicals and apparatus used in the illicit manufacture of amphetamines and other drugs;
2. to close a sentencing anomaly whereby principal offenders in drug trafficking matters are able to receive discounted sentences; and
3. to enable interstate chemical analysts to tender certificates of their analysis as evidence.

Part 1 — Preliminary

This Part contains the title of the Act, the commencement provisions and the title of the Act it amends.

Clause 1: Short title and citation.

Clause 2: This clause sets out the commencement provisions.

Subclause (1) provides that the proposed Act would come into operation on a day fixed by proclamation.

Subclause (2) provides that different provisions may come into operation on different days. This would enable the Regulations required for the successful implementation of the Act to be finalised and allow provisions not reliant on Regulations to be proclaimed separately.

Clause 3: The Act amended by this Act is the *Misuse of Drugs Act 1981*.

Part 2 — Amendment relating to approved analysts

Clause 4 This clause amends Section 3 of the *Misuse of Drugs Act 1981* to provide a new definition of “approved analyst”.

The amendment expands the existing definition to enable similarly qualified, recognised and approved analysts from other jurisdictions to be recognised as an approved analyst under the Act. This will allow these analysts to submit certificates into evidence in regard to the content of substances.

Currently analysts from other jurisdictions are required to attend court in every case and prove their bona fides as well as give verbal evidence of the substances they had analysed. This amendment will achieve both cost and time saving; where the analyst's evidence is not challenged, the analyst will be able to produce a certificate rather than appear in court in person.

Part 3 — Amendment relating to precursor chemicals and apparatus

Clause 5 This clause inserts a new Part IV.

The Part will allow two categories of precursor chemicals and associated apparatus to be prescribed in Regulations and mandates other requirements relating to their supply. Principally, suppliers will be required to advise police of certain transactions and offences are provided for non-compliance.

The new Part also provides police with the ability to examine the records and premises of chemical and scientific equipment suppliers in relation to transactions and storage of these precursor chemicals and apparatus.

The new Part will be titled "**Part IV – Controls relating to sale, supply and storage of certain substances and things.**" and proposes the following new sections:

12. Interpretation in Part IV. provides definitions for the Part to ensure a consistent, correct interpretation of the provisions in the Part.

13. Part not applicable to sale or supply of certain substances.

Subclause (1) ensures the legitimate medical and veterinarian uses of the substances, compounds and preparations that may otherwise be controlled by this Part are exempt from the Part. This ensures the Act does not capture people such as pharmacists, veterinarians and doctors and their suppliers carrying on their normal lawful business.

Subclause (2) ensures that the legitimate on-supply of category 1 and category 2 chemicals and apparatus, to and by such people as school teachers, university lecturers and persons managing laboratories within research institutions are also not captured by this Part of the Act. However, compliance at the time of the initial sale or supply to the education or research institution is required.

14. Sale or supply of category 1 items. This clause requires the suppliers of category 1 items to ensure these precursor chemicals are only supplied to a recipient who holds an account with the supplier, places a written order with the supplier and has provided the supplier with a declaration as to the chemicals' use. The supplier must not supply for a period of 24 hours, during which time police are to be provided with a copy of the declaration. Furthermore the person taking delivery must provide evidence of his or her identity at the time of supply. A simple offence is provided for non-compliance of these requirements.

15. Storage of category 1 items. This clause places an onus on the supplier who sells or supplies a category 1 item to store those items in such a manner that they can only be accessed by a person authorised in writing by that particular supplier. It also requires the supplier to retain a copy of that authorisation for at least 5 years after it ceases to have any effect. Offence provisions have been provided for breaches of these requirements.

16. Sale and supply of category 2 items. This clause requires suppliers of category 2 items to ensure that the sale or supply is on account and by written order given to the supplier; or if not on account, that the purchaser provides evidence of identity and completes a declaration in a prescribed form at the time of the sale or supply. The supplier must provide police with a copy of the declaration. A simple offence for failing to comply with the requirements is provided.

17. Offences relating to declarations under section 14(1)(c) or 16(b). This clause provides two simple offences:

1. for the seller or supplier who fails to retain the declaration required by sub section 14(1)(c) or 16(1)(b) for a period of 5 years; and
2. for a person giving false or misleading information in the declarations

18. Powers of police officers for purposes of this Part. This clause provides police officers with the power to enter, without warrant, any premises of sellers and suppliers of category 1 and 2 items for the purpose of inspecting their records and stocks in relation to any category 1 and 2 items with such assistance they consider necessary. This provision contains a power to demand the production for inspection of any books, papers, authorisations or other documents as well as access to any stocks of category 1 and 2 items. The offence provision under the existing section 25 provides an offence for failing to comply with such a demand.

The existing powers provided by sections 25, 26 and 29 of the Act are also extended to this clause thus providing the following in relation to the inspection of sellers and suppliers of category 1 and 2 precursor chemicals:

- (a) the power to seize, detain and copy books, papers and documents
- (b) the power to require a person to give such information, that is at the time in their power to give, to a police officer or approved person
- (c) an offence provision for refusing to comply with the above requirements or for giving false information
- (d) the power to seize and detain prohibited drug, plant or other thing
- (e) an offence provision for hindering a police officer or approved person by delaying, obstructing, failing to produce or concealing

The power provided at (b) above could require a person to provide information that may tend to incriminate him, however, the Act provides a safeguard that prevents such information given or caused to be given from being admitted in evidence in any proceedings against him (see section 25(3) of the Principal Act).

These powers of entry and inspection can be executed with such assistance as may be considered necessary by the police officer. For example, it may be considered necessary to have an accountant or chemist assist in the inspection. These powers of entry and inspection are necessary to enable police to fulfil an appropriate inspection role and are similar to those contained in a number of other Acts such as, the *Firearms Act 1973*, the *Pawnbrokers and Second-hand Dealers Act 1994* and the *Security and Related Activities (Control) Act 1996*.

These powers do not contain a power of forced entry. Where police require a power of forced entry, such as when conducting a raid on premises as part of an investigation, a search warrant would be sought.

19. Regulations as to category 1 items and category 2 items This clause provides for Regulations to prescribe and categorise a substance or thing as belonging to a specified category (i.e. category 1 or category 2) for purposes of this Part of the legislation.

Category 1 will be the category where there is a significant likelihood of the substance or thing being used in the manufacture of illicit drugs. Category 2 will be the category where there is a reasonable likelihood of the substance of thing being used in the manufacture of illicit drugs.

Due to the nature of illicit manufacturing and the continual discovery of new and variations of existing chemicals and substances, prescribing category 1 and 2 items in Regulations is considered the most appropriate and effective way to keep pace with this criminal activity.

Clause 6 This clause provides the penalties for the offences in the new Part IV of the Act. The penalties are fines ranging from up to \$5,000 for a first offence and to \$15,000 for a second or subsequent offence.

Part 4 — Amendment relating to attempts to commit offences

Clause 7 This clause amends section 32A(3) of the Act. The new indictable offence created by the proposed amendment to section 33(1) below is inserted in the list of offences that are defined as meaning both a “**external serious drug offence**” and a “**serious drug offence**” so that a person convicted of the new offence can, upon application, be declared by the court a “Drug trafficker”. This in turn would make the convicted person subject to section 8 of the *Criminal Property Confiscation Act 2000*.

Clause 8 It has been necessary to draft alternative amendments for this clause due to the effects of the *Criminal Code Amendment Bill 2003* which is currently progressing through Parliament. That Bill will consequentially amend the *Misuse of Drugs Act 1981* to remove mention of the term “indictable offence” and replace it with the term “Crime”. Section 33(1) restricts the courts to sentencing a person who attempts or incites another to commit, or becomes an accessory after the fact to, the principle offence to be sentenced to half the prescribed penalty. This clause amends this sub section by removing the sentencing restriction for a person convicted of attempting to commit a principle offence.

This amendment will, for example, remove the technicality that allows an offender to escape a full sentence simply because he or she did not take possession of the actual drug in a drug dealing transaction because police intercepted the delivery and substituted the illicit drug with a harmless substance.

Clause 9 This clause consequentially amends the *Bail Act 1982*, the *Evidence Act 1906*, the *Surveillance Devices Act 1998* and the *Young Offenders Act 1994* to ensure the correct operation of the amendments to section 33 relating to the new penalty provisions for attempting to commit an offence under section 6(1) *possession of a prohibited drug with intent to sell or supply* or 7(1) *possession of a prohibited plant with intent to sell or supply* of the principal Act.