

# MISUSE OF DRUGS AMENDMENT BILL 2018

## EXPLANATORY MEMORANDUM

### BACKGROUND

Currently, the *Misuse of Drugs Act 1981* requires that a court shall, on the application of the Director of Public Prosecution or a police prosecutor, declare a person to be a drug trafficker if they have (a) a quantity of a prohibited drug equal to or in excess of the quantity specified in Schedule VII, or (b) prohibited plants the number of which is not less than the number specified in Schedule VIII. Either of these conditions having been met, the court currently has no discretion, and must, by law, make the declaration.

This amendment will return discretion to the bench, allowing judges to refuse to make a drug trafficker declaration if and when the Court is satisfied that the circumstances of the offences are such that the making of a declaration would be clearly unjust. It will further require that any judge declining to make a declaration state his or her reasons for so doing.

### CLAUSE NOTES

#### **1. Short Title**

Provides for the short title of the Act, which will be the *Misuse of Drugs Amendment Act 2018*.

#### **2. Commencement**

Allows for sections 1 and 2 of the Act to come into operation on the day on which the Act receives the Royal Assent, while the remainder of the Act comes into operation on a day after that day.

#### **3. Act amended**

This clause provides that this Act will amend the *Misuse of Drugs Act 1981*.

#### **4. Section 32A amended**

This clause inserts the following after section 32A(1):

- (1A) Despite subsection (1), the court is not required to declare the person to be a drug trafficker if the court is satisfied that it would be clearly unjust to do so, having regard to the circumstances of the commission of the offence and any other matter the court considers relevant.
- (1B) A court that, because of subsection (1A), does not declare a person to be a drug trafficker must give reasons for its decision not to do so.