

Misuse of Drugs Amendment Bill 2010

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Western Australia

LEGISLATIVE ASSEMBLY

Misuse of Drugs Amendment Bill 2010

A Bill for

An Act to amend the *Misuse of Drugs Act 1981*.

The Parliament of Western Australia enacts as follows:

1 **1. Short title**

2 This is the *Misuse of Drugs Amendment Act 2010*.

3 **2. Commencement**

4 This Act comes into operation as follows:

- 5 (a) sections 1 and 2 — on the day on which this Act
6 receives the Royal Assent;
- 7 (b) the rest of the Act — on a day fixed by proclamation,
8 and different days may be fixed for different provisions.

9 **3. Act amended**

10 This Act amends the *Misuse of Drugs Act 1981*.

11 **4. Section 5 amended**

12 After section 5(2) insert:

- 13
- 14 (3) A person does not commit a simple offence under
15 subsection (1)(d) by reason only of his having in his
16 possession a pipe or utensil if he proves —
- 17 (a) that he had possession of the pipe or utensil —
- 18 (i) only for the purpose of delivering it to a
19 person authorised under this Act or the
20 *Poisons Act 1964* to have possession of
21 any prohibited drug or prohibited plant
22 in or on it; and
- 23 (ii) in accordance with the authority in
24 writing of the person so authorised,
- 25 and that, after taking possession of the pipe or
26 utensil, he took all such steps as were
27 reasonably open to him to deliver it into the
28 possession of that person; or

- 1 (b) that he had possession of the pipe or utensil
2 only for the purpose of analysing material in or
3 on it, examining it or otherwise dealing with it
4 for the purposes of this Act in his capacity as an
5 analyst, botanist or other expert.
6

7 **5. Section 21 amended**

8 In section 21 delete the definition of *holding order*.

9 **6. Section 26 amended**

10 (1) In section 26(1):

11 (a) delete “requires, may seize that thing and —” and insert:

12
13 requires —

14
15 (b) delete paragraphs (a) and (b) and insert:

16 (a) in the case of —
17 (i) a thing that is a prohibited drug,
18 prohibited plant or dangerous substance;
19 or

20 (ii) a thing that is contaminated by a
21 dangerous substance,
22 may seize and detain the thing until it is dealt
23 with under section 27; or

24 (b) in the case of any other thing, may seize it.
25
26

27 (2) After section 26(1) insert:

28
29 (2A) If under subsection (1)(b) a thing may be seized, the
30 *Criminal Investigation Act 2006* Part 13, with any
31 necessary changes, applies to and in relation to the
32 exercise of the power to seize the thing.

s. 7

1 (2B) If under subsection (1)(b) a thing is seized, the
2 *Criminal Investigation Act 2006* Part 13 and the
3 *Criminal and Found Property Disposal Act 2006*, with
4 any necessary changes, apply to and in relation to it.
5

6 **7. Section 27 amended**

7 (1) In section 27(1) delete “prohibited drug, prohibited plant or
8 dangerous substance” (each occurrence) and insert:

9
10 relevant thing
11

12 (2) In section 27(2):

13 (a) delete “prohibited drug, prohibited plant or dangerous
14 substance” and insert:

15
16 relevant thing
17

18 (b) delete paragraph (b) and insert:

19
20 (b) sufficient samples have been taken of or from
21 the thing,
22

23 (3) After section 27(5) insert:

24
25 (6A) If —

26 (a) a court convicts a person of an offence under
27 this Act that involved the possession or use of a
28 relevant thing; and

29 (b) the relevant thing was destroyed under this
30 section,

31 the court may order the person to pay the costs
32 reasonably incurred by the State in destroying the

1 thing, other than costs relating to the employment of
2 police officers or the use of equipment or facilities
3 under the control or management of the Commissioner.
4

5 (4) In section 27(6):

6 (a) delete “subsection (2)(b) —” and insert:

7
8 this section —

9
10 (b) insert in alphabetical order:

11
12 *relevant thing* means a prohibited drug, prohibited
13 plant or dangerous substance or a thing contaminated
14 with a dangerous substance;
15

16 **8. Section 28 replaced**

17 Delete section 28 and insert:

18
19 **28. Compensation for destroyed seized property**

20 (1) In this section —

21 *seized property* means a dangerous substance, or a
22 thing contaminated with a dangerous substance, seized
23 under section 26.

24 (2) This section does not apply to or in respect of any
25 seized property that has been forfeited to the Crown.

26 (3) If any seized property is destroyed —

27 (a) under section 27(1)(a)(i); or

28 (b) under an order made under section 27(1)(b),

29 a person who was entitled to possession of it when it
30 was seized is entitled to recover from the State (if
31 necessary, by action in a court of competent

1 jurisdiction) compensation equal to its market value at
2 the time it was seized.

3 (4) If under section 27(4) any seized property is destroyed
4 and —

5 (a) in the 12 months after the date on which the
6 property was seized no person is charged with
7 an offence that involved the possession, use,
8 sale or supply of it; or

9 (b) a person is charged with such an offence but is
10 acquitted, whether at trial or on appeal, and any
11 appeal against the acquittal is concluded,

12 any person who was entitled to possession of the
13 property when it was seized is entitled to recover from
14 the State (if necessary, by action in a court of
15 competent jurisdiction) compensation equal to its
16 market value at the time it was seized.
17

18 **9. Section 43 inserted**

19 After section 42 insert:

20
21 **43. Transitional provisions (Sch. IX)**

22 Schedule IX sets out transitional provisions.
23

24 **10. Schedule IX inserted**

25 After Schedule VIII insert:

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Schedule IX — Transitional provisions

[s. 43]

1. Property subject to holding orders under repealed s. 28

(1) In this clause —

repeal day means the day on which section 28 is repealed by the *Misuse of Drugs Amendment Act 2010* section 8.

(2) If immediately before repeal day any property is subject to a holding order granted under section 28, then on repeal day —

- (a) the repealed section 28 ceases to apply to and in respect of the property and the holding order; and
- (b) the property is to be taken to be seized property for the purposes of the *Criminal and Found Property Disposal Act 2006* and that Act applies to and in respect of it accordingly.

