

Misuse of Drugs Amendment Bill 2010 ~ Explanatory Memorandum

Clause 1 Short Title

This clause cites the short title of the Act as the *Misuse of Drugs Amendment Act 2010*.

Clause 2 Commencement

This clause sets out the commencement provisions. Clauses 1 and 2 come into operation upon the Royal Assent. The remaining clauses come into operation on a day fixed by proclamation. This will enable Western Australia Police (“WAPOL”) to make the necessary changes to computer systems before the Act becomes operative.

Clause 3 The Act amended

This Bill amends the *Misuse of Drugs Act 1981* (“the Act”).

Clause 4 Section 5 amended

New subclause (3)(a) provides a legislative protection for a person (either a police staff member or private sector courier) enabling them to be in lawful possession of a pipe or utensil containing detectable traces of a prohibited drug or plant, for the purpose of conveying this drug paraphernalia to a person authorised, such as an approved analyst at the Chemistry Centre (W.A.). This legislative protection merely mirrors existing protections already found in sections 6,7 and 14 of the Act.

WAPOL is considering the merits of implementing a drug collection scheme whereby police staff or an external contractor would be used, instead of a police officer, to convey about small quantities of drugs. No final decisions have yet been made, but it is envisaged that police staff would run a shuttle service between the Drug Receiving Unit (DRU) and metropolitan police stations and in the regional areas it is proposed to use a private sector courier on an ad hoc basis in exceptional cases where a sworn police officer does not convey the drugs personally.

New subclause (3)(b) is not related to the proposed drug collection service. It enables an approved analyst or approved botanist to be in lawful possession of a pipe or utensil with detectable traces for the purposes of performing their duties under the Act. The subclause merely mirrors existing protections already found in sections 6, 7 and 14 of the Act.

Clause 5 Section 21 amended

This clause deletes the definition of holding order for the purposes of Part V of the Act titled ‘Location, seizure, detention and disposal of things used in commission of offences’. This foreshadows the abolition of holding orders which is achieved in subsequent clauses of this Bill.

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Clause 6 Section 26 amended

This clause provides for a change in the way drug connected equipment is dealt with.

The Organised Crime Squad who attend and process all clandestine drug laboratories wish to be able to destroy drug connected equipment contaminated with dangerous precursor chemicals at site of seizure, rather than being required to detain this hazardous equipment in storage until resolution of the matter. New subclause (1)(a) achieves this objective by adding “a thing that is contaminated by a dangerous substance” to the prohibited things dealt with under section 27 of the Act. This then enables police to use the existing mechanism in sections 27(2)-(6) of the Act to obtain the necessary authorisation to destroy the contaminated equipment at site of seizure.

The abolition of the need to apply to a Justice of the Peace for a holding order to continue to detain drug connected equipment has been a corporate priority within WAPOL for many years. New subclause (1)(b) achieves this objective. It provides that uncontaminated drug connected equipment while still seized under the Act is detained and dealt with by the contemporary provisions of Part 13 of the *Criminal Investigation Act 2006* and the *Criminal and Found Property Disposal Act 2006*.

Clause 7 Section 27 amended

Section 27(1) of the Act is amended so that a thing contaminated with a dangerous substance is now regulated by section 27, rather than s28 of the Act.

Section 27(2) of the Act is amended so that a thing contaminated with a dangerous substance is included in this section and also an amendment is made in recognition of the fact that a sample cannot be taken of contaminated drug equipment without destroying the equipment and therefore providing a sample may be taken from contaminated drug equipment instead.

Police are of the opinion that the costs of destruction of clandestine laboratories should not, in all cases, be fully borne by WAPOL and sought a mechanism whereby some of these costs could be recouped from a convicted offender. New subclause (6A) achieves this objective.

The cost recovery mechanism may be invoked by the courts when a person is convicted of a manufacturing offence under the Act, particularly for manufacture of methamphetamine. In this case, WAPOL engages the services of a government contracted Contaminated Waste Disposal Service to securely transport, store and destroy the precursor chemicals and chemical contaminated equipment, as police do not have the equipment or expertise in this area. It is this additional cost, above and beyond the cost of police resources used, which is sought to be recovered from a convicted person in an appropriate case.

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Section 27(6) of the Act is amended to include a definition of “relevant thing” to mean a prohibited drug, prohibited plant or dangerous substance or a thing contaminated with a dangerous substance.

Clause 8 Section 28 replaced

This clause proposes to delete section 28 of the Act. This is the final step necessary to abolish the holding order regime. In its place, it is proposed to insert a compensation provision into the Act. The compensation provision recognises the fact that some “seized property” at a suspected clandestine laboratory may in fact be lawful to possess. For example, caustic soda, fertilizer, household chemicals and scientific apparatus.

The compensation provision has been included to cover the scenario where seized property (as defined in new subsection 28(1)) has been destroyed because it is hazardous to health and safety, but subsequent investigations by police or court proceedings prove that the “seized property” was not illegally used. In this case, an innocent person entitled to possession of the property when it was seized, should be entitled to compensation. This clause achieves that objective.

Clause 9 Section 43 inserted

This clause inserts Schedule IX into the Act to deal with transitional arrangements for drug connected property held in storage under the authority of a holding order.

Clause 10 Schedule IX inserted

This clause inserts a transitional provision into the Act to ensure that drug connected property held in storage and subject to an existing holding order, is, upon repeal of the holding order regime, to be taken to be seized property for the purposes of the *Criminal and Found Property Disposal Act 2006*. This will ensure that police are no longer bound to comply with the cumbersome service and disposal procedures currently prescribed in subsections 28(2) and 28(3) of the Act.