

## Misuse of Drugs Amendment Bill 2011

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Western Australia

LEGISLATIVE ASSEMBLY

*(As amended in Committee)*

## **Misuse of Drugs Amendment Bill 2011**

**A Bill for**

**An Act to amend the *Misuse of Drugs Act 1981* and to make consequential amendments to some other Acts.**

The Parliament of Western Australia enacts as follows:

1 **Part 1 — Preliminary matters**

2 **1. Short title**

3 This is the *Misuse of Drugs Amendment Act 2011*.

4 **2. Commencement**

5 This Act comes into operation as follows —

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

1                   **Part 2 — *Misuse of Drugs Act 1981* amended**

2       **3.       Act amended**

3                   This Part amends the *Misuse of Drugs Act 1981*.

4       **4.       Section 3 amended**

5                   In section 3(1) insert in alphabetical order:

6

7                               *adult* means a person who has reached 18 years of age;

8

9       **5.       Section 5 amended**

10           (1) Delete section 5(1)(d).

11           (2) Delete section 5(3).

12       **6.       Section 7B inserted**

13                   After section 7A insert:

14

15       **7B.      Drug paraphernalia, offences as to**

16           (1) In this section —

17                               *display*, in relation to drug paraphernalia, includes to  
18                               authorise or allow drug paraphernalia to be displayed;

19                               *drug paraphernalia* means —

20                               (a) any thing made or modified to be used in  
21                               connection with manufacturing or preparing a  
22                               prohibited drug or a prohibited plant —

23                                       (i) for administration to a person; or

24                                       (ii) for smoking, inhaling or ingesting by a  
25                                       person; or

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- 1 (iii) to be burned or heated so its smoke or  
2 fumes can be smoked or inhaled by a  
3 person;
- 4 or
- 5 (b) any thing made or modified to be used by a  
6 person —
- 7 (i) to administer a prohibited drug or a  
8 prohibited plant to a person; or
- 9 (ii) to smoke, inhale or ingest a prohibited  
10 drug or a prohibited plant; or
- 11 (iii) to smoke or inhale the smoke or fumes  
12 resulting from burning or heating a  
13 prohibited drug or a prohibited plant.
- 14 (2) A person who displays any drug paraphernalia for sale  
15 in a retail outlet commits a simple offence.  
16 Penalty: a fine of \$10 000.
- 17 (3) A person who sells any drug paraphernalia to an adult  
18 commits a simple offence.  
19 Penalty: a fine of \$10 000.
- 20 (4) A person who sells any drug paraphernalia to a child  
21 commits a simple offence.  
22 Penalty: a fine of \$24 000 or imprisonment for 2 years  
23 or both.
- 24 (5) It is a defence to a charge of an offence under  
25 subsection (2), (3) or (4) to prove —
- 26 (a) the accused was a person prescribed; or
- 27 (b) the drug paraphernalia displayed or sold was a  
28 thing prescribed or of a class prescribed; or
- 29 (c) the display or sale occurred in circumstances  
30 prescribed,
- 31 for the purposes of that subsection.

- 1           (6) A person who is in possession of any drug  
2           paraphernalia in or on which there is a prohibited drug  
3           or a prohibited plant commits a simple offence.  
4           Penalty: a fine of \$36 000 or imprisonment for 3 years  
5           or both.
- 6           (7) It is a defence to a charge of an offence under  
7           subsection (6) to prove —
- 8               (a) the accused was authorised by or under this Act  
9               or the *Poisons Act 1964* to possess the  
10              prohibited drug or prohibited plant; or
- 11              (b) the accused had possession of the drug  
12              paraphernalia —
- 13                      (i) only for the purpose of delivering it to a  
14                      person authorised under this Act or the  
15                      *Poisons Act 1964* to have possession of  
16                      any prohibited drug or prohibited plant  
17                      in or on it; and
- 18                      (ii) in accordance with the authority in  
19                      writing of the person so authorised,  
20              and that, after taking possession of the drug  
21              paraphernalia, the accused took all such steps  
22              as were reasonably open to the accused to  
23              deliver it into the possession of that person; or
- 24              (c) the accused had possession of the drug  
25              paraphernalia only for the purpose of analysing  
26              material in or on it, examining it or otherwise  
27              dealing with it for the purposes of this Act in  
28              his or her capacity as an analyst, botanist or  
29              other expert.  
30

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1     **7.       Section 8B amended**

2             In section 8B(1) in the definition of *minor cannabis related*  
3             *offence* paragraph (a) after “section 5(1)(d)(i)” insert:

4

5             or 7B(6)

6

7     **8.       Sections 19A and 19B deleted**

8             Delete sections 19A and 19B.

9     **9.       Section 34 amended**

10            (1) In section 34(1) delete “subsection (2),” and insert:

11

12            subsections (2) and (3),

13

14            (2) After section 34(2) insert:

15

16            (3) If a court is sentencing a person for an offence referred  
17            to in subsection (1)(a) that involved selling or  
18            supplying, or offering to sell or supply, a prohibited  
19            drug or a prohibited plant to a child, and the person  
20            was an adult when the offence was committed, then,  
21            despite the *Sentencing Act 1995* Part 5 —

22            (a) for a first offence the court must use one of  
23            only these sentencing options —

24            (i) suspended imprisonment imposed under  
25            the *Sentencing Act 1995* section 39 and  
26            Part 11;

27            (ii) conditional suspended imprisonment  
28            imposed under section 39 and Part 12 of  
29            that Act;



- 1 (iii) a term of imprisonment imposed under  
2 section 39 and Part 13 of that Act;  
3 and  
4 (b) for any subsequent offence (whether or not  
5 under the same provision) the court —  
6 (i) must impose a term of imprisonment of  
7 at least 6 months; and  
8 (ii) must not suspend the term of  
9 imprisonment.  
10 (4) If a court is sentencing a person for —  
11 (a) an offence under section 6(1)(b); or  
12 (b) an offence under section 7(1)(a) that involved  
13 cultivating a prohibited plant; or  
14 (c) an offence under section 14(1),  
15 committed in circumstances where the acts constituting  
16 the offence endangered the life, health or safety of a  
17 child under 16 years of age, and the person was an  
18 adult when the offence was committed, then, despite  
19 the *Sentencing Act 1995* Part 5 —  
20 (d) for a first offence the court must use one of  
21 only these sentencing options —  
22 (i) suspended imprisonment imposed under  
23 the *Sentencing Act 1995* section 39 and  
24 Part 11;  
25 (ii) conditional suspended imprisonment  
26 imposed under section 39 and Part 12 of  
27 that Act;  
28 (iii) a term of imprisonment imposed under  
29 section 39 and Part 13 of that Act;  
30 and

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- 1 (e) for any subsequent offence (whether or not  
2 under the same provision) the court —
- 3 (i) must impose a term of imprisonment of  
4 at least 6 months; and
- 5 (ii) must not suspend the term of  
6 imprisonment.
- 7 (5) If a court is sentencing a person for —
- 8 (a) an offence under section 6(1)(b); or
- 9 (b) an offence under section 7(1)(a) that involved  
10 cultivating a prohibited plant; or
- 11 (c) an offence under section 14(1),  
12 committed in circumstances where the acts constituting  
13 the offence caused bodily harm (as defined in *The*  
14 *Criminal Code* section 1(1) and (4)) to a child under  
15 16 years of age, and the person was an adult when the  
16 offence was committed, then, despite the *Sentencing*  
17 *Act 1995* Part 5, the court —
- 18 (d) must impose a term of imprisonment of at least  
19 12 months; and
- 20 (e) must not suspend the term of imprisonment.
- 21 (6) The Minister must carry out a review of the operation  
22 and effectiveness of the amendments made to this  
23 section by the *Misuse of Drugs Amendment Act 2011*  
24 section 9 as soon as practicable after the expiry of  
25 3 years from the commencement of that section.
- 26 (7) The Minister is to lay (or cause to be laid) a report of  
27 the review under this section before both Houses of  
28 Parliament as soon as practicable after the review is  
29 completed.  
30

1 **Part 3 — *Bail Act 1982* amended**

2 **10. Act amended**

3 This Part amends the *Bail Act 1982*.

4 **11. Schedule 2 amended**

5 In Schedule 2 item 2a after the row relating to s. 7(1) insert:

6

s. 14(1) Possessing a quantity of a category 1 item or a  
category 2 item in circumstances where the life, health  
or safety of a child under 16 years of age was  
endangered, or bodily harm (as defined in *The Criminal  
Code* section 1(1) and (4)) was caused to such a child,  
by the acts constituting the offence

7

1                      **Part 4 — *Spent Convictions Act 1988* amended**

2      **12.            Act amended**

3                      This Part amends the *Spent Convictions Act 1988*.

4      **13.            Section 11 amended**

5                      Delete section 11(6)(a)(i) and insert:

6

7                                      (i)    section 5(1)(d)(i) or 7B(6); or

8

1      **Part 5 — *Working with Children (Criminal Record***  
2                                    ***Checking) Act 2004* amended**

3      **14.      Act amended**

4                    This Part amends the *Working with Children (Criminal Record*  
5                    *Checking) Act 2004*.

6      **15.      Schedule 2 amended**

7                    In Schedule 2 in the item relating to the *Misuse of Drugs*  
8                    *Act 1981* insert in numerical order:

9  
10                    s. 7B(4)                    Selling drug paraphernalia to a child

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