

**DRUG MISUSE AND TRAFFICKING (AMENDMENT)
ACT 1986 No. 47**

NEW SOUTH WALES



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**DRUG MISUSE AND TRAFFICKING (AMENDMENT)
ACT 1986 No. 47**

NEW SOUTH WALES



Act No. 47, 1986

An Act to amend the Drug Misuse and Trafficking Act 1985 with respect to the destruction of drug exhibits and in certain other respects.
[Assented to, 9 May 1986]

See also Bail (Amendment) Act 1986.

Drug Misuse and Trafficking (Amendment) 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Drug Misuse and Trafficking (Amendment) Act 1986".

Commencement

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) Schedule 1, and section 3 in its application to that Schedule, shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 226, 1985

3. The Drug Misuse and Trafficking Act 1985 is amended in the manner set forth in Schedules 1 and 2.

SCHEDULE 1

(Sec. 3)

**AMENDMENTS TO THE DRUG MISUSE AND TRAFFICKING ACT
1985 RELATING TO DESTRUCTION OF EXHIBITS**

(1) Section 35—

Omit the section, insert instead:

Order for forfeiture, etc., of certain articles

35. A court which convicts a person of an offence against any of the provisions of this Act or the regulations may order that any article (other than a prohibited plant or prohibited drug) in respect of which the offence was committed shall be forfeited to Her Majesty and that any article so forfeited shall be destroyed or otherwise disposed of as the court thinks fit.

Drug Misuse and Trafficking (Amendment) 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE DRUG MISUSE AND TRAFFICKING ACT
1985 RELATING TO DESTRUCTION OF EXHIBITS—*continued*

(2) Part IIIA—

After Part III, insert:

PART IIIA
DESTRUCTION OF EXHIBITS
DIVISION 1—*Pre-trial orders*

Interpretation

39A. In this Division—

“minimum amount” means—

- (a) in relation to a prohibited drug other than heroin, the traffickable quantity of the prohibited drug; and
- (b) in relation to heroin, 1 gram.

Extent of order for destruction

39B. An order under this Division for the destruction of a prohibited drug shall not authorise the destruction of so much of the prohibited drug as comprises three times the amount that is required for the purpose of sampling and analysis.

Order for destruction by certain police officers

39C. Where no order has been made under this Division for the retention of a prohibited drug seized by a member of the police force, a member of the police force of or above the rank of Superintendent may, whether or not any person has been charged with an offence with respect to the prohibited drug, order that the prohibited drug be destroyed if the member is of the opinion that, by reason of the amount of the prohibited drug or otherwise, the prohibited drug could not reasonably be securely retained pending an order under this Division of a Magistrate.

Drug Misuse and Trafficking (Amendment) 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE DRUG MISUSE AND TRAFFICKING ACT
1985 RELATING TO DESTRUCTION OF EXHIBITS—*continued*

Application to Magistrate for order with respect to destruction

39D. (1) Where an amount which is not less than the minimum amount of a prohibited drug is seized by a member of the police force, a member of the police force shall, within the period of 21 days after the date of the seizure, make application to a Magistrate for an order with respect to the destruction of the prohibited drug.

(2) On the hearing of the application, the Magistrate shall make a determination whether the prohibited drug should be retained.

(3) Nothing in subsection (1) requires an application to be made if, within the period of 21 days—

- (a) a person is charged with an offence with respect to the prohibited drug; or
- (b) the prohibited drug is destroyed pursuant to an order under section 39C.

(4) An application shall lapse if, before the application is heard—

- (a) a person is charged with an offence with respect to the prohibited drug; or
- (b) the prohibited drug is destroyed pursuant to an order under section 39C.

Determination of Magistrate with respect to destruction on first mention of charge

39E. (1) Where a person is charged with an offence with respect to a prohibited drug involving an amount which is not less than the minimum amount of the prohibited drug, a Magistrate shall, on the first occasion on which the charge is mentioned before a Magistrate, ascertain whether the prohibited drug has been destroyed.

Drug Misuse and Trafficking (Amendment) 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE DRUG MISUSE AND TRAFFICKING ACT
1985 RELATING TO DESTRUCTION OF EXHIBITS—*continued*

(2) The Magistrate shall, where the prohibited drug has not been destroyed, make a determination whether the prohibited drug should be retained.

(3) Where the accused is legally represented and no party objects to the destruction of the prohibited drug, the Magistrate shall order—

- (a) that the prohibited drug, if it is not otherwise required to be forfeited to Her Majesty, be so forfeited; and
- (b) that the prohibited drug be destroyed.

(4) Where the accused is not present before the Magistrate, or is present but is not legally represented, or if any party objects to the destruction of the prohibited drug, the Magistrate shall order—

- (a) except where the Magistrate is satisfied as referred to in paragraph (b)—
 - (i) that the prohibited drug, if it is not otherwise required to be forfeited to Her Majesty, be so forfeited; and
 - (ii) that the prohibited drug be destroyed; or
- (b) where the Magistrate is satisfied that it is in the interests of justice to do so or that there is other sufficient reason, that the prohibited drug be retained.

Matters for consideration on determination for retention of prohibited drug

39F. In determining whether to order under this Division that a prohibited drug be retained, a Magistrate shall consider—

- (a) the amount of the prohibited drug;
- (b) whether the prohibited drug can reasonably be securely retained;
- (c) the period of retention;

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SCHEDULE 1—*continued*

AMENDMENTS TO THE DRUG MISUSE AND TRAFFICKING ACT
1985 RELATING TO DESTRUCTION OF EXHIBITS—*continued*

- (d) the purpose of retention;
- (e) the amount of the prohibited drug required for the purpose of sampling and analysis;
- (f) a report, if any, of an analyst relating to the prohibited drug;
- (g) whether the arrest of any person in relation to the prohibited drug is imminent;
- (h) the number of persons charged with offences in relation to the prohibited drug;
- (i) when the hearing of the charge relating to the prohibited drug is likely to be concluded;
- (j) whether there is any other order under this Part relating to the prohibited drug;
- (k) any claim of a person to be lawfully entitled to the prohibited drug; and
- (l) any other matter which, in the opinion of the Magistrate, is relevant.

Adjournment

39G. (1) A Magistrate shall adjourn the hearing of an application under section 39D or the making of a determination under section 39E (2) whether a prohibited drug should be retained—

- (a) where no order under this Division with respect to the prohibited drug has previously been made and a party to the proceedings requests the adjournment; or
- (b) where, in the opinion of the Magistrate, the hearing or making of the determination should be adjourned.

(2) An adjournment shall be for a reasonable period not exceeding 14 days.

SCHEDULE 1—*continued*AMENDMENTS TO THE DRUG MISUSE AND TRAFFICKING ACT
1985 RELATING TO DESTRUCTION OF EXHIBITS—*continued***Review of determination for retention of prohibited drug**

39H. Where a Magistrate determines that a prohibited drug be retained, the Magistrate shall fix a date not more than 2 months after the date of the determination in order to make a further determination whether the prohibited drug should be retained.

Destruction of prohibited drugs

39I. (1) A prohibited drug shall, except as provided by subsection (2) and section 39J, be destroyed as soon as practicable after the expiration of the period of 7 days, or such longer period as a Magistrate may have specified, after the date on which it was ordered to be destroyed.

(2) A Magistrate may rescind or vary an order for the destruction of a prohibited drug.

Use of prohibited drug for research, etc.

39J. Where, after a Magistrate has ordered that a prohibited drug be destroyed and before the prohibited drug is destroyed, the Secretary of the Department of Health requests the Commissioner of Police, in writing, to give the prohibited drug to a person or body specified in the request for the purpose of scientific research, instruction, analysis or study, the prohibited drug shall be dealt with in accordance with the request.

Order on committal for trial

39K. (1) On the committal for trial of a person for an offence with respect to a prohibited drug involving an amount which is not less than the minimum amount of the prohibited drug and which has not been ordered to be destroyed, the Magistrate shall make a determination whether the prohibited drug should be retained.

(2) Where the Magistrate determines that the prohibited drug be retained, the Magistrate shall give the reasons for the determination.

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SCHEDULE 1—*continued*AMENDMENTS TO THE DRUG MISUSE AND TRAFFICKING ACT
1985 RELATING TO DESTRUCTION OF EXHIBITS—*continued***Order on initial hearing of trial**

39L. Where a person is committed for trial for an offence with respect to a prohibited drug involving an amount which is not less than the minimum amount of the prohibited drug and which has not been ordered to be destroyed, the court hearing the trial shall, on the first occasion on which the matter is mentioned before the court, make a determination whether the prohibited drug should be retained.

Amount of prohibited drug less than minimum quantity

39M. (1) Where an amount which is less than the minimum amount of a prohibited drug is seized by a member of the police force, a member of the police force may, at any time, make application to a Magistrate for an order with respect to the destruction of the prohibited drug.

(2) This Division applies to and in respect of an application under subsection (1) in the same way as it applies to and in respect of an application under section 39D (1).

DIVISION 2—*Post-trial orders***Order on determination of proceedings before Magistrate**

39N. (1) On the determination of proceedings before a Magistrate for an offence with respect to a prohibited plant or prohibited drug which has not been destroyed, the Magistrate shall—

(a) except as provided by paragraph (b), order that the prohibited plant or prohibited drug be destroyed; or

(b) where—

(i) any party objects to the destruction of the prohibited plant or prohibited drug; or

Drug Misuse and Trafficking (Amendment) 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE DRUG MISUSE AND TRAFFICKING ACT
1985 RELATING TO DESTRUCTION OF EXHIBITS—*continued*

- (ii) the Magistrate is satisfied that it is in the interests of justice to do so or that there is other sufficient reason,

order that the prohibited plant or prohibited drug be retained.

(2) Where a Magistrate orders that the prohibited plant or prohibited drug be retained, the prohibited plant or the prohibited drug shall be destroyed after the expiration of the period of 3 months after the date of the order unless an appeal against any determination of the Magistrate with respect to the offence has been lodged before the expiration of that period.

Order on appeal to District Court

39o. Where an appeal is made to the District Court in respect of an offence involving a prohibited plant or prohibited drug which has not been destroyed, the Court shall, on the first occasion on which the appeal is mentioned before the Court, make a determination whether the prohibited plant or prohibited drug should be retained.

Order on determination of proceedings before District Court or Supreme Court

39p. On the determination of proceedings before the District Court or the Supreme Court for an offence with respect to a prohibited plant or prohibited drug which has not been destroyed, the District Court or the Supreme Court, as the case requires, may make such order with respect to the retention, forfeiture, destruction or other disposal of the prohibited plant or prohibited drug as it thinks fit.

Drug Misuse and Trafficking (Amendment) 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE DRUG MISUSE AND TRAFFICKING ACT
1985 RELATING TO DESTRUCTION OF EXHIBITS—*continued*

DIVISION 3—*Supplementary*

Presumption on appeal

39Q. Where—

- (a) a person who was legally represented before a Magistrate on the trial of an offence with respect to a prohibited plant or prohibited drug pleaded guilty to the charge;
- (b) an appeal is made against any determination of the Magistrate with respect to the offence; and
- (c) before the appeal is heard, the prohibited plant or prohibited drug is destroyed pursuant to an order under this Part.

any particular in the information as to the nature or quantity of the prohibited plant or prohibited drug shall, for the purposes of the appeal, be presumed to be true.

Return of prohibited drug to lawful owner

39R. (1) Nothing in this Part prevents a person lawfully entitled to a prohibited drug seized by a member of the police force from applying to a Magistrate, the District Court or the Supreme Court, as the case requires, for an order that the prohibited drug be returned to the person and the Magistrate or court may, subject to section 39, order the return of so much of the prohibited drug as has not been destroyed.

(2) Nothing in this Part prevents a Magistrate or court from ordering the return of a prohibited drug to a person lawfully entitled to the prohibited drug whether or not an application for the return of the prohibited drug has been made by the person.

*Drug Misuse and Trafficking (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE DRUG MISUSE AND TRAFFICKING ACT
1985 RELATING TO DESTRUCTION OF EXHIBITS—*continued***Regulations**

39s. The regulations may make provision, whether for the purposes of this Part or otherwise, for or with respect to the handling, storage and destruction of prohibited plants or prohibited drugs seized by members of the police force, the sampling and analysis of those prohibited plants or prohibited drugs and the return of any such prohibited drugs to a person lawfully entitled to them.

SCHEDULE 2

(Sec. 3)

MISCELLANEOUS AMENDMENTS TO THE DRUG MISUSE AND
TRAFFICKING ACT 1985(1) Section 3 (**Interpretation**)—

Section 3 (1), definitions of “cannabis leaf”, “cannabis oil”—

Omit the definitions, insert instead:

“cannabis leaf” means any plant or part of a plant of the genus Cannabis by whatever name that plant or part may be called, and includes the achene and seed of any such plant, but does not include—

- (a) cannabis oil;
- (b) any fibre of any such plant or part from which the resin has been extracted; or
- (c) cannabis plant;

“cannabis oil” means any liquid containing tetrahydrocannabinol;

Drug Misuse and Trafficking (Amendment) 1986

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE DRUG MISUSE AND
TRAFFICKING ACT 1985—*continued*

(2) Section 10 (**Possession of prohibited drugs**)—

Section 10 (2)—

Omit the subsection, insert instead:

(2) Nothing in this section renders unlawful the possession of a prohibited drug by—

- (a) a person licensed or authorised to have possession of the prohibited drug under the Poisons Act 1966;
- (b) a person acting in accordance with an authority granted by the Secretary of the Department of Health where the Secretary is satisfied that the possession of the prohibited drug is for the purpose of scientific research, instruction, analysis or study; or
- (c) a person for or to whom the prohibited drug has been lawfully prescribed or supplied.

(3) Section 13 (**Administration of prohibited drugs to others**)—

Section 13 (2)—

Omit the subsection, insert instead:

(2) Nothing in this section renders unlawful the administration or attempted administration of a prohibited drug to another person by—

- (a) a person licensed or authorised to do so under the Poisons Act 1966; or
- (b) a person authorised to do so by the Secretary of the Department of Health.

(4) Section 17 (**Obtaining prohibited drug by false representation**)—

After “medical practitioner,” insert “dentist,”.

SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE DRUG MISUSE AND
TRAFFICKING ACT 1985—*continued*

(5) Section 18—

Omit the section, insert instead:

Obtaining prohibited drugs from medical practitioners

18. A person who, by any representation (whether verbal, or in writing, or by conduct), obtains or attempts to obtain—

(a) a prohibited drug; or

(b) a prescription that includes a prohibited drug,

from a medical practitioner without previously informing the medical practitioner of the quantity of that or any other prohibited drug or prohibited drugs for which the person has obtained prescriptions from medical practitioners within the period of 2 months immediately preceding the time of the representation, where the failure or refusal to inform the medical practitioner is made with intent to deceive the medical practitioner, is guilty of an offence.

(6) Section 23 (**Offences with respect to prohibited plants**)—

Section 23 (2) (a)—

Omit “in his or her possession”.

(7) Section 24 (**Manufacture and production of prohibited drugs**)—

Section 24 (4)—

Omit the subsection, insert instead:

(4) Nothing in this section renders unlawful the manufacture or production of a prohibited drug by—

(a) a person licensed or authorised to do so under the Poisons Act 1966; or

*Drug Misuse and Trafficking (Amendment) 1986*SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE DRUG MISUSE AND
TRAFFICKING ACT 1985—*continued*

- (b) a person acting in accordance with an authority granted by the Secretary of the Department of Health where the Secretary is satisfied that the manufacture or production of the prohibited drug is for the purpose of scientific research, instruction, analysis or study,

or renders unlawful the taking part by any other person in the manufacture or production of a prohibited drug by a person to whom paragraph (a) or (b) applies.

(8) Section 25 (**Supply of prohibited drugs**)—

Section 25 (4)—

Omit the subsection, insert instead:

(4) Nothing in this section renders unlawful the supply of a prohibited drug by—

- (a) a person licensed or authorised to do so under the Poisons Act 1966; or
- (b) a person acting in accordance with an authority granted by the Secretary of the Department of Health where the Secretary is satisfied that the supply of the prohibited drug is for the purpose of scientific research, instruction, analysis or study,

or renders unlawful the taking part by any other person in the supply of a prohibited drug by a person to whom paragraph (a) or (b) applies.

(9) Section 39 (**Seizure and forfeiture of cannabis plants and certain prohibited drugs**)—

(a) Section 39—

After “Any”, insert “cannabis plant, cannabis leaf, cannabis resin, cannabis oil or any”.

(b) Section 39—

Before “prohibited drug”, insert “cannabis plant or”.

Drug Misuse and Trafficking (Amendment) 1986

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE DRUG MISUSE AND
TRAFFICKING ACT 1985—*continued*

(10) Section 40A—

After section 40, insert:

Proof of certain matters

40A. (1) The onus of proving that a substance is fibre of cannabis leaf from which the resin has been extracted shall lie on the accused.

(2) The onus of proving any act, matter or thing which is not rendered unlawful by virtue of section 10 (2), 11 (2), 12 (2), 13 (2), 14 (2), 23 (4) (b), 24 (4) or 25 (4) shall lie on the accused.

(11) Section 43 (**Proof of certificate of analyst**)—

(a) Section 43 (1)—

After “analyst” where secondly occurring, insert “or under whose supervision the analysis of any substance submitted to the analyst is carried out”.

(b) Section 43 (2)—

After “analysed,”, insert “the quantity or mass of the substance analysed”.
