

[Act 1999 No 67]



New South Wales

Drug Summit Legislative Response Bill 1999

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

This Bill arises out of the New South Wales Drug Summit held at Parliament House between 17 and 21 May 1999. It forms but one part of the Government's response to the recommendations arising from the Drug Summit. In addition to matters arising from those recommendations, it also deals with a number of other matters relating to drug abuse. The main subject of the Bill is the licensing and use of a medically supervised injecting centre. The proposals contained in the Bill in this regard contemplate a single injecting centre, operating for a trial period of 18 months.

* Amended in committee—see table at end of volume.

Explanatory note

The objects of this Bill are:

- (a) to amend the *Drug Misuse and Trafficking Act 1985* so as to allow the licensing and use of a single medically supervised injecting centre for the self-administration of prohibited drugs for a trial period of 18 months, and
- (b) to further amend the *Drug Misuse and Trafficking Act 1985* so as to prohibit the advertising or holding out of premises as being available for the unlawful administration of prohibited drugs, and
- (c) to amend the *Bail Act 1978* so as to provide that a court may impose bail conditions requiring an accused person to undergo a drug or alcohol treatment or rehabilitation program, and
- (d) to amend the *Correctional Centres Act 1952* so as to allow sniffer dogs to be used in detention centres under the *Children (Detention Centres) Act 1987* in the same way as they can be used in correctional centres, and
- (e) to amend the *Young Offenders Act 1997* so as to allow the procedures under that Act to be used in relation to summary offences under the *Drug Misuse and Trafficking Act 1985*, and
- (f) to repeal the *Drug Offensive Act 1987* and enact savings, transitional and other provisions consequent on the repeal of that Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Drug Misuse and Trafficking Act 1985* set out in Schedules 1 and 2.

Clause 4 is a formal provision giving effect to the amendments to other Acts set out in Schedule 3.

Clause 5 repeals the *Drug Offensive Act 1987*.

Clause 6 is a formal provision giving effect to the savings, transitional and other provisions set out in Schedule 4.

Schedule 1 Amendment of Drug Misuse and Trafficking Act 1985 in relation to licensed injecting centres

Schedule 1 inserts a new Part 2A into the Act. The new Part, which is to have effect for a trial period of 18 months, contains the following provisions:

Division 1 Preliminary

Proposed section 36A limits the operation of the proposed Part so as to allow the issue of only one licence, in respect of only one premises, to have effect only during a trial period of 18 months.

Proposed section 36B requires the Commissioner of Police and the Director-General of the Department of Health (referred to collectively as the *responsible authorities*) to review the proposed Part during the trial period, and to review the conduct of the licensed injecting centre operating during that period, in order to see whether the Act or regulations need amendment.

Proposed section 36C provides for the expiry of the proposed Part, and of any licence issued under the proposed Part, at the end of the trial period.

Proposed section 36D defines various words and expressions used in the proposed Part.

Division 2 Licensing of injecting centres

Proposed section 36E allows the responsible authorities to issue a licence authorising the conduct of specified premises as an injecting centre. The responsible authorities will be able to refuse an application for a licence for any or no reason.

Proposed section 36F ensures that a licence for an injecting centre cannot be issued unless the responsible authorities are of the opinion that satisfactory internal management protocols for the centre have been finalised, that there is community and local government acceptance of the proposal to establish the centre and that the proposed premises are suitable for use as an injecting centre.

Proposed section 36G provides that, unless sooner surrendered or revoked, a licence has effect for the period specified in it. The surrender of a licence will require consultation with the responsible authorities.

Proposed section 36H provides that a licence is subject to conditions imposed by the responsible authorities and to conditions imposed by or under the proposed Part

or the regulations. The responsible authorities will be required to consult with the holder or proposed holder of the licence before imposing conditions on the licence.

Proposed section 36I prescribes a statutory condition prohibiting the admission of children to that part of a licensed injecting centre that is used for the administration of drugs, and a further statutory condition requiring observance of a licensed injecting centre's internal management protocols.

Proposed section 36J sets out the sanctions that can be applied if a licensed injecting centre is conducted in contravention of the proposed Division or its licence conditions. These sanctions include a warning, a reprimand, a fine (not exceeding 100 penalty units) and the suspension or revocation of the licence.

Proposed section 36K requires the responsible authorities to arrange for the ongoing or periodical review of any licensed injecting centre.

Division 3 Internal management protocols

Proposed section 36L requires the responsible authorities to have regard to whether provision needs to be made to ensure that specified requirements are met in considering the internal management protocols for a proposed injecting centre.

Proposed section 36M regulates the means by which a licensed injecting centre's internal management protocols may be amended or replaced.

Division 4 Exemptions from liability

Proposed section 36N provides that it is not unlawful for a person at a licensed injecting centre to be in possession of, or to administer to himself or herself, an "exempt quantity" of a prescribed drug or to be in possession of an item of equipment for use in its administration. An "exempt quantity" will generally be what is referred to in the Act as a "small quantity", being a quantity of the drug that allows certain offences under the Act to be dealt with summarily, rather than on indictment.

Proposed section 36O provides that it is not unlawful for a person to engage, participate or otherwise be involved in the conduct of a licensed injecting centre.

Proposed section 36P provides that a person (including the licensee, the State and any Minister of the Crown in right of the State) is not liable for anything done or omitted to be done in connection with the conduct of a licensed injecting centre so long as it was done or omitted in good faith for the purpose of executing the proposed Part and was not done in a reckless or grossly negligent manner.

Division 5 Miscellaneous

Proposed section 36Q provides that development for the purposes of a licensed injecting centre during the trial period does not require development consent and is not subject to Part 5 of the *Environmental Planning and Assessment Act 1979*.

Proposed section 36R provides that the responsible authorities may issue certificates that can be used in legal proceedings as evidence of certain matters.

Proposed section 36S sets out various matters with respect to which regulations may be made for the purposes of the proposed Part.

Schedule 2 Amendment of Drug Misuse and Trafficking Act 1985 in relation to other matters

Schedule 2 inserts proposed section 18A into the Act.

Proposed section 18A provides that a person who is responsible for premises is guilty of an offence if the person advertises or holds out in any way, or causes, suffers or permits any other person to advertise or hold out in any way, that the premises are available for use for the administration of prohibited drugs. The proposed section will not apply to an injecting centre licensed under proposed Part 2A.

Schedule 3 Amendment of other Acts

Schedule 3.1 [4] amends the *Bail Act 1978* so as to provide that a court may impose bail conditions requiring an accused person to undergo a drug or alcohol treatment or rehabilitation program. **Schedule 3.1 [1], [2], [3] and [5]** merely make consequential amendments.

Schedule 3.2 amends section 45A of the *Correctional Centres Act 1952* so as to allow sniffer dogs to be used for the detection of drugs in detention centres under the *Children (Detention Centres) Act 1987*.

Schedule 3.3 amends section 8 of the *Young Offenders Act 1997* so as to allow the procedures under that Act to be used in relation to a summary offence under the *Drug Misuse and Trafficking Act 1985* so long as the offence does not involve more than a small quantity of a prohibited drug.

Schedule 4 Savings, transitional and other provisions

Schedule 4 enacts savings, transitional and other provisions consequent on the repeal of the *Drug Offensive Act 1987*. In particular, the Schedule defines certain words and expressions (clause 1), abolishes the New South Wales Drug Offensive Council (clause 2), abolishes the New South Wales Drug Offensive Foundation (clause 3), abolishes the Drug Offensive Foundation Fund (clause 4), imposes certain reporting requirements (clause 5) and empowers the making of savings and transitional regulations (clause 6).