



New South Wales

# Drugs and Poisons Legislation Amendment (New Psychoactive and Other Substances) Bill 2013

## Explanatory note

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

## Overview of Bill

The objects of this Bill are to amend:

- (a) the *Poisons and Therapeutic Goods Act 1966* (the **Poisons Act**) to provide for the addition of a ninth schedule to the Poisons List containing the substances that are in the current Poisons Standard within the meaning of Part 6-3 of the *Therapeutic Goods Act 1989* of the Commonwealth (**Schedule 9 substances**), and
- (b) the *Drug Misuse and Trafficking Act 1985* (the **Drug Misuse Act**):
  - (i) to prohibit the possession, manufacture, production or supply (or taking part in the manufacture, production or supply) of Schedule 9 substances other than prohibited drugs unless authorised under the Poisons Act, and
  - (ii) to prohibit the manufacture (or the knowingly taking part in the manufacture) of a psychoactive substance for human consumption or supply of such a substance, and
  - (iii) to prohibit the publication or display of an advertisement knowing or being reckless as to whether it promotes the consumption or sale of a substance for its psychoactive effects and providing information on how or where it may be acquired, and
  - (iv) to remove the requirement in determining whether a drug is an analogue of a prohibited drug that the drug have psychotropic properties.

## 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.

## **Schedule 1      Amendment of Drug Misuse and Trafficking Act 1985 No 226**

**Schedule 1 [4]** inserts proposed section 25B into the Drug Misuse Act to achieve the object described in paragraph (b) (i) of the Overview above. **Schedule 1 [3]** is a consequential amendment.

**Schedule 1 [5]** inserts proposed Part 2C (proposed sections 36ZD–36ZG) into the Drug Misuse Act to achieve the objects described in paragraph (b) (ii) and (iii) of the Overview above.

Proposed section 36ZD contains definitions of words and expressions used in the proposed Part. A *psychoactive substance* is defined as being any substance (other than a substance to which the proposed Part does not apply) that, when consumed by a person, has the capacity to induce a psychoactive effect.

Proposed section 36ZE lists the substances to which the proposed Part does not apply.

Proposed section 36ZF makes it an offence to manufacture or supply a psychoactive substance knowing that it is being supplied to or acquired for a person primarily for human consumption or being reckless as to whether it is being supplied or acquired for human consumption.

Proposed section 36ZG makes it an offence to publish or display an advertisement knowing or being reckless as to whether it promotes the consumption or sale of a substance for its psychoactive effects and providing information on how or where it may be acquired.

**Schedule 1 [6]** amends section 40 of the Drug Misuse Act so that if a substance is represented as being a psychoactive substance for the purpose of supply it will be taken to be a psychoactive substance.

**Schedule 1 [1], [2] and [7]** make associated amendments to insert or amend definitions for the purpose of the proposed Part and to enable regulations to be made exempting persons from the provisions of the Drug Misuse Act relating to psychoactive substances.

**Schedule 1 [8]** amends Schedule 1 to the Drug Misuse Act to achieve the object described in paragraph (b) (iv) of the Overview above.

## **Schedule 2      Amendment of Poisons and Therapeutic Goods Act 1966 No 31**

**Schedule 2 [2]–[4]** make the amendments to the Poisons Act described in paragraph (a) of the Overview above. The amendments incorporate by reference Schedule 9 of the Commonwealth Standard for the Uniform Scheduling of Medicines and Poisons into the Poisons List. Any new substances added to the Commonwealth Schedule will automatically be included in the Poisons List. It will be an offence under the proposed amendments to the Drug Misuse Act made by Schedule 1 [4] to sell, supply, manufacture or possess such a substance unless authorised by or under the Poisons Act.

**Schedule 2 [5]** inserts proposed section 17D into the Poisons Act to enable the Director-General of the Ministry of Health to authorise a specified person or class of persons to manufacture, supply or possess a specified Schedule 9 substance (not being a prohibited drug within the meaning of the Drug Misuse Act) for medical or scientific research, analytical, teaching or training purposes or for industrial or commercial purposes.

**Schedule 2 [1] and [6]** are associated amendments to insert a definition and provide for evidence in prosecutions that a substance is a Schedule 9 substance.



New South Wales

# Drugs and Poisons Legislation Amendment (New Psychoactive and Other Substances) Bill 2013

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New South Wales

# Drugs and Poisons Legislation Amendment (New Psychoactive and Other Substances) Bill 2013

No. , 2013

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## A Bill for

An Act to amend the *Drug Misuse and Trafficking Act 1985* to prohibit the manufacture, supply, sale and advertising of psychoactive substances and to remove the requirement for analogues of prohibited drugs to have psychotropic properties; to amend the *Poisons and Therapeutic Goods Act 1966* with respect to the addition of further substances to the Poisons List; and for other purposes.

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**The Legislature of New South Wales enacts:**

1

**1 Name of Act**

2

This Act is the *Drugs and Poisons Legislation Amendment (New Psychoactive and Other Substances) Act 2013*.

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4

**2 Commencement**

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This Act commences on a day or days to be appointed by proclamation.

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| <b>Schedule 1</b>  | <b>Amendment of Drug Misuse and Trafficking Act 1985 No 226</b>  | 1  |
|  |  | 2  |
| <b>[1] Section 3 Definitions</b>   |  | 3  |
|  | Insert in alphabetical order in section 3 (1):   | 4  |
|  | <i>psychoactive substance</i> —see section 36ZD.   | 5  |
| <b>[2] Section 6 Meaning of “take part in”</b>   |  | 6  |
|  | Insert “or psychoactive substance” after “prohibited drug”.  | 7  |
| <b>[3] Section 7 Deemed possession of prohibited drug etc</b>                              |  | 8  |
|  | Insert “, Schedule 9 substance (not being a prohibited drug)” after “prohibited drug”.   | 9  |
| <b>[4] Section 25B</b>   |  | 10 |
|  | Insert after section 25A:  | 11 |
| <b>25B Manufacture, production, possession and supply of certain Schedule 9 substances</b> |  | 12 |
|  |  | 13 |
| (1)  | A person who manufactures or produces, or who knowingly takes part in the manufacture or production of, a Schedule 9 substance (not being a prohibited drug within the meaning of this Act) is guilty of an offence.                             | 14 |
|  | Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.  | 15 |
| (2)  | A person who supplies, or who knowingly takes part in the supply of, a Schedule 9 substance (not being a prohibited drug within the meaning of this Act) is guilty of an offence.  | 16 |
|  | Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.  | 17 |
| (3)  | A person who has in his or her possession a Schedule 9 substance (not being a prohibited drug within the meaning of this Act) is guilty of an offence.   | 18 |
|  | Maximum penalty: 20 penalty units or imprisonment for 12 months, or both.  | 19 |
| (4)  | Nothing in this section renders unlawful the manufacture, production, possession or supply of a Schedule 9 substance (not being a prohibited drug) by:   | 20 |
|  | (a) a person licensed or authorised to do so under the <i>Poisons and Therapeutic Goods Act 1966</i> , or  | 21 |
|  | (b) a person in accordance with an authorisation given by the Director-General of the Ministry of Health under section 17D of that Act,  | 22 |
|  | or renders unlawful the taking part by any other person in the manufacture, production or supply of such a substance by a person to whom paragraph (a) or (b) applies or the possession of the substance by the other person for those purposes. | 23 |
| (5)  | In this section:   | 24 |
|  | <i>Schedule 9 substance</i> means a Schedule 9 substance within the meaning of the <i>Poisons and Therapeutic Goods Act 1966</i> .   | 25 |
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| [5] Part 2C  | 1  |
| Insert after Part 2B:  | 2  |
| <b>Part 2C Offences involving psychoactive substances</b>  | 3  |
| <b>36ZD Definitions</b>  | 4  |
| (1) In this Part:  | 5  |
| <i>advertisement</i> means:  | 6  |
| (a) any words, whether written or spoken, or   | 7  |
| (b) any pictorial representation or design, or   | 8  |
| (c) any other representation by any means at all.  | 9  |
| <i>display</i> , in relation to an advertisement, includes cause or permit to be displayed.  | 10 |
| <i>manufacture</i> , in relation to a psychoactive substance, means to make up, prepare, produce, process (including by extracting or refining), package or label the psychoactive substance.  | 12 |
| <i>psychoactive effect</i> , in relation to a person who is consuming or has consumed a psychoactive substance, means:   | 15 |
| (a) stimulation or depression of the central nervous system of the person, resulting in hallucinations or a significant disturbance in, or significant change to, motor function, thinking, behaviour, perception, awareness or mood, or   | 17 |
| (b) causing a state of dependence, including physical or psychological addiction.  | 21 |
| <i>psychoactive substance</i> means any substance (other than a substance to which this Part does not apply) that, when consumed by a person, has the capacity to induce a psychoactive effect.  | 23 |
| <i>publish</i> includes distribute, disseminate, circulate, exhibit and cause or permit to be published.   | 26 |
| <i>substance</i> includes any plant, fungus or natural organism.   | 28 |
| <i>tobacco product</i> means tobacco, or a cigarette or cigar, or any other product containing tobacco and designed for human consumption or use.  | 29 |
| <i>usage instruction</i> , in relation to a psychoactive substance, includes any direction, caution, warning, advice or recommendation in relation to the consumption of the substance.  | 31 |
| (2) In this Part, a reference to the <i>consumption</i> of a psychoactive substance includes a reference to the ingestion, injection or inhalation of a psychoactive substance, the smoking of a psychoactive substance, the inhalation of fumes caused by the heating or burning of a psychoactive substance and any other means of introducing a psychoactive substance into any part of the body of a person. | 34 |
| <b>36ZE Substances to which this Part does not apply</b>   | 40 |
| (1) This Part does not apply to the following substances:  | 41 |
| (a) a substance specified in Schedule 1,   | 42 |
| (b) a precursor within the meaning of section 24A,   | 43 |
| (c) a poison, restricted substance or drug of addiction within the meaning of the <i>Poisons and Therapeutic Goods Act 1966</i> ,  | 44 |
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| (d)         | therapeutic goods included in the Australian Register of Therapeutic Goods maintained under the <i>Therapeutic Goods Act 1989</i> of the Commonwealth or that are exempted from the operation of Part 3-2 of that Act by regulations made under section 18 of that Act,   | 1<br>2<br>3<br>4     |
| (e)         | a food within the meaning of the <i>Food Act 2003</i> ,   | 5                    |
| (f)         | alcohol,  | 6                    |
| (g)         | a tobacco product,  | 7                    |
| (h)         | any plant or fungus, or extract from a plant or fungus, that is not, or does not contain, a substance specified in Schedule 1,  | 8<br>9               |
| (i)         | controlled drugs, controlled plants and controlled precursors within the meaning of Part 9.1 of the Criminal Code set out in the Schedule to the <i>Criminal Code Act 1995</i> of the Commonwealth,   | 10<br>11<br>12       |
| (j)         | a substance supplied by a health practitioner (within the meaning of the <i>Health Care Complaints Act 1993</i> ) in the course of the provision of a health service (within the meaning of that Act),  | 13<br>14<br>15       |
| (k)         | any other substance prescribed by the regulations for the purposes of this section.   | 16<br>17             |
| (2)         | A reference to a substance in subsection (1) does not include any substance that contains, or has had added to it, any psychoactive substance that is not specified in subsection (1).  | 18<br>19<br>20       |
| <b>36ZF</b> | <b>Offence of supplying or manufacturing psychoactive substances</b>  | 21                   |
| (1)         | A person must not manufacture or knowingly take part in the manufacture of a psychoactive substance for supply to another person:   | 22<br>23             |
| (a)         | knowing that it is being supplied to the person primarily for human consumption or for supply by that person to another person for that purpose, or   | 24<br>25<br>26       |
| (b)         | being reckless as to whether it is being so supplied.   | 27                   |
|             | Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.   | 28                   |
| (2)         | A person must not supply a psychoactive substance:  | 29                   |
| (a)         | knowing that it is being acquired primarily for human consumption, or   | 30                   |
| (b)         | being reckless as to whether it is being so acquired.   | 31                   |
|             | Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.   | 32                   |
| (3)         | A court may be satisfied that a person knowingly or recklessly manufactured or supplied a psychoactive substance despite a usage instruction concerning the substance (given in any manner, way, medium or form) that indicates that it is not a psychoactive substance or is not intended for human consumption. | 33<br>34<br>35<br>36 |
| (4)         | In any proceedings for an offence under this section, the court may have regard to the following in determining whether a person knew or was reckless as to whether a substance was being acquired or supplied primarily for human consumption:   | 37<br>38<br>39<br>40 |
| (a)         | any advertising matter published or displayed by the person, or usage instruction concerning the substance given by the person, whether before or after the commencement of this subsection, that indicates that the substance:   | 41<br>42<br>43<br>44 |
| (i)         | has or may have a psychoactive effect, or   | 45                   |
| (ii)        | has or may have a similar effect to a prohibited drug or may be used in a similar way to a prohibited drug,   | 46<br>47             |

|             |  |                            |
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| (b)         | whether it would be reasonable in all the circumstances to find that the substance concerned was being manufactured or supplied for a lawful purpose.  | 1<br>2<br>3                |
| (5)         | Subsection (4) does not limit the matters that the court may consider.   | 4                          |
| <b>36ZG</b> | <b>Prohibition of advertising of psychoactive substances</b>   | 5                          |
|             | A person is guilty of an offence if the person publishes or displays in any manner, way, medium or form any advertisement:   | 6<br>7                     |
| (a)         | knowing or being reckless as to whether the advertisement promotes, or apparently promotes, directly or indirectly, the consumption, supply or sale of a substance for its psychoactive effects, and   | 8<br>9<br>10               |
| (b)         | providing information on how or where the psychoactive substance may be acquired.  | 11<br>12                   |
|             | Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.  | 13                         |
| <b>[6]</b>  | <b>Section 40 Effect of certain representations</b>  | 14                         |
|             | Insert after section 40 (2):   | 15                         |
| (3)         | A substance (not being a psychoactive substance) which, for the purpose of its being supplied, is represented (whether verbally, in writing or by conduct) as being a psychoactive substance or a specified psychoactive substance is, for the purposes of this Act and the regulations, to be taken to be a psychoactive substance or the specified psychoactive substance, as the case requires. | 16<br>17<br>18<br>19<br>20 |
| <b>[7]</b>  | <b>Section 45 Regulations</b>  | 21                         |
|             | Omit “or prohibited drugs” from section 45 (2).  | 22                         |
|             | Insert instead “, prohibited drugs or psychoactive substances”.  | 23                         |
| <b>[8]</b>  | <b>Schedule 1</b>  | 24                         |
|             | Omit “, being a substance that has psychotropic properties,”.  | 25                         |

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| <b>Schedule 2</b>  | <b>Amendment of Poisons and Therapeutic Goods Act 1966 No 31</b>   | 1  |
|  |  | 2  |
| <b>[1] Section 4 Interpretation</b>  |  | 3  |
|  | Insert in alphabetical order in section 4 (1):   | 4  |
|  | <i>Schedule 9 substance</i> means any substance specified in Schedule 9 of the Poisons List.   | 5  |
|  |  | 6  |
| <b>[2] Section 8 Poisons List</b>  |  | 7  |
|  | Omit “8 Schedules” from section 8 (2). Insert instead “9 Schedules”.   | 8  |
| <b>[3] Section 8 (2)</b>   |  | 9  |
|  | Insert after the matter relating to Schedule Eight:  | 10 |
|  | <b>Schedule Nine</b>   | 11 |
|  | Substances which are specified in Schedule 9 of the current Poisons Standard (within the meaning of Part 6-3 of the Commonwealth Act).   | 12 |
|  | <b>Note.</b> Substances in Schedule 9 are substances which may be abused or misused, the manufacture, possession, sale or use of which should be prohibited by law except when required for medical or scientific research, or for analytical, teaching or training purposes with the approval of Commonwealth or State or Territory Health Authorities. The Poisons Standard is available in electronic form, free of cost, at <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> . | 13 |
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| <b>[4] Section 8 (7)</b>   |  | 20 |
|  | Omit “the current Poisons Standard (within the meaning of Part 5B”.  | 21 |
|  | Insert instead “provisions of the current Poisons Standard (within the meaning of Part 6-3”.   | 22 |
| <b>[5] Section 17D</b>   |  | 23 |
|  | Insert after section 17C:  | 24 |
| <b>17D Authorisation of use etc of Schedule 9 substances for research and similar purposes</b> |  | 25 |
|  |  | 26 |
|  | (1) The Director-General may, by order in writing, authorise a specified person or class of persons to manufacture, possess, use or supply a specified Schedule 9 substance (not being a prohibited drug within the meaning of the <i>Drug Misuse and Trafficking Act 1985</i> ) for medical or scientific research, analytical, teaching or training purposes or for industrial or commercial purposes.   | 27 |
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|  | (2) The authorisation may be given unconditionally or subject to conditions.   | 32 |
| <b>[6] Section 41 Evidence in prosecutions under this Act</b>                                  |  | 33 |
|  | Insert after section 41 (c):   | 34 |
|  | (c1) that it is a Schedule 9 substance, or   | 35 |
| <b>[7] Section 41 (e)</b>  |  | 36 |
|  | Insert “, (c1)” after “(c)”.   | 37 |