

NORTHERN TERRITORY OF AUSTRALIA
MISUSE OF DRUGS AMENDMENT ACT 1994

No. 56 of 1994

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NORTHERN TERRITORY OF AUSTRALIA

No. 56 of 1994

AN ACT

to amend the *Misuse of Drugs Act*

[Assented to 22 September 1994]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Misuse of Drugs Amendment Act 1994*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Misuse of Drugs Act* is in this Act referred to as the Principal Act.

4. FORFEITURE OF DRUGS, &c.

(1) Section 34 of the Principal Act is amended -

- (a) by omitting from subsections (3), (5), (6), (8), (12) (a) and (13) "any money" and substituting "any vehicle, vessel, aircraft, other conveyance, money"; and
 - (b) by omitting from subsection (4) "in the money" and substituting "in the vehicle, vessel, aircraft, other conveyance, money".
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5. NEW PART

The Principal Act is amended by inserting after section 19 the following:

"PART IIA - DESTRUCTION OF EXHIBITS

"Division 1 - Pre-Trial Orders

"19A. DEFINITION

"In this Division -

'minimum amount' means -

(a) in relation to a dangerous drug other than heroin, the traffickable quantity by weight of the dangerous drug; or

(b) in relation to heroin, 1 g.;

'magistrate' means a magistrate sitting as the Court of Summary Jurisdiction.

"19B. EXTENT OF ORDER FOR DESTRUCTION

"An order under this Division for the destruction of a dangerous drug shall not authorise the destruction of so much of the dangerous drug as comprises 3 times the amount that is required for the purpose of sampling and analysis.

"19C. ORDER FOR DESTRUCTION BY CERTAIN POLICE OFFICERS

"(1) Where no order has been made under this Division for the retention of a dangerous drug seized by a member of the Police Force, a member of the Police Force of or above the rank of Commander may, whether or not any person has been charged with an offence with respect to the dangerous drug, order that the dangerous drug be destroyed if the member is of the opinion that, by reason of the amount of the drug or otherwise, the dangerous drug could not reasonably be securely retained pending an order under this Division of a magistrate.

"(2) Where a dangerous drug is seized by a member of the Police Force, a Commander may order the dangerous drug to be destroyed without a Court order, if the Commander is satisfied on reasonable grounds that there is no lawful owner and it is not intended that any person is to be charged with an offence with respect to the dangerous drug.

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"19D. APPLICATION TO MAGISTRATE FOR ORDER WITH RESPECT TO DESTRUCTION

"(1) Where an amount which is not less than the minimum amount of a dangerous drug is seized by a member of the Police Force, a member of the Police Force may, any time on or after the date of the seizure, make application to a magistrate for an order with respect to the destruction of the dangerous drug.

"(2) On the hearing of the application, the magistrate shall make a determination whether the dangerous drug should be retained.

"19E. DETERMINATION OF MAGISTRATE WITH RESPECT TO DESTRUCTION ON FIRST MENTION OF CHARGE

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

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

"(3) Where the accused is legally represented and no party objects to the destruction of the dangerous drug, the magistrate shall order that the dangerous drug, if it is not otherwise required to be forfeited to the Crown, be so forfeited and 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 dangerous drug, the magistrate may order -

- (a) the dangerous drug, if it is not otherwise required to be forfeited to the Crown, be so forfeited and 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 dangerous drug be retained.

"19F. MATTERS FOR CONSIDERATION ON DETERMINATION FOR RETENTION OF DANGEROUS DRUG

"In determining whether to order that a dangerous drug be retained, a magistrate shall consider -

- (a) the amount of the dangerous drug;
- (b) whether the dangerous drug can reasonably be securely retained;

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

"19G. ADJOURNMENT

"(1) A magistrate shall adjourn the hearing of an application under section 19D or the making of a determination under section 19E whether a dangerous drug should be retained -

- (a) where no order under this Division with respect to the dangerous 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 under this section shall be for a reasonable period not exceeding 14 days.

"19H. REVIEW OF DETERMINATION FOR RETENTION OF DANGEROUS DRUG

"Where a magistrate determines that a dangerous 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 dangerous drug should be retained.

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"19J. DESTRUCTION OF DANGEROUS DRUGS

"(1) A dangerous drug shall, except as provided by subsection (2) and section 19K, be destroyed as soon as practicable after the expiration 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 dangerous drug.

"19K. USE OF DANGEROUS DRUG FOR RESEARCH, &c.

"Where, after a magistrate has ordered that a dangerous drug be destroyed and before the drug is destroyed, the Chief Executive Officer of the Agency, within the meaning of the *Public Sector Employment and Management Act* responsible under the Minister for the administration of the *Public Health Act*, requests the Commissioner of Police, in writing, to give the dangerous drug to a person or body specified in the request for the purpose of scientific research, instruction, analysis or study, the dangerous drug shall be dealt with in accordance with the request.

"19M. ORDER ON COMMITTAL FOR TRIAL

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

"(2) Where the magistrate determines that the dangerous drug be retained, the magistrate shall give the reasons for the determination.

"19N. ORDER ON INITIAL HEARING OF TRIAL

"Where a person is committed for trial for an offence with respect to a dangerous drug involving an amount which is not less than the minimum amount of the dangerous 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 it, make a determination whether the dangerous drug should be retained.

"19P. AMOUNT OF DANGEROUS DRUG LESS THAN MINIMUM AMOUNT

"(1) Where an amount which is less than the minimum amount of a dangerous drug is seized by a member of the Police Force, a member of the Police Force may, at any time, make an application to a magistrate for an order with respect to the destruction of the dangerous drug.

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"(2) This Division applies to and in relation to an application under subsection (1) in the same way as it applies to and in relation to an application under section 19D.

"Division 2 - Post-Trial Orders

"19Q. ORDER ON APPEAL

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

"Division 3 - Supplementary

"19R. PRESUMPTION ON APPEAL

"Where -

- (a) a person who was legally represented before a magistrate on the trial of an offence with respect to a prohibited plant or dangerous 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 dangerous 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 dangerous drug shall, for the purposes of the appeal, be presumed to be true.

"19S. RETURN OF DANGEROUS DRUG TO LAWFUL OWNER

"(1) Nothing in this Part prevents a person lawfully entitled to a dangerous drug seized by a member of the Police Force from applying to a magistrate for an order that the dangerous drug be returned to the person, and the magistrate may order the return of so much of the dangerous drug as has not been destroyed.

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

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"19T. REGULATIONS

"The Regulations may make provisions, whether for the purpose of this Part or otherwise, for or with respect to the handling storage and destruction of prohibited plants or dangerous drugs seized by members of the Police Force, the sampling and analysis of those prohibited plants or dangerous drugs and the return of such prohibited plants or dangerous drugs to a person lawfully entitled to them.".
