

2013

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

MISUSE OF DRUGS AMENDMENT BILL 2013

SERIAL NO. 55

EXPLANATORY STATEMENT

GENERAL OUTLINE

The purpose of the Bill is to amend the *Misuse of Drugs Act* to cure deficiencies in the application of section 5(2)(a)(iv) and the sentencing guidelines applicable to this section, to remove duplication and inconsistencies within Schedule 2 of the Act and to clarify wording of the regulation making power of the Act.

NOTES ON CLAUSES

Clause 1. Short Title

This is a formal clause which provides for the citation of the Bill.

The Bill when passed may be cited as the *Misuse of Drugs Amendment Act 2013*.

Clause 2. Commencement

This Act will commence on a day fixed by the Administrator by *Gazette* notice.

Clause 3. Act amended

This Act will amend the *Misuse of Drugs Act*. **Clause 4. Section 5 amended**

This clause omits the words “to a person” in section 5(2)(a)(iv).

This means it will not be necessary to prove supply “to a person” in an Indigenous community and will allow the full definition of supply, including acts preparatory to supply, to apply to the section 5(2)(a)(iv) offence.

Clause 4 also omits subsection 5(3) and replaces it with a provision that states that in a prosecution against subsection 2, a statement in a complaint or information that the place at which the supply occurred or was to occur was at the relevant time an Indigenous community, is evidence of that matter.

Clause 5. Section 37 amended

This clause inserts the wording ‘an offence against section 5 that was committed in an indigenous community’ as paragraph (d) in the definition of aggravating circumstance in section 37(1). This means “an offence against section 5 that was committed in an indigenous community” is an aggravating circumstance under the penalty guidelines of the Act.

This clause also makes minor grammatical amendments to section 37(1)(a), (aa) and (c).

Clause 6. Section 43 amended

This clause inserts section 43(2)(aa). Section 43(2)(aa) allows regulations to be made to amend Schedule 1 and 2 of the Act by omitting a substance or plant from Schedule 2 and inserting that substance or plant, including the prescribed traffickable and commercial quantities, in Schedule 1.

Clause 7. Section 46 inserted

Clause 7 is the transitional provision for this Bill. The transitional provision states the following matters:

1. the *Misuse of Drugs Act*, as amended by the *Misuse of Drugs Amendment Act 2013*, only applies to offences committed after commencement;
2. the *Misuse of Drugs Act*, as in force prior to commencement of this Act, applies to offences committed before commencement; and
3. section 46(3) states that an offence is taken to have been committed after commencement only if all the conduct constituting the offence occurred after commencement.

Clause 8. Schedule 2 amended.

This clause omits Schedule 2 and inserts a new Schedule 2. Duplicate references to drug compounds in Schedule 2 have been removed, references to ‘positional’ forms of dangerous drugs in Schedule 2 have been removed and references to hallucinogenic properties or effects of dangerous drugs in Schedule 2 have been removed.

No dangerous drugs have been legalised as a result of the amendments.

In all cases where a positional form has been removed, the base compound has been listed with the same quantities prescribed. For example;

- the references to dexamphetamine and levamphetamine have been removed as they are

duplicate references to amphetamine which is already listed in the Schedule;

- the reference to the positional forms 3-Methylfentanyl and a-Methylfentanyl have been replaced with Methylfentanyl (the base compound for both entries); and

- the reference to ‘N,N-Dimethyltryptamine and its derivatives having hallucinogenic properties’ has been removed as N,N-Dimethyltryptamine is already listed in the Schedule.

Clause 9. Expiry

This is an expiry clause and states the Act expires on the day after it commences.