

Western Australia

Misuse of Drugs Amendment Act 2011

As at 21 Nov 2011

No. 56 of 2011

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Misuse of Drugs Amendment Act 2011

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Western Australia

Misuse of Drugs Amendment Act 2011

No. 56 of 2011

An Act to amend the *Misuse of Drugs Act 1981* and to make consequential amendments to some other Acts.

[Assented to 21 November 2011]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary matters

1. Short title

This is the *Misuse of Drugs Amendment Act 2011*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — Misuse of Drugs Act 1981 amended

3. Act amended

This Part amends the *Misuse of Drugs Act 1981*.

4. Section 3 amended

In section 3(1) insert in alphabetical order:

adult means a person who has reached 18 years of age;

5. Section 5 amended

- (1) Delete section 5(1)(d).
- (2) Delete section 5(3).

6. Section 7B inserted

After section 7A insert:

7B. Drug paraphernalia, offences as to

- (1) In this section —

display, in relation to drug paraphernalia, includes to authorise or allow drug paraphernalia to be displayed;

drug paraphernalia means —

- (a) any thing made or modified to be used in connection with manufacturing or preparing a prohibited drug or a prohibited plant —
 - (i) for administration to a person; or
 - (ii) for smoking, inhaling or ingesting by a person; or

(iii) to be burned or heated so its smoke or fumes can be smoked or inhaled by a person;

or

(b) any thing made or modified to be used by a person —

(i) to administer a prohibited drug or a prohibited plant to a person; or

(ii) to smoke, inhale or ingest a prohibited drug or a prohibited plant; or

(iii) to smoke or inhale the smoke or fumes resulting from burning or heating a prohibited drug or a prohibited plant.

(2) A person who displays any drug paraphernalia for sale in a retail outlet commits a simple offence.

Penalty: a fine of \$10 000.

(3) A person who sells any drug paraphernalia to an adult commits a simple offence.

Penalty: a fine of \$10 000.

(4) A person who sells any drug paraphernalia to a child commits a simple offence.

Penalty: a fine of \$24 000 or imprisonment for 2 years or both.

(5) It is a defence to a charge of an offence under subsection (2), (3) or (4) to prove —

(a) the accused was a person prescribed; or

(b) the drug paraphernalia displayed or sold was a thing prescribed or of a class prescribed; or

(c) the display or sale occurred in circumstances prescribed,

for the purposes of that subsection.

- (6) A person who is in possession of any drug paraphernalia in or on which there is a prohibited drug or a prohibited plant commits a simple offence.
Penalty: a fine of \$36 000 or imprisonment for 3 years or both.
- (7) It is a defence to a charge of an offence under subsection (6) to prove —
- (a) the accused was authorised by or under this Act or the *Poisons Act 1964* to possess the prohibited drug or prohibited plant; or
 - (b) the accused had possession of the drug paraphernalia —
 - (i) only for the purpose of delivering it to a person authorised under this Act or the *Poisons Act 1964* to have possession of any prohibited drug or prohibited plant in or on it; and
 - (ii) in accordance with the authority in writing of the person so authorised,and that, after taking possession of the drug paraphernalia, the accused took all such steps as were reasonably open to the accused to deliver it into the possession of that person; or
 - (c) the accused had possession of the drug paraphernalia only for the purpose of analysing material in or on it, examining it or otherwise dealing with it for the purposes of this Act in his or her capacity as an analyst, botanist or other expert.

s. 7

7. Section 8B amended

In section 8B(1) in the definition of *minor cannabis related offence* paragraph (a) after “section 5(1)(d)(i)” insert:

or 7B(6)

8. Sections 19A and 19B deleted

Delete sections 19A and 19B.

9. Section 34 amended

(1) In section 34(1) delete “subsection (2),” and insert:

subsections (2) and (3),

(2) After section 34(2) insert:

(3) If a court is sentencing a person for an offence referred to in subsection (1)(a) that involved selling or supplying, or offering to sell or supply, a prohibited drug or a prohibited plant to a child, and the person was an adult when the offence was committed, then, despite the *Sentencing Act 1995* Part 5 —

(a) for a first offence the court must use one of only these sentencing options —

(i) suspended imprisonment imposed under the *Sentencing Act 1995* section 39 and Part 11;

(ii) conditional suspended imprisonment imposed under section 39 and Part 12 of that Act;

- (iii) a term of imprisonment imposed under section 39 and Part 13 of that Act;
- and
- (b) for any subsequent offence (whether or not under the same provision) the court —
 - (i) must impose a term of imprisonment of at least 6 months; and
 - (ii) must not suspend the term of imprisonment.
- (4) If a court is sentencing a person for —
 - (a) an offence under section 6(1)(b); or
 - (b) an offence under section 7(1)(a) that involved cultivating a prohibited plant; or
 - (c) an offence under section 14(1),
committed in circumstances where the acts constituting the offence endangered the life, health or safety of a child under 16 years of age, and the person was an adult when the offence was committed, then, despite the *Sentencing Act 1995* Part 5 —
 - (d) for a first offence the court must use one of only these sentencing options —
 - (i) suspended imprisonment imposed under the *Sentencing Act 1995* section 39 and Part 11;
 - (ii) conditional suspended imprisonment imposed under section 39 and Part 12 of that Act;
 - (iii) a term of imprisonment imposed under section 39 and Part 13 of that Act;
- and

- (e) for any subsequent offence (whether or not under the same provision) the court —
 - (i) must impose a term of imprisonment of at least 6 months; and
 - (ii) must not suspend the term of imprisonment.
- (5) If a court is sentencing a person for —
 - (a) an offence under section 6(1)(b); or
 - (b) an offence under section 7(1)(a) that involved cultivating a prohibited plant; or
 - (c) an offence under section 14(1),
committed in circumstances where the acts constituting the offence caused bodily harm (as defined in *The Criminal Code* section 1(1) and (4)) to a child under 16 years of age, and the person was an adult when the offence was committed, then, despite the *Sentencing Act 1995* Part 5, the court —
 - (d) must impose a term of imprisonment of at least 12 months; and
 - (e) must not suspend the term of imprisonment.
- (6) The Minister must carry out a review of the operation and effectiveness of the amendments made to this section by the *Misuse of Drugs Amendment Act 2011* section 9 as soon as practicable after the expiry of 3 years from the commencement of that section.
- (7) The Minister is to lay (or cause to be laid) a report of the review under this section before both Houses of Parliament as soon as practicable after the review is completed.

Part 3 — *Bail Act 1982* amended

10. Act amended

This Part amends the *Bail Act 1982*.

11. Schedule 2 amended

In Schedule 2 item 2a after the row relating to s. 7(1) insert:

- s. 14(1) Possessing a quantity of a category 1 item or a category 2 item in circumstances where the life, health or safety of a child under 16 years of age was endangered, or bodily harm (as defined in *The Criminal Code* section 1(1) and (4)) was caused to such a child, by the acts constituting the offence

Part 4 — *Spent Convictions Act 1988* amended

12. Act amended

This Part amends the *Spent Convictions Act 1988*.

13. Section 11 amended

Delete section 11(6)(a)(i) and insert:

- (i) section 5(1)(d)(i) or 7B(6); or

**Part 5 — Working with Children (Criminal Record
Checking) Act 2004 amended**

14. Act amended

This Part amends the *Working with Children (Criminal Record Checking) Act 2004*.

15. Schedule 2 amended

In Schedule 2 in the item relating to the *Misuse of Drugs Act 1981* insert in numerical order:

s. 7B(4) Selling drug paraphernalia to a child

