

MINUTES forming ENCLOSURE to

18-00898
MLO 0453/18

THE HON THE ATTORNEY-GENERAL

I refer to your letter of 16 May 2018 providing a draft of the *Statutes Amendment (Drug Offences) Bill 2017* (the Bill), inviting comment.

SAPOL understands that the intent of the Bill is to bring the penalty regime in the *Controlled Substances Act 1984* into line with the expectations of the community by increasing penalties and adding aggravated offences. The Bill will:

- limit drug diversions to only two occasions in ten years, with the third and any subsequent “*offence*” being dealt with by prosecution through the courts.
- Increase the maximum penalty for possession or consumption of a controlled drug (to which drug diversions apply) from a maximum penalty of \$500 with no imprisonment to a maximum fine of \$2,000 or imprisonment for two years or both.
- increase offence provisions across most of Part 5 Division 2 (commercial offences) of the *Controlled Substances Act 1984*, generally with reference to the addition of aggravated offences. Many currently summary matters will become indictable with aggravated offences potentially becoming major indictable.

Observations:

The South Australian Police Drug Diversion Initiative (PDDI) was introduced on 1 October 2001 when the *Controlled Substances (Drug Offence Diversion) Amendment Act 2000* came into operation and amended the *Controlled Substances Act 1984*. The three main aims of the PDDI are to:

1. provide individuals detected by police for simple drug possession offences with the opportunity to address their drug use through health services;
2. reduce the number of people appearing before the courts; and
3. reduce crime and harm in the community by addressing the personal issues underlying an individual’s drug use.

The PDDI and its ethos are complementary to the harm minimisation principles of the South Australian Alcohol and Other Drug Strategy 2017- 2020. At a national level, current drug policy is to treat a person’s need for drug use primarily as a health issue rather than a criminal issue. Limiting the number of drug diversions to two in a ten year period will be in conflict with this.

The National Drug Strategy 2017- 2026 references illicit drug diversion (from the criminal justice system into treatment services) as an example of evidence based (and practice informed) approach to harm minimisation.

Based on the 2016-17 financial year, the Bill will result in an additional 408 prosecution files where a person would previously have been diverted on three or more occasions. The prescribed drug offender being liable to a significantly increased punishment will likely shift more matters into the realm of the District Court. This will increase the workload of SAPOL's Crime and Prosecution areas and the Office of the Director of Public Prosecutions with consequent resource implications. Additionally, as the sanction becomes more serious, the likelihood of early guilty pleas will reduce.

Amendments

SAPOL assesses that the Bill should provide for an evidentiary aid to prove, in the absence of proof to the contrary, that the alleged person has in the past 10 years engaged with two diversions. The absence of such an evidentiary aid provision will require the prosecution to call evidence to prove this element of the offence. This will involve people who arranged for and completed previous diversions with the defendant, and who may then be subject to cross examination as to the person's conduct, genuine intent to rehabilitate and any other relevant matter.

The Bill as drafted also has a degree of inherent conflict with section 40A (Confidentiality) of the *Controlled Substances Act 1984* contained in Division 6 (procedure in relation to simple possession offences):

A person who is, or has been, engaged in duties related to the administration of this Division must not disclose information relating to a person referred for assessment under this Division, being information obtained in the course of those duties, unless the disclosure is made—

- (a) in the administration of this Division; or*
- (b) as authorised or required by law; or*
- (c) with the consent of the person to whom the information relates*

Maximum penalty: \$10 000.

There would seem to be some conflict between the "*administration*" of Division 6 and giving evidence within the context of a "*prosecution*" under Division 6. The confidentiality protection which applies to the "*administration*" of Division 6 may not necessarily extend to a "*prosecution*" under Division 6. The Bill should be amended to clarify the confidentiality provisions, to enable employees of Drug & Alcohol Services South Australia (DASSA) to give evidence in court regarding previous diversions without breaching section 40A.

Recommendations

SAPOL recommends amendments to the Bill to create:

- an evidentiary aid to deem that in the absence of proof to the contrary, a person (the defendant) has been subject to two drug diversions within the past ten years.
- a provision to enable a person who is or has been engaged in duties related to the administration of Division 6 to disclose information relating to a person referred for assessment for the purposes of judicial proceedings.



(Grant Stevens)
COMMISSIONER OF POLICE

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Contact:
Telephone:

Ministerial Liaison SAPOL
23821

Copy: Minister for Police