

## CLAUSE NOTES

### *Poisons Amendment Bill 2019*

- Clause 1            **Short Title**  
The short title is the *Poisons Amendment Act 2019*.
- Clause 2            **Commencement**  
Provides for the Act to commence on a day to be proclaimed.
- Clause 3            **Principal Act**  
Provides that the *Poisons Act 1971* is the Principal Act.
- Clause 4            **Section 83A amended (Possession of pipe, &c.)**  
Increases the penalty for possession of drug paraphernalia from 20 penalty units to 50 penalty units, for consistency with a similar provision in s23 of the *Misuse of Drugs Act 2001*.
- Clause 5            **Part VI, Division 2B inserted**  
Inserts a new Division after s86B of the Principal Act, titled 'Division 2B – Ice pipes'.  
The new Division includes sections 86C – 86H to provide for:
- definitions of controlled drug, device, exempt pipe, exempt shop, ice pipe and shop (s86C). The definitions of ice pipe and shop are appropriately broad to ensure the effective enforcement of the provisions in relation to both devices and retail and wholesale settings. The application of the Division can be appropriately broadened or limited if necessary through the references to regulation-making power in the definitions of ice pipe, shop, exempt pipe and exempt shop.
  - limiting the application of the new Division so that it does not apply to exempt pipes or exempt shops, which as defined can be specified by regulations if the need arises (s86D).
  - an offence of selling an ice pipe in a shop or in connection with a shop (s86E) with a penalty of 100 penalty units. This reflects the seriousness of selling these devices. The definition of 'sell' in s3 of the Principal Act means sale by wholesale or retail sale, including offering or exposing for sale, having in possession for sale, sending for sale, and so on; including permitting acts of sale to be done. The reference to 'in connection with a shop' is to avoid a person avoiding the commission of the offence by, for example, displaying or selling ice pipes outside the shop.
  - a defence for the offence of selling an ice pipe (s86F). The defence applies if the person charged proves that the ice pipe

is designed primarily for a purpose other than administering a controlled drug. The section provides that a disclaimer, as defined by the section, is not of itself a defence. For example, it is not enough for the retailer to simply assert that an object meeting the definition of ice pipe is designed for some other use. Further evidence would be required.

- powers of entry to a shop, inspection, and seizure of ice pipes for police officers and inspectors appointed under the Principal Act (s86G). These are similar to the powers of inspectors in relation to licensed premises under s90 of the Principal Act. Section 86G(4) provides for an offence related to obstruction of an inspector or police officer, similar to related offences in s82 of the Act.
- the return of anything seized under s86F if the reason for its seizure no longer exists (s86H(1)). For example, this ensures that seized things are returned if the police officer or inspector determines they are not ice pipes.
- a court to be able to order the forfeiture and destruction of seized ice pipes following a finding of guilty (s86H(2)).
- the Secretary to be able to direct the destruction of an ice pipe if a person is taken to have been convicted of an offence against s86E in accordance with s20 of the *Monetary Penalties Enforcement Act 2005* (s86H(3)). For example, the direction could be given after the infringement penalty has been paid, or the person has not elected to have the notice heard by a court within the time allowed.

#### Clause 6

#### Section 92B amended (Infringement notices)

Amends s92B of the Principal Act to extend the power to issue infringement notices to police officers. This removes the current administrative necessity for police officers to be first appointed as inspectors under the Act.

#### Clause 7

#### Repeal of Act

This automatically repeals the amending legislation one year after commencement. The provisions inserted into the Principal Act will remain in force after the repeal of the Amending Act.