

MLL319 Exam Notes 2019

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Relevant Sections

The Relevant Offences

S 71AC Drugs, Poisons and Controlled Substances Act 1981: Trafficking in a drug of dependence

(1) Subject to subsection (2), a person who, without being authorised by or licensed under this Act or the regulations or the Access to Medicinal Cannabis Act 2016 or the regulations under that Act to do so, traffics or attempts to traffic in a drug of dependence is guilty of an indictable offence and liable to level 4 imprisonment (15 years maximum)

(2) A person who, without being authorised by or licensed under this Act or the regulations or the Access to Medicinal Cannabis Act 2016 or the regulations under that Act to do so, traffics or attempts to traffic in a drug of dependence at a school or in a public place within 500 metres of a school is guilty of an indictable offence and liable to level 3 imprisonment (20 years maximum).

NOTE:

Under s 3 the Access to Medicinal Cannabis Act 2016, “licensed cultivator” means a person who holds a cultivation licence

Under s 70 the DPCS Act 1981, “traffic” in relation to a drug of dependence includes –

- (a) prepare a drug of dependence for trafficking;
- (b) manufacture a drug of dependence; or
- (c) sell, exchange, agree to sell, offer for sale or have in possession for sale, a drug of dependence

Under s 4 DPCS Act 1981, “drug of dependence” means a substance that it -

(a) a drug -

(i) specified in column 1 of Part 1 of Schedule Eleven; or

(ii) included in a class of drug specified in column 1 of Part 1 of Schedule Eleven; or

(b) any fresh or dried parts of any plant specified in column 1 of Part 2 of Schedule Eleven; or

(ba) prescribed as a drug of dependence in accordance with s 132AA whether specified as included in Part 1, Part 2 or Part 3 of Schedule Eleven; or

(c) a drug -

(i) specified in column 1 of Part 3 of Schedule Eleven; or

(ii) included in a class of drug specified in column 1 of Part 3 of Schedule Eleven -

and includes -

(d) any form of a drug specified in column 1 of Part 1 or column 1 of Part 3 of Schedule Eleven, whether natural or synthetic, and the salts, analogues, derivatives and isomers of that drug and any salt of those analogues, derivatives and isomers; and

(e) any -

(i) drug specified in, or drug included in a class of drug specified in column 1 of Part 1 or column 1 of Part 3 of Schedule Eleven, whether natural or synthetic; or

(ii) salts, analogues, derivatives or isomers of a drug specified in column 1 of Part 1 or column 1 of Part 3 of Schedule Eleven; or

(iii) salt of any analogue, derivative or isomer mentioned in subparagraph (ii) -

contained in or mixed with another substance

S 73 Drugs, Poisons and Controlled Substances Act 1981: Possession of a drug of dependence

(1) A person who without being authorised by or licensed under this Act or the regulations or the Access to Medicinal Cannabis Act 2016 or the regulations under that Act to do so has or attempts to have in his possession a drug of dependence is guilty of an indictable offence and liable –

(a) where the court is satisfied on the balance of probabilities that -

(i) the offence was committed in relation to a quantity of cannabis or tetrahydrocannabinol that is not more than the small quantity applicable to cannabis or tetrahydrocannabinol;

(ii) the offence was not committed for any purpose related to trafficking in cannabis or tetrahydrocannabinol

to a penalty of not more than 5 penalty units;

(b) subject to paragraph (a), where the court is satisfied on the balance of probabilities that the offence was not committed by the person for any purpose relating to trafficking in that drug of dependence—to a penalty of not more than 30 penalty units or to level 8 imprisonment (1 year maximum) or to both that penalty and imprisonment; or

(c) in any other case—to a penalty of not more than 400 penalty units or to level 6 imprisonment (5 years maximum) or to both that penalty and imprisonment

(2) Where a person has in his possession, without being authorized by or licensed under this Act or the regulations or the Access to Medicinal Cannabis Act 2016 or the regulations under that Act to do so, a drug of dependence in a quantity that is not less than the trafficable quantity applicable to that drug of dependence, the possession of that drug of dependence in that quantity is prima facie evidence of trafficking by that person in that drug of dependence.

NOTE:

Under s 70 of the DPCS Act 1981, “trafficable quantity”, in relation to a drug of dependence (b) the name of which is specified in column 1 of Part 2 of Schedule Eleven, means the quantity, or the number of plants that is specified in that Part of that Schedule opposite the name of that drug of dependence; (namely being cannabis and tetrahydrocannabinol)

Cannabis – large commercial quantity = 250kg or 1000 plants, commercial quantity 25kg or 100m plants, trafficable quantity = 250g or 10 plants

Under s 70, “cannabis” means a plant or any part of a plant of the genus Cannabis L, whether fresh or dried

Under s 70, “small quantity” means 50g of Cannabis L