Australian Legislation relating to Synthetic Cannabinoids - Kronic- K2

National

On 6 July 2011, the Commonwealth Government’s Therapeutic Goods Administration (TGA) added a number of synthetic cannabinoids, including JWH-018, the active ingredient in Kronic, to Schedule 9 (‘prohibited substances’) of the Commonwealth Poisons Standard (which is a legislative instrument under the Therapeutic Goods Act 1989 (Cth)), the effect of which is to prohibit the possession, sale and use of the products from 8 August 2011. The Schedules contained in the Poisons Standard are used in state and territory legislation for regulatory purposes in order to achieve a uniform national approach to such regulation. The TGA’s approach was a two-staged one: first altering Sch 9 to restrict eight synthetic cannabinoids to address immediate public health risks while devising a longer term solution to the capture of related substances as they are developed.

It appears that Commonwealth Environmental Health Officers will monitor retailers and take appropriate enforcement action where a breach is found but sale and use is not a criminal offence until amendments are made to the various drug laws in the states and territories.31

A longer term nationwide approach is currently being considered with the issue having been referred to an Intergovernmental Committee on Drugs.32

Western Australia

The Poisons Act 1964 (WA), Sch 9 in Appendix A (which reproduces and modifies Sch 9 of the Commonwealth Poisons Standard) was amended pursuant to the Poisons (Appendix A Amendment) Order 2011 on 17 June 2011 to ban a number of synthetic cannabinoids (contained in products such as Kronic, Voodoo, Kaos etc).

Complementing the changes to the Poisons Act 1964, the Misuse of Drugs (Amounts of Prohibited Drugs) Order (No 2) 201133 added a number of synthetic cannabinoids to the list of prohibited drug amounts under the Schedules to the Misuse of Drugs Act 1981 (WA). Under the Misuse of Drugs Act 1981, the sale or supply of prohibited drugs is an offence with fines of up to $100,000 or 25 years imprisonment, or both, possible for those offending against the laws (ss 6(1), 34). Unlawful possession of prohibited drugs can attract a fine of up to $2,000 or 2 years imprisonment or both.


South Australia

In June 2011, the South Australian Government issued a notice under the Controlled Substances Act 1984 (SA) to immediately prohibit the sale, supply or possession of known synthetic cannabinoid substances pending amendments to the Controlled Substance (General) Regulations (Regulations).34 The rapid action by the Government was reportedly to reduce the potential for people to stockpile the drug before the ban was introduced.35 On 23 June 2011, the Controlled Substances (General) Variation Regulations 2011 (SA) amended the Regulations to add various synthetic cannabinoids in Schedule 1, Part 1 to the...
list of Controlled Drugs. The effect of this is to make their unlawful sale, possession or supply an offence under Part 5, Div 4 of the Controlled Substances Act. Thus, unlawful possession of a controlled drug attracts penalties of up to 2 years imprisonment and/or a fine of up to $2,000 [33L]. Unlawful supply/administration of a controlled drug incurs a fine of up to $50,000 & Queensland Parliamentary Library and/or 10 years imprisonment [s 33I] and manufacturing such attracts a $35,000 fine or imprisonment for 7 years, or both [s 33J].

Australian Legislation relating to Synthetic Cannabinoids - Kronic- K2

New South Wales

In July 2011, the New South Wales Government banned the sale and use of specified synthetic cannabinoids drugs following amendments to the list of ‘prohibited drugs’ under Schedule 1 of the Drug Misuse and Trafficking Act 1985 (NSW). Under the Act, it is an offence to unlawfully possess a prohibited drug, with the penalty being a fine of $2,200, or 2 years imprisonment, or both [ss 10, 21]. Unlawful manufacture and production or supply of a non-commercial quantity of prohibited drugs is punishable by a fine of $220,000 or 15 years imprisonment, or both [ss 24, 25, 31, 32 [see also, s 30].

Tasmania

On 2 August 2011, it was announced that Tasmania would restrict the sale and manufacture of synthetic cannabis. Kronic was placed on the State’s poisons schedule, thereby restricting its sale. The Misuse of Drugs Order 2011, which took effect on 3 August 2011, amended the Misuse of Drugs Act 2001 (Tas) (pursuant to s 40 of the Act which allows the Governor to amend Schedule 1, Part 2 of the Act, specifying the range of ‘controlled drugs’, by way of an Order) to include a range of synthetic drugs. The effect is that unlawful possession or use of a controlled drug is an offence, attracting up to 2 years imprisonment or a fine not exceeding $6,500 [s 24]. Unlawful sale or supply of a controlled drug incurs a fine not exceeding $13,000 or imprisonment of up to 4 years [s 26].

Victoria

The Drugs, Poisons and Controlled Substances Amendment (Drugs of Dependence) Act 2011 [Vic] commenced 7 September 2011, its intent being to provide regulation making power enabling the Government to take prompt action to ban emerging new drugs such as various substances and products (including synthetic cannabinoids) as an interim measure – sunsetting after 12 months – until the substances can be prescribed into legislation and Commonwealth regulations.

When introducing the amending legislation into the Parliament, the Minister for Mental Health said that although the legislation will allow the banning of Kronic, it also provides the mechanism needed to ban the next synthetic, lab-derived substance similar to cannabis, and the one after that, or, indeed, a synthetic substance similar to any drug of dependence. It will provide ‘future proofing’ for regulating synthetic drugs because, as soon as a new substance is developed, the Minister can then ban it temporarily to enable consideration of a permanent ban by the Parliament.
Northern Territory

The Northern Territory Government made the *Misuse of Drugs Amendment [Synthetic Cannabinoids] Regulations (No. 2) 2011* on 23 August 2011 to include a number of synthetic cannabinoids on the list of ‘dangerous drugs’ in Schedule 2 of the *Misuse of Drugs Act (NT)*, as provided for by s 43 of that Act. Under the Act, unlawful supply of a non-commercial quantity of a Sch 2 dangerous drug attracts a fine of up to $11,645.44 or imprisonment for up to 5 years (9 years if to a person in an Indigenous community and 14 years if to a child) [s 5]. The manufacture or production of a non-commercial quantity of a Sch 2 dangerous drug is punishable by up to 7 years imprisonment (25 years if of a commercial quantity) [s 8]. The Criminal and Other Legislation Amendment Bill 2011 7

Australian Legislation relating to Synthetic Cannabinoids - Kronic- K2

Possession of a non-commercial quantity of a Sch 2 dangerous drug is punishable by a fine of up to $2,329 (but up to 14 years imprisonment if it is of a commercial quantity) [s 9].

Australian Capital Territory

Schedule 9 of the Commonwealth Medicines and Poisons Standard [Poisons Standard] under the *Therapeutic Goods Act 1989* [TG Act] lists a range of substances which are ‘prohibited substances’ under the Act. Schedule 9 of the Poisons Standard automatically applies in the ACT. Following the ending of the ACT Government’s amnesty (to 1 August 2011), under Ch 4 of the *Medicines, Poisons and Therapeutic Goods Act 2008* [the Act] the unlawful supply of a prohibited substance attracts a fine of up to $55,000.45 and/or imprisonment for up to 5 years [s 26]. Unlawful possession is punishable by a fine of up to $2,200 and/or 2 years imprisonment [s 36]. See also, Director of Public Prosecutions Direction - Notifiable instrument NI2011–366.

Source:
Banning Kronic and Other Synthetic Drugs: The Criminal and Other Legislation Amendment Bill 2011 (QLD)

Bill:
Criminal and Other Legislation Amendment Bill 2011 (Qld)

Date of introduction:
13 October 2011

Portfolio:
Attorney-General

Hansard Reference First Reading:
Queensland Parliamentary Debates, 13 October 2011, pp 3183-3185

Referred to:
Legal Affairs, Police, Corrective Services and Emergency Services Committee (13 October 2011)