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

This Research Brief focuses on the proposed amendments by the **Criminal and Other Legislation Amendment Bill 2011 (Qld)** to the **Drugs Misuse Act 1986 (Qld)** and **Drugs Misuse Regulation 1987 (Qld)**. The Brief discusses the proposed changes to the definition of 'dangerous drug' to overcome the difficulties of proving that an analogue has a substantially similar pharmacological effect to a scheduled dangerous drug. The proposed changes would effectively prohibit the sale and use of synthetic cannabinoid products in addition to the substance commonly known as 'Kronic' and others that were recently added to the list of scheduled dangerous drugs in the lead up to Schoolies Week.

Bill:	Criminal and Other Legislation Amendment Bill 2011 (Qld)
Date of introduction:	13 October 2011
Portfolio:	Attorney-General
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Referred to:	Legal Affairs, Police, Corrective Services and Emergency Services Committee (13 October 2011)

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Readers may also wish to refer to the report on the Bill by the relevant portfolio committee (or other committee nominated when the Bill was presented) and the Parliament's Record of Proceedings (Hansard).

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Key Points

1. On 13 October 2011, the [Criminal and Other Legislation Amendment Bill 2011 \(Qld\)](#) (the Bill) was introduced into the Queensland Legislative Assembly. The Bill was referred to the [Legal Affairs, Police, Corrective Services and Emergency Services Committee](#) the same day for detailed consideration and report by 19 March 2012.
2. While the Bill seeks to amend a number of pieces of legislation, the focus of this Research Brief is on **Parts 6 and 7** – the proposed amendments to the [Drugs Misuse Act 1986 \(Qld\)](#) and [Drugs Misuse Regulation 1987 \(Qld\)](#) seeking to overcome the difficulties of proving that an analogue (a substance having a similar chemical structure to a ‘dangerous drug’ but which differs slightly from it) has a substantially similar pharmacological effect to a scheduled ‘**dangerous drug**’. The proposed changes would effectively prohibit the sale and use of synthetic cannabinoid products in addition to the substance commonly known as ‘Kronic’ and others that were [recently](#) added to the list of scheduled dangerous drugs in the lead up to Schoolies Week.

Background

3. Certain synthetic cannabinoids products are not currently prohibited under the Drugs Misuse Act 1986. Yet these products are intended to have the same effect as some scheduled dangerous drugs. ‘Kronic’ (which has recently been banned) has received considerable media attention over the past year or so. It and other synthetic drugs have become popular due to their having similar effects on their users as the illegal drug cannabis. However, Kronic does not contain real THC (delta-9 tetrahydrocannabinol), the main chemical found in cannabis, which makes cannabis a prohibited drug. Instead it contains synthesised chemical copies of THC.

What is ‘Kronic’?

4. Kronic contains a chemical that acts on the same receptor sites of the brain as THC found in cannabis, making users feel ‘high’. While Kronic is probably the best known of drugs containing synthetic cannabinoids, there are many other THC analogues on the market. The true ingredients of Kronic are not really known but it is believed to comprise a plant base (which might be legal herbs) impregnated or sprayed with a synthetic chemical (a THC analogue of some type, probably JWH-018, a synthetic cannabinoid).
5. While Kronic was, until 2011, legally available in Queensland and other Australian states and territories, various health concerns and mystery around its actual ingredients have prompted governments to ban the product and others like it.

Some Kronic Points

6. Not a great deal is known about Kronic or its effects on health owing to its relative newness on the drug scene. However, the **following points** can be made:
 - Kronic appears to have originated from New Zealand and has been available online in Australia for about 2 years. It was, before the bans, also available at adult shops and some tobacconists;
 - Kronic appears to have found favour among miners and workers in other dangerous occupations where drug testing is common. So far, those tests do not detect Kronic;

- medical personnel in hospital emergency departments are starting to see a few cases a week of people seeking help for injuries suffered in accidents that can be linked to Kronic;
- because of the considerable vagueness about what Kronic actually contains, the health effects are not known nor are short or long term harms;
- a '[Kronic Pot](#)' website states that its product is only for people over 18 years of age. It warns that pregnant or breastfeeding women or people with a heart condition or compromised lung or liver function must not use it.

Current Difficulties of Proof under the Drugs Misuse Act 1986

7. **Part 6** of the [Criminal and Other Legislation Amendment Bill 2011 \(Qld\)](#) (the Bill) seeks to amend the [Drugs Misuse Act 1986](#). Relevant to this Brief are the proposed provisions to make it easier to prosecute offences concerning dangerous drugs.
8. Until recently, Kronic and similar synthetic drugs were not caught by the Drugs Misuse Act 1986 (the Act) because they did not fall under the definition in s 4 of 'dangerous drug' as specified under Schedules 1 or 2 of the [Drugs Misuse Regulation 1987 \(Qld\)](#). Unlawful supply or production or possession of a Schedule 2 dangerous drug can attract a 15 to 20 year prison sentence (ss 6, 8, 9). Schedule 2 of the Regulation was recently [amended](#) (in September and November 2011) to add a number of substances, including various synthetic cannabinoids. However, it is possible for the formula for any of those substances to be changed, even slightly, to avoid falling under Schedule 2. It is therefore difficult for the Government to anticipate and to keep up adding new substances to the Regulation.
9. Section 4(c) of the Drugs Misuse Act 1986 currently requires that the offending thing 'has a chemical structure that is **substantially similar to the chemical structure of a thing under Schedules 1 or 2** and '**has a substantially similar pharmacological effect**'. Even if the person *intends* that the thing (e.g. a particular synthetic drug) have a substantially similar pharmacological effect to a prohibited thing, that intention would not suffice.

What Does the Bill Seek to Do?

10. The Attorney-General's [Media Statement](#) said that the intention of the amendments is that it will only need to be proved that the producer of the thing *intends* that it have the same pharmacological effect as a banned substance for a charge to be laid.

Under a **proposed new s 4** (see cl 45 of the Bill) the amended definition of '**dangerous drug**' covers things specified in Schedules 1 or 2 of the Regulation, and (for present purposes) a thing that has a chemical structure that is substantially similar to the chemical structure of such a thing and that:

- (i) has a substantially similar pharmacological effect; or
- (ii) ***is intended, or apparently intended, to have a substantially similar pharmacological effect.***

A **proposed new s 129A** (see cl 51) seeks to clarify the application of 'dangerous drug' in relation to proceedings for an offence under the Act.

Other Jurisdictions

11. Other Australian jurisdictions have sought to deal with synthetic cannabinoids in a number of different ways, either **through jurisdiction-specific laws** listing the various known substances (e.g. Western Australia, South Australia) or through **adoption** of specified prohibited substances under **Schedule 9 ('prohibited substances')** of the

Commonwealth [Poisons Standard](#) (e.g. Australian Capital Territory). To overcome the problem of synthetic cannabinoids producers quickly making new formulations to circumvent specific listings of substances, some jurisdictions have legislation targeting synthetic cannabinoids **'intended' to have a substantially similar pharmacological effect** to cannabis (e.g. Queensland).

For further clarification and analysis of the relevant issues, the reader should consult the Research Brief and refer to the Explanatory Notes to the Bill as well as to the Bill itself.

Introduction

On 13 October 2011, the Hon Paul Lucas MP, Attorney-General, Minister for Local Government and Special Minister of State, introduced the [Criminal and Other Legislation Amendment Bill 2011 \(Qld\)](#) (the Bill) into the Queensland Legislative Assembly. The Bill was referred to the [Legal Affairs, Police, Corrective Services and Emergency Services Committee](#) on that same date for detailed consideration and report by 19 March 2012.

While the Bill proposes to amend a number of pieces of legislation, the focus of this Research Brief is on Parts 6 and 7 – the amendments to the [Drugs Misuse Act 1986 \(Qld\)](#) and [Drugs Misuse Regulation 1987 \(Qld\)](#) (the Regulation) to alter the definition of ‘dangerous drug’. The intention is to overcome difficulties in proving that an analogue – a substance having a similar chemical structure to a ‘dangerous drug’ but which differs slightly from it¹ – has a substantially similar pharmacological effect to a scheduled ‘dangerous drug’. The proposed changes would effectively prohibit the supply and use of synthetic cannabinoid products as they are developed, in addition to the substance commonly known as ‘Kronic’ and others that were [recently](#) added to the list of scheduled dangerous drugs in the lead up to Schoolies Week.²

Background

Certain synthetic cannabinoids products are not currently prohibited under the Drugs Misuse Act 1986 as they have not been included under the Schedules in the Regulation which determine whether the particular substance is or is not legal to make, sell or use. Yet these products are intended to have the same effect as some scheduled dangerous drugs. ‘Kronic’ (which has recently been banned) has received considerable media attention over the past year or so. It and other synthetic drugs have become popular due to their having similar effects on their users as the illegal drug cannabis. However, Kronic does not contain real THC (delta-9 tetrahydrocannabinol), the main chemical found in cannabis, which makes cannabis a prohibited drug. Instead it contains synthesised chemical copies of THC.³

While Kronic was, until 2011, legally available in Queensland and other Australian states and territories, various health concerns and mystery around its actual ingredients have prompted governments to ban the product and others like it. If a synthetic drug is readily available and legal, many people want to try it, particularly if, and this seems to be the case with Kronic, it is marketed as ‘herbal’ and ‘natural’.⁴

What is ‘Kronic’?

Kronic contains a chemical that acts on the same receptor sites of the brain as THC found in cannabis, making users feel ‘high’.⁵ While Kronic is probably the best known of drugs containing synthetic cannabinoids, there are many other THC analogues on the market. The true ingredients of Kronic are somewhat vague but it is believed to comprise a plant base (which might be legal herbs) impregnated or sprayed with a synthetic chemical (a THC analogue of some type, probably JWH-018, a synthetic cannabinoid).⁶ Kronic is sometimes called ‘synthetic marijuana’.⁷ JWH-018 became commercially available in Europe around 3 years ago but was then banned in many European countries. However, similar products containing slightly different chemicals and ingredients quickly appeared but these were not actually scheduled as prohibited drugs.⁸

The Commonwealth Government's [Therapeutic Goods Administration](#) (TGA) says that many synthetic cannabinoids were synthesised in order to use them in laboratory tests to find out more about marijuana receptors while others were developed to help find new drugs for conditions such as glaucoma and for appetite suppression or for use in other studies. Some have been used for medicinal purposes (e.g. Dronabinol – a synthetic pure THC applied in multiple sclerosis and pain patients' treatments). However, there were reports of synthetic cannabinoids starting to be used recreationally as a substitute for cannabis in countries including Australia under product names including Kronic, Voodoo and Spice.⁹

Kronic is often marketed as providing a legal high and a loophole for people in industries, generally dangerous occupations such as mining, where THC is not allowed. It has been reported as having been used by prisoners and to be all the rage on some university campuses.¹⁰

Some Kronic Points

Not a great deal is known about Kronic or its effects on health owing to its relative newness on the drug scene. However, the following points can be made:

- It appears to have originated from New Zealand and has been available online in Australia for about 2 years.¹¹ Before the bans, it was available at adult shops, tobacconists and herbal shops and marketed as a 'legal high' ('pass those drug tests while flying high!');¹²
- its main users appear to be older people who may have smoked a bit of marijuana in their youth but do not want to risk their jobs or going to gaol;¹³
- Kronic appears to have found favour among miners and the New South Wales Government recently became aware of miners in the Hunter region using it during work shifts. The NSW Minister for Mental Health expressed concern about the potential workplace health and safety issues posed by the drug.¹⁴ BHP Billiton and Rio Tinto have banned its use at their mines.¹⁵ While mining is one of the industries that tests workers for drug use, given the dangerous nature of the occupation, a Monash University Addiction Medicine Specialist has said that Kronic may be difficult to detect through traditional drug screening.¹⁶ The Queensland Resources Council has referred its concerns about the use and legality of Kronic to the Queensland Minister for Health after a radio station revealed that miners throughout the country were using the drug;¹⁷
- medical personnel in hospital emergency departments are starting to see a few cases a week of people seeking help for injuries suffered in accidents that can be linked to Kronic.¹⁸ A website selling 'Kronic Pot' advises users not to drive or use heavy machinery within 6 hours of using Kronic;¹⁹
- because of the considerable vagueness about what Kronic actually contains, its health effects are not known nor are short or long term harms.²⁰ Very few cases of synthetic cannabis use have been studied;²¹
- a '[Kronic Pot](#)' website states that its product is only for people over 18 years of age. It warns users that everybody processes Kronic at different rates so '*[h]ave one toke and wait 10 minutes to feel the effects, gauge the strength before consuming more*' and not to use to excess – '*may cause anxiety in sensitive persons*'; and not to mix it with drugs or medicines, especially blood pressure lowering medication;
- the '[Kronic Pot](#)' website further advises that pregnant or breastfeeding women or people with a heart condition or compromised lung or liver function must not use it. Anyone with a history of mental illness should not use it. Use should also be discontinued in the event of a panic attack, persisting paranoia or psychotic symptoms;
- the president of the Australian Medical Association (Tasmania) believes that Kronic has side effects such as heart palpitations, hallucinations, delirium and severe

depression and could have other effects that are not yet known due to the drug being relatively new;²²

- the Australian Capital Territory Health Department states that there have been reports of overdoses and deaths associated with synthetic cannabinoid use but it has not yet been proven that these were due to that use.²³

Current Difficulties of Proof under the Drugs Misuse Act 1986

Part 6 of the [Criminal and Other Legislation Amendment Bill 2011 \(Qld\)](#) (the Bill) seeks to amend the [Drugs Misuse Act 1986](#). Relevant to this Brief are the proposed provisions to make it easier to prosecute offences concerning dangerous drugs.

Until recently, Kronic and similar synthetic drugs were not caught by the Drugs Misuse Act 1986 (the Act) because they did not fall under the definition in s 4 of 'dangerous drug' as specified under Schedules 1 or 2 of the [Drugs Misuse Regulation 1987 \(Qld\)](#) (the Regulation). Unlawful supply or production or possession of a Schedule 2 dangerous drug can attract a 15 to 20 year prison sentence (ss 6, 8 & 9 of the Act). Schedule 2 of the Regulation was recently amended (in September and November 2011)²⁴ to add a number of substances, including various synthetic cannabinoids (e.g. JWH-018 which, as noted above, appears to be found in Kronic). However, it is possible for the formula for any of those substances to be changed, even slightly, to avoid falling under Schedule 2. It is therefore difficult for the Government to anticipate and to keep up adding new substances to the Regulation. Although those emerging synthetic drugs are intended to have the same effect as cannabis (listed in Schedule 2), the production, supply or possession of such drugs is not currently a criminal offence.

As pointed out by the Attorney-General, the Hon Paul Lucas MP, there is difficulty in proving the offence against the dangerous drug provisions because of the scientific processes involved in trying to show, as currently required by s 4(c) of the Act, that the offending thing '*has a chemical structure that is substantially similar to the chemical structure of a thing*' under Schedules 1 or 2 of the Regulation and that it '*has a substantially similar pharmacological effect*'.²⁵ Even if the person intends that the thing have a substantially similar pharmacological effect, that intention would not currently suffice.

The [Explanatory Notes](#) (p 7) to the Bill state that the reason for amending the drugs legislation is to ensure that the laws keep pace with emerging developments in the manufacture and supply of dangerous drugs. In a [Media Statement](#) announcing the new legislation, the Attorney-General said the new laws would mean that people would no longer be able to circumvent laws prohibiting the sale of banned substances in Queensland by changing the key ingredients or slightly changing chemicals in the product.²⁶ The Attorney-General noted that the Government has been moving to ban cannabinoids, with (at that time) three recently being added to the list of banned substances and others under investigation.²⁷

What Does the Bill Seek to Do?

The Attorney-General's [Media Statement](#) said that the intention of the amendments to the Act is that it will only need to be proved that the producer of the thing intends that it have the same pharmacological effect as a banned substance for a charge to be laid. The Attorney-General said that because '*Kronic is intended to have the same effect as other banned substances, the sale of Kronic will be effectively prohibited and no changing the chemicals that make it up will change that*'.²⁸

1.1 Amended Definition of ‘Dangerous Drugs’

Under a **proposed new s 4** (see cl 45 of the Bill) the amended definition of ‘**dangerous drug**’ covers (the amendment to s 4(c) is indicated by italics):

- (a) a thing specified in Schedules 1 or 2 of the Regulation, or if the thing is a plant, any part of the thing; and
- (b) a thing being a salt, derivative or stereo-isomer of a thing in para (a) (or any salt of such a derivate or stereo-isomer); and
- (c) a thing that has a chemical structure that is substantially similar to the chemical structure of a thing under paras (a) or (b) and that:
 - (i) has a substantially similar pharmacological effect; or
 - (ii) *is intended, or apparently intended, to have a substantially similar pharmacological effect.*

A dangerous drug is also any of the things in paras (a), (b) or (c) that is contained in a natural substance or in any preparation, solution or admixture.

1.2 Evidence of Dangerous Drug

A **proposed new s 129A** (see cl 51) seeks to clarify the application of ‘dangerous drug’ under the new sub-paragraph (ii) of the amended s 4(c) so that if there are proceedings for an offence on foot and it is relevant to prove that a thing is a dangerous drug under s 4(c)(ii), the thing is a dangerous drug if there is evidence that:

- the accused actually intended that the thing have a substantially similar pharmacological effect; or
- an ordinary person would reasonably consider, in the circumstances of the case, that the accused intended that the thing have a substantially similar pharmacological effect.

Other Australian Jurisdictions

Other Australian jurisdictions have sought to deal with synthetic cannabinoids in a number of different ways, either through jurisdiction-specific laws listing the various known substances (e.g. Western Australia, South Australia) or through adoption of specified prohibited substances under Schedule 9 (‘prohibited substances’) of the Commonwealth [Poisons Standard](#) (e.g. Australian Capital Territory). To overcome the problem of synthetic cannabinoids producers quickly making new formulations to circumvent specific listings of substances, some jurisdictions have legislation targeting synthetic cannabinoids ‘intended’ to have a substantially similar pharmacological effect to cannabis (e.g. Queensland).²⁹

In considering the drug offence provisions of legislation in other jurisdictions, not every offence can be covered and discussion is limited to the basic offences of unlawful supply/sale, manufacture and possession/use of small quantities of the drug. In most places, there are exceptions and exemptions that apply to offences which are too numerous and varied to be discussed here.

It is interesting to note that in a number of jurisdictions, such as South Australia, cannabis offences are treated more leniently than those involving synthetic cannabinoids.

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.³⁰

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 \(No 2\) 2011](#)³³ 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 (ss 6(2), 34).

See also, '[WA Government bans synthetic cannabinoids](#)', *WA Government Media Statement*, 13 June 2011.

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

and/or 10 years imprisonment (s 33I) and manufacturing such attracts a \$35,000 fine or imprisonment for 7 years, or both (s 33J).

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 \(NSW\)](#).³⁶ Under the Act, it is an offence to unlawfully possess a prohibited drug, with the penalty being a fine of \$2,200,³⁷ 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)).³⁸

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.³⁹ 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).⁴⁰ Unlawful sale or supply of a controlled drug incurs a fine not exceeding \$13,000 or imprisonment of up to 4 years (s 26).⁴¹

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.⁴²

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.⁴³

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 \$11,645⁴⁴ 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).

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 \(ACT\)](#) (the Act) the unlawful supply of a prohibited substance attracts a fine of up to \$55,000⁴⁵ 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](#).

Key Documents and Links

Bill and Related Material

- [Criminal and Other Legislation Amendment Bill 2011 \(Qld\)](#); [Explanatory Notes](#) (esp. pp 23-24); [Introduction and Referral](#) (pp 3183-3185)
- [Drugs Misuse Amendment Regulation \(No 1\) 2011 \(Qld\)](#), [Explanatory Notes](#)
- [Drugs Misuse Amendment Regulation \(No 2\) 2011 \(Qld\)](#), [Explanatory Notes](#)

Amended Legislation (relevant to Research Brief)

- [Drugs Misuse Act 1986 \(Qld\)](#); [Drugs Misuse Regulation 1987 \(Qld\)](#)

Other amendments to the *Drugs Misuse Act 1986* (Qld) proposed by the Bill seek to:

- put beyond doubt that, in committing an offence of failing to take reasonable care and precaution with a hypodermic syringe or needle, there is no requirement that the needle/syringe was used/intended to be used with respect to a dangerous drug (cl 48 amending s 10);
- provide for a 'reasonable excuse' defence for the offence of possessing relevant substances or things (cl 46 amending s 9A);
- insert a new s 9D (see cl 47) to introduce the offence (also to become a 'serious offence' under Pt 5B) of carrying on the business of unlawfully trafficking in relevant substances or things as defined in s 9A for use in the commission of a crime under s 8; and
- allow for disclosure of information to a staff member of the Australian Crime Commission to enable the staffer to perform his or her functions (cl 49 amending s 43U).

Referral Committee: Legal Affairs, Police, Corrective Services and Emergency Services Committee

- [Legal Affairs, Police, Corrective Services and Emergency Services Committee; Inquiry into the Criminal and Other Legislation Amendment Bill 2011 into](#) (Report date: 19 March 2012. The call for public submissions closes on Friday 23 December 2011.

Ministerial Media Statements

- Hon Paul Lucas MP, Attorney-General, Minister for Local Government and Special Minister of State:
 - '[Bligh Government moves to ban synthetic cannabinoids](#)', 16 June 2011
 - '[New laws to stop the sale of synthetic drugs](#)', 14 October 2011
 - '[Nineteen cannabinoids banned in lead up to Schoolies](#)', 15 November 2011

Other Relevant Website Information

- [Therapeutic Goods Administration](#)
- Better Health Channel (Victorian Government), [Cannabis \(marijuana\)](#); [Cannabis and Psychosis](#) Fact Sheets
- Dovetail (a body providing free professional services to youth drug and alcohol services in Queensland and which is funded by the Government): [Kronic legal status update](#), 5 August 2011; C Francis, 'Kronic: The Real Story', *Dovetail Magazine*, No 5, July 2011, p 10

Newspaper Articles & TV Clip

- 'State Parliament: Laws aim to stub out artificial dope', *Courier Mail*, 14 October 2011, p 27
- 'Miners abuse drugs, alcohol: Alcohol-fuelled violence and illicit drug use are 'rife' in communities', *Morning Bulletin (Rockhampton)*, 16 September 2011, p 11
- 'Kronic to be made illegal', *Age*, 1 July 2011
- 'NSW to ban synthetic cannabis Kronic', *Sydney Morning Herald*, 28 June 2011
- 'Chronic drug war only ends in defeat', *Courier Mail*, 21 June 2011, p 24
- 'State Parliament: Heel comes down to stub out displays and mock pot', *Courier Mail*, 17 June 2011, p 11
- 'Kronic a bad trip for the law', *Sydney Morning Herald*, 16 June 2011
- 'Why is this MP buying a bag of weed?', *Sydney Morning Herald*, 12 June 2011
- 'Fears over legal synthetic cannabis: A Kronic problem in the workplace?', *brisbanetimes.com.au*, 7 June 2011
- 60 Minutes - Synthetic drugs are the latest party drugs, 13 November 2011

Endnotes

- ¹ See, for example, Australian Government, 'The National Drug Strategy 2010-2015: consultation draft', [About the National Drug Strategy](#).
- ² In addition, the Bill proposes to introduce a new offence of trafficking in precursors (that is, substances used to manufacture dangerous drugs), but this aspect will not receive detailed treatment in this Brief. The other amendments proposed by the Bill to the *Drugs Misuse Act 1986* (Qld) are set out in the **Key Documents and Links** section of this Research Brief.
- ³ M Frei, '[Explainer: What is synthetic cannabis or Kronic?](#)', *The Conversation Media Group*, 29 June 2011.
- ⁴ Richard Noone, 'Fake pot known as Kronic is a very chronic concern', *Daily Telegraph*, 20 May 2011, referring to comments by Professor Jan Copeland, Director of the National Cannabis Prevention and Information Centre.
- ⁵ Richard Noone, 'Fake pot known as Kronic is a very chronic concern'; C Francis, 'Kronic: The Real Story', *Dovetail Magazine*, No 5, July 2011, p 10.
- ⁶ C Francis.
- ⁷ 'Kronic a bad trip for the law', *Sydney Morning Herald Online*, 16 June 2011.
- ⁸ C Francis.
- ⁹ Australian Government, [Therapeutic Goods Administration](#), '[Final Decisions & Reasons for Decisions by Delegates of the Secretary to the Department of Health and Ageing](#)', July 2011, pp 1, 2.
- ¹⁰ 'Kronic a bad trip for the law'.
- ¹¹ Richard Noone, 'Fake pot known as Kronic is a very chronic concern'.
- ¹² Herbal Highs Online Store, [Herbal Highs Safety Guidelines \(Kronic Pot\)](#).
- ¹³ Richard Noone, 'Fake pot known as Kronic is a very chronic concern', referring to comments by a Department of Health and Aging spokesperson.
- ¹⁴ Heath Aston, 'Why is this MP buying a bag of weed?', *Sydney Morning Herald*, 12 June 2011.
- ¹⁵ Edith Bevin, 'Tasmania set to ban synthetic cannabis', *ABC News Online*, 21 July 2011.
- ¹⁶ M Frei; Dan Nancarrow, 'Fears over legal synthetic cannabis: A Kronic problem in the workplace?', *brisbanetimes.com.au*, 7 June 2011; Simon Green, 'Miners abuse drugs, alcohol: Alcohol-fuelled violence and illicit drug use are 'rife' in communities', *Morning Bulletin (Rockhampton)*, 16 September 2011.
- ¹⁷ Dan Nancarrow.
- ¹⁸ 'Kronic a bad trip for the law'.
- ¹⁹ Herbal Highs Online Store, [Herbal Highs Safety Guidelines \(Kronic Pot\)](#).
- ²⁰ Richard Noone, 'Fake pot known as Kronic is a very chronic concern', referring to comments by a Department of Health and Aging spokesperson.

- 21 M Frei.
- 22 Edith Bevin.
- 23 ACT Health, '[Prohibition of Synthetic Cannabinoids](#)', Fact Sheet.
- 24 See the [Drugs Misuse Amendment Regulation \(No 1\) 2011 \(Qld\)](#) and the [Drugs Misuse Amendment Regulation \(No 2\) 2011 \(Qld\)](#).
- 25 Hon Paul Lucas MP, Attorney-General, Minister for Local Government and Special Minister of State, '[New laws to stop the sale of synthetic drugs](#)', *Media Statement*, 14 October 2011; 'Queensland to ban synthetic drugs such as 'Kronic'', *brisbanetimes.com.au*, 16 June 2011.
- 26 Hon Paul Lucas MP, 'New laws to stop the sale of synthetic drugs'.
- 27 Further substances were added to Schedule 2 of the Regulation in September and November 2011: see the [Drugs Misuse Amendment Regulation \(No 1\) 2011 \(Qld\)](#) and the [Drugs Misuse Amendment Regulation \(No 2\) 2011 \(Qld\)](#), '[Nineteen cannabinoids banned in lead up to Schoolies](#)', 15 November 2011.
- 28 Hon Paul Lucas MP, 'New laws to stop the sale of synthetic drugs'.
- 29 TGA, [Final Decisions & Reasons for Decisions by Delegates of the Secretary to the Department of Health and Ageing](#), p 2.
- 30 TGA, [Final Decisions & Reasons for Decisions by Delegates of the Secretary to the Department of Health and Ageing](#), pp 15-16.
- 31 Dovetail, [Kronic legal status update](#), 5 August 2011.
- 32 The Committee comprises senior officers representing health and law enforcement in each Australian jurisdiction and experts in identified priority areas including from the Ministerial Council on Aboriginal and Torres Strait Islander Affairs and the Department of Education, Science and Training.
- 33 See WA Government Gazette, 1 July 2011.
- 34 Hon MD Rann MP, Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change, 'Synthetic Cannabinoids', *House of Assembly Hansard*, 21 June 2011, pp 4173-4174, p 4174.
- 35 Julian Swallow, 'South Australia Government bans synthetic cannabis', *Advertiser*, 18 June 2011.
- 36 Which s 44 of the Act allows to occur by way of Regulation. The Drug Misuse and Trafficking Amendment (Prohibited Drugs) Regulation 2011 (NSW) added the relevant cannabinoid substances to Sch 1 of the Act, with effect from 8 July 2011.
- 37 A penalty unit is currently \$110: see s 17 [Crimes \(Sentencing Procedure\) Act 1999 \(NSW\)](#)
- 38 Under s 33, the manufacture/production or supply involving commercial quantities of prohibited drugs (other than a cannabis plant or cannabis leaf) may attract a fine of \$385,000 or 20 years imprisonment, or both (larger commercial quantities may attract life imprisonment or a fine of \$550,000, or both).
- 39 'Tasmania to make Kronic a controlled drug', *news.com.au*, 2 August 2011.
- 40 A penalty unit is currently \$130: [Penalty Units and Other Penalties Act 1987 \(Tas\)](#), s 4A.

⁴¹ The Order also amends Sch 1, Part 4 of the Act to include new ‘controlled precursor’ chemicals.

⁴² The [Drugs, Poisons and Controlled Substances Act 1981 \(Vic\)](#) reflects Commonwealth legislation so the addition of a substance to Sch 9 of Commonwealth Poisons Standard is automatically on the Victorian Act’s Schedule, thereby banning its possession in Victoria: Hon M Wooldridge MP, Minister for Mental Health, *Drugs, Poisons and Controlled Substances Amendment (Drugs of Dependence) Act 2011 (Vic)*, Second Reading Speech, *House of Assembly Hansard*, 29 June 2011, p 2380; ‘Victoria moves to ban Kronic’, *brisbanetimes.com.au*, 30 June 2011.

⁴³ Hon M Wooldridge MP, Second Reading Speech, p 2380.

⁴⁴ A penalty unit for the 2011-2012 financial year is \$137: see [Penalty Units Regulations \(NT\)](#).

⁴⁵ A penalty unit is \$110: see s 133 of the [Legislation Act 2001 \(ACT\)](#).