

Drugs: Trafficking – *Drugs Misuse Act 1986*

Legislation

Drugs Misuse Act 1986

Part 2 Drug Offences

5 Trafficking in dangerous drugs

- (1) A person who carries on the business of unlawfully trafficking in a dangerous drug is guilty of a crime.

Maximum penalty—life imprisonment.

- (2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

- (3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

Commentary

‘Trafficking’ includes selling. Typically, the trafficking will be selling. But ‘trafficking’ is of wider import, meaning ‘knowingly engaging in the movement of drugs from source to ultimate user’: *R v Elhusseini* [1988] 2 Qd R 442 at 450.

To establish trafficking it is necessary to show a regularity of drug dealing sufficient to establish that it occurred in the course of a business which might be regarded as trafficking: *Martin v Osborne* (1936) 55 CLR 367 at 376; *R v Kelly* [2005] QCA 103 at [7].

Suggested Direction

It is a crime to carry on a business of unlawfully trafficking in a dangerous drug. [Drug name] is a dangerous drug. ‘Trafficking’ includes selling. Here there is no suggestion that the defendant was selling [heroin or other drugs] lawfully. So the critical question is whether the defendant was carrying on a business of selling [heroin or other drugs] at some time between the dates, and at the place, mentioned in the indictment.

What does the expression ‘carrying on a business’ connote in this context?

Generally speaking, a single sale may be proved to have been carried out in such circumstances as to show that it was a part of the carrying on of a business. However, mere occasional sales of the drug could not amount to the carrying on of a business of selling it. 'Carrying on a business' for present purposes signifies much more than a few isolated transactions. The expression connotes a continuous course of conduct engaged in to obtain a reward of a commercial character. Proof of the carrying on of a business therefore requires the prosecution to establish several transactions done for gain over more than a brief interval. Repetition of acts, and activities of a commercial nature possessing something of a permanent character, are hallmarks of a business being carried on. But the person does not need to intend to trade indefinitely before that person can be said to be carrying on a business. The venture does not have to be profitable before it may fairly answer the description 'business'.

The reward does not need be money. For example, an addict could carry on a business though the only reward is drugs for personal consumption. And it is hardly to be expected that a person who carries on an illicit trade [in heroin or other drugs] would establish shop premises, have business cards, or advertise. It is not essential to the identification of a venture as a business that it have more than one customer. Some businesses of their nature will have more than one customer: for example, the local grocer. Others may not.