

South Australia

## Controlled Substances Act 1984

An Act to regulate or prohibit the manufacture, production, sale, supply, possession, handling or use of certain poisons, drugs, medicines and other substances, and of certain medical devices; to apply certain laws of the Commonwealth relating to therapeutic goods as laws of South Australia; and for other related purposes.

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## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Controlled Substances Act 1984*.

### 4—Interpretation

(1) In this Act, unless the contrary intention appears—

**Advisory Council** means the Controlled Substances Advisory Council established under Part 2;

**aggravated offence**—where a provision differentiates between the penalty for an aggravated offence and the penalty for a basic offence, the reference to an aggravated offence is a reference to the offence in its aggravated form (see section 43);

**analyst** means—

- (a) a person appointed as an analyst for the purposes of this Act; or
- (b) a person holding a position of a class approved by the Governor for the purposes of this Act;

**applied provisions** means the Commonwealth therapeutic goods laws that apply as a law of South Australia by virtue of section 11A;

**artificially enhanced cultivation** means—

- (a) cultivation in a solution comprised wholly or principally of water enriched with nutrients; or
- (b) cultivation involving the application of an artificial source of light or heat;

**assessment service** means a drug assessment service accredited under Division 6 of Part 5;

**authorised officer**—see section 50(1);

**basic offence**—where a provision differentiates between the penalty for an aggravated offence and the penalty for a basic offence, the reference to a basic offence is a reference to the offence in its non-aggravated form (see section 43);

**cannabis** means a plant, or any part (including the seed) of a plant, of the genus *cannabis*, but does not include cannabis resin or cannabis oil;

**cannabis oil** means a substance that contains chemicals of any one or more of the following classes;

- (a) cannabinoids;
- (b) tetrahydrocannabinols;
- (c) alkyl homologues of tetrahydrocannabinols,

where the amount of soluble material in any quantity of the substance, when dissolved in the solvent known as hexane, constitutes more than 85 per cent of the weight of that quantity of substance;

**cannabis resin** means a substance that contains chemicals of any one or more of the following classes:

- (a) cannabinoids;
- (b) tetrahydrocannabinols;
- (c) alkyl homologues of tetrahydrocannabinols,

where the amount of soluble material in any quantity of the substance, when dissolved in the solvent known as hexane, constitutes more than 15 per cent but not more than 85 per cent of the weight of that quantity of substance;

**child** means a person under the age of 18 years and, in relation to the alleged commission of an offence, means a person who was, at the time of the alleged commission of the offence, under that age;

**commercial quantity** of a controlled drug, controlled precursor or controlled plant means—

- (a) in relation to a controlled drug or controlled precursor contained in a mixture—
  - (i) a quantity of the drug or precursor that equals or exceeds the amount prescribed as a commercial quantity for the drug or precursor (as the case may be) in its pure form; or
  - (ii) a quantity of the mixture that equals or exceeds the amount prescribed as a commercial quantity for any mixture containing the drug or precursor (as the case may be); or
  - (iii) a number of discrete dosage units of the mixture that equals or exceeds the number of discrete dosage units prescribed as a commercial quantity for any mixture containing the drug or precursor (as the case may be); or

- (b) in relation to a controlled drug or controlled precursor that is not contained in a mixture—a quantity of the drug or precursor that equals or exceeds the amount prescribed as a commercial quantity for the drug or precursor (as the case may be) in its pure form; or
- (c) in relation to a controlled plant—
  - (i) a number of the plant that equals or exceeds the number of plants prescribed as a commercial quantity for the plant; or
  - (ii) a weight of the plant that equals or exceeds the weight prescribed as a commercial quantity for the plant;

**Commonwealth Act** means the *Therapeutic Goods Act 1989* of the Commonwealth;

**Commonwealth Minister** means the Minister of the Commonwealth responsible for the administration of the Commonwealth therapeutic goods laws;

**Commonwealth Secretary** means the Secretary of the Department of the Commonwealth that is, under the Commonwealth Minister, responsible for the administration of the Commonwealth therapeutic goods laws;

**Commonwealth therapeutic goods laws** means the Commonwealth Act and the regulations, orders and manufacturing principles under that Act;

**controlled drug** means—

- (a) a drug of dependence; or
- (b) a substance declared by the regulations to be a controlled drug for the purposes of this Act; or
- (c) an interim controlled drug,

but does not include a controlled plant;

**controlled plant** means a growing cannabis plant or a cutting of a cannabis plant (provided that the cutting has been planted or otherwise placed in a growing medium) or any other plant declared by the regulations to be a controlled plant for the purposes of this Act;

**controlled precursor** means a substance declared by the regulations to be a controlled precursor for the purposes of this Act;

**cultivate** a controlled plant means—

- (a) plant a seed, seedling or cutting of the plant or transplant the plant; or
- (b) nurture, tend or grow the plant; or
- (c) harvest the plant (including pick any part of the plant or separate any resin or other substance from the plant); or
- (d) dry the harvested plant or part of the plant; or
- (e) take part in the process of cultivation of the plant;

**dentist** means a person registered under the *Health Practitioner Regulation National Law*—

- (a) to practise in the dental profession as a dentist (other than as a student); and
- (b) in the dentists division of that profession;

**Department** means the department of the Minister to whom the administration of this Act has been committed;

**discrete dosage unit**, in relation to a controlled drug contained in a mixture or a controlled precursor contained in a mixture, means an amount of the mixture which is prepared or apparently prepared for the purpose of being administered as a single dose;

**drug detection dog** means a dog that has completed training of a kind approved by the Commissioner of Police for the purpose of detecting the presence of a controlled drug, controlled precursor or controlled plant;

**drug of dependence** means a poison declared by the regulations to be a drug of dependence;

**electronic drug detection system** means—

- (a) an electronic device of a kind approved by the Commissioner of Police; or
- (b) a system, of a kind approved by the Commissioner of Police, that involves the use of an electronic device,

for the purpose of detecting the presence of a controlled drug, controlled precursor or controlled plant;

**general drug detection** means—

- (a) walking or otherwise placing a drug detection dog in the vicinity of a person or property; or
- (b) using an electronic drug detection system in relation to a person or property in a manner prescribed by regulation,

for the purpose of determining whether the dog or system (as the case may be) detects the presence of a controlled drug, controlled precursor or controlled plant (but does not include any other conduct by a person that would constitute a search);

**interim controlled drug** means a substance declared to be an interim controlled drug by a notice under section 12A;

**large commercial quantity** of a controlled drug, controlled precursor or controlled plant means—

- (a) in relation to a controlled drug or controlled precursor contained in a mixture—
  - (i) a quantity of the drug or precursor that equals or exceeds the amount prescribed as a large commercial quantity for the drug or precursor (as the case may be) in its pure form; or
  - (ii) a quantity of the mixture that equals or exceeds the amount prescribed as a large commercial quantity for any mixture containing the drug or precursor (as the case may be); or
  - (iii) a number of discrete dosage units of the mixture that equals or exceeds the number of discrete dosage units prescribed as a large commercial quantity for any mixture containing the drug or precursor (as the case may be); or

- (b) in relation to a controlled drug or controlled precursor that is not contained in a mixture—a quantity of the drug or precursor that equals or exceeds the amount prescribed as a large commercial quantity for the drug or precursor (as the case may be) in its pure form; or
- (c) in relation to a controlled plant—
  - (i) a number of the plant that equals or exceeds the number of plants prescribed as a large commercial quantity for the plant; or
  - (ii) a weight of the plant that equals or exceeds the weight prescribed as a large commercial quantity for the plant;

**manufacture**, in relation to a controlled drug means—

- (a) undertake any process by which the drug is extracted, produced or refined; or
- (b) take part in the process of manufacture of the substance;

**medical device** has the same meaning as in the applied provisions;

**medical practitioner** means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

**medicine** has the same meaning as in the applied provisions;

**midwife** means a person registered under the *Health Practitioner Regulation National Law* to practise in the nursing and midwifery profession as a midwife (other than as a student);

**nurse** means a person registered under the *Health Practitioner Regulation National Law* to practise in the nursing and midwifery profession as a nurse (other than as a student);

**nurse practitioner** means a nurse whose registration under the *Health Practitioner Regulation National Law* is endorsed as being qualified to practise as a nurse practitioner;

**owner**, in relation to premises, includes the occupier of the premises;

**pharmacist** means a person registered under the *Health Practitioner Regulation National Law* to practise in the pharmacy profession (other than as a student);

**poison** means a substance declared by the regulations to be a poison for the purposes of this Act;

**possession** of a substance or thing includes—

- (a) having control over the disposition of the substance or thing; and
- (b) having joint possession of the substance or thing;

**premises** means any land, building, structure, vehicle, vessel or aircraft;

**prescription drug** means a poison declared by the regulations to be a prescription drug for the purposes of this Act;

**product** of a controlled plant includes—

- (a) a seed of the plant; and
- (b) a part of the plant (whether live or dead); and

(c) a substance separated from the plant;

**registered health practitioner** has the same meaning as in the *Health Practitioner Regulation National Law*;

**school zone** means the grounds of a primary or secondary school and the area within 500 metres of the boundary of the school;

**sell** means sell, barter or exchange, offer or agree to sell, barter or exchange or expose for sale, barter or exchange;

**senior police officer** means a police officer of or above the rank of Inspector;

**simple possession offence** means an offence against section 33L(1) other than an offence relating to a prescribed controlled drug;

**substance** means any gaseous, liquid or solid substance and includes a plant or fungus;

**supply** means provide or distribute or offer to provide or distribute;

**traffic** in a controlled drug means—

- (a) sell the drug; or
- (b) have possession of the drug intending to sell it; or
- (c) take part in the process of sale of the drug;

**trafficable quantity** of a controlled drug or controlled plant means—

- (a) in relation to a controlled drug contained in a mixture—
  - (i) a quantity of the drug that equals or exceeds the amount prescribed as a trafficable quantity for the drug in its pure form; or
  - (ii) a quantity of the mixture that equals or exceeds the amount prescribed as a trafficable quantity for any mixture containing the drug; or
  - (iii) a number of discrete dosage units of the mixture that equals or exceeds the number of discrete dosage units prescribed as a trafficable quantity for any mixture containing the drug; or
- (b) in relation to a controlled drug that is not contained in a mixture—a quantity of the drug that equals or exceeds the amount prescribed as a trafficable quantity for the drug in its pure form; or
- (c) in relation to a controlled plant—
  - (i) a number of the plant that equals or exceeds the number of plants prescribed as a trafficable quantity for the plant; or
  - (ii) a weight of the plant that equals or exceeds the weight prescribed as a trafficable quantity for the plant;

**vessel** means any ship, boat or other water craft;

**veterinary surgeon** means a person registered as a veterinary surgeon under the *Veterinary Practice Act 2003*;

**volatile solvent** means a substance declared by the regulations to be a volatile solvent for the purposes of this Act.

- (2) A substance is an analogue of another for the purposes of this Act if—
  - (a) they both have substantially similar chemical structures; or
  - (b) they both have substantially similar pharmacological effects.
- (3) Subject to the regulations, an analogue of a controlled drug (not being an analogue that is itself declared by regulation to be a drug of dependence or a controlled drug) is by virtue of this subsection a controlled drug.
- (4) For the purposes of this Act, a person takes part in the process of sale, manufacture or cultivation of a controlled drug or controlled plant if the person directs, takes or participates in any step, or causes any step to be taken, in the process of sale, manufacture or cultivation of the drug or plant.
- (5) For the purposes of this Act, a step in the process of sale of a controlled drug includes, without limitation, any of the following when done for the purpose of sale of the drug:
  - (a) storing the drug;
  - (b) carrying, transporting, loading or unloading the drug;
  - (c) packaging the drug, separating the drug into discrete units or otherwise preparing the drug;
  - (d) guarding or concealing the drug;
  - (e) providing or arranging finance (including finance for the acquisition of the drug);
  - (f) providing or allowing the use of premises or jointly occupying premises.
- (6) For the purposes of this Act, a step in the process of manufacture of a controlled drug includes, without limitation, any of the following when done for the purpose of manufacture of the drug:
  - (a) acquiring equipment, substances or materials;
  - (b) storing equipment, substances or materials;
  - (c) carrying, transporting, loading or unloading equipment, substances or materials;
  - (d) guarding or concealing equipment, substances or materials;
  - (e) providing or arranging finance (including finance for the acquisition of equipment, substances or materials);
  - (f) providing or allowing the use of premises or jointly occupying premises.
- (7) For the purposes of this Act, a step in the process of cultivation of a controlled plant includes, without limitation, any of the following when done for the purpose of cultivation of the plant:
  - (a) acquiring the plant or equipment, substances or materials;
  - (b) storing the plant or equipment, substances or materials;
  - (c) carrying, transporting, loading or unloading the plant or equipment, substances or materials;
  - (d) guarding or concealing the plant or equipment, substances or materials;

- (e) providing or arranging finance (including finance for the acquisition of the plant or equipment, substances or materials);
  - (f) providing or allowing the use of premises or jointly occupying premises.
- (8) In subsection (7)—  
*materials* includes seeds, seedlings and cuttings.

## 5—Application of Act

- (1) This Act binds the Crown.
- (2) The provisions of this Act are in addition to, and do not derogate from the obligations imposed by, the provisions of any other Act.
- (3) The provisions of this Act do not limit or derogate from any civil remedy at law or in equity.

## Part 2—Controlled Substances Advisory Council

### 6—The Controlled Substances Advisory Council

- (1) The *Controlled Substances Advisory Council* is established.
- (2) The Advisory Council consists of 10 members appointed by the Governor, on the nomination of the Minister, of whom—
  - (a) 1 (the presiding member) is an officer or employee of the Department or of another administrative unit of the Public Service, or body incorporated under the *Health Care Act 2008*, involved in the administration of this Act; and
  - (b) 1 is a medical practitioner; and
  - (c) 1 is a police officer; and
  - (ca) 1 is a legal practitioner who, in the opinion of the Minister, has experience in the administration and operation of this Act; and
  - (d) 2 are persons who, in the opinion of the Minister, have qualifications and extensive experience in the field of chemistry, pharmacy or pharmacology; and
  - (e) 1 is a person who, in the opinion of the Minister, has had extensive experience in the manufacture or sale of substances or devices to which this Act applies; and
  - (f) 2 are persons who, in the opinion of the Minister, have a wide knowledge of the factors and issues involved in controlling the manufacture, sale and supply of substances or devices to which this Act applies; and
  - (g) 1 is, in the opinion of the Minister, a suitable person to represent the interests of the general public.
- (3) The Governor may appoint a suitable person to be the deputy of a member of the Advisory Council.
- (4) If a member is for any reason absent or unable to act as a member of the Advisory Council, his or her deputy may act as a member of the Advisory Council.

## **7—Terms and conditions of office**

- (1) A member of the Advisory Council will be appointed for a term of office, not exceeding 3 years, specified in the instrument of appointment and will, on the expiration of any such term, be eligible for reappointment.
- (2) The Governor may remove a member of the Advisory Council from office on the ground of—
  - (a) mental or physical incapacity to carry out satisfactorily the duties of office; or
  - (b) neglect of duty; or
  - (c) dishonourable conduct.
- (3) The office of a member of the Advisory Council becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by giving notice in writing to the Minister; or
  - (d) is removed from office by the Governor pursuant to subsection (2).
- (4) On the office of a member of the Advisory Council becoming vacant, a person must be appointed to that office in accordance with this Act.

## **8—Validity of acts of the Advisory Council**

An act or proceeding of the Advisory Council is not invalid by reason of a vacancy in the membership of the Advisory Council or of a defect in the appointment of a person to the Advisory Council.

## **9—Allowances and expenses**

A member of the Advisory Council is entitled to receive such allowances and expenses as the Governor may from time to time determine

## **10—Conduct of business**

- (1) The presiding member or, in the presiding member's absence, his or her deputy, will preside at any meeting of the Advisory Council.
- (2) In the absence of both the presiding member and the presiding member's deputy from a meeting of the Advisory Council, the members present may elect one of their number to preside at that meeting.
- (3) Six members constitute a quorum of the Advisory Council, and no business may be transacted at any meeting of the Advisory Council unless a quorum is present.
- (4) A decision carried by the votes of a majority of the members present at a meeting is a decision of the Advisory Council.
- (5) The person presiding at a meeting of the Advisory Council will, in the event of an equality of votes, have a second, or casting, vote.
- (6) Subject to this Act, the business of the Advisory Council may be conducted in a manner determined by the Advisory Council.

## **10A—Conflict of interest under Public Sector (Honesty and Accountability) Act**

A member of the Advisory Council will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with those engaged in or associated with the manufacture or sale of substances or devices to which the *Controlled Substances Act 1984* applies generally, or a substantial section of those engaged in or associated with the manufacture or sale of such substances or devices.

## **11—Functions of the Advisory Council**

- (1) The functions of the Advisory Council are as follows:
  - (a) to keep under review substances and devices that are subject to this Act or that may, in the opinion of the Advisory Council, need to be brought under this Act and the controls (if any) that are, or should be, applicable to them; and
  - (b) to advise the Minister on the measures that should, in the opinion of the Advisory Council, be taken in relation to imposing, withdrawing or varying controls in respect of any of those substances or devices; and
  - (c) to monitor the administration and operation of this Act; and
  - (d) such other functions as the Minister may assign to the Advisory Council.
- (2) The Advisory Council may make recommendations to the Minister for—
  - (a) amendments to this Act; or
  - (b) making, varying or revoking regulations under this Act.
- (3) The Advisory Council must advise the Minister on any matter referred by the Minister to the Advisory Council for advice.
- (4) The Advisory Council may establish subcommittees for the purpose of giving advice to the Advisory Council in the performance of its functions.
- (5) A subcommittee will consist of such members of the Advisory Council, and such other persons co-opted by the Advisory Council, as the Advisory Council thinks fit.
- (6) The Advisory Council must, not later than 31 October in each year, report to the Minister on the administration and operation of this Act during the previous financial year.
- (7) The Minister must, as soon as practicable after receipt of a report submitted under subsection (6), cause a copy of the report to be laid before each House of Parliament.

## **Part 2A—Application in South Australia of Commonwealth therapeutic goods laws**

### **Division 1—Applied provisions**

#### **11A—Application of Commonwealth therapeutic goods laws**

- (1) The Commonwealth therapeutic goods laws, as in force for the time being and as modified by or under this Part, apply as a law of South Australia.
- (2) Those Commonwealth therapeutic goods laws so apply as if they extended to—
  - (a) things done or omitted to be done by persons who are not corporations; and
  - (b) things done or omitted to be done in the course of trade and commerce within the limits of South Australia.
- (3) For the purposes of this section, the Commonwealth therapeutic goods laws are modified as follows:
  - (a) a reference to the Federal Court or the Federal Court of Australia is to be read as a reference to the District Court of South Australia;
  - (b) a reference to the Administrative Appeals Tribunal is to be read as a reference to the Administrative and Disciplinary Division of the District Court of South Australia;
  - (c) a reference to a prescribed court is to be read as a reference to a prescribed court excluding the Federal Court;
  - (d) any other modifications specified by the regulations.

#### **11B—Interpretation of Commonwealth therapeutic goods laws**

- (1) The *Acts Interpretation Act 1901* of the Commonwealth, as in force for the time being—
  - (a) applies to the interpretation of the applied provisions; and
  - (b) so applies as if the applied provisions were an Act of the Commonwealth or regulations or orders under a Commonwealth Act, as the case requires.
- (2) The *Acts Interpretation Act 1915* does not apply to the applied provisions.

### **Division 2—Functions and powers under applied provisions**

#### **11C—Functions and powers of Commonwealth Minister**

The Commonwealth Minister has the same functions and powers under the applied provisions as that Minister has under the Commonwealth therapeutic goods laws as those laws apply to the Commonwealth.

#### **11D—Functions and powers of Commonwealth Secretary**

- (1) The Commonwealth Secretary has the same functions and powers under the applied provisions as that Secretary has under the Commonwealth therapeutic goods laws as those laws apply to the Commonwealth.

- (2) Without limiting subsection (1), the Commonwealth Secretary has the function of including goods in the Australian Register of Therapeutic Goods kept under the applied provisions and is authorised to cancel the inclusion of goods in that Register in accordance with those provisions.

### **11E—Commonwealth may retain fees paid to Commonwealth Secretary**

The Commonwealth may retain fees paid to, or recovered by, the Commonwealth Secretary in respect of the performance or exercise of functions or powers conferred on the Commonwealth Secretary by the applied provisions.

### **11F—Functions and powers of other persons**

An authorised person, authorised officer or official analyst appointed under the Commonwealth therapeutic goods laws has the same functions and powers under the applied provisions as that person, officer or analyst has under the Commonwealth therapeutic goods laws as those laws apply to the Commonwealth.

### **11G—Delegation by Commonwealth Minister or Commonwealth Secretary**

Any delegation by the Commonwealth Minister or the Commonwealth Secretary under section 57 of the Commonwealth Act is taken to extend to, and have effect for the purposes of, the corresponding provision of the applied provisions.

### **11H—Appointments under Commonwealth therapeutic goods laws**

The appointment of a person to an office or position under a provision of the Commonwealth therapeutic goods laws is taken to extend to, and have effect for the purposes of, the applied provisions.

## **Division 3—Offences against applied provisions**

### **11I—Application of Commonwealth criminal laws to offences against applied provisions**

- (1) The relevant Commonwealth laws apply as laws of South Australia in relation to any offence committed against the applied provisions as if the applied provisions were a law of the Commonwealth and not a law of South Australia.
- (2) For the purposes of a law of South Australia, an offence against the applied provisions—
  - (a) is taken to be an offence against the laws of the Commonwealth in the same way as if the applied provisions were a law of the Commonwealth; and
  - (b) is taken not to be an offence against the laws of South Australia.
- (3) Subsection (2) has effect for the purposes of a law of South Australia except as prescribed by the regulations.

### **11J—Functions and powers conferred on certain Commonwealth officers and authorities relating to offences**

- (1) A provision of the applied provisions applying because of section 11I that confers on a Commonwealth officer or authority a function or power in relation to an offence against the Commonwealth therapeutic goods laws also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the applied provisions.
- (2) In performing a function, or exercising a power, conferred by subsection (1), the Commonwealth officer or authority must act as nearly as is practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the corresponding provision of the Commonwealth therapeutic goods laws.

### **11K—No double jeopardy for offences against applied provisions**

If—

- (a) an act or omission is both an offence against the applied provisions and an offence against the Commonwealth therapeutic goods laws; and
- (b) the offender has been punished for that offence under the Commonwealth therapeutic goods laws,

the offender is not liable to be punished for that offence under the applied provisions.

## **Division 4—Reviews and appeals**

### **11L—District Court may sit with assessors**

- (1) In proceedings for review by or on an appeal to the Administrative and Disciplinary Division of the District Court under the applied provisions, the Court will, if a Judge of the Court so determines, sit with assessors.
- (2) For the purposes of this section, if a Judge of the Court determines that the Court is to sit with assessors—
  - (a) the Minister must establish a panel of persons who may sit as assessors; and
  - (b) a member of the panel will hold office on terms and conditions specified by the Minister in the instrument of appointment (and a member of the panel whose term of office expires is eligible for reappointment); and
  - (c) subject to paragraph (d), if assessors are to sit with the District Court, the Judge of the Court on the appeal will select 2 members of the panel to sit with the Court in the proceedings; and
  - (d) a member of the panel who has a personal or direct or indirect pecuniary interest in a matter before the District Court is disqualified from participating in proceedings relating to the matter; and
  - (e) if an assessor dies or is for any reason unable to continue with any proceedings, the District Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

## **Part 3—Controlled substances**

### **12—Declaration of poisons, prescription drugs, drugs of dependence, controlled drugs etc**

- (1) The Governor may, by regulation, declare, individually or by class, any substance that in the Governor's opinion has the potential to be harmful to humans to be a poison for the purposes of this Act.
- (2) The Governor may, by regulation, declare, individually or by class, a poison to be a prescription drug for the purposes of this Act.
- (3) The Governor may, by regulation, declare, individually or by class, a poison that in the Governor's opinion may lead to dependence in humans to be a drug of dependence for the purposes of this Act.
- (4) The Governor may, by regulation, declare, individually or by class, any substance that in the Governor's opinion may lead to dependence in humans or is of exceptional danger to humans to be a controlled drug for the purposes of this Act.
- (4a) The Governor may, by regulation, declare, individually or by class, a substance that in the Governor's opinion may be used in the manufacture of a controlled drug to be a controlled precursor for the purposes of this Act.
- (4b) The Governor may, by regulation, declare, individually or by class, a plant that in the Governor's opinion has the potential if it, or any product of it, is smoked or consumed by, or administered to, humans to lead to dependence in humans to be a controlled plant for the purposes of this Act.
- (7) The Governor may, by regulation, declare, individually or by class, any substance that in the Governor's opinion is a volatile solvent, or contains a volatile solvent, to be a volatile solvent for the purposes of this Act.
- (8) In any regulations made for the purposes of this section, the Governor may assign a poison or drug of dependence to a specified class or specified classes.

### **12A—Interim controlled drugs**

- (1) The Attorney-General may, if he or she is of the opinion that a substance may be of exceptional danger to humans, by notice in the Gazette, declare the substance to be an interim controlled drug.
- (2) A notice under subsection (1)—
  - (a) operates for a period specified in the notice (being a period of not more than 12 months); and
  - (b) may be varied or revoked at any time by the Attorney-General by further notice in the Gazette; and
  - (c) may refer to a substance by its trade name or in any other manner.

## Part 4—General offences

### 13—Manufacture and packing

- (1) A person must not manufacture or pack a poison, medicine or medical device to which this section applies unless the person—
- (a) is a registered health practitioner or veterinary surgeon acting in the ordinary course of his or her profession; or
  - (b) is licensed to do so by the Minister.

Maximum penalty: \$10 000.

- (2) This section applies to such poisons (other than prescription drugs), medicines or medical devices as may be prescribed, individually or by class, by the regulations.
- (3) In proceedings for an offence against subsection (1), the paragraphs of the subsection are to be treated as providing exceptions, and, if the complaint negatives the exceptions or alleges that the defendant acted without lawful authority, no proof will be required in relation to the exceptions by the prosecution but the application of an exception will be a matter for proof by the defendant.
- (4) In this section—
- manufacture*—
- (a) in relation to a substance, means undertake any process by which the substance is extracted, produced, refined, separated into discrete units or otherwise prepared; and
  - (b) in relation to a device, means undertake any process by which the device is produced.

### 14—Sale by wholesale

- (1) A person must not sell by wholesale a poison, medicine or medical device to which this section applies unless the person—
- (a) is a pharmacist acting in the ordinary course of his or her profession; or
  - (b) is licensed to do so by the Minister.

Maximum penalty: \$10 000.

- (2) This section applies to such poisons (other than prescription drugs), medicines or medical devices as may be prescribed, individually or by class, by the regulations.
- (3) In proceedings for an offence against subsection (1), the paragraphs of the subsection are to be treated as providing exceptions, and, if the complaint negatives the exceptions or alleges that the defendant acted without lawful authority, no proof will be required in relation to the exceptions by the prosecution but the application of an exception will be a matter for proof by the defendant.

### **15—Sale or supply to end user**

- (1) A person must not sell by retail or supply to a person a poison, medicine or medical device to which this section applies unless the person—
  - (a) is a registered health practitioner or veterinary surgeon acting in the ordinary course of his or her profession; or
  - (b) is licensed to do so by the Minister.

Maximum penalty: \$10 000.

- (2) This section applies to such poisons (other than prescription drugs), medicines or medical devices as may be prescribed, individually or by class, by the regulations.
- (3) In proceedings for an offence against subsection (1), the paragraphs of the subsection are to be treated as providing exceptions, and, if the complaint negatives the exceptions or alleges that the defendant acted without lawful authority, no proof will be required in relation to the exceptions by the prosecution but the application of an exception will be a matter for proof by the defendant.

### **16—Sale of certain poisons**

- (1) A person must not sell a poison to which this section applies to a person under the age of 18 years.

Maximum penalty: \$10 000.

- (2) A person must not sell a poison to which this section applies—
  - (a) unless the purchaser is known to the vendor; or
  - (b) unless the purchaser produces satisfactory evidence of his or her identity.

Maximum penalty: \$10 000.

- (3) If a person seeks to purchase a poison to which this section applies, the vendor must ask the prospective purchaser the purpose for which the poison is required, and must not proceed with the sale unless the question is satisfactorily answered.  
Maximum penalty: \$10 000.
- (4) A person who sells poisons to which this section applies must keep prescribed records.  
Maximum penalty: \$10 000.
- (5) This section applies to such poisons as may be prescribed, individually or by class, by the regulations.

### **17—Sale of poisons the possession of which requires a licence**

A person must not sell a poison the possession of which requires a licence under this Act unless the purchaser produces his or her licence.

Maximum penalty: \$10 000.

### **17A—Manufacture, sale, supply or possession of certain precursors**

- (1) A person must not, unless he or she holds a permit from the Minister to do so, manufacture, sell or supply a poison to which this section applies (a *section 17A precursor*).

Maximum penalty: \$15 000 or imprisonment for 3 years, or both.

- (2) A person must not, unless he or she holds a permit from the Minister to do so, be in possession of a section 17A precursor.  
Maximum penalty: \$10 000 or imprisonment for 2 years, or both.
- (3) A person must not sell a section 17A precursor unless the purchaser produces the permit under which the person is entitled to be in possession of the section 17A precursor.  
Maximum penalty: \$10 000 or imprisonment for 2 years, or both.
- (4) This section applies to such poisons as may be prescribed, individually or by class, by the regulations.

### **17B—Storage and sale of certain precursors**

- (1) A person must not sell a poison to which this section applies (a *section 17B precursor*) to another person unless—
  - (a) the purchaser holds an account with the seller; and
  - (b) the sale is transacted as a sale on account pursuant to a duly completed order form supplied by the purchaser; and
  - (c) the order form is accompanied by a duly completed end user statement in the form prescribed by regulation; and
  - (d) the person collecting the precursor produces his or her driver's licence, passport or other satisfactory evidence of the person's identity that includes a photograph; and
  - (e) the seller is satisfied that the person collecting the precursor is the purchaser or is acting on behalf of the purchaser; and
  - (f) the seller duly completes the seller's section of the end user statement.

Maximum penalty: \$10 000 or imprisonment for 3 years, or both.

- (2) A seller of section 17B precursors—
  - (a) must, in relation to each sale of such a precursor, keep a record of—
    - (i) the name and address of the purchaser; and
    - (ii) the name of the precursor and the quantity sold; and
    - (iii) the date of the sale; and
  - (b) must retain an end user statement for at least 5 years after the date of the sale to which it relates; and
  - (c) must make the record referred to in paragraph (a) and the end user statements available for inspection at any time by an authorised officer.

Maximum penalty: \$10 000 or imprisonment for 3 years, or both.

- (3) A seller of section 17B precursors must, if at any time he or she forms a suspicion that an order or enquiry for the purchase of such a precursor may be connected to an unlawful use of the precursor, inform the Commissioner of Police of the suspicion.

Maximum penalty: \$1 000 or imprisonment for 12 months, or both.

- (4) A seller of section 17B precursors—
- (a) must keep those precursors in storage that is secure from access by any person other than the seller or a person who is authorised in writing by the seller to have such access; and
  - (b) must retain such a written authorisation while it is current and for at least 5 years after it ceases to have effect and make it available for inspection at any time by an authorised officer; and
  - (c) must cause the stock of those precursors to be checked, after each sale, by some person other than the person who directly handled the sale.

Maximum penalty: \$1 000 or imprisonment for 12 months, or both.

- (5) This section does not apply in relation to the sale of a section 17B precursor if the sale—
- (a) is of a section 17B precursor contained in a preparation designed, packaged and labelled for human or animal therapeutic use; and
  - (b) is made to, or by, a registered health practitioner or veterinary surgeon acting in the ordinary course of his or her profession.
- (6) This section applies to such poisons as may be prescribed, individually or by class, by the regulations.

### **17C—Regulation of sale of certain precursors**

- (1) A person must not sell a poison to which this section applies (a *section 17C precursor*) to another person unless—
- (a) the purchaser provides the seller with a duly completed end user statement in the form prescribed by regulation; and
  - (b) the purchaser produces his or her driver's licence, passport or other satisfactory evidence of the person's identity that includes a photograph; and
  - (c) the seller duly completes the seller's section of the end user statement.

Maximum penalty: \$10 000 or imprisonment for 3 years, or both.

- (2) A seller of section 17C precursors must, if at any time he or she forms a suspicion that an order or enquiry for the purchase of such a precursor may be connected to an unlawful use of the precursor, inform the Commissioner of Police of the suspicion.

Maximum penalty: \$1 000 or imprisonment for 12 months, or both.

- (3) This section does not apply in relation to the sale of a section 17C precursor if the sale—
- (a) is of a section 17C precursor contained in a preparation designed, packaged and labelled for human or animal therapeutic use; and
  - (b) is made to, or by, a registered health practitioner or veterinary surgeon acting in the ordinary course of his or her profession.
- (4) This section applies to such poisons as may be prescribed, individually or by class, by the regulations.

## 18—Regulation of prescription drugs

- (1) A person must not prescribe a prescription drug (not being a drug of dependence) except as follows:
- (a) a registered health practitioner may prescribe a prescription drug (not being a drug of dependence) for a person if he or she is acting in the ordinary course of the practitioner's profession and—
    - (i) the practitioner is a dentist, medical practitioner or nurse practitioner; or
    - (ii) the practitioner's registration is endorsed under section 94 of the *Health Practitioner Regulation National Law* as being qualified to prescribe a scheduled medicine or class of scheduled medicines and the drug is a scheduled medicine or of a class of scheduled medicines specified in the endorsement; or
    - (iii) the practitioner is authorised to prescribe the drug by the regulations;
  - (b) a veterinary surgeon may prescribe a prescription drug (not being a drug of dependence) for an animal if the veterinary surgeon is acting in the ordinary course of the veterinary surgeon's profession;
  - (c) a person may prescribe a prescription drug (not being a drug of dependence) for a person or an animal if licensed to do so by the Minister.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (1a) A person must not sell a prescription drug (not being a drug of dependence) by wholesale except as follows:
- (a) a pharmacist may sell a prescription drug (not being a drug of dependence) by wholesale if the pharmacist is acting in the ordinary course of the pharmacist's profession;
  - (b) a person may sell a prescription drug (not being a drug of dependence) by wholesale if licensed to do so by the Minister.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (1b) A person must not sell a prescription drug (not being a drug of dependence) by retail except as follows:
- (a) a pharmacist may sell a prescription drug (not being a drug of dependence) by retail if the pharmacist—
    - (i) is dispensing the drug on the prescription of a person of a class authorised to prescribe the drug; and
    - (ii) is acting in the ordinary course of the pharmacist's profession;
  - (b) a registered health practitioner may sell a prescription drug (not being a drug of dependence) by retail if the practitioner is acting in the ordinary course of the practitioner's profession and—
    - (i) the practitioner is a dentist, medical practitioner or nurse practitioner; or

- (ii) the practitioner's registration is endorsed under section 94 of the *Health Practitioner Regulation National Law* as being qualified to sell a scheduled medicine or class of scheduled medicines and the drug is a scheduled medicine or of a class of scheduled medicines specified in the endorsement; or
- (iii) the practitioner is authorised to sell the drug by the regulations;
- (c) a veterinary surgeon may sell a prescription drug (not being a drug of dependence) by retail if the veterinary surgeon is acting in the ordinary course of the veterinary surgeon's profession;
- (d) a person may sell a prescription drug (not being a drug of dependence) by retail if the person is licensed to do so by the Minister.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (1c) A person must not supply a prescription drug (not being a drug of dependence) to another person except as follows:
- (a) a pharmacist may supply a prescription drug (not being a drug of dependence) to a person if the pharmacist—
    - (i) is dispensing the drug on the prescription of a person of a class authorised to prescribe the drug; and
    - (ii) is acting in the ordinary course of the pharmacist's profession;
  - (b) a registered health practitioner may supply a prescription drug (not being a drug of dependence) to a person if the practitioner is acting in the ordinary course of the practitioner's profession and—
    - (i) the practitioner is a dentist, medical practitioner, nurse or midwife; or
    - (ii) the practitioner's registration is endorsed under section 94 of the *Health Practitioner Regulation National Law* as being qualified to supply a scheduled medicine or class of scheduled medicines and the drug is a scheduled medicine or of a class of scheduled medicines specified in the endorsement; or
    - (iii) the practitioner is authorised to supply the drug by the regulations;
  - (c) a veterinary surgeon may supply a prescription drug (not being a drug of dependence) to a person for an animal if the veterinary surgeon is acting in the ordinary course of the veterinary surgeon's profession;
  - (d) a person may supply a prescription drug (not being a drug of dependence) to another person if licensed to do so by the Minister.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (1d) A person must not administer a prescription drug (not being a drug of dependence) to another person or an animal except as follows:
- (a) a registered health practitioner may administer a prescription drug (not being a drug of dependence) to a person if the practitioner is acting in the ordinary course of the practitioner's profession and—
    - (i) the practitioner is a dentist, medical practitioner, nurse or midwife; or

- (ii) the practitioner's registration is endorsed under section 94 of the *Health Practitioner Regulation National Law* as being qualified to administer a scheduled medicine or class of scheduled medicines and the drug is a scheduled medicine or of a class of scheduled medicines specified in the endorsement; or
  - (iii) the practitioner is authorised to administer the drug by the regulations;
- (b) a veterinary surgeon may administer a prescription drug (other than a drug of dependence) to an animal if the veterinary surgeon is acting in the ordinary course of the veterinary surgeon's profession;
- (c) a person may administer a prescription drug (not being a drug of dependence) to another person if—
  - (i) the person is licensed to do so by the Minister; or
  - (ii) the drug has been lawfully prescribed for, or supplied to, that other person;
- (d) a person may administer a prescription drug (not being a drug of dependence) to an animal if—
  - (i) the person is licensed to do so by the Minister; or
  - (ii) the drug has been lawfully prescribed or supplied for that animal.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (1e) A person must not manufacture or pack a prescription drug (not being a drug of dependence) except as follows:
- (a) a pharmacist may manufacture or pack a prescription drug (not being a drug of dependence) if the pharmacist is acting in the ordinary course of the pharmacist's profession;
  - (b) a registered health practitioner may manufacture or pack a prescription drug (not being a drug of dependence) if the practitioner is acting in the ordinary course of the practitioner's profession and—
    - (i) the practitioner is a dentist, medical practitioner or nurse practitioner; or
    - (ii) the practitioner's registration is endorsed under section 94 of the *Health Practitioner Regulation National Law* as being qualified to sell, supply or administer a scheduled medicine or class of scheduled medicines, the drug is a scheduled medicine or of a class of scheduled medicines specified in the endorsement and the manufacture or packing is incidental to the sale, supply or administration of the drug; or
    - (iii) the practitioner is authorised to manufacture or pack the drug by the regulations;
  - (c) a veterinary surgeon may manufacture or pack a prescription drug (not being a drug of dependence) if the veterinary surgeon is acting in the ordinary course of the veterinary surgeon's profession;

- (d) a person may manufacture or pack a prescription drug (not being a drug of dependence) if licensed to do so by the Minister;
- (e) a person may manufacture or pack a prescription drug (not being a drug of dependence) if—
  - (i) the drug has been lawfully prescribed for the person, another person or an animal; and
  - (ii) the manufacture or packing is incidental to the administration of the drug as so prescribed.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (2) A person must not prescribe a prescribed prescription drug unless the person has the qualifications or meets the requirements specified in the regulations for the purposes of this subsection.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (3) A person must not have in his or her possession a prescription drug (not being a drug of dependence) unless he or she—
  - (a) is the person, or is acting on behalf of the person, for whom the drug has been lawfully prescribed or supplied; or
  - (b) is the owner, or is acting on behalf of the owner, of an animal for whom the drug has been lawfully prescribed or supplied; or
  - (c) is a person authorised by law to sell or supply prescription drugs; or
  - (d) is licensed to do so by the Minister; or
  - (e) has other lawful authority or reasonable excuse for doing so.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (4) In proceedings for an offence against subsection (1) or (3), the paragraphs of the subsection are to be treated as providing exceptions, and, if the complaint negatives the exceptions or alleges that the defendant acted without lawful authority and, in the case of a complaint for an offence against subsection (3), without reasonable excuse, no proof will be required in relation to the exceptions by the prosecution but the application of an exception will be a matter for proof by the defendant.
- (5) In this section—

*manufacture*, in relation to a substance, means undertake any process by which the substance is extracted, produced, refined, separated into discrete units or otherwise prepared.

### **18A—Restriction of prescription or supply of drug of dependence in certain circumstances**

- (a1) A person must not prescribe for a person or an animal a drug of dependence except as follows:
  - (a) a registered health practitioner may prescribe a drug of dependence for a person if the practitioner is acting in the ordinary course of the practitioner's profession and—

- (i) the practitioner is a dentist, medical practitioner or nurse practitioner; or
  - (ii) the practitioner is a registered health practitioner whose registration is endorsed under section 94 of the *Health Practitioner Regulation National Law* as being qualified to prescribe a scheduled medicine or class of scheduled medicines and the drug is a scheduled medicine or of a class of scheduled medicines specified in the endorsement; or
  - (iii) the practitioner is authorised to prescribe the drug by the regulations;
- (b) a veterinary surgeon may prescribe a drug of dependence for an animal if the veterinary surgeon is acting in the ordinary course of the veterinary surgeon's profession.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (1) A registered health practitioner must not prescribe any drug of dependence for, or supply any drug of dependence to—
- (a) a person for regular use by the person during a period exceeding 2 months, or during a period that, together with any other period for which a drug of dependence has, to the practitioner's knowledge, been prescribed or supplied by a registered health practitioner, would result in drugs of dependence being regularly used by the person during a period exceeding 2 months; or
  - (b) a person who the practitioner knows or has reasonable cause to believe is dependent on drugs,

unless the practitioner prescribes or supplies the drug in accordance with an authority granted by the Minister under this section or in circumstances that are exempted from this subsection by the regulations.

Maximum penalty: \$4 000 or imprisonment for 4 years.

- (2) For the purposes of this section, a person is dependent on drugs if—
- (a) the person—
    - (i) has acquired, as a result of the repeated administration of prescription drugs or controlled drugs, an overpowering desire for the continued administration of such drugs; and
    - (ii) is likely to suffer mental or physical distress or disorder on cessation of the administration of such drugs; or
  - (b) the person has a history of consuming or using prescription drugs or controlled drugs in a quantity or manner that—
    - (i) in the case of drugs lawfully supplied to the person—is contrary to the prescribing practitioner's instructions relating to consumption or use of the drug; and
    - (ii) in any case—presents a risk to the person's health.
- (3) An application for the authority of the Minister to prescribe or supply a drug of dependence under this section must—
- (a) be in writing and be signed by the registered health practitioner who proposes to prescribe or supply the drug; and

- (b) contain such information as may be prescribed.
- (4) The Minister may give an authority to the registered health practitioner by whom any such application is made to prescribe for or supply to the person to whom the application relates a drug of dependence specified in the authority for therapeutic purposes.
- (5) Any such authority must be in writing and must specify—
  - (a) the quantity of the drug of dependence that may be so prescribed or supplied by the practitioner; and
  - (b) the period for which any such drug may be so prescribed or supplied.
- (6) In the case of an emergency the Minister may issue a registered health practitioner authorised to prescribe a drug of dependence a temporary authority to prescribe or supply a drug of dependence under this section.
- (7) A temporary authority—
  - (a) may be applied for, and given, orally; and
  - (b) cannot operate in respect of a period longer than 2 months.
- (8) An authority or temporary authority given under this section—
  - (a) may be subject to such conditions as the Minister thinks fit; and
  - (b) may be varied or revoked by the Minister at any time by notice in writing given personally or by post to the holder of the authority or temporary authority.

### **19—Sale or supply of volatile solvents**

- (1) A person must not sell or supply a volatile solvent to another person if he or she suspects, or there are reasonable grounds for suspecting, that the other person—
  - (a) intends to inhale the solvent; or
  - (b) intends to sell or supply the solvent to a further person for inhalation by that further person.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (2) If a person, acting at the request of another person, purchases a volatile solvent on behalf of the other person for the purpose of inhalation, the person is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (3) A person must not sell or supply a volatile solvent to which this subsection applies to a person under the age prescribed for the volatile solvent.

Maximum penalty: \$10 000.

- (4) Subsection (3) applies to such volatile solvents as may be prescribed, individually or by class, by the regulations.
- (5) An authorised officer may confiscate a volatile solvent (together with its container) found in the possession of a person if the authorised officer has reason to suspect that the person has the solvent for the purpose of inhalation.

- (6) Anything confiscated under subsection (5) is forfeited to the Crown and may be sold, destroyed or otherwise disposed of as the Minister or the Commissioner of Police directs.

## **20—Prohibition of automatic vending machines**

- (1) A person must not—
- (a) whether on premises of which the person is the owner or in any other place—
    - (i) install an automatic vending machine for the sale or supply of a poison, medicine or medical device; or
    - (ii) sell or supply a poison, medicine or medical device by means of an automatic vending machine; or
  - (b) permit or suffer any such vending machine to be installed or operated on premises of which he or she is the owner.

Maximum penalty: \$5 000.

- (2) This section does not apply to a poison, medicine or medical device prescribed, or of a class prescribed, by regulation or in circumstances prescribed by regulation.

## **21—Sale, supply, possession or administration of other potentially harmful substances or devices**

- (1) The Minister may, by notice published in the Gazette, prohibit the sale, supply, possession or administration of—
- (a) any substance or device specified in the order, being a substance or device that should not, in the Minister's opinion, be sold, supplied, possessed or administered pending evaluation of its harmful properties; and
  - (b) in the case of a substance, any preparation containing that substance.
- (2) A person must not contravene a notice published under subsection (1).  
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (3) The Minister may, by notice published in the Gazette, vary or revoke a notice published under subsection (1).
- (4) On publishing a notice under this section, the Minister must refer the subject matter of the notice to the Advisory Council for its consideration.

## **22—Possession**

- (1) A person must not have in his or her possession a poison to which this section applies unless licensed to do so by the Minister.  
Maximum penalty: \$10 000.
- (2) This section applies to such poisons (other than drugs of dependence) as may be prescribed, individually or by class, by the regulations.

## **23—Quality**

- (1) A person must not sell by wholesale or by retail or supply a poison, medicine or medical device that does not conform with the regulations.  
Maximum penalty: \$10 000.

- (2) It is a defence for a person charged with an offence against this section to prove that he or she did not know and could not, by the exercise of reasonable diligence, have known that the subject matter of the offence did not conform with the regulations.

#### **24—Packaging and labelling**

A person must not sell by wholesale or by retail or supply to a person a poison, medicine or medical device unless—

- (a) it is enclosed in a package or container; and
- (b) the package or container conforms with the regulations; and
- (c) the package or container is labelled in accordance with the regulations.

Maximum penalty: \$10 000.

#### **25—Storage**

A person must not store a poison, medicine or medical device contrary to the regulations.

Maximum penalty: \$10 000.

#### **26—Transport**

A person must not transport a poison, medicine or medical device contrary to the regulations.

Maximum penalty: \$10 000.

#### **27—Use**

A person must not—

- (a) use a poison, medicine or medical device for a purpose or in a manner prohibited by the regulations; or
- (b) sell, supply, prescribe, or purchase a poison, medicine or medical device for a purpose prohibited by the regulations.

Maximum penalty: \$10 000.

#### **28—Prohibition of advertisement**

- (1) A person must not advertise that a poison, controlled drug, medicine or medical device to which this section applies is available for sale or supply.

Maximum penalty: \$10 000.

- (2) This section applies to such poisons, controlled drugs, medicines and medical devices as may be prescribed, individually or by class, by the regulations.

#### **29—Regulation of advertisement**

A person must comply with the regulations in advertising that a poison, medicine or medical device is available for sale or supply.

Maximum penalty: \$10 000.

### 30—Forgery etc of prescriptions

- (1) A person must not forge or fraudulently alter or utter a prescription or other document, or have in his or her possession such a prescription or document knowing it to be forged or fraudulently altered, with a view to obtaining a prescription drug.  
Maximum penalty: \$15 000 or imprisonment for 5 years.
- (2) A person must not knowingly, by false representation, obtain—
- (a) a prescription drug; or
  - (b) a prescription for a prescription drug.
- Maximum penalty: \$10 000 or imprisonment for 2 years.
- (2a) A person must not, in or in connection with obtaining a prescription drug, give to the person prescribing or supplying the drug a name or address that is false.  
Maximum penalty: \$10 000.
- (3) A pharmacist must retain any prescription or other document that he or she has reasonable cause to believe has been forged or fraudulently altered and must forthwith deliver any such prescription or document to the Commissioner of Police.

## Part 4A—Licences to cultivate alkaloid poppies and process poppy straw

### Division 1—Preliminary

#### 30A—Interpretation

In this Part—

**alkaloid poppy** means a plant or any part of a plant whether fresh or dried of—

- (a) *Papaver bracteatum* Lindley; or
- (b) *Papaver somniferum* L.;

**alkaloid poppy register** means the register established under section 30ZZG;

**associate** has the same meaning given in section 30B;

**Chief Executive** means the Chief Executive of the Department that is, under the Minister, responsible for the administration of the *Agricultural and Veterinary Chemicals (South Australia) Act 1994*;

**Commonwealth licence to export** means a licence to export narcotic substances which relates to the export of poppy straw under the *Customs Act 1901* of the Commonwealth;

**Commonwealth licence to manufacture** means a licence to manufacture narcotic drugs which relates to the manufacturing of opiates from alkaloid poppies under the *Narcotic Drugs Act 1967* of the Commonwealth;

***criminal intelligence*** means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety;

***detention or seizure receipt*** means a receipt given in accordance with section 30ZC or section 30ZI;

***disqualified person*** means—

- (a) a person who is under the age of 17 years unless the person is an apprentice or trainee within the meaning of the *Training and Skills Development Act 2008*; or
- (b) a person against whom a finding of guilt in respect of a serious offence was made by a court (whether in or outside South Australia) in the 10 years preceding the date an application is made under this Part; or
- (c) a person against whom a finding of guilt for an offence under this Act or an offence under a corresponding law of another jurisdiction was made by a court (whether in or outside South Australia) in the 5 years preceding the date an application is made under this Part; or
- (d) a person who belongs to a prescribed class of persons;

***employee***, in relation to a licensed grower or a licensed processor, includes a person who is—

- (a) employed under a contract of employment; or
- (b) employed under a training contract; or
- (c) engaged under any other contract to perform a specified task authorised under a poppy cultivation licence or a poppy processing licence;

***employee identification certificate*** means a certificate issued to an employee by a licensed grower under section 30J or by a licensed processor under section 30T;

***harvest and destruction order*** means an order made under section 30ZM(3);

***inspector*** means—

- (a) a person authorised under section 30Z; and
- (b) an inspector under Part IVB of the *Drugs, Poisons and Controlled Substances Act 1981* of Victoria; and
- (c) a police officer;

***inspector identification certificate*** means a certificate issued to an inspector under section 30ZA;

***licence holder*** means—

- (a) a licensed grower; or
- (b) a licensed processor;

***licensed grower*** means the holder of a poppy cultivation licence;

***licensed processor*** means the holder of a poppy processing licence;

**poppy cultivation licence** means a licence issued under section 30F(2);

**poppy processing licence** means a licence issued under section 30P(2);

**poppy straw** means the upper parts of an alkaloid poppy, including the stem and capsule, harvested after mowing;

**process**, in relation to poppy straw, means—

- (a) to prepare or treat poppy straw in any manner other than refinement, concentration, extraction or reaction unless the refinement, concentration, extraction or reaction is for chemical analysis for non-therapeutic use; or
- (b) to store poppy straw;

**risk management plan** means a plan that forms part of a poppy cultivation licence or a poppy processing licence;

**seized material** means any alkaloid poppies, poppy straw or material derived from alkaloid poppies or poppy straw seized by an inspector under section 30ZH;

**serious offence** means—

- (a) an indictable offence involving dishonesty, fraud or assault; or
- (b) an indictable offence involving possession, or cultivation of, or trafficking in, a drug of dependence; or
- (c) any other indictable offence under this Act; or
- (d) an indictable offence under the law of another jurisdiction involving—
  - (i) dishonesty, fraud or assault; or
  - (ii) possession, or cultivation of, or trafficking in, a drug of dependence;

**specified premises** means premises to which a licence under this Part applies;

**Tribunal** means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

### **30B—Meaning of *associate***

- (1) For the purposes of this Part, a person who is of or above the age of 18 years is an **associate** of an applicant for a poppy cultivation licence or a poppy processing licence or a licence holder if the person—
  - (a) holds any relevant financial interest, or is entitled to exercise any relevant power (whether in right of the person or on behalf of any other person) in the business of the applicant or the licence holder (being the business to which the application or licence relates), and by virtue of that interest or power, is able to exercise a significant influence over or with respect to the management or operation of the business; or
  - (b) holds any relevant position (whether in right of the person or on behalf of any other person) in the business of the applicant or the licence holder (being the business to which the application or licence relates); or
  - (c) is a relative of the applicant or the licence holder; or
  - (d) is in a position to exercise control or significant influence over the conduct of the applicant or the licence holder.

(2) In subsection (1)—

**domestic partner** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

**relative** means a person who is—

- (a) a spouse or domestic partner; or
- (b) a parent; or
- (c) a step-parent; or
- (d) a sibling or step-sibling; or
- (e) a child, step-child or adopted child;

**relevant financial interest** in relation to a business means—

- (a) any share in the capital of the business; or
- (b) any entitlement to receive any income derived from the business;

**relevant position** in relation to the business of an applicant or a licence holder means—

- (a) the position of director, partner, trustee, manager or other executive position or secretary, however that position is designated; and
- (b) any other person determined by the Chief Executive to be associated or connected with the ownership, administration or management of the operations or business of the applicant;

**relevant power** means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—

- (a) to participate in any directorial, managerial or executive decision; or
- (b) to elect or appoint any person to any relevant position;

**spouse**—a person is the spouse of another if they are legally married.

### **30C—Matters to be considered—fit and proper person**

- (1) For the purpose of preventing criminal activity in the cultivation of alkaloid poppies and the processing of poppy straw, the Chief Executive must not issue a licence under this Part to an applicant unless the Chief Executive is satisfied that—
  - (a) neither the applicant nor any associate of the applicant has been found guilty in respect of a serious offence (whether in or outside South Australia) during the 10 years preceding the date of making the application under this Part; and
  - (b) the applicant and each associate of the applicant is a suitable person to be concerned in or associated with the cultivation of alkaloid poppies or the processing of poppy straw, as the case requires; and
  - (c) the applicant's property or premises will be suitable for the cultivation of alkaloid poppies or the processing of poppy straw, as the case requires, in relation to location, facilities and proposed security arrangements; and
  - (d) the applicant meets the prescribed requirements (if any).

- (2) For the purpose of preventing criminal activity in the cultivation of alkaloid poppies and the processing of poppy straw, the Chief Executive must not—
- (a) renew a poppy cultivation licence of a licensed grower unless the Chief Executive is satisfied that—
    - (i) neither the licensed grower nor any associate of the licensed grower has been found guilty in respect of a serious offence (whether in or outside South Australia) during the 3 years preceding the date of making the application for renewal under this Part; and
    - (ii) the licensed grower and each associate of the licensed grower is a suitable person to be concerned in or associated with the cultivation of alkaloid poppies; and
    - (iii) the licensed grower's property or premises are suitable for the cultivation of alkaloid poppies, in relation to location, facilities and proposed security arrangements; and
    - (iv) the licensed grower meets the prescribed requirements (if any); or
  - (b) renew a poppy processing licence of a licensed processor unless the Chief Executive is satisfied that—
    - (i) neither the licensed processor nor any associate of the licensed processor has been found guilty in respect of a serious offence (whether in or outside South Australia) during the 12 months preceding the date of making the application for renewal under this Part; and
    - (ii) the licensed processor and each associate of the licensed processor is a suitable person to be concerned in or associated with the processing of poppy straw; and
    - (iii) the licensed processor's property or premises are suitable for the processing of poppy straw in relation to location, facilities and proposed security arrangements; and
    - (iv) the licensed processor meets the prescribed requirements (if any).
- (3) Without limiting subsection (1) or (2), the Chief Executive may consider whether—
- (a) the applicant, the licensed grower or the licensed processor and each associate of the applicant, the licensed grower or the licensed processor is of good repute, having regard to character, honesty and integrity; and
  - (b) the applicant, the licensed grower or the licensed processor or any associate of the applicant, the licensed grower or the licensed processor has a history of non-compliance with the Act; and
  - (c) in the case of an application for a licence, the applicant or any associate of the applicant has within the 10 years preceding the date of making the application been found guilty by a court (whether in or outside South Australia) of any offence; and
  - (d) in the case of an application for the renewal of a poppy cultivation licence, the licensed grower or any associate of the licensed grower has within the 3 years preceding the date of making the application for renewal been found guilty by a court (whether in or outside South Australia) of any offence; and

- (e) in the case of an application for the renewal of a poppy processing licence, the licensed processor or any associate of the licensed processor has within the 12 months preceding the date of making the application for renewal been found guilty by a court (whether in or outside South Australia) of any offence; and
- (f) in the case of an applicant, a licensed grower or a licensed processor that is not a natural person, the applicant, the licensed grower or the licensed processor has a satisfactory ownership, trust or corporate structure; and
- (g) the applicant, the licensed grower or the licensed processor is of sound and stable financial background; and
- (h) the financial circumstances of the applicant, the licensed grower or the licensed processor may significantly limit the person's capacity to meet the person's obligations in conducting activities under the licence in compliance with the terms and conditions applying to the relevant licence.

## **Division 2—Poppy cultivation licence**

### **30D—Application for poppy cultivation licence**

- (1) A person may apply for a poppy cultivation licence which authorises a person for commercial purposes relating to therapeutic use—
  - (a) to cultivate or possess alkaloid poppies; and
  - (b) to sell or supply poppy straw to a licensed processor at premises specified in the licence.
- (2) A person may apply for a poppy cultivation licence for research purposes relating to non-therapeutic use—
  - (a) to cultivate or possess alkaloid poppies; and
  - (b) to conduct measurements, analyses and extractions, including extraction of alkaloids from alkaloid poppies for chemical analyses at specified premises; and
  - (c) to supply alkaloid poppies or poppy straw to a licensed processor.
- (3) An application under subsection (1) or (2) must—
  - (a) be in writing; and
  - (b) be accompanied by a copy of the proposed risk management plan; and
  - (c) be accompanied by the relevant prescribed application fee (if any); and
  - (d) be accompanied by any other prescribed particulars.
- (4) An application under subsection (1) or (2) must contain or be accompanied by evidence to the satisfaction of the Chief Executive that the applicant is a fit and proper person to be given a licence and—
  - (a) in the case of an application under subsection (1), intends to undertake a bona fide commercial activity relating to the therapeutic use of alkaloid poppies under the licence and includes evidence of the commercial activity to be carried out; or

- (b) in the case of an application under subsection (2), intends to undertake a research activity relating to the non therapeutic use of alkaloid poppies under the licence and includes evidence that the research activity would be conducted by a person with appropriate scientific training using an appropriate methodology.
- (5) An application under subsection (1) or (2) must contain any other information about the applicant or the application which the Chief Executive reasonably requires to assist in assessing the application.

### **30E—Chief Executive must investigate application**

- (1) On receiving an application under section 30D the Chief Executive—
  - (a) must carry out all investigations and inquiries that the Chief Executive considers necessary to determine the application; and
  - (b) may conduct an inspection of the premises that are to be specified in the relevant licence; and
  - (c) may require that an applicant or any associate of the applicant submit to the Chief Executive a recent police record check of the applicant or any associate of the applicant.
- (2) The Chief Executive must provide a copy of an application made under section 30D and any accompanying documents to the Commissioner of Police.
- (3) The Commissioner of Police must—
  - (a) inquire into and report to the Chief Executive on any matters concerning the application that he or she believes are appropriate or reasonably necessary; and
  - (b) inquire into and report to the Chief Executive on any matters concerning the application that the Chief Executive requests; and
  - (c) within 28 days of receiving the application from the Chief Executive, notify the Chief Executive in writing of the Commissioner of Police's decision to support or oppose the issuing of a licence and provide the reasons for the decision.
- (4) If the Chief Executive is notified under subsection (3)(c) that the Commissioner of Police opposes the issuing of a poppy cultivation licence, the Chief Executive must not issue the licence.

### **30F—Determining an application**

- (1) After considering an application and any investigation under section 30E, the Chief Executive must determine the application within 60 days of receiving the application.
- (2) The Chief Executive may issue a poppy cultivation licence to an applicant under section 30D(1) or (2).
- (3) The Chief Executive may refuse to issue a poppy cultivation licence to an applicant under section 30D(1) or (2).
- (4) The Chief Executive must—
  - (a) notify the applicant in writing of the decision under subsection (2); and

- (b) if the Chief Executive refuses an application under subsection (3), provide reasons for the decision.

### **30G—Terms and conditions of a poppy cultivation licence**

- (1) A poppy cultivation licence is issued for the term, not exceeding 3 years, specified in the licence unless it is sooner suspended or cancelled.
- (2) A poppy cultivation licence relates only to the specified premises described in it.
- (3) A poppy cultivation licence is subject to the condition that the licensed grower must only employ persons that are suitable to carry out activities under the licence.
- (4) A poppy cultivation licence is subject to the condition that a licensed grower must comply with the risk management plan under the licence.
- (5) A poppy cultivation licence is subject to the prescribed terms, conditions, limitations and restrictions (if any).
- (6) A poppy cultivation licence is subject to the terms, conditions, limitations and restrictions specified in it including, but not limited to, terms, conditions, limitations and restrictions relating to the following:
  - (a) the species, subspecies or varieties of alkaloid poppy to be cultivated;
  - (b) the specified premises at which activities authorised under the licence may be carried out;
  - (c) the implementation and maintenance of satisfactory security and surveillance measures to restrict access of unauthorised persons to crops and harvested material;
  - (d) the keeping of records and other documents;
  - (e) the provision of information, records or other documents to the Chief Executive relating to—
    - (i) the activities carried out under the licence; or
    - (ii) a change in the position of director, manager, secretary or other executive position, however designated, or the structure of the business to which the licence relates; or
    - (iii) any other matter that the Chief Executive reasonably requires in relation to the licence or the licensed activity;
  - (f) the disposal of harvested material and crop residue;
  - (g) the inspection, sampling, supervision and surveillance of seed of alkaloid poppies, alkaloid poppies and poppy straw by an inspector;
  - (h) the destruction of alkaloid poppies, poppy straw and any material derived from alkaloid poppies.
- (7) A poppy cultivation licence issued under section 30D(1) is subject to the condition that unless otherwise with the approval of the Chief Executive, the licensed grower whilst carrying out an activity under the licence must have a contract with a licensed processor for the processing of alkaloid poppies cultivated under the licence that is registered in the alkaloid poppy register.

### **30H—Poppy cultivation licence is not transferable**

A poppy cultivation licence is not transferable to another person.

### **30I—Employee of licensed grower authorised to undertake activities under licence**

- (1) For the purposes of this Act, an employee of a licensed grower who holds a poppy cultivation licence for commercial purposes relating to therapeutic use, is authorised to carry out any activity under the licence involving the cultivation or possession of alkaloid poppies or the sale or supply of poppy straw to a licensed processor required of the employee in the course of his or her employment.
- (2) For the purposes of this Act, an employee of a licensed grower who holds a poppy cultivation licence for research purposes relating to non-therapeutic use, is authorised to carry out any activity under the licence, including the following, that is required of the employee in the course of his or her employment:
  - (a) to cultivate or possess alkaloid poppies;
  - (b) to conduct measurements, analyses and extractions including extraction of alkaloids from alkaloid poppies for chemical analyses at specified premises;
  - (c) to supply alkaloid poppies or poppy straw to a licensed processor.
- (3) An employee must only undertake an activity authorised under subsection (1) or (2) in relation to his or her employment.

### **30J—Employee identification certificate issued by licensed grower**

- (1) The licensed grower must issue an employee identification certificate to each employee employed to carry out activities in the business conducted by a licensed grower under a poppy cultivation licence.
- (2) The employee identification certificate must contain the following information:
  - (a) the employee's name;
  - (b) a clear photograph of the employee;
  - (c) the employee's date of birth;
  - (d) the expiry date of the employee identification certificate;
  - (e) the poppy cultivation licence under which the employee is authorised to carry out activities required of the employee in the course of his or her employment;
  - (f) the prescribed information (if any).

### **30K—Application for renewal of licence**

- (1) A licensed grower may apply to the Chief Executive for the renewal of a poppy cultivation licence.
- (2) A renewal application must be made to the Chief Executive at least 2 months before the poppy cultivation licence is due to expire.
- (3) A renewal application must—
  - (a) be in writing; and

- (b) be accompanied by any information relevant to whether or not the licensed grower is a fit and proper person; and
  - (c) be accompanied by the current risk management plan under the poppy cultivation licence; and
  - (d) be accompanied by the relevant prescribed renewal fee (if any); and
  - (e) be accompanied by any other information the Chief Executive reasonably requires to assess the application; and
  - (f) contain any prescribed particulars.
- (4) A poppy cultivation licence may be renewed more than once.

### **30L—Chief Executive must investigate renewal application**

- (1) On receipt of a renewal application under section 30K the Chief Executive—
- (a) must carry out any investigation or inquiry necessary to determine the renewal application; and
  - (b) may conduct an inspection of the specified premises of the poppy cultivation licence; and
  - (c) may require that an applicant or any associate of the applicant submit to the Chief Executive a recent police record check of the applicant or any associate of the applicant.
- (2) The Chief Executive must provide a copy of a renewal application made under section 30K and any accompanying documents to the Commissioner of Police.
- (3) The Commissioner of Police must—
- (a) inquire into and report to the Chief Executive on any matters concerning the application that the Commissioner of Police believes are appropriate or reasonably necessary; and
  - (b) inquire into and report to the Chief Executive on any matters concerning the renewal application that the Chief Executive requests; and
  - (c) within 28 days of receiving the application from the Chief Executive notify the Chief Executive in writing of the Commissioner of Police's decision to support or oppose the renewal of a licence and provide the reasons for the decision.
- (4) If the Chief Executive is notified under subsection (3)(c) that the Commissioner of Police opposes the renewal of a poppy cultivation licence, the Chief Executive must not renew the relevant licence.

### **30M—Determining a renewal application**

- (1) After considering a renewal application and any investigation under section 30L, the Chief Executive must determine the renewal application within 60 days of receiving it.
- (2) The Chief Executive may renew a poppy cultivation licence for a period not exceeding 3 years.
- (3) The Chief Executive may refuse to renew a poppy cultivation licence of a licensed grower.

- (4) A renewed poppy cultivation licence expires on the date specified by the Chief Executive, unless the licence is cancelled or suspended prior to the expiry.
- (5) The Chief Executive must—
  - (a) notify the applicant in writing of the decision under subsection (2); and
  - (b) if the Chief Executive refuses to renew the poppy cultivation licence under subsection (3), provide reasons for the decision.

### **Division 3—Poppy processing licence**

#### **30N—Application for poppy processing licence**

- (1) A person may apply to the Chief Executive for a poppy processing licence which authorises a person for commercial purposes relating to therapeutic use—
  - (a) to receive poppy straw from a licensed grower or from a licensed processor or a person authorised to possess and supply alkaloid poppies in another jurisdiction; and
  - (b) to process and possess poppy straw at premises specified in the licence; and
  - (c) to transport, sell or supply poppy straw to a person who possesses a Commonwealth licence to manufacture; and
  - (d) to transport, sell or supply poppy straw if the applicant possesses a Commonwealth licence to export; and
  - (e) to transport, sell or supply poppy straw to a person who possesses a Commonwealth licence to export.
- (2) A person may apply to the Chief Executive for a poppy processing licence which authorises a person for research purposes relating to non-therapeutic use—
  - (a) to receive or process poppy straw at premises specified in the licence; and
  - (b) to possess, transport, sell or supply poppy straw to a licensed processor.
- (3) An application under subsection (1) or (2) must—
  - (a) be in writing; and
  - (b) be accompanied by a copy of the proposed risk management plan; and
  - (c) be accompanied by the relevant prescribed application fee (if any); and
  - (d) be accompanied by any other prescribed particulars; and
  - (e) in the case of an application under subsection (1), be accompanied by a copy of a Commonwealth licence to manufacture or a Commonwealth licence to export, as the case requires.
- (4) An application under subsection (1) or (2) must contain or be accompanied by evidence to the satisfaction of the Chief Executive that the applicant is a fit and proper person to be issued a licence and—
  - (a) in the case of an application under subsection (1), intends to undertake a bona fide commercial activity relating to the therapeutic use of poppy straw including evidence of the commercial activity to be carried out; or

- (b) in the case of an application under subsection (2), intends to undertake a research activity relating to the non-therapeutic use of poppy straw under the licence including evidence that the research activity would be conducted by a person with appropriate scientific training using appropriate methodology.
- (5) An application under subsection (1) or (2) must contain any other information about the applicant or the application which the Chief Executive reasonably requires to assist in assessing the application.

### **30O—Chief Executive must investigate application**

- (1) On receiving an application under section 30N, the Chief Executive—
  - (a) must carry out all investigations and inquiries that the Chief Executive considers necessary to determine the application; and
  - (b) may conduct an inspection of the premises that are to be specified in the relevant licence; and
  - (c) may require that an applicant or any associate of the applicant submit to the Chief Executive a recent police record check of the applicant or any associate of the applicant.
- (2) The Chief Executive must provide a copy of an application made under section 30N and any accompanying documents to the Commissioner of Police.
- (3) The Commissioner of Police must—
  - (a) inquire into and report to the Chief Executive on any matters concerning the application that the Commissioner of Police believes are appropriate or reasonably necessary; and
  - (b) inquire into and report to the Chief Executive on any matters concerning the application that the Chief Executive requests; and
  - (c) within 28 days of receiving the application from the Chief Executive, notify the Chief Executive in writing of the Commissioner of Police's decision to support or oppose the issuing of a licence and provide the reasons for the decision.
- (4) If the Chief Executive is notified under subsection (3)(c) that the Commissioner of Police opposes the issuing of a poppy processing licence, the Chief Executive must not issue the licence.

### **30P—Determining an application**

- (1) After considering an application and any investigation under section 30O, the Chief Executive must determine the application within 60 days of receiving the application.
- (2) The Chief Executive may issue a poppy processing licence to an applicant under section 30N(1) or (2).
- (3) The Chief Executive may refuse to issue a poppy processing licence to an applicant under section 30N(1) or (2).
- (4) The Chief Executive must—
  - (a) notify the applicant in writing of the decision under subsection (2); and

- (b) if the Chief Executive refuses an application under subsection (3), provide reasons for the decision.

### **30Q—Terms and conditions of a poppy processing licence**

- (1) A poppy processing licence is issued for the term, not exceeding 12 months, specified in the licence unless it is sooner suspended or cancelled.
- (2) A poppy processing licence relates only to the premises specified in it.
- (3) A poppy processing licence must specify the maximum quantity of alkaloid poppies that may be processed by a licensed processor.
- (4) A poppy processing licence is subject to the condition that a licensed processor must comply with the risk management plan under the licence.
- (5) A poppy processing licence is subject to the condition that the licensed processor must only employ persons that are suitable to carry out activities under the licence.
- (6) A poppy processing licence is subject to the prescribed terms, conditions, limitations and restrictions (if any).
- (7) A poppy processing licence is subject to the terms, conditions, limitations and restrictions that are specified in it including, but not limited to, terms, conditions, limitations and restrictions relating to the following:
  - (a) the specified premises at which the activities authorised by the licence may be carried out;
  - (b) the implementation and maintenance of satisfactory security and surveillance measures to restrict access of unauthorised persons to poppy straw;
  - (c) the keeping of records and other documents;
  - (d) the provision of information, records or other documents to the Chief Executive relating to—
    - (i) the activities carried out under the licence; or
    - (ii) a change in the position of director, manager, secretary or other executive position, however designated, or the structure of the business to which the licence relates; or
    - (iii) any other matter that the Chief Executive reasonably requires in relation to the licence or the licensed activity;
  - (e) the disposal of poppy straw;
  - (f) the inspection, supervision and surveillance of poppy straw by an inspector.
- (8) A poppy processing licence referred to in section 30N(1) is subject to the condition that the licensed processor must hold a current Commonwealth licence to manufacture or a current Commonwealth licence to export whilst undertaking an activity authorised by the licence.

### **30R—Poppy processing licence is not transferable**

A poppy processing licence is not transferable to another person.

### **30S—Employee of licensed processor authorised to undertake activities under licence**

- (1) For the purposes of this Act, an employee of a licensed processor who holds a poppy processing licence for commercial purposes relating to therapeutic use, is authorised to carry out any of the following activities under the licence that is required of the employee in the course of his or her employment:
  - (a) to receive poppy straw from a licensed grower or a person authorised to possess alkaloid poppies in another jurisdiction;
  - (b) to process and possess poppy straw at specified premises;
  - (c) to transport, sell or supply poppy straw to a person who possesses a Commonwealth licence to manufacture;
  - (d) to export poppy straw if the applicant possesses a Commonwealth licence to export.
- (2) For the purposes of this Act, an employee of a licensed processor who holds a poppy processing licence for research purposes relating to non-therapeutic use, is authorised to carry out any activity under the licence involving the processing, possession, transportation of poppy straw or the sale or supply of poppy straw to a licensed processor that is required of the employee in the course of his or her employment.
- (3) An employee must only undertake an activity authorised under subsection (1) or (2) in relation to his or her employment.

### **30T—Employee identification certificate issued by licensed processor**

- (1) The licensed processor must issue an employee identification certificate to each employee employed to carry out activities in the business conducted by a licensed processor under a poppy processing licence.
- (2) The employee identification certificate must contain the following information:
  - (a) the employee's name;
  - (b) a clear photograph of the employee;
  - (c) the employee's date of birth;
  - (d) the expiry date of the employee identification certificate;
  - (e) the poppy processing licence under which the employee is authorised to carry out activities required of the employee in the course of his or her employment;
  - (f) the prescribed information (if any).

### **30U—Application for renewal of licence**

- (1) A licensed processor may apply to the Chief Executive for the renewal of a poppy processing licence.
- (2) A renewal application must be made to the Chief Executive at least 2 months before the poppy processing licence is due to expire.
- (3) A renewal application must—
  - (a) be in writing; and

- (b) be accompanied by any information relevant to whether or not the licensed processor is a fit and proper person; and
  - (c) be accompanied by the current risk management plan under the poppy processing licence; and
  - (d) be accompanied by a copy of the licensed processor's current Commonwealth licence to manufacture or current Commonwealth licence to export; and
  - (e) be accompanied by the relevant prescribed renewal fee (if any); and
  - (f) be accompanied by any other information the Chief Executive reasonably requires to assess the application; and
  - (g) contain any prescribed particulars.
- (4) A poppy processing licence may be renewed more than once.

### **30V—Chief Executive must investigate renewal application**

- (1) On receipt of a renewal application under section 30U, the Chief Executive—
- (a) must carry out any investigation or inquiry necessary to determine the renewal application; and
  - (b) may conduct an inspection of the specified premises of the poppy processing licence; and
  - (c) may require that an applicant or any associate of the applicant submit to the Chief Executive a recent police record check of the applicant or any associate of the applicant.
- (2) The Chief Executive must provide a copy of a renewal application made under section 30U and any accompanying documents to the Commissioner of Police.
- (3) The Commissioner of Police must—
- (a) inquire into and report to the Chief Executive on any matters concerning the application that the Commissioner of Police believes are appropriate or reasonably necessary; and
  - (b) inquire into and report to the Chief Executive on any matters concerning the renewal application that the Chief Executive requests; and
  - (c) within 28 days of receiving the application from the Chief Executive, notify the Chief Executive in writing of the Commissioner of Police's decision to support or oppose the renewal of a licence and provide the reasons for the decision.
- (4) If the Chief Executive is notified under subsection (3)(c) that the Commissioner of Police opposes the renewal of a poppy processing licence, the Chief Executive must not renew the licence.

### **30W—Determining a renewal application**

- (1) After considering a renewal application and any investigation under section 30V, the Chief Executive must determine the renewal application within 60 days of receiving it.
- (2) The Chief Executive may renew a poppy processing licence for a period not exceeding 12 months.

- (3) The Chief Executive may refuse to renew a poppy processing licence of a licensed processor.
- (4) A renewed poppy processing licence expires on the date specified by the Chief Executive unless the licence is cancelled or suspended prior to the expiry.
- (5) The Chief Executive must—
  - (a) notify the applicant in writing of the decision under subsection (2); and
  - (b) if the Chief Executive refuses to renew the poppy processing licence under subsection (3), provide reasons for the decision.

## **Division 4—General provisions applying to a poppy cultivation licence or poppy processing licence**

### **30X—Amendment of licences**

- (1) The Chief Executive may—
  - (a) amend an existing term, condition, limitation or restriction to which a poppy cultivation licence or poppy processing licence is subject; or
  - (b) impose a new term, condition, limitation or restriction on the poppy cultivation licence or the poppy processing licence.
- (2) The Chief Executive may exercise a power under subsection (1)—
  - (a) on the application of the licensed grower or the licensed processor; or
  - (b) in the Chief Executive's discretion.
- (3) The Chief Executive must determine an application made under subsection (2)(a) within 28 days of receiving the application.
- (4) The Chief Executive must notify the licensed grower or the licensed processor, in writing within 7 business days, if an amendment to a licence is made under subsection (1)(a) or (b).
- (5) An application by a licensed grower or a licensed processor made under subsection (2)(a) must—
  - (a) be in writing; and
  - (b) be accompanied by the relevant prescribed fee (if any); and
  - (c) be accompanied by any prescribed particulars.

### **30Y—Suspension or cancellation of licences**

- (1) The Chief Executive, by notice in writing to the licensed grower or the licensed processor, may suspend or cancel the relevant licence if—
  - (a) the licensed grower or the licensed processor requests suspension or cancellation; or
  - (b) the licensed grower or the licensed processor has not complied with the terms, conditions, limitations or restrictions of the licence; or
  - (c) the licensed grower or the licensed processor has failed to comply with this Part or the regulations applying under this Part; or

- (d) the Chief Executive is satisfied that the licensed grower or the licensed processor or any associate of the licensed grower or the licensed processor is no longer a fit and proper person to be concerned with or associated with, as the case requires—
    - (i) the cultivation of alkaloid poppies; or
    - (ii) the processing of poppy straw; or
  - (e) the Chief Executive is satisfied that the specified premises—
    - (i) of the licensed grower are no longer suitable for the cultivation of alkaloid poppies; or
    - (ii) of the licensed processor are no longer suitable for the processing of poppy straw; or
  - (f) the Chief Executive is satisfied that the licensed grower or the licensed processor obtained the relevant licence by fraud, misrepresentation or concealment of facts; or
  - (g) the Commissioner of Police requests suspension or cancellation on the basis of criminal intelligence concerning the licensed grower or the licensed processor; or
  - (h) the licensed grower or the licensed processor ceases to carry on the research or commercial activity to which the relevant licence relates.
- (2) If a poppy cultivation licence or a poppy processing licence is suspended or cancelled under subsection (1) the Chief Executive must—
- (a) notify the Commissioner of Police regarding the suspension or cancellation; and
  - (b) in the case of a poppy cultivation licence, notify a licensed processor who has a registered contract with the licensed grower within 7 business days of the suspension or cancellation taking effect; or
  - (c) in the case of a poppy processing licence, notify the licensed grower who has a contract registered in the alkaloid poppy register with the licensed processor within 7 business days of the suspension or cancellation taking effect.
- (3) A poppy cultivation licence or a poppy processing licence ceases to have effect on the suspension or cancellation of the licence under this section.

## **Division 5—Inspection and enforcement**

### **30Z—Inspectors under this Part**

- (1) The Chief Executive, by instrument in writing, may authorise persons to be inspectors for the purposes of all or any specified provisions of this Part.
- (2) The Chief Executive may determine the terms and conditions of authorisation of any inspector.
- (3) The terms and conditions of authorisation of an inspector may contain general directions as to how the inspector's powers may be exercised.
- (4) The Chief Executive, in writing, may vary or revoke the authorisation of an inspector at any time.

### **30ZA—Identification certificate**

- (1) The Chief Executive must issue an identification certificate to each inspector (other than an inspector who is a police officer) which sets out the provisions of this Part for which the inspector is authorised to be an inspector.
- (2) In the course of performing his or her functions under this Part, an inspector must produce his or her identification certificate to any person who requests its production.
- (3) In this Part, a reference to an identification certificate in relation to an inspector who is a police officer is a reference to written evidence of the fact that he or she is a police officer.

### **30ZB—General powers of inspector**

- (1) For the purposes of determining compliance with this Part or a licence issued under this Part, an inspector, with any assistance he or she thinks necessary, at any reasonable time may do all or any of the following:
  - (a) enter and inspect any place, other than premises used as a residence, occupied by any person who is the licensed grower or the licensed processor;
  - (b) inspect, count, examine or mark for identification any alkaloid poppy or poppy straw in the place;
  - (c) intercept, inspect and examine any vehicle or machine which an inspector reasonably believes is being used for the harvest of alkaloid poppies and transport of poppy straw;
  - (d) require a person to produce any document that the inspector reasonably requires for ascertaining whether this Part or a poppy cultivation licence or a poppy processing licence is being complied with—
    - (i) to examine the document; and
    - (ii) to make copies of it or take extracts from it; and
    - (iii) to remove the document for as long as is reasonably necessary to make copies or take extracts;
  - (e) take or remove for examination samples of or from, or specimens of, soil, any alkaloid poppy or poppy straw or any other plant or crop to determine—
    - (i) whether the alkaloid poppy or poppy straw has been cultivated or processed in accordance with the relevant licence; or
    - (ii) that its possession is in accordance with the relevant licence;
  - (f) submit any sample or specimen taken in accordance with this Part to a laboratory or place approved by the Chief Executive for examination and testing.
- (2) An inspector must not exercise any powers under this Part if the inspector fails to produce his or her identification certificate for inspection on request by the occupier of the place or the person in charge or apparent control of the place.

### **30ZC—Procedure on seizing a document, thing or taking a sample**

- (1) Subject to section 30ZI, if an inspector seizes a document or thing or takes a sample of, or from, a thing at the premises occupied by the licensed grower or the licensed processor, the inspector must give a detention or seizure receipt for the document or thing or sample to the licensed grower or the licensed processor from whom it was taken.
- (2) If an inspector is unable to give a detention or seizure receipt to the relevant licensed grower or licensed processor in respect of a document or thing or sample seized, the inspector must—
  - (a) leave the detention or seizure receipt with, or post it to, the licensed grower or the licensed processor that occupies the premises from which the document or thing or sample was seized; and
  - (b) if a document is seized, leave a copy of the document, if practicable, with, or post it to, the licensed grower or the licensed processor that occupies the premises from which the document was seized.
- (3) A detention or seizure receipt must—
  - (a) identify the seized document, thing or sample taken; and
  - (b) state the name of the inspector who seized the document, thing or took the sample; and
  - (c) state the reason why the document or thing was seized or the sample was taken.
- (4) If an inspector proposes to take a sample under section 30ZB(1)(e) the inspector must—
  - (a) divide the sample into 3 parts; and
  - (b) give 1 part to the licensed grower or the licensed processor, as the case requires, and retain 1 part for examination and 1 part untouched for future comparison.

### **30ZD—Power to use electronic equipment at premises**

- (1) This section applies if—
  - (a) while acting under section 30ZB, an inspector finds a thing at the premises that is or includes a disk, tape or other device for the storage of information; and
  - (b) there is at the premises equipment that may be used with the disk, tape or other storage device; and
  - (c) the inspector believes, on reasonable grounds, that information stored in the disk, tape or other storage device may be relevant to determine whether this Part has been contravened.
- (2) An inspector may operate or may require the licensed grower or the licensed processor or an employee of the licensed grower or the licensed processor to operate the equipment to access the information.

- (3) An inspector may require the licensed grower or the licensed processor or an employee of the licensed grower or the licensed processor to provide the inspector with any password, encryption key or other information required to operate the equipment to access the information.

### **30ZE—Power to copy information on electronic storage devices**

If an inspector finds that a disk, tape or other storage device at the premises contains information that the inspector believes, on reasonable grounds, stores information that is relevant to determine whether this Part has been complied with, the inspector may—

- (a) put the information in a documentary form and seize the documents so produced; or
- (b) copy the information to another disk, tape or other storage device and remove that disk, tape or storage device from the premises.

### **30ZF—Inspector must not damage equipment**

An inspector must not operate equipment for a purpose set out in section 30ZD or section 30ZE unless the inspector believes, on reasonable grounds, that the operation can be carried out without damage to the equipment.

### **30ZG—Inspector may possess alkaloid poppies or poppy straw**

For the purposes of this Act, an inspector is authorised to have alkaloid poppies or poppy straw in his or her possession in the exercise or performance of any power, function or duty conferred on him or her by this Part or the regulations made under this Part.

### **30ZH—Inspector has power to detain or seize alkaloid poppies or poppy straw**

An inspector may detain or seize any alkaloid poppies, poppy straw or material derived from alkaloid poppies or poppy straw and deal with it in accordance with section 30ZI if the inspector believes on reasonable grounds that—

- (a) in the case of a poppy cultivation licence, the licensed grower has contravened this Part or the poppy cultivation licence; or
- (b) in the case of a poppy processing licence, the licensed processor has contravened this Part or the poppy processing licence; or
- (c) the relevant licence has been suspended or cancelled under this Part.

### **30ZI—Procedure on detaining or seizing alkaloid poppies or poppy straw**

- (1) If an inspector detains or seizes any seized material under section 30ZH, the inspector must immediately—
- (a) make a written record of the detention or seizure; and
  - (b) give a detention or seizure receipt to the licensed grower or the licensed processor, as the case requires, that—
    - (i) identifies the seized material taken; and
    - (ii) states the name of the inspector who detained or seized the seized material; and

- (iii) states the reasons for the detention or seizure; and
  - (c) in the case of an inspector who is not a police officer, send a copy of the detention or seizure receipt to the Chief Executive; and
  - (d) in the case of an inspector who is a police officer, send a copy of the detention or seizure receipt to the Commissioner of Police and the Chief Executive.
- (2) If an inspector detains or seizes any seized material under section 30ZH, the inspector, with any assistance necessary, may take or send the seized material to a place approved by the Chief Executive for it to be examined, tested or stored.
- (3) This section does not limit or prevent the exercise of any power by a police officer to commence a proceeding in respect of compliance with this Part in relation to any seized material.

**30ZJ—Chief Executive has power to dispose or deal with seized alkaloid poppies or poppy straw**

- (1) This section applies if—
- (a) the Chief Executive is satisfied on reasonable grounds that this Part has been contravened; and
  - (b) the relevant licensed grower or licensed processor has surrendered the seized material to the Chief Executive and agreed that the Chief Executive may deal with the seized material.
- (2) In dealing with seized material to which this section applies, the Chief Executive may do any of the following:
- (a) dispose of the seized material;
  - (b) direct the licensed grower or the licensed processor (as the case requires) to dispose of the seized material;
  - (c) harvest and deal with the seized material as appropriate;
  - (d) harvest and destroy the seized material;
  - (e) enter into an agreement with the licensed grower or the licensed processor (as the case requires), or any other person, to deal with the seized material as required in all of the circumstances;
  - (f) anything reasonably necessary to ensure the security of the seized material.

**30ZK—Retention and return of seized alkaloid poppies or poppy straw**

- (1) If an inspector seizes any seized material under section 30ZH, subject to section 30ZJ, the Chief Executive with any assistance necessary must—
- (a) take reasonable steps to release or return the seized material to the licensed grower or the licensed processor from whom it was seized or its lawful owner if the reason for its detention or seizure no longer exists; or
  - (b) retain any seized material that is required for evidence in a legal proceeding in a place approved by the Chief Executive.

- (2) If the seized material has not been returned to the licensed grower or the licensed processor from whom it was seized or its lawful owner within 3 months after it was seized, the Chief Executive must take reasonable steps to return it to that licensed grower or licensed processor or lawful owner (as the case requires) unless—
  - (a) proceedings for the purpose for which the seized material was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
  - (b) the Magistrates Court makes an order under section 30ZL extending the period during which the seized material may be retained.

### **30ZL—Magistrates Court may extend 3 month period**

- (1) The Chief Executive may apply to the Magistrates Court for an extension (not exceeding 3 months) of the period during which the seized material may be retained—
  - (a) within 3 months after the seized material is seized under section 30ZH; or
  - (b) if an extension has been granted under this section, before the end of the period of the extension.
- (2) The Magistrates Court may make an order extending the period that the seized material is to be retained if satisfied that—
  - (a) the making of the order is in the interests of justice; and
  - (b) the total period of retention does not exceed 12 months; and
  - (c) retention of the seized material is necessary for the purposes of an investigation into whether a contravention of this Part has occurred.
- (3) At least 7 days prior to the hearing of an application under subsection (1), the Chief Executive must give notice of the application to the licensed grower or the licensed processor, as the case requires, from whom the alkaloid poppies, poppy straw or material derived from alkaloid poppies or poppy straw were seized or its lawful owner described in the application.

### **30ZM—Forfeiture, harvest and destruction of alkaloid poppies or poppy straw**

- (1) The Chief Executive may apply to the Magistrates Court for a harvest and destruction order if—
  - (a) a licence holder has contravened the Act; and
  - (b) the Chief Executive has cancelled the relevant licence.
- (2) The Magistrates Court may make an order that the seized material of the licensed grower or the licensed processor, as the case requires, be forfeited to the Crown and be dealt with in accordance with a harvest and destruction order made under subsection (3) if satisfied that—
  - (a) the relevant seized material poses a risk to public health and safety; and
  - (b) in all the circumstances it is appropriate to make a harvest and destruction order in regards to the relevant seized material.
- (3) The Magistrates Court may make any of the following harvest and destruction orders (as the case requires):
  - (a) an order that the relevant seized material be harvested;

- (b) an order that the relevant seized material be destroyed;
  - (c) an order that the relevant seized material be harvested and destroyed.
- (4) The Magistrates Court may—
- (a) give any direction necessary to enable the Chief Executive to carry out the harvest and destruction order; and
  - (b) authorise the Chief Executive to give any appropriate direction to harvest or destroy the seized material (as the case requires) to which the order relates.

### **30ZN—Recovery of costs**

If the Chief Executive incurs any costs in carrying out a harvest and destruction order the Chief Executive may recover those costs in any court of competent jurisdiction as a debt due to the Crown.

### **30ZO—Inspector may access ratepayer information**

- (1) For the purposes of exercising a power under this Part, an inspector may require a person having custody of any records relating to ratepayers (within the meaning of the *Local Government Act 1999*) to provide the inspector with—
- (a) the name and address or other contact details of a ratepayer—
    - (i) who is a licensed grower or a licensed processor; or
    - (ii) who is an applicant for a poppy cultivation licence or a poppy processing licence; or
  - (b) the address or description of any land in respect of which the ratepayer is liable to pay rates and charges under the *Local Government Act 1999* if the ratepayer—
    - (i) is a licensed grower or a licensed processor; or
    - (ii) is an applicant for a licence under this Part.
- (2) An inspector may make a record of any information provided to the inspector under subsection (1).
- (3) An inspector must not be charged a fee for anything done, or required to be done, by the inspector under this section.

### **30ZP—Protection against self-incrimination**

It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Part, if the giving of the information or the doing of that thing would tend to incriminate the person.

### **30ZQ—Power to issue expiation notices**

An inspector may give an expiation notice (under the *Expiation of Offences Act 1996*) to a person who the inspector has reason to believe has committed a prescribed offence.

### **30ZR—Expiation fee**

The regulations may prescribe the expiation fees for prescribed offences referred to in section 30ZQ.

## **Division 6—Offences**

### **30ZS—Offence to fail to report the amendment or cancellation of a contract**

A licensed grower who holds a poppy cultivation licence under section 30D(1) must report to the Chief Executive within 3 business days any amendment to a contract registered in the alkaloid poppy register that does 1 or more of the following:

- (a) amends the duration of the contract;
- (b) amends the maximum quantity of alkaloid poppies that may be cultivated under the contract;
- (c) amends the date the contract expires;
- (d) cancels the contract.

Maximum penalty: \$15 000.

### **30ZT—Offence to fail to report amendment or cancellation**

A licensed processor must inform the Chief Executive within 10 business days if a Commonwealth licence to manufacture or a Commonwealth licence to export required for the current poppy processing licence held by the licensed processor is amended or cancelled.

Maximum penalty: \$15 000.

### **30ZU—Offence to fail to report on any change of details of the licensed grower or the licensed processor**

- (1) A licensed grower or a licensed processor must report any specified information referred to in subsection (2) in respect of a poppy cultivation licence or a poppy processing licence to the Chief Executive within 7 business days.

Maximum penalty: \$15 000.

- (2) For the purposes of subsection (1), specified information is—
  - (a) any change to the details of the licensed grower or the licensed processor that appears on the poppy cultivation licence or the poppy processing licence; or
  - (b) any associate other than those provided to the Chief Executive in the application for a poppy cultivation licence or a poppy processing licence; or
  - (c) the signing of a personal insolvency agreement or any declaration of bankruptcy that applies to the licensed grower or the licensed processor; or
  - (d) any offence that the licensed grower or the licensed processor has been found guilty of by a court in South Australia or elsewhere, after the date of the application for the poppy cultivation licence or the poppy processing licence (as the case requires) was sent to the Chief Executive; or
  - (e) any serious offence that an associate of the licensed grower or the licensed processor has been found guilty of by a court in South Australia or elsewhere, after the date of the application for the poppy cultivation licence or the poppy processing licence (as the case requires) was sent to the Chief Executive; or

- (f) any information that the name of an associate of a licensed grower or a licensed processor provided to the Chief Executive by the licensed grower or the licensed processor, in a successful application under this Part, has been changed; or
- (g) the entering by a licensed grower or a licensed processor that is not a natural person into voluntary administration, liquidation or receivership.

### **30ZV—Offence to fail to surrender licence on suspension or cancellation**

Within 14 days of the suspension or cancellation of a poppy cultivation licence or a poppy processing licence under section 30Y, a person must surrender to the Chief Executive—

- (a) the relevant licence; and
- (b) any related document issued to the person.

Maximum penalty: \$5 000.

### **30ZW—Offence to contravene a licence**

- (1) A licensed grower must not contravene a prescribed minor term, condition, limitation or restriction to which the poppy cultivation licence is subject.

Maximum penalty: \$5 000.

- (2) A licensed grower must not contravene the terms, conditions, limitations or restrictions to which the poppy cultivation licence is subject which is not a prescribed minor term, condition, limitation or restriction.

Maximum penalty: \$15 000 or imprisonment for 12 months, or both.

- (3) A licensed processor must not contravene a prescribed minor term, condition, limitation or restriction to which the poppy processing licence is subject.

Maximum penalty: \$5 000.

- (4) A licensed processor must not contravene the terms, conditions, limitations or restrictions to which the poppy processing licence is subject which is not a prescribed minor term, condition, limitation or restriction.

Maximum penalty: \$15 000 or imprisonment for 12 months, or both.

### **30ZX—Offence to fail to prohibit access to premises**

- (1) A licensed grower must not permit any other person to enter the area of land where alkaloid poppies are being cultivated unless that other person is—

- (a) an employee of the licensed grower who is employed to undertake an activity authorised under the poppy cultivation licence; or
- (b) a licensed processor; or
- (c) a party to a contract registered in the alkaloid poppy register with the relevant licensed grower or an employee of the relevant licensed processor.

Maximum penalty: \$15 000.

- (2) A licensed processor must not permit any other person to enter the specified premises unless that other person is an employee of the licensed processor who is employed—
- (a) to carry out an activity in the business conducted by a licensed processor under the poppy processing licence; or
  - (b) to undertake an activity authorised under the poppy processing licence.

Maximum penalty: \$15 000.

- (3) A licensed grower must not permit any other person to enter the area of land where alkaloid poppies are being cultivated unless that other person is accompanied at all times—
- (a) by the licensed grower; or
  - (b) by an employee of the licensed grower who is employed to undertake an activity authorised under the poppy cultivation licence; or
  - (c) by an inspector.

Maximum penalty: \$15 000.

- (4) A licensed processor must not permit any other person to enter the specified premises unless the other person is accompanied at all times—
- (a) by the licensed processor; or
  - (b) by an employee of the licensed processor who is employed to undertake an activity authorised under the poppy processing licence; or
  - (c) by an inspector.

Maximum penalty: \$15 000.

### **30ZY—Offence to fail to carry and produce identification certificate**

- (1) An employee of a licensed grower or a licensed processor who has been issued with an employee identification certificate must carry the certificate with him or her during the performance of any activity authorised under the relevant licence.

Maximum penalty: \$10 000.

- (2) An employee of a licensed grower or a licensed processor must produce his or her employee identification certificate on the request of an inspector.

Maximum penalty: \$10 000.

### **30ZZ—Offence to employ disqualified persons under licence**

- (1) A licensed grower must not employ a disqualified person in the business conducted under the poppy cultivation licence.

Maximum penalty: \$10 000.

- (2) A licensed processor must not employ a disqualified person in the business conducted under the poppy processing licence.

Maximum penalty: \$10 000.

**30ZZA—Offence for disqualified person to be employed by licensed grower or licensed processor**

- (1) A disqualified person must not accept employment to carry out activities in the business conducted by a licensed grower under a poppy cultivation licence.  
Maximum penalty: \$10 000.
- (2) A disqualified person must not accept employment to carry out activities in the business conducted by a licensed processor under a poppy processing licence.  
Maximum penalty: \$10 000.

**30ZZB—Employee must comply with terms and conditions of licence**

- (1) A licensed grower must take reasonable steps to prevent an employee of the licensed grower contravening the terms, conditions, limitations or restrictions of the poppy cultivation licence and the applicable requirements of this Part in carrying out an activity authorised by the licence.  
Maximum penalty: \$10 000.
- (2) A licensed processor must take reasonable steps to prevent an employee of the licensed processor contravening the terms, conditions, limitations or restrictions of the licence and the applicable requirements of this Part in carrying out an activity authorised by the licence.  
Maximum penalty: \$10 000.
- (3) A licensed grower must take reasonable steps to provide each employee of the licensed grower carrying out an activity authorised under the poppy cultivation licence with sufficient and appropriate information, instruction, training and supervision to be able to carry out that activity in accordance with the licence.  
Maximum penalty: \$10 000.
- (4) A licensed processor must take reasonable steps to provide each employee of the licensed processor carrying out an activity authorised under the poppy processing licence with sufficient and appropriate information, instruction, training and supervision to be able to carry out that activity in accordance with the licence.  
Maximum penalty: \$10 000.
- (5) An employee must cooperate with the licensed grower in relation to any direction given, or action taken, by the licensed grower or by any person authorised by the licensed grower, in order to comply with subsection (1) or (3).  
Maximum penalty: \$10 000.
- (6) An employee must cooperate with the licensed processor in relation to any direction given, or action taken, by the licensed processor or by any person authorised by the licensed processor, in order to comply with subsection (2) or (4).  
Maximum penalty: \$10 000.

### **30ZZC—Criminal liability of licensed grower or licensed processor—failure to exercise due diligence**

- (1) If an employee of a licensed grower or a licensed processor commits an offence against this Part, the relevant licensed grower or licensed processor also commits an offence against this Part, if the licensed grower or the licensed processor failed to exercise due diligence to prevent the commission of the offence by the employee.
- (2) A licensed grower or a licensed processor referred to in subsection (1) is liable to a penalty not exceeding the maximum penalty that applies to the offence against this Part committed by the employee.
- (3) In determining whether a licensed grower or a licensed processor failed to exercise due diligence, a court may have regard to—
  - (a) whether or not the licensed grower or the licensed processor permitted or authorised the act or omission of the employee in the course of his or her employment that constituted the offence against this Part; and
  - (b) what steps the licensed grower or the licensed processor took, or could reasonably have taken, to prevent the commission of the offence by the employee.
- (4) Without limiting any other defence available to a licensed grower or a licensed processor, the relevant licensed grower or licensed processor may rely on a defence that would be available to the employee of the licensed grower or the licensed processor if (as the case requires)—
  - (a) the employee were charged with the offence with which the licensed grower or the licensed processor is charged; and
  - (b) in doing so, the licensed grower or the licensed processor bears the same burden of proof that the employee would bear.
- (5) A licensed grower or a licensed processor may commit an offence against this Part whether or not the employee of the licensed grower or the licensed processor, as the case requires, has been prosecuted for, or found guilty of, an offence against this Part.

### **30ZZD—Offence to fail to provide an identification certificate for employees**

- (1) A licensed grower must issue to each employee authorised in respect of the poppy cultivation licence an employee identification certificate that contains the information required under section 30J(2).  
Maximum penalty: \$10 000.
- (2) A licensed processor must issue to each employee authorised in respect of the poppy processing licence an employee identification certificate that contains the information required under section 30T(2).  
Maximum penalty: \$10 000.

### **30ZZE—Offence to hinder or obstruct inspector**

- (1) A person must not, without reasonable excuse, hinder or obstruct an inspector in the exercise of a power under this Part.  
Maximum penalty: \$15 000.

- (2) A person must not, without reasonable excuse, fail to comply with any direction, requirement or order of an inspector under this Part.

Maximum penalty: \$15 000.

### **30ZZF—Offence to remove detained or seized alkaloid poppies or poppy straw**

A person must not, while a detention or seizure notice remains in effect, remove the whole or any part of an alkaloid poppy, poppy straw or material derived from an alkaloid poppy or poppy straw to which the notice relates, without the authorisation of the Chief Executive or an inspector.

Maximum penalty: \$15 000.

## **Division 7—Alkaloid poppy register**

### **30ZZG—Alkaloid poppy register**

- (1) The Chief Executive must establish and maintain the alkaloid poppy register.
- (2) The alkaloid poppy register is to contain the following information in respect of each registrable contract:
- (a) the name of each party to the contract;
  - (b) the location of the specified premises;
  - (c) the date the contract was entered into by the parties;
  - (d) any other relevant information provided by an applicant or licensed grower or licensed processor to an inspector or the Chief Executive;
  - (e) the details of the relevant poppy cultivation licence or poppy processing licence;
  - (f) any relevant information collected or received by an inspector to determine the compliance of a licensed grower or a licensed processor with this Part;
  - (g) any other prescribed information.

### **30ZZH—Request to register a contract**

- (1) The Chief Executive, if requested to do so by a licensed grower, may register a contract between the licensed grower and a licensed processor in the alkaloid poppy register if the contract—
- (a) is a valid contract; and
  - (b) includes details of the specified premises and area of land where it is proposed to cultivate alkaloid poppies; and
  - (c) specifies the period of the contract; and
  - (d) includes any other prescribed particulars (if any).
- (2) If a licensed grower makes a request under subsection (1), the Chief Executive must, within 7 days—
- (a) register the contract; or
  - (b) refuse to register the contract.

- (3) On making a decision under subsection (2) the Chief Executive must—
  - (a) notify the licensed grower and the licensed processor who are the parties to the contract of that decision; and
  - (b) provide reasons for the decision if the decision was a refusal under subsection (2)(b).

### **30ZZI—Access to the alkaloid poppy register restricted**

- (1) The Chief Executive must ensure that the alkaloid poppy register, or any part of the alkaloid poppy register, is only accessed by a prescribed person, or class of prescribed person, who is authorised to do so by the Chief Executive.
- (2) The Chief Executive must ensure that personal information in the alkaloid poppy register is only disclosed in accordance with this Act.

### **30ZZJ—Person with access to alkaloid poppy register not to disclose personal information from it**

- (1) Unless a disclosure is authorised under this section, a person authorised to have access to the alkaloid poppy register or any part of the alkaloid poppy register must not disclose to any person the following information in the alkaloid poppy register:
  - (a) any personal information;
  - (b) the location of specified premises;
  - (c) commercial in confidence information.

Maximum penalty: \$15 000 or imprisonment for 12 months, or both.

- (2) The Chief Executive or a person authorised to have access to the alkaloid poppy register or any part of the alkaloid poppy register may disclose personal information in the alkaloid poppy register to a Department or public statutory authority—
  - (a) for the purpose of law enforcement; or
  - (b) as required by or under any Act or law; or
  - (c) if the Chief Executive or a person authorised to have access to the alkaloid poppy register believes on reasonable grounds that to do so is necessary to enable the proper administration of the Act.

### **30ZZK—Delegation**

- (1) The Chief Executive may, by instrument in writing, delegate a power or function under this Part—
  - (a) to a particular person; or
  - (b) to the person for the time being performing particular duties or holding or acting in a specified position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) may be absolute or conditional; and

- (b) does not derogate from the power of the delegator to act personally in a matter; and
- (c) is revocable at will.

## **Division 8—Review**

### **30ZZL—Review by Tribunal**

- (1) A person may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for review of a decision of the Chief Executive—
  - (a) to refuse to issue a poppy cultivation licence or a poppy processing licence to that person; or
  - (b) to refuse to renew a poppy cultivation licence or a poppy processing licence held by that person; or
  - (c) to refuse to register a contract between a licensed grower and a licensed processor in the alkaloid poppy register; or
  - (d) to suspend, cancel or amend a poppy cultivation licence or a poppy processing licence held by that person.
- (2) Subject to subsection (3), an application for review must be made within 1 month of the making of the relevant decision of the Chief Executive.
- (3) If the reasons of the Chief Executive are not given in writing at the time of making the decision and the person (within 1 month of the making of the decision) requires the Chief Executive to state the reasons in writing, the time for commencing proceedings before the Tribunal runs from the time at which the person receives the written statement of those reasons.

## **Division 9—Miscellaneous**

### **30ZZM—Criminal intelligence**

- (1) Information that is classified by the Commissioner of Police as criminal intelligence for the purposes of this Part may not be disclosed to any person other than the Chief Executive, the Minister, the Tribunal, a court or a person to whom the Commissioner of Police authorises its disclosure.
- (2) If the Commissioner of Police—
  - (a) opposes the issuing or renewal of a poppy cultivation licence or a poppy processing licence; or
  - (b) requests the suspension or cancellation of a poppy cultivation licence or a poppy processing licence,

on the basis of information that is classified by the Commissioner of Police as criminal intelligence, the Chief Executive is not (despite any other provision of this Part) required to provide any grounds or reasons for a decision to refuse to issue or renew the licence or to suspend or cancel the licence (as the case may be) other than that the decision was made in the public interest.

- (3) In any proceedings under this Part, the Tribunal or a court—
- (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
  - (b) may take evidence consisting of or relating to information so classified by the Commissioner of Police by way of affidavit of a police officer of or above the rank of superintendent.
- (4) The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Part except to a Deputy Commissioner or Assistant Commissioner of Police.

### **30ZZN—Regulations**

- (1) Without limiting section 63, the Governor may make regulations for or with respect to the following:
- (a) the cultivation of alkaloid poppies;
  - (b) the processing of poppy straw;
  - (c) classes of persons that are disqualified persons;
  - (d) prescribing fees or levies to recover any compliance or administrative costs;
  - (e) prescribing terms, conditions, limitations and restrictions to which licences issued under this Part will be subject;
  - (f) particulars to be included in any application for the issue, renewal or amendment of a poppy cultivation licence or a poppy processing licence;
  - (g) restricting, limiting or prohibiting premises, vehicles or machines used or intended to be used in connection with the cultivation and destruction of alkaloid poppies or the processing or destruction of poppy straw;
  - (h) limiting or prohibiting transport of poppy straw, including in relation to specific geographical areas or regions in South Australia;
  - (i) the distance required to separate alkaloid poppies and poppy straw at a specified premises from any other place;
  - (j) matters to be considered by the Chief Executive in relation to the suitability of specified premises for the cultivation of alkaloid poppies or processing of poppy straw;
  - (k) fencing of specified premises and standard of fencing required to separate alkaloid poppies and poppy straw from a public place or any other premises;
  - (l) requirements of signage at specified premises and information to be displayed at a specified premises, or on equipment or vehicles used for or in connection with the growing or harvesting of alkaloid poppies or the processing of poppy straw;
  - (m) the manner in which searches, detentions and seizures under this Part are to be carried out;

- (n) records to be kept in relation to alkaloid poppy cultivation or poppy straw processing;
  - (o) prescribing a penalty of not more than \$15 000 for any contravention of or failure to comply with the regulations made under this Part.
- (2) Regulations made for the purposes of this Part may—
- (a) be of general or limited application;
  - (b) differ according to differences in time, place or circumstances;
  - (c) apply to different classes of person and licences;
  - (d) provide for different fees for different activities or classes of activity or different cases or classes of cases;
  - (e) provide for waiver or reduction of fees;
  - (f) in the case of applications for the issue or renewal of licences, specify fees that reflect the cost of administration of, and the provision of, inspection services in connection with this Part;
  - (g) confer powers or discretions or impose duties on the Chief Executive or an inspector;
  - (h) exempt specified persons or things or classes of person or classes of thing from complying with all or any of the regulations—
    - (i) whether unconditionally or on specified conditions; and
    - (ii) either wholly or to such an extent as is specified; and
    - (iii) leave any matter to be required to be undertaken in a manner approved by the Chief Executive.

## **Part 5—Offences relating to controlled drugs, precursors and plants**

### **Division 1—Preliminary**

#### **31—Application of Part**

- (1) This Part does not apply to—
- (a) the manufacture, sale or supply of a poison, or the sale or supply of equipment for use in connection with the consumption or administration of a poison, by a pharmacist if the pharmacist is acting in the ordinary course of the pharmacist's profession; or
  - (ab) the sale by retail of a poison, or of equipment for use in connection with the consumption or administration of a poison, by a registered health practitioner if the practitioner is acting in the ordinary course of the practitioner's profession and—
    - (i) the practitioner is a dentist, medical practitioner or nurse practitioner; or

- (ii) the practitioner's registration is endorsed under section 94 of the *Health Practitioner Regulation National Law* as being qualified to sell a scheduled medicine or class of scheduled medicines and the poison is a scheduled medicine or of a class of scheduled medicines specified in the endorsement; or
  - (iii) the practitioner is authorised to sell the poison by the regulations; or
- (ac) the supply of a poison, or of equipment for use in connection with the consumption or administration of a poison, by a registered health practitioner if the practitioner is acting in the ordinary course of the practitioner's profession and—
  - (i) the practitioner is a dentist, medical practitioner, nurse or midwife; or
  - (ii) the practitioner's registration is endorsed under section 94 of the *Health Practitioner Regulation National Law* as being qualified to supply a scheduled medicine or class of scheduled medicines and the poison is a scheduled medicine or of a class of scheduled medicines specified in the endorsement; or
  - (iii) the practitioner is authorised to supply the poison by the regulations; or
- (ad) the administration of a poison by a registered health practitioner if the practitioner is acting in the ordinary course of the practitioner's profession and—
  - (i) the practitioner is a dentist, medical practitioner, nurse or midwife; or
  - (ii) the practitioner's registration is endorsed under section 94 of the *Health Practitioner Regulation National Law* as being qualified to administer a scheduled medicine or class of scheduled medicines and the poison is a scheduled medicine or of a class of scheduled medicines specified in the endorsement; or
  - (iii) the practitioner is authorised to administer the poison by the regulations; or
- (ae) the manufacture, sale, supply or administration of a poison, or the sale or supply of equipment for use in connection with the consumption or administration of a poison, by a veterinary surgeon if the veterinary surgeon is acting in the ordinary course of the veterinary surgeon's profession; or
- (af) the possession of a poison or equipment if that possession is incidental to an activity described in a preceding paragraph; or
- (ag) the cultivation or sale of a plant, the manufacture, sale, supply, administration or possession of a substance or the sale, supply or possession of equipment by a person who is acting in accordance with a licence or permit issued under this Act; or
- (ah) the cultivation, processing, possession, sale or supply of a plant, or the sale, supply or possession of a substance by a person who is acting in accordance with the *Industrial Hemp Act 2017*; or
- (ai) the possession of industrial hemp that is cultivated or supplied pursuant to a licence under the *Industrial Hemp Act 2017*; or

- (b) the possession of a relevant controlled drug, or of equipment for use in connection with the consumption or administration of a relevant controlled drug, by—
    - (i) a person—
      - (A) for whom the drug has been lawfully prescribed; or
      - (B) to whom the drug has been lawfully supplied for the purpose of consumption or administration by the person; or
    - (ii) a person—
      - (A) being the owner of an animal for whom the drug has been lawfully prescribed; or
      - (B) to whom the drug has been lawfully supplied for the purpose of consumption by or administration to an animal owned by the person; or
    - (iii) a person acting on behalf of a person referred to in subparagraph (i) or (ii); or
  - (c) the administration or supply, or the giving of permission for the administration or supply, of a relevant controlled drug to a person—
    - (i) for whom the drug has been lawfully prescribed; or
    - (ii) to whom the drug has been lawfully supplied for the purpose of consumption or administration by the person; or
  - (d) the consumption or administration of a relevant controlled drug by a person—
    - (i) for whom the drug has been lawfully prescribed; or
    - (ii) to whom the drug has been lawfully supplied for the purpose of consumption or administration by the person.
- (2) In proceedings for an offence against this Part, subsection (1) is to be treated as providing exceptions, and no proof will be required in relation to any exception by the prosecution but the application of an exception will be a matter for proof by the defendant.
- (3) In this section—  
*industrial hemp* has the same meaning as in the *Industrial Hemp Act 2017*;  
*relevant controlled drug* means a controlled drug other than a controlled drug of a kind excluded from this definition by regulation.

## **Division 2—Commercial offences**

### **Subdivision 1—Trafficking in controlled drugs**

#### **32—Trafficking**

- (1) A person who traffics in a large commercial quantity of a controlled drug is guilty of an offence.
- Maximum penalty: \$500 000 or imprisonment for life, or both.

- (2) A person who traffics in a commercial quantity of a controlled drug is guilty of an offence.
- Maximum penalty:
- (a) for a basic offence—\$200 000 or imprisonment for 25 years, or both;
  - (b) for an aggravated offence—\$500 000 or imprisonment for life, or both.
- (2a) A person who, in a prescribed area, traffics in a controlled drug is guilty of an offence.
- Maximum penalty:
- (a) for a basic offence—\$75 000 or imprisonment for 15 years, or both;
  - (b) for an aggravated offence—\$200 000 or imprisonment for 25 years, or both.
- (3) A person who traffics in a controlled drug is guilty of an offence.
- Maximum penalty:
- (a) for a basic offence—\$50 000 or imprisonment for 10 years, or both;
  - (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.
- (4) An offence against subsection (3) involving cannabis, cannabis resin or cannabis oil (and not involving any other controlled drug) must be prosecuted, and dealt with by the Magistrates Court, as a summary offence but if the Court determines that a person found guilty of such an offence should be sentenced to a term of imprisonment exceeding 5 years, the Court must commit the person to the District Court for sentence.
- (5) If, in any proceedings for an offence against subsection (1), (2), (2a) or (3) it is proved that the defendant had possession of a trafficable quantity of a controlled drug, it is presumed, in the absence of proof to the contrary—
- (a) in a case where it is alleged that the defendant was taking part in the process of sale of the drug, that the defendant—
    - (i) was acting for the purpose of sale of the drug; and
    - (ii) had the relevant belief concerning the sale of the drug necessary to constitute the offence; or
  - (b) in any other case—that the defendant had the relevant intention concerning the sale of the drug necessary to constitute the offence.
- (6) In this section—

***prescribed area*** means—

- (a) prescribed licensed premises or an area being used in connection with prescribed licensed premises; or
- (b) premises at which members of the public are gathered for a public entertainment or an area being used in connection with such premises;

**Example—**

Areas ***being used in connection with*** premises would include—

- (a) a car parking area specifically provided for the use of patrons of the premises;
- (b) an area in which people are queuing to enter the premises.

*prescribed licensed premises* means—

- (a) premises in respect of which 1 of the following classes of licence is in force under the *Liquor Licensing Act 1997*:
  - (i) a hotel licence;
  - (ii) a restaurant licence that includes an extended trading authorisation;
  - (iii) an entertainment venue licence;
  - (iv) a club licence that includes an extended trading authorisation;
  - (v) a special circumstances licence that includes an extended trading authorisation;
  - (vi) a licence of a class prescribed by regulation;
- (b) the premises defined in the casino licence, within the meaning of the *Casino Act 1997*, as the premises to which the licence relates;
- (c) premises subject to a licence prescribed by regulation;

*public entertainment* means a dance, performance, exhibition or event that is calculated to attract and entertain members of the public, whether admission is open, procured by the payment of money or restricted to members of a club or a class of persons with some other qualification or characteristic.

## **Subdivision 2—Manufacture of controlled drugs**

### **33—Manufacture of controlled drugs for sale**

- (1) A person who manufactures a large commercial quantity of a controlled drug intending to sell any of it or believing that another person intends to sell any of it is guilty of an offence.

Maximum penalty: \$500 000 or imprisonment for life, or both.

- (2) A person who manufactures a commercial quantity of a controlled drug intending to sell any of it or believing that another person intends to sell any of it is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—\$200 000 or imprisonment for 25 years, or both;
- (b) for an aggravated offence—\$500 000 or imprisonment for life, or both.

- (3) A person who manufactures a controlled drug intending to sell any of it or believing that another person intends to sell any of it is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—\$50 000 or imprisonment for 10 years, or both;
- (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

- (4) If—

- (a) in any proceedings for an offence against subsection (1), (2) or (3) it is proved that the defendant manufactured a trafficable quantity of a controlled drug; or

- (b) in any proceedings for an offence of attempting or conspiring to commit an offence against subsection (1), (2) or (3) it is proved that the defendant attempted or conspired (as the case may require) to manufacture a trafficable quantity of a controlled drug,

it is presumed, in the absence of proof to the contrary, that the defendant had the relevant intention or belief concerning the sale of the drug necessary to constitute the offence.

### **33A—Sale, manufacture etc of controlled precursor**

- (1) A person who—

- (a) sells a large commercial quantity of a controlled precursor; or
- (b) has possession of a large commercial quantity of a controlled precursor intending to sell it,

believing that the person to whom it is, or is to be, sold or another person intends to use any of it to unlawfully manufacture a controlled drug is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—\$200 000 or imprisonment for 25 years, or both;
- (b) for an aggravated offence—\$500 000 or imprisonment for life, or both.

- (2) A person who—

- (a) sells a commercial quantity of a controlled precursor; or
- (b) has possession of a commercial quantity of a controlled precursor intending to sell it,

believing that the person to whom it is, or is to be, sold or another person intends to use any of it to unlawfully manufacture a controlled drug is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—\$75 000 or imprisonment for 15 years, or both;
- (b) for an aggravated offence—\$200 000 or imprisonment for 25 years, or both.

- (3) A person who—

- (a) sells a controlled precursor; or
- (b) has possession of a controlled precursor intending to sell it,

believing that the person to whom it is, or is to be, sold or another person intends to use any of it to unlawfully manufacture a controlled drug is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—\$50 000 or imprisonment for 10 years, or both;
- (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

- (4) A person who manufactures a controlled precursor—

- (a) intending to unlawfully manufacture a controlled drug; and
- (b) intending to sell any of the drug so manufactured or believing that another person intends to sell any of it,

is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—\$50 000 or imprisonment for 10 years, or both;
- (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

(5) A person who manufactures a controlled precursor—

- (a) intending to sell any of the precursor to another person; and
- (b) believing that that person, or another person, intends to use the controlled precursor to unlawfully manufacture a controlled drug,

is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—\$50 000 or imprisonment for 10 years, or both;
- (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

### **Subdivision 3—Cultivation and sale of controlled plants**

#### **33B—Cultivation of controlled plants for sale**

(1) A person who cultivates a large commercial quantity of a controlled plant intending to sell any of them or their products or believing that another person intends to sell any of them or their products is guilty of an offence.

Maximum penalty: \$500 000 or imprisonment for life, or both.

(2) A person who cultivates a commercial quantity of a controlled plant intending to sell any of them or their products or believing that another person intends to sell any of them or their products is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—\$200 000 or imprisonment for 25 years, or both;
- (b) for an aggravated offence—\$500 000 or imprisonment for life, or both.

(3) A person who cultivates a controlled plant intending to sell it or any of its products or believing that another person intends to sell it or any of its products is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—\$50 000 or imprisonment for 10 years, or both;
- (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

(4) An offence against subsection (3) involving a cannabis plant (and not involving any other controlled plant) must be prosecuted, and dealt with by the Magistrates Court, as a summary offence but if the Court determines that a person found guilty of such an offence should be sentenced to a term of imprisonment exceeding 5 years, the Court must commit the person to the District Court for sentence.

(5) If, in any proceedings for an offence against subsection (1), (2) or (3), it is proved that the defendant cultivated a trafficable quantity of a controlled plant, it is presumed, in the absence of proof to the contrary, that the defendant had the relevant intention or belief concerning the sale of the plants or their products necessary to constitute the offence.

### **33C—Sale of controlled plants**

- (1) A person who—
- (a) sells a large commercial quantity of a controlled plant; or
  - (b) has possession of a large commercial quantity of a controlled plant intending to sell any of them or their products,
- is guilty of an offence.
- Maximum penalty: \$500 000 or imprisonment for life, or both.
- (2) A person who—
- (a) sells a commercial quantity of a controlled plant; or
  - (b) has possession of a commercial quantity of a controlled plant intending to sell any of them or their products,
- is guilty of an offence.
- Maximum penalty:
- (a) for a basic offence—\$200 000 or imprisonment for 25 years, or both;
  - (b) for an aggravated offence—\$500 000 or imprisonment for life, or both.
- (3) A person who—
- (a) sells a controlled plant; or
  - (b) has possession of a controlled plant intending to sell it or its products,
- is guilty of an offence.
- Maximum penalty:
- (a) for a basic offence—\$50 000 or imprisonment for 10 years, or both;
  - (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.
- (4) An offence against subsection (3) involving a cannabis plant (and not involving any other controlled plant) must be prosecuted, and dealt with by the Magistrates Court, as a summary offence but if the Court determines that a person found guilty of such an offence should be sentenced to a term of imprisonment exceeding 5 years, the Court must commit the person to the District Court for sentence.
- (5) If, in any proceedings for an offence against subsection (1), (2) or (3) it is proved that the defendant had possession of a trafficable quantity of a controlled plant, it is presumed, in the absence of proof to the contrary, that the defendant had the relevant intention concerning the sale of the plants or their products necessary to constitute the offence.

### **Subdivision 4—Sale of equipment etc**

#### **33D—Sale of equipment**

- A person who—
- (a) sells a piece of equipment for use in connection with the smoking, consumption or administration of a controlled drug, or the preparation of such a drug for smoking, consumption or administration; or

(b) has possession of a piece of equipment, intending to sell it for such use, is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years, or both.

### **33DA—Sale of instructions**

(1) A person who, without reasonable excuse (proof of which lies on the person)—

(a) sells a document containing instructions for the manufacture of a controlled drug or the cultivation of a controlled plant; or

(b) has possession of a document containing instructions for the manufacture of a controlled drug or the cultivation of a controlled plant, intending to sell it,

is guilty of an offence.

Maximum penalty:

(a) for a basic offence—\$10 000 or imprisonment for 3 years, or both;

(b) for an aggravated offence—\$15 000 or imprisonment for 5 years, or both.

(2) In this section—

*document* includes any record of information whether in documentary, magnetic, electronic or other form.

## **Division 3—Offences involving children and school zones**

### **33E—Application of Division**

(1) A person is not guilty of an offence against this Division if, at the time of the offence, the person was a child.

(2) Subject to subsection (3), a person may be guilty of an offence against this Division involving another person who was a child whether or not the person knew that the other person was a child.

(3) However, it is a defence to a charge of an offence against this Division involving another who was a child if it is proved that the defendant believed on reasonable grounds that the other person had attained 18 years of age.

### **33F—Sale, supply or administration of controlled drug to child**

A person who—

(a) sells, supplies or administers a controlled drug to a child; or

(b) has possession of a controlled drug intending to sell, supply or administer the drug to a child,

is guilty of an offence.

Maximum penalty: \$1 000 000 or imprisonment for life, or both.

### **33G—Sale, supply or administration of controlled drug in school zone**

(1) A person who—

(a) sells, supplies or administers a controlled drug to another person in a school zone; or

- (b) has possession, in a school zone, of a controlled drug intending to sell, supply or administer the drug to another person,

is guilty of an offence.

Maximum penalty: \$1 000 000 or imprisonment for life, or both.

- (2) If, in any proceedings for an offence against this section it is proved that the defendant had possession of a trafficable quantity of a controlled drug, it is presumed, in the absence of proof to the contrary that the defendant had the relevant intention concerning the sale or supply of the drug necessary to constitute the offence.

### **33GA—Sale of equipment to child for use in connection with consumption of controlled drugs**

A person who—

- (a) sells a piece of equipment to a child for use in connection with the smoking, consumption or administration of a controlled drug, or the preparation of such a drug for smoking, consumption or administration; or
- (b) has possession of a piece of equipment, intending to sell it to a child for such use,

is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 2 years, or both.

### **33GB—Sale of instructions to a child**

- (1) A person who, without reasonable excuse (proof of which lies on the person)—

- (a) sells to a child a document containing instructions for the manufacture of a controlled drug or the cultivation of a controlled plant; or
- (b) has possession of a document containing instructions for the manufacture of a controlled drug or the cultivation of a controlled plant, intending to sell it to a child,

is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—\$20 000 or imprisonment for 3 years, or both;
- (b) for an aggravated offence—\$30 000 or imprisonment for 5 years, or both.

- (2) In this section—

*document* includes any record of information whether in documentary, magnetic, electronic or other form.

### **33H—Procuring child to commit offence**

A person who procures a child to commit an offence against this Part is guilty of an offence.

Maximum penalty: \$1 000 000 or imprisonment for life, or both.

## **Division 4—Other offences**

### **33I—Supply or administration of controlled drug**

- (1) A person who—
- (a) supplies or administers a controlled drug (other than cannabis, cannabis resin or cannabis oil) to another person; or
  - (b) has possession of a controlled drug (other than cannabis, cannabis resin or cannabis oil) intending to supply or administer the drug to another person,

is guilty of an offence.

Maximum penalty: \$50 000 or imprisonment for 10 years, or both.

- (2) A person who—
- (a) supplies or administers cannabis, cannabis resin or cannabis oil to another person; or
  - (b) has possession of cannabis, cannabis resin or cannabis oil intending to supply or administer the cannabis, cannabis resin or cannabis oil to another person,

is guilty of an offence.

Maximum penalty: \$2 000 or imprisonment for 2 years, or both.

### **33J—Manufacture of controlled drugs**

- (1) A person who manufactures a controlled drug is guilty of an offence.

Maximum penalty: \$35 000 or imprisonment for 7 years, or both.

- (2) A person who has possession of—

- (a) a controlled precursor; or
- (b) any prescribed equipment,

intending to use it to manufacture a controlled drug is guilty of an offence.

Maximum penalty: \$15 000 or imprisonment for 5 years, or both.

### **33K—Cultivation of controlled plants**

- (1) A person who—
- (a) cultivates a controlled plant (other than a cannabis plant); or
  - (ab) cultivates a cannabis plant by artificially enhanced cultivation; or
  - (b) cultivates more than the prescribed number of cannabis plants; or
  - (c) cultivates a cannabis plant intending to supply the plant or to supply or administer any product of the plant to another person,

is guilty of an offence.

Maximum penalty: \$2 000 or imprisonment for 2 years, or both.

- (2) A person who cultivates not more than the prescribed number of cannabis plants is guilty of an offence.

Maximum penalty: \$1 000 or imprisonment for 6 months, or both.

- (3) A court sentencing a person for an offence against subsection (2) that is a simple cannabis offence (within the meaning of section 45A) must not impose any sentence of imprisonment in relation to the offence.

### **33L—Possession or consumption of controlled drug etc**

- (1) A person who—
- (a) has possession of a controlled drug (other than an interim controlled drug, cannabis, cannabis resin or cannabis oil); or
  - (b) smokes, consumes or administers to himself or herself, or permits another person to administer to him or her, a controlled drug (other than an interim controlled drug, cannabis, cannabis resin or cannabis oil); or
  - (c) has possession of any piece of equipment for use in connection with the smoking, consumption or administration of a controlled drug (other than an interim controlled drug, cannabis, cannabis resin or cannabis oil), or the preparation of such a drug for smoking, consumption or administration,

is guilty of an offence.

Maximum penalty: \$2 000 or imprisonment for 2 years, or both.

- (2) A person who—
- (a) has possession of any cannabis, cannabis resin or cannabis oil; or
  - (b) smokes or consumes any cannabis, cannabis resin or cannabis oil; or
  - (c) has possession of any piece of equipment for use in connection with the smoking or consumption of cannabis, cannabis resin or cannabis oil, or the preparation of cannabis, cannabis resin or cannabis oil for smoking or consumption,

is guilty of an offence.

Maximum penalty: \$500.

### **33LA—Possession or supply of prescribed equipment**

A person who, without reasonable excuse (proof of which lies on the person)—

- (a) has possession of any prescribed equipment; or
- (b) supplies to another person any prescribed equipment; or
- (c) has possession of any prescribed equipment intending to supply it to another person,

is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years, or both.

### **33LAB—Possession or supply of instructions**

- (1) A person who, without reasonable excuse (proof of which lies on the person)—
- (a) has possession of a document containing instructions for the manufacture of a controlled drug or the cultivation of a controlled plant; or
  - (b) supplies to another person a document containing instructions for the manufacture of a controlled drug or the cultivation of a controlled plant; or

- (c) has possession of a document containing instructions for the manufacture of a controlled drug or the cultivation of a controlled plant intending to supply it to another person,

is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years, or both.

- (2) In this section—

*document* includes any record of information whether in documentary, magnetic, electronic or other form.

### **33LB—Possession or supply of prescribed quantity of controlled precursor**

- (1) A person who, without reasonable excuse (proof of which lies on the person)—

- (a) has possession of a prescribed quantity of a controlled precursor; or
- (b) supplies to another person a prescribed quantity of a controlled precursor; or
- (c) has possession of a prescribed quantity of a controlled precursor intending to supply it to another person,

is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 3 years, or both.

- (2) A person who, without reasonable excuse (proof of which lies on the person)—

- (a) —
  - (i) has possession of a prescribed quantity of a controlled precursor; or
  - (ii) supplies to another person a prescribed quantity of a controlled precursor; or
  - (iii) has possession of a prescribed quantity of a controlled precursor intending to supply it to another person; and
- (b) —
  - (i) has possession of a prescribed quantity of another kind of controlled precursor or any prescribed equipment; or
  - (ii) supplies to another person a prescribed quantity of another kind of controlled precursor or any prescribed equipment; or
  - (iii) has possession of a prescribed quantity of another kind of controlled precursor or any prescribed equipment intending to supply it to another person,

is guilty of an offence.

Maximum penalty: \$15 000 or imprisonment for 5 years, or both.

- (5) In this section—

*prescribed quantity* of a controlled precursor means—

- (a) in relation to a controlled precursor contained in a mixture—
  - (i) a quantity of the precursor that equals or exceeds the amount prescribed for the purposes of this section for the precursor in its pure form; or

- (ii) a quantity of the mixture that equals or exceeds the amount prescribed for the purposes of this section for a mixture containing the precursor; or
- (b) in relation to a controlled precursor that is not contained in a mixture—a quantity of the precursor that equals or exceeds the amount prescribed for the purposes of this section for the precursor in its pure form.

## **Division 4A—Offences relating to controlled drug alternatives**

### **33LC—Interpretation**

- (1) In this Division—  
*manufacture*, in relation to a substance, means—
  - (a) undertake any process by which the substance is extracted, produced or refined; or
  - (b) take part in the process of manufacture of the substance.
- (2) For the purposes of this Division, a person takes part in the process of manufacture of a substance if the person directs, takes or participates in any step, or causes any step to be taken, in the process of manufacture of the substance.
- (3) For the purposes of this Division, a step in the process of manufacture of a substance includes, without limitation, any of the following when done for the purpose of manufacture of the substance:
  - (a) acquiring equipment, substances or materials;
  - (b) storing equipment, substances or materials;
  - (c) carrying, transporting, loading or unloading equipment, substances or materials;
  - (d) guarding or concealing equipment, substances or materials;
  - (e) providing or arranging finance (including finance for the acquisition of equipment, substances or materials);
  - (f) providing or allowing the use of premises or jointly occupying premises.
- (4) A court may be satisfied that a person has committed an offence against this Division in relation to a substance despite any usage instruction concerning the substance (given in any manner, way, medium or form) that indicates that it is not a controlled drug or a legal alternative to a controlled drug or that it is not intended for human consumption.

### **33LD—Intentional manufacture of controlled drug alternative**

A person who manufactures a substance intending that the substance—

- (a) will have pharmacological effects similar to those of a controlled drug; or
- (b) will be a legal alternative to a controlled drug,

is guilty of an offence.

Maximum penalty: \$15 000 or imprisonment for 4 years, or both.

### **33LE—Promoting controlled drug alternative**

- (1) A person who promotes a substance—
- (a) as having pharmacological effects similar to those of a controlled drug; or
  - (b) as being a legal alternative to a controlled drug; or
  - (c) in a way that is intended, or likely, to cause a person to believe that the substance—
    - (i) is a controlled drug; or
    - (ii) has pharmacological effects similar to those of a controlled drug; or
    - (iii) is a legal alternative to a controlled drug,

is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years, or both.

- (2) In proceedings for an offence against subsection (1), the prosecution need not prove that the defendant promoted the substance—
- (a) as having pharmacological effects similar to those of a particular controlled drug; or
  - (b) as being a legal alternative to a particular controlled drug; or
  - (c) in a way that is intended, or likely, to cause a person to believe that the substance—
    - (i) is a particular controlled drug; or
    - (ii) has pharmacological effects similar to those of a particular controlled drug; or
    - (iii) is a legal alternative to a particular controlled drug.
- (3) For the purposes of subsection (1), a person *promotes* a substance if the person takes any action that is designed to publicise or promote the substance, whether visual or auditory means are employed and whether the substance is directly depicted or referred to or symbolism of some kind is employed, and includes taking any other action of a kind prescribed by regulation for the purposes of this subsection.

### **33LF—Manufacturing, packaging, selling or supplying substance promoted as controlled drug alternative**

- (1) If a police officer reasonably suspects that a person intends to manufacture, package, sell or supply a substance that is being, or is to be, promoted in a manner prohibited under section 33LE, the officer may give the person a notice (containing any particulars prescribed by the regulations) warning the person that if he or she manufactures, packages, sells or supplies the substance he or she will be guilty of an offence.
- (2) A notice given to a person under subsection (1) may be revoked at any time by further notice given to the person by a police officer (and must be so revoked if a police officer is satisfied that the substance to which the notices relates is not being, and is not to be, promoted in a manner prohibited under section 33LE).

- (3) A person who has been given a notice under subsection (1) and who subsequently manufactures, sells or supplies the substance specified in the notice is guilty of an offence.

Maximum penalty: \$15 000 or imprisonment for 4 years, or both.

- (4) A notice to be given to a person under this section—
- (a) in the case of a notice under subsection (1)—must be served on the person personally; or
  - (b) in the case of a notice under subsection (2)—may be served personally or by post.

## **Division 5—General provisions relating to offences**

### **33M—Interpretation**

In this Division—

*controlled substance* means a controlled drug, controlled precursor or controlled plant.

### **33N—Aggregation of offences**

- (1) If—
- (a) a person has committed offences against this Part in relation to different batches of controlled substances (whether or not controlled substances of the same kind); and
  - (b) the offences were committed by the person on the same occasion or within 7 days of each other or in the course of an organised commercial activity relating to controlled substances carried on by the person,

the person may be charged with a single offence against this Part in respect of all of the different batches of controlled substances and, subject to section 33O, the quantity of controlled substances concerned for the purposes of that offence is the total quantity of the controlled substances in the different batches.

- (2) If the prosecution seeks to rely on this section to charge a person with a single offence in respect of different batches of controlled substances—
- (a) the fact that the prosecution intends to do so must be set out in the charge; and
  - (b) the charge must contain adequate particulars of the defendant's conduct in relation to each of the batches or in relation to the total quantity of the controlled substances in the different batches; and
  - (c) it is not necessary for the prosecution to specify, if the charge relates to conduct of the defendant on different occasions, the exact dates of each occasion or to specify the exact quantity of each batch.
- (3) The presumption under section 32(5), 33(4) or 33B(5) may only apply in a case where the prosecution seeks to rely on this section if—
- (a) the charge relates to conduct of the defendant on the same occasion; or

- (b) the charge relates to conduct of the defendant on different occasions within 7 days of each other and on at least one occasion involved a trafficable quantity of a controlled substance.
- (4) Nothing in this section prevents a person being charged with separate offences in respect of different batches of controlled substances.
- (5) However, if a person has been convicted or acquitted of a single offence against this Part in respect of different batches of controlled substances, the person may not be charged with a separate offence in respect of any of the batches.
- (6) A person may not be charged with a single offence against this Part in respect of different batches of controlled substances if the person has been convicted or acquitted of a separate offence in respect of any of the batches.

### **330—Offences involving more than one kind of substance**

- (1) If a person is charged with a single offence against this Part and the charge relates to more than one kind of controlled substance, the quantity of the controlled substances for the purposes of the charge is to be determined as follows:
  - (a) the quantity is a trafficable quantity if the sum of the fractions obtained by dividing the actual quantity of each kind of controlled substance by the quantity prescribed in relation to that kind of controlled substance (in its pure form) for the purposes of the definition of *trafficable quantity* in section 4 is equal to or greater than 1;
  - (b) the quantity is a commercial quantity if the sum of the fractions obtained by dividing the actual quantity of each kind of controlled substance by the quantity prescribed in relation to that kind of controlled substance (in its pure form) for the purposes of the definition of *commercial quantity* in section 4 is equal to or greater than 1;
  - (c) the quantity is a large commercial quantity if the sum of the fractions obtained by dividing the actual quantity of each kind of controlled substance by the quantity prescribed in relation to that kind of controlled substance (in its pure form) for the purposes of the definition of *large commercial quantity* in section 4 is equal to or greater than 1.
- (2) If there is no quantity prescribed in relation to a particular kind of controlled substance in its pure form for the purposes of the relevant definition, the quantity of that controlled substance must be disregarded for the purposes of a calculation under this section.

### **330A—Basis for determining quantity of controlled substance**

- (1) If, for the purposes of the definition of *trafficable quantity*, *commercial quantity* or *large commercial quantity* in section 4(1) or the definition of *prescribed quantity* in section 33LB, the regulations prescribe more than 1 of the following in relation to a particular controlled drug or controlled precursor:
  - (a) an amount for the drug or precursor in its pure form;
  - (b) an amount for a mixture containing the drug or precursor;
  - (c) a number of discrete dosage units for a mixture containing the drug or precursor,

then, in proceedings for an offence against this Part involving that drug or precursor contained in a mixture, the question of whether or not the quantity of the drug or precursor the subject of the proceedings was a trafficable quantity, commercial quantity, large commercial quantity or prescribed quantity will be determined by reference to—

- (d) if the charge alleges a particular quantity of the drug or precursor in its pure form—the prescribed amount for the drug or precursor in its pure form; or
  - (e) if the charge alleges a particular quantity of the mixture containing the drug or precursor—the prescribed amount for a mixture containing the drug or precursor; or
  - (f) if the charge alleges a particular number of discrete dosage units of the mixture containing the drug or precursor—the prescribed number of discrete dosage units for a mixture containing the drug or precursor.
- (2) If, for the purposes of the definition of *trafficable quantity*, *commercial quantity* or *large commercial quantity* in section 4(1), the regulations prescribe both a number of a particular controlled plant and a weight of that plant, then, in proceedings for an offence against this Part involving that plant, the question of whether or not the quantity of the plant the subject of the proceedings was a trafficable quantity, commercial quantity or large commercial quantity will be determined by reference to—
- (a) if the charge alleges a particular number of the plant—the prescribed number for the plant; or
  - (b) if the charge alleges a particular weight of the plant—the prescribed weight for the plant.

### **33P—Knowledge or recklessness with respect to identity or quantity**

- (1) In any proceedings against a person for an offence against this Part relating to a controlled substance, the prosecution must establish that the person knew, or was reckless with respect to, the fact that the substance was or was to be a controlled substance.
- (2) The prosecution need not establish that the person knew, or was reckless with respect to, the particular identity of the controlled substance.

### **33Q—Alternative conviction—mistake as to identity of controlled substance**

- (1) If, in any proceedings against a person for an offence against this Part relating to a particular quantity of a controlled substance—
  - (a) the court is satisfied that, at the time of the conduct constituting the offence, the person was under a mistaken belief about the identity of the controlled substance; and
  - (b) the person would have been guilty of another equivalent or lesser offence against this Part if his or her mistaken belief had been correct,the court may find the person not guilty of the offence charged but guilty of the other equivalent or lesser offence (and the person is liable to be punished accordingly).
- (2) The burden of proving a mistaken belief as to the identity of a controlled substance lies on the defendant.

- (3) For the purposes of this section, an equivalent or lesser offence is an offence for which the maximum penalty is the same as or less than the maximum penalty for the offence charged.

### **33R—Alternative verdicts**

- (1) If, in any proceedings against a person for an offence against this Part, the court is not satisfied that the person committed the offence but is satisfied that the person committed another equivalent or lesser offence against this Part, the court may find the person not guilty of the offence charged but guilty of the other equivalent or lesser offence (and the person is liable to be punished accordingly).
- (2) For the purposes of this section, an equivalent or lesser offence is an offence for which the maximum penalty is the same as or less than the maximum penalty for the offence charged.

### **33S—No accessorial liability for certain offences**

Section 267 of the *Criminal Law Consolidation Act 1935* does not apply—

- (a) in relation to an offence against section 32, 33, 33B or 33LD; or
- (b) in circumstances prescribed by regulation.

### **33T—Power of court to prohibit certain activities**

- (1) A court may, on the application of a police officer, make an order under this section in relation to a person if satisfied that—
- (a) the person has been convicted of 1 or more offences against this Part committed in the course of carrying on a business; and
- (b) the making of the order is reasonably necessary to ensure that the person does not engage in further conduct constituting an offence against this Part.
- (2) An order under this section may prohibit a person from—
- (a) engaging in specified conduct; or
- (b) carrying on a specified business or a specified kind of business,
- at specified premises or in specified circumstances.
- (3) A court making an order under this section may make any ancillary orders that the court considers appropriate.
- (4) A court may, by subsequent order, vary or revoke an order made by the court under this section.

## **Division 6—Procedure in relation to simple possession offences**

### **34—Application of Division**

- (1) This Division does not apply in relation to—
- (a) a child who is alleged to have committed a simple possession offence; or
- (b) a person who is alleged to have committed a simple possession offence and is charged with a serious drug offence arising out of the same circumstances.

- (2) In this section—

*serious drug offence* means an offence against Division 2 (other than Subdivision 4), Division 3, Division 4 (other than section 33I(2), 33K or 33L) or Division 4A of this Part.

### **35—Accreditation of drug assessment and treatment services**

- (1) The Minister may, by instrument in writing, accredit such suitably qualified persons or bodies as drug assessment services or drug treatment services as are necessary for the purposes of this Division.
- (2) Without limiting subsection (1), the Minister may establish panels of persons with a view to the accreditation of such a panel as a drug assessment service under that subsection.
- (3) The Minister may, in an instrument of accreditation, impose conditions on the accreditation.
- (4) The Minister may, by notice in writing to an accredited drug assessment service or drug treatment service—
  - (a) vary or revoke any of the conditions imposed on the accreditation or impose further conditions; or
  - (b) revoke the accreditation.

### **36—Referral for assessment**

- (1) If a person is alleged to have committed a simple possession offence, a police officer must refer the person to a nominated assessment service and give the person a notice that sets out particulars of the date, place and time at which the person must attend the service.
- (2) A copy of the referral notice must be forwarded to the nominated assessment service.
- (3) A referral under this section operates as a stay of proceedings (if any) for the alleged offence.

### **37—Assessment of referred person**

- (1) On a person being referred to an assessment service under this Division, the service must proceed to carry out and complete its assessment as expeditiously as reasonably practicable.
- (2) For the purposes of carrying out the assessment, the service may, by notice in writing given personally or by post, require the person to—
  - (a) give written consent to—
    - (i) the release of the person's medical and other treatment records to the service and to any drug treatment service that is to provide treatment to the person pursuant to an undertaking under this Division;
    - (ii) the release to the service of—
      - (A) records held by or on behalf of an assessment service or any agency or instrumentality of the Crown relating to previous assessments of, or undertakings entered into by, the person under this Division; and

- (B) the person's criminal record (ie, record of any convictions recorded against the person); or
  - (b) attend the service for such further number of interviews as the service thinks fit; or
  - (c) submit to an examination, by the service or by any other person, to determine whether the person is experiencing physical, psychological or social problems connected with the misuse of drugs and, if so, the treatment (if any) appropriate for the person.
- (3) The assessment service must, by notice in writing to the person given personally or by post, terminate the person's referral to the service—
- (a) if the person fails, without reasonable excuse, to attend the service in accordance with the referral notice or with any other notice requiring the person to attend; or
  - (b) if at any time during the assessment it becomes apparent to the service that—
    - (i) it would not in the circumstances be appropriate to require the person to enter into an undertaking under this Division; or
    - (ii) the person does not admit to the allegation (but the service is not required to ascertain this); or
    - (iii) the person does not want the service to deal with the matter,and may, in the same manner, terminate the referral—
  - (c) if the person hinders, or does not cooperate with, the service in carrying out the assessment; or
  - (d) if the person, without reasonable excuse, refuses or fails to comply with a requirement under this Division to give written consent to the release of records or to submit to an examination; or
  - (e) if the person refuses to comply with a requirement to enter into an undertaking under this Division or, without reasonable excuse, contravenes or fails to comply with an undertaking entered into under this Division.
- (4) A notice under subsection (3) must set out a short statement of the service's reasons for the termination.
- (5) The service must give a copy of the notice of termination to the Commissioner of Police.

### **38—Undertakings**

- (1) An assessment service may, on the completion of an assessment under this Division, require the person alleged to have committed the offence to enter into a written undertaking relating to—
- (a) the treatment that the person will undertake; or
  - (b) participation by the person in a programme of an educative, preventive or rehabilitative nature; or

- (c) any other matters that will, in the opinion of the service, assist the person to overcome any personal problems that may tend to lead, or that may have led, to the misuse of drugs.
- (2) The undertaking can only require the person to undergo treatment with a drug treatment service that is accredited under this Division.
- (3) If the person enters into the undertaking—
  - (a) the person must be given a copy of the undertaking; and
  - (b) any complaint laid against the person for the alleged simple possession offence must be withdrawn; and
  - (c) the person must, if remanded in custody for the alleged simple possession offence but not otherwise subject to detention, be released from detention or, if on bail for the offence, the bail agreement must be discharged.
- (4) The undertaking will be effective for a period, not exceeding 6 months, determined by the service and specified in the undertaking.
- (5) The service may, at the request or with the consent of the person bound by the undertaking, vary the terms of the undertaking, but not so that the total period of the undertaking exceeds 6 months.
- (6) The service must notify the Commissioner of Police that the person has entered into an undertaking, of any extension to the period of the undertaking and, if it occurs, of the expiry of the undertaking.

### **39—Release from custody for the purposes of assessment or undertaking**

If a person who is in custody has been given a notice under this Division requiring the person to attend an assessment service or any other place, or has entered into an undertaking under this Division requiring the person to attend at any place, the manager of the place in which the person is being detained must cause the person to be brought to the service or other place as required by the notice or undertaking.

### **40—Prosecution of simple possession offences**

- (1) A prosecution for a simple possession offence alleged to have been committed by a person cannot proceed unless the person has been referred to an assessment service under this Division and the referral has been terminated by the service.
- (2) The fact that a person alleged to have committed a simple possession offence participates in an assessment or enters into an undertaking under this Division does not constitute an admission of guilt, and will not be regarded as evidence tending to establish guilt, in relation to the alleged offence.
- (3) If the referral of a person is terminated under this Division, evidence—
  - (a) of anything said or done by the person in the course of being assessed or carrying out an undertaking; or
  - (b) of the reasons for the termination,is not admissible in any proceedings against the person for the alleged offence.
- (4) On the expiry of an undertaking under this Division, the person who entered into it is immune from prosecution for the alleged offence to which the undertaking related.

## **40A—Confidentiality**

A person who is, or has been, engaged in duties related to the administration of this Division must not disclose information relating to a person referred for assessment under this Division, being information obtained in the course of those duties, unless the disclosure is made—

- (a) in the administration of this Division; or
- (b) as authorised or required by law; or
- (c) with the consent of the person to whom the information relates.

Maximum penalty: \$10 000.

## **Part 6—Offences, penalties etc**

### **43—Aggravated offences**

- (1) An aggravated offence is an offence committed in circumstances where—
  - (a) the offender committed the offence for the benefit of a criminal organisation, or 2 or more members of a criminal organisation, or at the direction of, or in association with, a criminal organisation; or
  - (b) in the course of, or in connection with, the offence the offender identified himself or herself in some way as belonging to, or otherwise being associated with, a criminal organisation (whether or not the offender did in fact belong to, or was in fact associated with, the organisation).
- (2) For the purposes of subsection (1)(b), a person will be taken to have identified himself or herself as belonging to, or as being associated with, a criminal organisation if the person displayed (whether on an article of clothing, as a tattoo or otherwise) the insignia of the criminal organisation unless the person proves that he or she did not display the insignia knowingly or recklessly.
- (3) Subsection (2) does not limit the ways in which a person may identify himself or herself as belonging to, or being associated with, a criminal organisation.
- (4) If a person is charged with an aggravated offence, the circumstances alleged to aggravate the offence must be stated in the instrument of charge.
- (5) In this section—

***criminal organisation*** has the same meaning as in Part 3B of the *Criminal Law Consolidation Act 1935*.
- (6) This section does not prevent a court from taking into account, in the usual way, the circumstances of and surrounding the commission of an offence for the purpose of determining sentence.

#### **Examples—**

- 1 A person is charged with a basic offence and the court finds that the offence was committed in circumstances that would have justified a charge of the offence in its aggravated form. In this case, the court may, in sentencing, take into account the circumstances of aggravation for the purpose of determining penalty but must (of course) fix a penalty within the limits appropriate to the basic offence.

- 2 A person is charged with an aggravated offence and the court finds a number (but not all) of the circumstances alleged in the instrument of charge to aggravate the offence have been established. In this case, the court may, in sentencing, take into account the established circumstances of and surrounding the aggravated offence (whether alleged in the instrument of charge or not) but must not (of course) take account of circumstances alleged in the instrument of charge that were not established.

#### 44—Matters to be considered when court fixes penalty

- (1) In determining the penalty to be imposed on a person convicted of an indictable or minor indictable offence against this Act, the court must take into consideration—
- (a) subject to subsection (2), the nature of the substance or goods involved in the commission of the offence; and
  - (b) the quantity of the substance or goods involved in the commission of the offence; and
  - (c) the personal circumstances of the convicted person (being a natural person), including the circumstances relating to the person's use (if at all) of any controlled drug; and
  - (d) in the case of an offence against Part 5 Division 2 or 3—
    - (i) the commercial or other motives of the convicted person in committing the offence; and
    - (ii) the financial gain that is likely to have accrued to the convicted person as a result of the commission of the offence (but this is not to be taken into consideration if that financial gain is the subject of an application under the *Criminal Assets Confiscation Act 2005*); and
  - (da) in the case of an offence against section 33F, 33H or 33I—whether the offence occurred within a school zone or at or near any prescribed place; and
  - (e) any other relevant factor.
- (2) In determining the penalty to be imposed in respect of a summary or indictable offence against Part 5 involving a controlled drug (other than cannabis, cannabis resin or cannabis oil), the degree of physical or other harm generally associated with the consumption of that particular type of controlled drug, as compared with other types of controlled drugs, is not a relevant consideration and the court must determine the penalty on the basis that controlled drugs are all categorised equally as very harmful.
- (3) If a person is convicted by a court of an indictable offence against this Act and an offence against section 32 of the *Criminal Law Consolidation Act 1935* constituted of having the custody or control of a firearm or imitation firearm for the purpose of—
- (a) using, or causing or permitting another person to use, the firearm in the course of committing the indictable offence against this Act; or
  - (b) carrying, or causing or permitting another person to carry, the firearm when committing the indictable offence against this Act,

the court must make any sentences of imprisonment imposed for the 2 offences cumulative unless the court is satisfied that special reasons exist for not doing so.

## 45A—Expiation of simple cannabis offences

- (1) A prosecution for a simple cannabis offence cannot be commenced except by—
  - (a) the Director of Public Prosecutions; or
  - (b) a police officer; or
  - (c) a person authorised in writing by the Director of Public Prosecutions to commence the prosecution.
- (2) Subject to this section, if a person (not being a child) is alleged to have committed a simple cannabis offence, then before a prosecution is commenced, an expiation notice must be given to the alleged offender under the *Expiation of Offences Act 1996*.
- (3) Expiation fees (which may vary according to any factor) may be fixed by regulation for the purposes of this section.
- (7) Non-compliance with subsection (2) does not invalidate a prosecution.
- (8) For the purposes of this section—

*simple cannabis offence* means—

  - (a) an offence against section 33K(2) involving the cultivation (not being artificially enhanced cultivation) of cannabis plants other than an offence involving the cultivation of a number of cannabis plants in excess of the number prescribed by regulation for the purposes of this paragraph; or
  - (b) an offence against section 33L(2)(a) other than an offence involving the possession of quantities of cannabis, cannabis resin or cannabis oil in excess of the quantity prescribed by regulation for the purposes of this paragraph; or
  - (c) an offence against section 33L(2)(b) other than an offence alleged to have been committed in—
    - (i) a public place; or
    - (ii) a place of a kind prescribed by regulation; or
  - (d) an offence against section 33L(2)(c).

## Part 7—Search, seizure, forfeiture and analysis

### 49—Application of Part

This Part does not apply in relation to Part 4A.

**Note—**

See Part 4A Division 5.

### 50—Authorised officers

- (1) The following persons are authorised officers for the purposes of this Act:
  - (a) a police officer; and
  - (b) any other person appointed by the Minister, by instrument in writing, to be an authorised officer for the purposes of this Act.
- (2) The Minister must provide an authorised officer appointed under subsection (1)(b) with a certificate of identification.

- (3) An authorised officer appointed under subsection (1)(b) must, on demand by a person in relation to whom the officer is exercising any powers under this Act, produce the certificate of identification for the inspection of that person.

### **51—Analysts**

- (1) Subject to subsection (2), the Governor may appoint such number of persons to be analysts as the Governor thinks necessary or desirable for the purposes of this Act.
- (2) No person who has a direct or indirect interest in the manufacture, production, sale or supply of any substance or device to which this Act applies may be appointed as an analyst.

### **52—Power to search, seize etc**

- (1) Subject to this section, an authorised officer may—
  - (a) enter at any time any premises for the purposes of ascertaining whether the provisions of this Act, or of a licence, authority or permit granted under this Act, are being complied with or have been contravened; and
  - (b) if reasonably necessary for that purpose, break into or open any part of the premises, or anything in or on the premises; and
  - (c) for the purposes of paragraph (a) or (b), require the driver of any vehicle, the master of any vessel or the pilot of any aircraft to stop that vehicle, vessel or aircraft.
- (2) While an authorised officer is in or on any premises pursuant to this section, the officer may—
  - (a) inspect or search the premises or any equipment or other thing on the premises;
  - (b) require any person to produce any books, papers or documents (including a written record that reproduces, in an understandable form, information stored by computer, microfilm or other process) or any substance, equipment or device;
  - (c) examine any books, papers or documents (including a written record that reproduces, in an understandable form, information stored by computer, microfilm or other process) and take extracts from any of them or make copies of any of them;
  - (d) examine any substance, equipment or device;
  - (e) take and remove from the premises samples of any substance or goods;
  - (f) carry out any tests;
  - (g) take any photographs or films or make any audio or audiovisual record;
  - (h) require the holder of a licence, authority or permit under this Act to produce that licence, authority or permit for inspection;
  - (i) if the officer suspects on reasonable grounds that an offence against this Act has been committed, seize and remove from the premises anything that the officer has reasonable cause to suspect affords evidence of the offence;

- (j) give such directions as are reasonably necessary for, or incidental to, the effective exercise of the officer's powers under this Act.
- (3) The powers conferred by subsection (1)(b) may only be exercised by an authorised officer who is a police officer.
- (4) An authorised officer must not exercise the powers conferred by subsection (1)(a) and (b) except on the authority of a warrant issued by a senior police officer, magistrate or justice, unless the powers are being exercised in relation to—
  - (a) premises that are used by a registered health practitioner or veterinary surgeon in the ordinary course of his or her profession; or
  - (b) premises that are used in the course of an activity in respect of which a licence, authority or permit has been granted under this Act; or
  - (c) premises that are used for a non-residential purpose and in which the authorised officer reasonably suspects poisons, medicines, medical devices or volatile solvents are being stored, used or sold,provided that the powers are exercised during ordinary business hours.
- (5) A senior police officer, magistrate or justice must not issue a warrant under subsection (4) unless satisfied, on information given on oath—
  - (a) that there are reasonable grounds for suspecting that an offence against this Act has been, is being, or is about to be, committed; and
  - (b) that a warrant is reasonably required in the circumstances.
- (6) An authorised officer who is a police officer may search any person whom the officer reasonably suspects has in his or her possession any substance or equipment in contravention of this Act.
- (9) If an authorised officer who is a police officer reasonably suspects that any substance or equipment that would afford evidence of an offence against this Act is in any vehicle, vessel or aircraft, the officer may—
  - (a) require the driver of the vehicle, the master of the vessel or the pilot of the aircraft to stop the vehicle, vessel or aircraft; and
  - (b) detain and search the vehicle, vessel or aircraft; and
  - (c) seize and remove from the vehicle, vessel or aircraft anything that the officer reasonably suspects would afford evidence of an offence against this Act.
- (10) Nothing in this section derogates from the power of a police officer to do anything authorised under section 52A or 52B.
- (11) A police officer may, in exercising powers pursuant to a warrant issued under subsection (4) or any other powers under this section, use a drug detection dog or an electronic drug detection system.

### **52A—General drug detection powers**

- (1) A police officer may carry out general drug detection in relation to—
  - (a) any property in an area to which this section applies; and
  - (b) any person who is in, or is apparently attempting to enter or to leave, an area to which this section applies; and

- (c) any property in the possession of such a person.
- (2) This section applies to the following areas:
  - (a) licensed premises or a carparking area specifically provided for the use of patrons of any licensed premises;
  - (b) a public venue or a carparking area specifically provided for the use of patrons of any public venue;
  - (c) a public passenger carrier or any place at which public passenger carriers may take up, or set down, passengers;
  - (d) a public place in relation to which the exercise of powers under this section is authorised in accordance with subsection (3).
- (3) A senior police officer may authorise the exercise of powers under this section in relation to a public place.
- (4) An authorisation granted by a senior police officer under subsection (3)—
  - (a) must be granted in accordance with any guidelines issued by the Commissioner in relation to such authorisations; and
  - (b) must define the public place to which the authorisation relates; and
  - (c) may be subject to conditions specified by the officer granting the authorisation; and
  - (d) operates for an initial period (not exceeding 14 days) specified by the officer granting the authorisation; and
  - (e) may be renewed from time to time by a senior police officer for a further period (not exceeding 14 days).
- (5) An authorisation granted under subsection (3) may be varied or revoked by a senior police officer at any time.
- (6) A police officer exercising powers under this section may—
  - (a) enter and remain in any premises or place necessary for the purpose of exercising those powers; and
  - (b) give such directions as are reasonably necessary for, or incidental to, the effective exercise of those powers.
- (7) A police officer may only detain a person, by directions given under this section, for so long as is reasonably necessary to carry out general drug detection in relation to the person and any property in the possession of the person.
- (8) In this section—

***licensed premises*** means—

  - (a) licensed premises within the meaning of the *Liquor Licensing Act 1997*, other than premises in respect of which only a restaurant licence or residential licence is in force; and
  - (b) the premises defined in the casino licence, within the meaning of the *Casino Act 1997*, as the premises to which the licence relates;

*public passenger carrier* means a bus, tram, train, vessel or aircraft used for the purpose of carrying passengers for hire or reward;

*public place* includes—

- (a) a place to which free access is permitted to the public, with the express or tacit consent of the owner or occupier of that place; and
- (b) a place to which the public are admitted on payment of money, the test of admittance being the payment of money only; and
- (c) a road, street, footway, court, alley or thoroughfare which the public are allowed to use, notwithstanding that that road, street, footway, court, alley or thoroughfare is on private property;

*public venue* means a place where members of the public are gathered for an entertainment or an event or activity of any kind, whether admission is open, procured by the payment of money or restricted to members of a club or a class of persons with some other qualification or characteristic, but does not include a church or place of public worship.

## **52B—Special powers relating to drug transit routes**

- (1) A senior police officer may, if he or she reasonably suspects that an area is being, or is likely to be, used for the transport of controlled drugs, controlled precursors or controlled plants in contravention of this Act, authorise the exercise of powers under this section in relation to the area.
- (2) An authorisation granted by a senior police officer under subsection (1)—
  - (a) must be granted in accordance with any guidelines issued by the Commissioner in relation to such authorisations; and
  - (b) must define the area to which the authorisation relates; and
  - (c) may be subject to conditions specified by the officer granting the authorisation; and
  - (d) operates for an initial period (not exceeding 14 days) specified by the officer granting the authorisation; and
  - (e) may be renewed from time to time by a senior police officer for a further period (not exceeding 14 days).
- (3) An authorisation granted under subsection (1) may be varied or revoked by a senior police officer at any time.
- (4) An area may only be subject to an authorisation under this section if—
  - (a) the whole of the area is situated more than 30 kilometres from the General Post Office at Adelaide; and
  - (b) the total size of the area is not more than 5 square kilometres.
- (5) If the exercise of powers under this section in relation to an area is authorised, a police officer may—
  - (a) require the driver of a vehicle within the area to stop the vehicle (whether at a drug detection point established in accordance with subsection (7) or at any other location); and

- (b) detain the vehicle and carry out general drug detection in relation to the vehicle and any persons or property in or on the vehicle; and
  - (c) allow a drug detection dog to enter any part of the vehicle not designed for the purpose of carrying passengers while the vehicle is moving; and
  - (d) direct a person to open any part of the vehicle and give such other directions as are reasonably necessary for, or incidental to, the effective exercise of powers under this section.
- (6) A police officer may only detain a person who is in a vehicle, by directions given under this section, for so long as is reasonably necessary to carry out general drug detection in relation to the vehicle and any persons or property in the vehicle.
- (7) A drug detection point may be established by police officers at any time on or in the vicinity of any road within an area in relation to which the exercise of powers under this section is authorised for the purpose of exercising those powers in relation to persons driving motor vehicles on the road.
- (8) A drug detection point must be established in such a way, and consist of such facilities and warning and other devices, as the Commissioner of Police considers necessary in order to enable vehicles to be stopped in a safe and orderly manner.
- (9) The Commissioner of Police must—
- (a) establish procedures to be followed by police officers in the exercise of powers under this section, being procedures designed to prevent as far as reasonably practicable any undue delay or inconvenience to persons being subjected to the powers; and
  - (b) establish procedures to ensure that the exercise of powers under this section is not authorised in relation to more than 3 areas at any one time.

### **52C—Report to Minister on issue of authorisations**

- (1) The Commissioner of Police must, on or before 30 September in each year (other than the calendar year in which this section comes into operation), provide a report to the Attorney-General specifying the following information in relation to the financial year ending on the preceding 30 June:
- (a) the number of authorisations granted by senior police officers under sections 52A and 52B during that financial year;
  - (b) the public places or areas in relation to which those authorisations were granted;
  - (c) the periods during which the authorisations applied;
  - (d) the number of occasions on which a drug detection dog or electronic drug detection system indicated detection of the presence of a controlled drug, controlled precursor or controlled plant in the course of the exercise of powers under sections 52A and 52B.
- (2) The Attorney-General must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

### **52D—General provisions relating to exercise of powers**

- (1) Nothing in this Part derogates from the power of a police officer to do anything pursuant to a general search warrant issued under the *Summary Offences Act 1953*.
- (2) An authorised officer may, in exercising powers under this Part, be assisted by such persons as the authorised officer considers necessary or desirable in the circumstances.
- (3) A person must not—
  - (a) hinder or obstruct an authorised officer, or a person accompanying an authorised officer, in the exercise of the powers conferred by this Part; or
  - (b) refuse or fail to comply with a requirement made of the person, or a direction given to the person, pursuant to section 52, 52A or 52B.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (4) In any proceedings, an apparently genuine document purporting to be a certificate signed by the Commissioner of Police (or a delegate of the Commissioner of Police), and certifying that—
  - (a) a particular public place was subject to an authorisation properly granted by a senior police officer in accordance with section 52A(3) during a period specified in the certificate; or
  - (b) a particular area was subject to an authorisation properly granted by a senior police officer in accordance with section 52B(1) during a period specified in the certificate; or
  - (c) a dog used during a specified period to carry out general drug detection within a specified area, or at a specified place, was a drug detection dog; or
  - (d) a device or system used during a specified period to carry out general drug detection within a specified area, or at a specified place, was an electronic drug detection system,

constitutes proof, in the absence of proof to the contrary, of the matters so certified.

- (5) For the avoidance of doubt, an indication—
  - (a) by a drug detection dog that the dog has detected the presence of a controlled drug, controlled precursor or controlled plant; or
  - (b) by an electronic drug detection system that the system has detected the presence of a controlled drug, controlled precursor or controlled plant,

constitutes reasonable grounds to suspect that a controlled drug, controlled precursor or controlled plant is present.

### **52E—Seized property and forfeiture**

- (1) Subject to this section, seized property must be held pending proceedings for an offence against this Act relating to the property.
- (2) If seized property—
  - (a) is a controlled drug, controlled plant, controlled precursor or a poison; or
  - (b) is, in the opinion of the Commissioner of Police, likely to constitute a danger if stored pending proceedings for an offence against this Act relating to the property,

the Commissioner of Police may direct that the property be destroyed, whether or not a person has been or is to be charged with an offence in relation to it.

- (3) Property referred to in subsection (2) may be destroyed at the place at which it was seized or at any other suitable place.
- (4) If a charge is laid, or is to be laid, for an offence in relation to property referred to in subsection (2)—
  - (a) samples of the property that provide a true representation of the nature of the property must be taken and kept for evidentiary purposes; and
  - (b) the defendant is entitled to have a portion of the sample analysed by an analyst (see section 53); and
  - (c) the defendant must be given written notice of that entitlement.
- (5) Possession of samples taken under this section must remain at all times within the control of the Commissioner of Police or his or her nominee.
- (6) The regulations may make provision relating to the taking of samples of seized property and analysis of those samples.
- (6a) If a person is convicted of an offence in relation to property destroyed in accordance with subsection (2), the court may order the convicted person to pay the reasonable costs of destruction to the Commissioner of Police.
- (7) If the Magistrates Court on application by an authorised officer, or any court hearing proceedings under this Act, finds that seized property—
  - (a) was the subject of an offence against this Act; or
  - (b) consists of equipment, devices, substances, documents or records acquired, used or intended for use for, or in connection with, the manufacture, or the smoking, consumption or administration, of a controlled drug or the cultivation of a controlled plant,the court may, by order, forfeit the property to the Crown.
- (8) Property that is the subject of an order for forfeiture under this section may be sold, destroyed or otherwise disposed of as the Commissioner of Police directs.
- (9) Subject to subsections (10) and (11), if seized property has not been forfeited to the Crown in proceedings under this Act commenced within the prescribed period after its seizure, a person from whose lawful possession the property was seized, or a person with legal title to it, is entitled to recover from the Commissioner of Police (if necessary, by action in a court of competent jurisdiction) the property itself, or if it has been damaged or destroyed or has deteriorated, compensation of an amount equal to its market value at the time of its seizure.
- (10) Subsection (9) does not apply to property that has been destroyed under subsection (2) if the property—
  - (a) was the subject of an offence against this Act; or
  - (b) consists of equipment, devices, substances, documents or records acquired, used or intended for use for, or in connection with, the manufacture, or the smoking, consumption or administration, of a controlled drug or the cultivation of a controlled plant.

- (11) Despite subsection (9), a court hearing proceedings under that subsection in relation to property that has not been destroyed under subsection (2) may, if it thinks fit, make an order under subsection (7) for forfeiture of the property to the Crown.
- (12) Nothing in this section affects the operation of the *Criminal Assets Confiscation Act 2005*.
- (13) In this section—

***prescribed period*** means two years or such longer period as the Magistrates Court may, on application by an authorised officer, allow;

***seized property*** means anything—

- (a) seized under this Act; or
- (b) seized otherwise than under this Act that is evidence of an offence against this Act.

## **53—Analysis**

- (1) An authorised officer may cause any substance seized or taken pursuant to this Part to be analysed by, or under the supervision of, an analyst.
- (1a) An analysis under this section may include a determination as to the weight, amount or quantity of any substance (and such determination must comply with any requirements prescribed by regulation).
- (2) Any person may, for the purposes of ascertaining whether a substance is, or is not, a particular poison, prescription drug, drug of dependence, controlled drug, controlled precursor, controlled plant or medicine, or for any other evidentiary purpose, cause the substance to be analysed by, or under the supervision of, an analyst.
- (3) A person who initiates an analysis pursuant to subsection (2) must do so in the prescribed manner and on payment of the prescribed fee.
- (4) An analyst must, on the completion of an analysis pursuant to this section, certify in the prescribed form the results of the analysis, and—
  - (a) in the case of an analysis initiated by an authorised officer who is a police officer—must forward the certificate to the Commissioner of Police; or
  - (b) in the case of an analysis initiated by any other authorised officer—must forward the certificate to the Department; or
  - (c) in any other case—must forward the certificate to the person who initiated the analysis.

## **Part 8—Miscellaneous**

### **55—Licences, authorities and permits**

- (1) The Minister may, in the Minister's absolute discretion, grant or refuse a licence, authority or permit for the purposes of this Act.
- (2) The Minister may grant a licence, authority or permit subject to such conditions as the Minister thinks fit and specifies in the licence, authority or permit and may at any time, by notice in writing given personally or by post to the holder, vary or revoke a condition, or attach a further condition, to the licence, authority or permit.

- (2a) If a person who holds a licence, authority or permit contravenes or fails to comply with a condition of that licence, authority or permit, the holder is guilty of an offence.  
Maximum penalty: \$5 000.
- (2b) The Minister may fix fees payable in respect of a licence, authority or permit (including application fees, fees for grant and renewal and periodic fees) and may waive or reduce a fee payable if the Minister considers it appropriate to do so.
- (3) On the expiry of the term of a licence granted under this Act, the Minister must, if application for renewal has been made in the due manner and the appropriate fee paid, renew the licence for a further term.
- (4) The Minister may, by notice in writing given personally or by post to the holder of a licence, authority or permit granted under this Act, suspend or revoke the licence, authority or permit if—
  - (a) the holder obtained it improperly; or
  - (b) the holder is found guilty of an offence against this Act; or
  - (c) the holder has, in the opinion of the Minister, contravened or failed to comply with a condition of the licence, authority or permit.
- (5) A person whose licence, authority or permit is suspended or revoked under subsection (4)(c) may appeal to the Administrative and Disciplinary Division of the District Court against the suspension or revocation.
- (6) Subject to subsection (8), an appeal must be instituted within 1 month of the suspension or revocation.
- (7) The Minister must, if required by the appellant, state in writing the reasons for the suspension or revocation.
- (8) If the reasons of the Minister are not given to the appellant, in writing, at the time of making the decision to suspend or revoke and the appellant (within 1 month of the making of the decision) requires the Minister to state the reasons in writing, the time for instituting the appeal runs from the time at which the appellant receives the written statement of those reasons.
- (9) This section does not apply in relation to a licence under Part 4A.

#### **56—Permits for research etc**

- (1) The Minister may issue a permit authorising, subject to such conditions as may be specified in the permit, the person named in the permit to manufacture, cultivate, sell, supply, administer or have in his or her possession a substance or medical device for the purposes of analysis, research, instruction or training.
- (2) Despite any other provision of this Act, the holder of a permit issued under this section is not guilty of an offence against this Act in respect of anything done pursuant to and in accordance with the permit.

#### **57—Power of Minister to prohibit certain activities**

- (1) If a person—
  - (a) has been convicted of an offence against this Act; or

- (b) has, in the opinion of the Minister, contravened or failed to comply with a condition of a licence, authority or permit granted under this Act; or
- (c) has, in the opinion of the Minister, prescribed, sold, supplied or administered a prescription drug in an irresponsible manner,

the Minister may, by order, prohibit the person from manufacturing, producing, packaging, selling, supplying, prescribing, administering, using or having possession of any substance or device specified in the order.

- (2) The Minister may, by subsequent order, revoke an order under subsection (1).
- (3) The Minister must publish an order made under subsection (1) or (2) in the Gazette and must cause a copy of the order to be served personally or by post on the person to whom it applies.
- (4) A person must not contravene an order made under this section.  
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (5) A person to whom an order under subsection (1) applies may appeal to the Administrative and Disciplinary Division of the District Court against the order.
- (6) Subject to subsection (8), an appeal must be instituted within 1 month of the making of the order.
- (7) The Minister must, if required by the appellant, state in writing the reasons for the order.
- (8) If the reasons of the Minister are not given to the appellant, in writing, at the time of making the order and the appellant (within 1 month of the making of the order) requires the Minister to state the reasons in writing, the time for instituting the appeal runs from the time at which the appellant receives the written statement of those reasons.

### **57A—Warnings**

- (1) Subject to this section, if the Minister is satisfied that—
  - (a) a substance or device might be dangerous to persons consuming or using the substance or device (whether because of a failure to comply with a requirement under this Act or otherwise); or
  - (b) an advertisement or other published material relating to a substance or device contains instructions or other material that might be dangerous to persons consuming or using the substance or device,

the Minister may take such action as the Minister thinks fit to warn the public against the risks or potential risks.

- (2) The Minister may only take action under this section—
  - (a) in relation to a substance, if the substance is a poison or medicine or is a substance that the Minister is satisfied has the potential to be harmful to humans or is or may be used, or is designed to be used, as a medicine; or
  - (b) in relation to a device, if the device is a medical device or is a device that the Minister is satisfied is or may be used, or is designed to be used, as a medical device.

- (3) For the purpose of subsection (1), the Minister may publish the trade name or description of a substance or device and may identify manufacturers, sellers, suppliers or importers of the substance or device.

### **58—Publication of information**

- (1) If the Minister believes on reasonable grounds that a person has a history of consuming poisons or medicines in a quantity or manner that presents a risk to the person's health or has obtained or attempted to obtain a poison, medicine or medical device by false pretences or other unlawful means or for an unlawful purpose, the Minister may, for the purpose of preventing or restricting the supply of such a substance or device to that person, publish information relating to that person to all or any of the following classes of persons:
- (a) persons concerned in the management of hospitals or nursing homes who are responsible for the supply of such substances or devices to patients attending the hospitals or nursing homes; and
  - (b) registered health practitioners; and
  - (c) veterinary surgeons; and
  - (f) any other prescribed class of persons, being persons who deal in or supply such substances or devices in the ordinary course of their business or profession.
- (1a) The Minister may publish information to a class of persons referred to in subsection (1)—
- (a) by publishing the information to a professional association prescribed by regulation whose members belong to that class of persons; or
  - (b) in any other manner the Minister thinks fit.
- (2) Information published under this section is privileged unless it is proved that it was done with malice.
- (3) A person to whom information was published under this section must not communicate that information to any other person except so far as it may be necessary to do so in order to achieve the purpose of the publication.

### **60—Minister may require certain information to be given**

- (1) For the purpose of ascertaining—
- (a) whether any substance or device is, or ought to be, one to which this Act applies; or
  - (b) whether any requirements under this Act relating to a substance or device are appropriate and effective,

the Minister may, by notice in writing given personally or by post to a person who manufactures, produces, packs, sells, supplies, imports or advertises a substance or device, require that person to furnish to the Minister such information relating to the substance or device as may be specified in the notice.

- (2) If the Minister has reasonable cause to believe that there is extensive misuse of a prescription drug or a volatile solvent in a particular area, the Minister may, by notice in writing given personally or by post to a registered health practitioner, veterinary surgeon or supplier practising or operating in, or in the vicinity of, that area, require him or her to furnish to the Minister such particulars as may be specified relating to—
- (a) in the case of a registered health practitioner (other than a pharmacist) or veterinary surgeon—the quantities in which and the number and frequency of occasions on which a prescription drug specified in the notice was prescribed, supplied or administered by him or her;
  - (b) in the case of a pharmacist or supplier—the quantities in which and the number and frequency of occasions on which a prescription drug or volatile solvent specified in the notice was supplied by him or her.
- (3) A notice under this section may require any such information or particulars to be furnished in such manner and within such period, being not less than 14 days, as may be specified in the notice.
- (4) A person to whom a notice under this section has been given must not fail to comply with the notice.

Maximum penalty: \$5 000.

### 60A—Confidentiality

- (1) A person must not divulge—
- (a) information relating to trade processes; or
  - (b) medical records or details of medical treatment of a person,
- obtained (whether by that person or some other person) in the administration or enforcement of this Act except—
- (c) in connection with the administration or enforcement of this Act; or
  - (d) as authorised or required by law; or
  - (e) with the consent of the person from whom the information was obtained or to whom the information relates; or
  - (f) for the purpose of any legal proceedings arising out of the administration or enforcement of this Act; or
  - (g) to a law enforcement, prosecution or health authority of another jurisdiction as may be reasonably required for the purpose of the administration or enforcement of a law of that jurisdiction.

Maximum penalty: \$10 000

- (2) Subsection (1)(b) does not prevent the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

## 60B—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided, or record kept, under this Act.

Maximum penalty: \$5 000.

## 61—Evidentiary provisions

- (1) In any proceedings for an offence against this Act, an apparently genuine document purporting to be signed by the Minister and to certify that a person named in the certificate did, or did not, hold a licence, authority or permit under this Act on a specified day will, in the absence of proof to the contrary, be proof of the matters so certified.
- (2) In any proceedings for an offence against this Act, an apparently genuine document purporting to be signed by an analyst and to certify that an analysis of a substance referred to in the certificate was carried out by, or under the supervision of, the analyst will, in the absence of proof to the contrary, be proof of any facts stated in the certificate—
  - (a) tending to identify the substance analysed or tending to identify the substance analysed as an analogue of another substance for the purposes of this Act; and
  - (ab) as to the weight, amount or quantity of the substance analysed; and
  - (b) relating to the nature and results of the analysis.
- (2a) In any proceedings for an offence against this Act, an apparently genuine document purporting to be a certificate issued under a corresponding law and to certify that an analysis of a substance referred to in the certificate was carried out in accordance with the corresponding law will, in the absence of proof to the contrary, be proof of any facts stated in the certificate—
  - (a) tending to identify the substance analysed or tending to identify the substance analysed as an analogue of another substance for the purposes of this Act; and
  - (ab) as to the weight, amount or quantity of the substance analysed; and
  - (b) relating to the nature and results of the analysis.
- (3) In any proceedings for an offence against this Act, an apparently genuine document purporting to be signed by the Minister and to certify that a person named in the certificate is an authorised officer, or an analyst, as the case may be, will, in the absence of proof to the contrary, be proof of the matter certified.
- (4) In this section—

*corresponding law* means a law of the Commonwealth, another State, or a Territory that is prescribed by regulation for the purposes of this definition.

## 62A—Delegation

- (1) The Minister may delegate a power or function vested in or conferred on the Minister by or under this Act—
  - (a) to a particular person or body; or

- (b) to the person for the time being holding or acting in a particular office or position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act in a matter; and
  - (c) is revocable at will by the delegator.

### **63—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.
- (2) The Minister must consult with the Advisory Council in relation to any regulation proposed to be made under this Act (other than a regulation proposed to be made under Part 4A or section 33LA).
- (3) No regulation may be made prescribing an amount relating to a controlled drug, controlled precursor or controlled plant for the purposes of Part 5 or section 45A except on the recommendation of the Advisory Council.
- (4) Without limiting the generality of subsection (1), the regulations may—
  - (a) regulate, restrict or prohibit the manufacture, production, packaging, sale (whether by wholesale or retail), supply, prescribing, administration, possession, use, handling, labelling, storing, transporting, disposal or advertising of any poison, controlled precursor, medicine, medical device or volatile solvent;
  - (b) prescribe standards, or provide for the prescription by a person, a committee of persons or an authority, of standards, with which any poison, controlled precursor, medicine or medical device must conform;
  - (ba) regulate the installation, sale, supply or operation of an automatic vending machine for the sale or supply of a poison, medicine or medical device (in circumstances in which that is not prohibited);
  - (c) prescribe the form of any notice, application, certificate, warrant or other document to be given, made or granted under this Act;
  - (d) prescribe fees in respect of anything to be done under this Act, and provide for the remission of fees in specified circumstances;
  - (e) provide for or regulate the classes, application for, grant, term, refusal, renewal, suspension or revocation of licences and permits under this Act by a person, a committee of persons or an authority;
  - (f) require any specified person, or persons of a specified class, to keep records or provide information in relation to any poison, controlled drug, controlled precursor, controlled plant, medicine, medical device or volatile solvent;
  - (g) provide for and regulate the inspection, examination, testing or analysis of any substance or goods;

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- (h) exempt, conditionally or unconditionally, any person, substance or medical device from any provision of this Act or the applied provisions, or provide for all or any of those exemptions to be given by a person or committee of persons or an authority;
    - (i) prescribe penalties, not exceeding \$5 000, for breach of, or non-compliance with, any regulation.
  - (5) The regulations may refer to or, by reference, incorporate (with or without modifications) any code, standard, pharmacopoeia or other document published inside or outside of this State, either as in force at the time the regulations are made or as in force from time to time.
  - (5a) If a code, standard, pharmacopoeia or other document is referred to or incorporated in the regulations (or in a code, standard, pharmacopoeia or other document referred to or incorporated in the regulations)—
    - (a) a copy of the code, standard, pharmacopoeia or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and
    - (b) evidence of the contents of the code, standard, pharmacopoeia or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard, pharmacopoeia or other document.
  - (6) Any regulation under this Act may be of general or limited application according to—
    - (a) the classes of persons or things; or
    - (b) the circumstances; or
    - (c) any other specified factor,to which the regulation is expressed to apply.
  - (7) The regulations may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1984	52	<i>Controlled Substances Act 1984</i>	24.5.1984	9.5.1985 ( <i>Gazette 9.5.1985 p1399</i> ) except s 19—3.3.1986 ( <i>Gazette 27.2.1986 p421</i> ) and except s 22—1.7.1988 ( <i>Gazette 19.5.1988 p1246</i> ) and except s 21—9.2.1989 ( <i>Gazette 9.2.1989 p354</i> ) and except ss 12(7), 13—18 & 23—29—4.1.1996 ( <i>Gazette 4.1.1996 p2</i> ) and except ss 3(1), 12(5), (6) & 20—1.7.2011 ( <i>Gazette 9.6.2011 p2544</i> )
1986	17	<i>Crimes (Confiscation of Profits) Act 1986</i>	20.3.1986	1.3.1987 ( <i>Gazette 19.2.1987 p381</i> )
1986	43	<i>Statutes Amendment (Analysts) Act 1986</i>	4.9.1986	16.10.1986 ( <i>Gazette 16.10.1986 p1373</i> )
1986	64	<i>Controlled Substances Act Amendment Act 1986</i>	6.11.1986	20.11.1986 ( <i>Gazette 20.11.1986 p1638</i> ) except s 8—30.4.1987 ( <i>Gazette 30.4.1987 p1133</i> ) and except s 7—29.3.1990 ( <i>Gazette 29.3.1990 p884</i> )
1990	28	<i>Controlled Substances Act Amendment Act 1990</i>	26.4.1990	26.4.1990
1990	29	<i>Controlled Substances Act Amendment Act (No. 2) 1990</i>	26.4.1990	26.9.1991 ( <i>Gazette 26.9.1991 p890</i> )
1991	13	<i>Pharmacists Act 1991</i>	4.4.1991	21.11.1991 ( <i>Gazette 21.11.1991 p1328</i> )
1991	49	<i>Director of Public Prosecutions Act 1991</i>	21.11.1991	6.7.1992 ( <i>Gazette 25.6.1992 p1869</i> )
1991	69	<i>Statutes Repeal and Amendment (Courts) Act 1991</i>	12.12.1991	6.7.1992 ( <i>Gazette 2.7.1992 p209</i> )
1992	44	<i>Controlled Substances (Classification of Offences) Amendment Act 1992</i>	10.9.1992	6.7.1992: s 2
1994	27	<i>Controlled Substances (Destruction of Cannabis) Amendment Act 1994</i>	26.5.1994	13.10.1994 ( <i>Gazette 13.10.1994 p944</i> )

1995	98	<i>Controlled Substances (General Offences—Poisons) Amendment Act 1995</i>	14.12.1995	4.1.1996 ( <i>Gazette 4.1.1996 p2</i> )
1996	34	<i>Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996</i>	2.5.1996	Sch (cl 12)—3.2.1997 ( <i>Gazette 19.12.1996 p1923</i> )
1999	59	<i>Controlled Substances (Miscellaneous) Amendment Act 1999</i>	19.8.1999	19.8.1999
2000	34	<i>South Australian Health Commission (Administrative Arrangements) Amendment Act 2000</i>	6.7.2000	Sch 1 (cl 4)—6.7.2000 ( <i>Gazette 6.7.2000 p5</i> )
2000	87	<i>Controlled Substances (Drug Offence Diversion) Amendment Act 2000</i>	14.12.2000	1.10.2001 ( <i>Gazette 27.9.2001 p4295</i> )
2002	47	<i>Controlled Substances (Cannabis) Amendment Act 2002</i>	12.12.2002	1.2.2003 ( <i>Gazette 16.1.2003 p180</i> )
2004	48	<i>Controlled Substances (Repeal of Sunset Provision) Amendment Act 2004</i>	16.12.2004	30.9.2004: s 2
2005	19	<i>Criminal Assets Confiscation Act 2005</i>	6.2005	Sch 1 (cll 2—4)—2.4.2006 ( <i>Gazette 16.2.2006 p578</i> )
2005	80	<i>Controlled Substances (Serious Drug Offences) Amendment Act 2005</i>	8.12.2005	Pt 2 (ss 4(2), (4), 5, 6, 12, 18, 19(2), 21, 23—28)—12.1.2006 ( <i>Gazette 12.1.2006 p43</i> ); ss 4(1), (3), (5)—(12), 7—11, 13—17, 19(1), (3), (4), 20, 22, 29, 30 & Sch 1 (cl 6)—3.12.2007 ( <i>Gazette 22.11.2007 p4294</i> )
2007	35	<i>Statutes Amendment (Petroleum Products) Act 2007</i>	20.9.2007	Pt 2 (s 4)—1.7.2008 ( <i>Gazette 13.3.2008 p1006</i> )
2007	50	<i>Controlled Substances (Possession of Prescribed Equipment) Amendment Act 2007</i>	29.11.2007	26.9.2008 ( <i>Gazette 25.9.2008 p4575</i> ) except s 4—19.10.2008 ( <i>Gazette 16.10.2008 p4834</i> )
2008	3	<i>Health Care Act 2008</i>	13.3.2008	Sch 4 (cl 4)—1.7.2008 ( <i>Gazette 26.6.2008 p2563</i> )
2008	11	<i>Summary Offences (Drug Paraphernalia) Amendment Act 2008</i>	8.5.2008	Sch 1 (cll 1 & 2)—8.6.2008 ( <i>Gazette 5.6.2008 p1872</i> )
2008	32	<i>Controlled Substances (Controlled Drugs, Precursors and Cannabis) Amendment Act 2008</i>	31.7.2008	10.9.2009 ( <i>Gazette 10.9.2009 p4410</i> )
2008	33	<i>Controlled Substances (Drug Detection Powers) Amendment Act 2008</i>	31.7.2008	Pt 2 (ss 4—8)—23.10.2008 ( <i>Gazette 23.10.2008 p4931</i> )
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 37 (ss 68 & 69)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
2010	5	<i>Health Practitioner Regulation National Law (South Australia) Act 2010</i>	1.7.2010	Sch 1 (cl 6)—1.7.2010 ( <i>Gazette 1.7.2010 p3338</i> )
2010	17	<i>Controlled Substances (Miscellaneous) Amendment Act 2010</i>	14.10.2010	28.11.2010 ( <i>Gazette 25.11.2010 p5401</i> )
2011	3	<i>Controlled Substances (Therapeutic Goods and Other Matters) Amendment Act 2011</i>	3.3.2011	9.6.2011 except ss 4—26, 28—32 & Sch 1—1.7.2011 ( <i>Gazette 9.6.2011 p2544</i> )

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2011	25	<i>Controlled Substances (Offences Relating to Instructions) Amendment Act 2011</i>	21.7.2011	28.8.2011 ( <i>Gazette 18.8.2011 p3490</i> )
2011	36	<i>Statutes Amendment (Directors' Liability) Act 2011</i>	22.9.2011	Pt 8 (s 10)—1.1.2012 ( <i>Gazette 15.12.2011 p4988</i> )
2012	12	<i>Statutes Amendment (Serious and Organised Crime) Act 2012</i>	10.5.2012	Pt 4 (ss 17—25)—17.6.2012 ( <i>Gazette 14.6.2012 p2756</i> )
2012	43	<i>Statutes Amendment (Courts Efficiency Reforms) Act 2012</i>	22.11.2012	Pt 3 (ss 6—9)—1.7.2013 ( <i>Gazette 16.5.2013 p1541</i> )
2013	84	<i>Controlled Substances (Offences) Amendment Act 2013</i>	5.12.2013	16.2.2014 ( <i>Gazette 23.1.2014 p343</i> )
2015	38	<i>Controlled Substances (Simple Possession Offences) Amendment Act 2015</i>	26.11.2015	29.2.2016 ( <i>Gazette 4.2.2016 p365</i> )
2015	42	<i>Controlled Substances (Poppy Cultivation) Amendment Act 2015</i>	3.12.2015	16.9.2016 ( <i>Gazette 1.9.2016 p3625</i> )
2016	52	<i>Controlled Substances (Miscellaneous) Amendment Act 2016</i>	10.11.2016	1.4.2017 ( <i>Gazette 16.2.2017 p549</i> )
<b>2017</b>	<b>15</b>	<b><i>Industrial Hemp Act 2017</i></b>	<b>16.5.2017</b>	<b>Sch 1—12.11.2017 (<i>Gazette 31.10.2017 p4467</i>)</b>
2017	49	<i>Liquor Licensing (Liquor Review) Amendment Act 2017</i>	28.11.2017	Sch 1 (cl 1)—uncommenced

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 s 4	1.7.2011
	amended under <i>Legislation Revision and Publication Act 2002</i>	28.8.2011
Pt 1		
s 2	<i>deleted by 59/1999 s 13 (Sch)</i>	19.8.1999
s 3 before omission		
s 3(2)	<i>deleted by 59/1999 s 13 (Sch)</i>	19.8.1999
s 3	<i>omitted under Legislation Revision and Publication Act 2002</i>	28.8.2011
s 4		
s 4(1)	s 4 redesignated as s 4(1) by 64/1986 s 3(b)	20.11.1986
Advisory Council	the Advisory Council amended to read Advisory Council by 3/2011 Sch 1	1.7.2011
aggravated offence	inserted by 12/2012 s 17(1)	17.6.2012
analyst	substituted by 43/1986 s 5(a)	16.10.1986
applied provisions	inserted by 3/2011 s 5(1)	1.7.2011
artificially enhanced cultivation	inserted by 32/2008 s 4(1)	10.9.2009

<i>assessment panel</i>	<i>deleted by 87/2000 s 3</i>	1.10.2001
assessment service	inserted by 87/2000 s 3	1.10.2001
authorised officer	substituted by 32/2008 s 4(2)	10.9.2009
basic offence	inserted by 12/2012 s 17(2)	17.6.2012
<i>botanist</i>	<i>deleted by 43/1986 s 5(b)</i>	16.10.1986
cannabis	substituted by 29/1990 s 3(a)	26.9.1991
cannabis oil	substituted by 29/1990 s 3(a)	26.9.1991
cannabis resin	substituted by 29/1990 s 3(a)	26.9.1991
child	substituted by 29/1990 s 3(b)	26.9.1991
commercial quantity	inserted by 80/2005 s 4(1)	3.12.2007
	amended by 32/2008 s 4(3)	10.9.2009
Commonwealth Act	inserted by 3/2011 s 5(2)	1.7.2011
Commonwealth Minister	inserted by 3/2011 s 5(2)	1.7.2011
Commonwealth Secretary	inserted by 3/2011 s 5(2)	1.7.2011
Commonwealth therapeutic goods laws	inserted by 3/2011 s 5(2)	1.7.2011
controlled drug	inserted by 80/2005 s 4(1)	3.12.2007
	amended by 84/2013 s 4(1)	16.2.2014
controlled plant	inserted by 80/2005 s 4(1)	3.12.2007
controlled precursor	inserted by 80/2005 s 4(1)	3.12.2007
cultivate	inserted by 80/2005 s 4(1)	3.12.2007
dentist	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 80/2005 s 4(2)	12.1.2006
	substituted by 5/2010 Sch 1 cl 6(1)	1.7.2010
Department	the Department inserted by 34/2000 Sch 1 cl 4(a)	6.7.2000
	the Department amended to read Department by 3/2011 Sch 1	1.7.2011
discrete dosage unit	inserted by 32/2008 s 4(4)	10.9.2009
	substituted by 17/2010 s 4	28.11.2010
drug detection dog	inserted by 33/2008 s 4(1)	23.10.2008
electronic drug detection system	inserted by 33/2008 s 4(2)	23.10.2008
general drug detection	inserted by 33/2008 s 4(2)	23.10.2008
<i>the Health Commission</i>	<i>deleted by 3/2008 Sch 4 cl 4</i>	1.7.2008
interim controlled drug	inserted by 84/2013 s 4(2)	16.2.2014
large commercial quantity	inserted by 80/2005 s 4(3)	3.12.2007
	amended by 32/2008 s 4(5)	10.9.2009
manufacture	inserted by 80/2005 s 4(3)	3.12.2007

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medical device	inserted by 3/2011 s 5(3)	1.7.2011
medical practitioner	amended by 59/1999 s 13 (Sch)	19.8.1999
	substituted by 5/2010 Sch 1 cl 6(2)	1.7.2010
medicine	inserted by 3/2011 s 5(4)	1.7.2011
midwife	inserted by 3/2011 s 5(4)	1.7.2011
nurse	amended by 64/1986 s 3(a)	20.11.1986
	amended by 80/2005 s 4(4)	12.1.2006
	substituted by 5/2010 Sch 1 cl 6(3)	1.7.2010
nurse practitioner	inserted by 3/2011 s 5(5)	1.7.2011
pharmacist	substituted by 13/1991 (Sch 2)	21.11.1991
	substituted by 5/2010 Sch 1 cl 6(4)	1.7.2010
<i>plant</i>	<i>deleted by 29/1990 s 3(c)</i>	<i>26.9.1991</i>
possession	substituted by 80/2005 s 4(5)	3.12.2007
<i>produce</i>	<i>deleted by 80/2005 s 4(6)</i>	<i>3.12.2007</i>
product	inserted by 80/2005 s 4(6)	3.12.2007
<i>prohibited substance</i>	<i>deleted by 80/2005 s 4(7)</i>	<i>3.12.2007</i>
registered health practitioner	inserted by 3/2011 s 5(6)	1.7.2011
<i>related person or body</i>	<i>deleted by 17/1986 s 13 (Sch)</i>	<i>1.3.1987</i>
sell	substituted by 80/2005 s 4(8)	3.12.2007
senior police officer	inserted by 33/2008 s 4(3)	23.10.2008
	amended by 3/2011 Sch 1	1.7.2011
school zone	inserted by 29/1990 s 3(d)	26.9.1991
simple possession offence	substituted by 80/2005 s 4(9)	3.12.2007
supply	substituted by 80/2005 s 4(10)	3.12.2007
<i>therapeutic device</i>	<i>deleted by 3/2011 s 5(7)</i>	<i>1.7.2011</i>
<i>therapeutic substance</i>	<i>deleted by 3/2011 s 5(7)</i>	<i>1.7.2011</i>
traffic	inserted by 80/2005 s 4(11)	3.12.2007
trafficable quantity	inserted by 80/2005 s 4(11)	3.12.2007
	amended by 32/2008 s 4(6)	10.9.2009
veterinary surgeon	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 Sch 1	1.7.2011
s 4(2)	inserted by 64/1986 s 3(b)	20.11.1986
s 4(3)	inserted by 64/1986 s 3(b)	20.11.1986
	substituted by 80/2005 s 4(12)	3.12.2007
s 4(4)—(8)	inserted by 80/2005 s 4(12)	3.12.2007
s 5		
s 5(2) and (3)	amended by 59/1999 s 13 (Sch)	19.8.1999
Pt 2		
s 6		

s 6(1)	substituted by 59/1999 s 13 (Sch)	19.8.1999
s 6(2)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 34/2000 Sch 1 cl 4(b)	6.7.2000
	amended by 80/2005 s 5(1), (2)	12.1.2006
	amended by 32/2008 s 5	10.9.2009
	amended by 3/2011 Sch 1	1.7.2011
s 6(4)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 Sch 1	1.7.2011
s 7		
s 7(1)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 Sch 1	1.7.2011
s 7(2) and (3)	amended by 59/1999 s 13 (Sch)	19.8.1999
s 7(4)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 Sch 1	1.7.2011
ss 8 and 9	amended by 59/1999 s 13 (Sch)	19.8.1999
s 10		
s 10(1)	substituted by 59/1999 s 13 (Sch)	19.8.1999
s 10(2)	amended by 59/1999 s 13 (Sch)	19.8.1999
s 10(3)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 80/2005 s 6	12.1.2006
s 10(4)—(6)	amended by 59/1999 s 13 (Sch)	19.8.1999
s 10A	inserted by 84/2009 s 68	1.2.2010
s 11		
s 11(3)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 Sch 1	1.7.2011
s 11(5)—(7)	amended by 59/1999 s 13 (Sch)	19.8.1999
Pt 2A	inserted by 3/2011 s 6	1.7.2011
Pt 3		
s 12		
s 12(1) and (3)	amended by 59/1999 s 13 (Sch)	19.8.1999
s 12(4)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 80/2005 s 7(1)	3.12.2007
s 12(4a) and (4b)	inserted by 80/2005 s 7(2)	3.12.2007
s 12(5) and (6)	<i>amended by 59/1999 s 13 (Sch) but deleted by 3/2011 s 7(1) immediately following commencement</i>	1.7.2011
s 12(7)	amended by 59/1999 s 13 (Sch)	19.8.1999
s 12(8)	amended by 3/2011 s 7(2)	1.7.2011
s 12A	inserted by 84/2013 s 5	16.2.2014
Pt 4		
s 13		
s 13(1)	amended by 98/1995 s 3	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999

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	amended by 34/2000 Sch 1 cl 4(c)	6.7.2000
	amended by 80/2005 s 8(1)	3.12.2007
	amended by 3/2011 s 8(1), (2)	1.7.2011
s 13(2)	amended by 3/2011 s 8(3)	1.7.2011
s 13(3)	inserted by 59/1999 s 2	19.8.1999
s 13(4)	inserted by 80/2005 s 8(2)	3.12.2007
s 14		
s 14(1)	amended by 98/1995 s 4	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 34/2000 Sch 1 cl 4(d)	6.7.2000
	amended by 3/2011 s 9(1)	1.7.2011
s 14(2)	amended by 3/2011 s 9(2)	1.7.2011
s 14(3)	inserted by 59/1999 s 3	19.8.1999
s 15		
s 15(1)	amended by 98/1995 s 5	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 34/2000 Sch 1 cl 4(e)	6.7.2000
	amended by 3/2011 s 10(1), (2)	1.7.2011
s 15(2)	amended by 3/2011 s 10(3)	1.7.2011
s 15(3)	inserted by 59/1999 s 4	19.8.1999
s 16		
s 16(1) and (2)	amended by 98/1995 s 6	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 16(3)	amended by 98/1995 s 6	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 Sch 1	1.7.2011
s 16(4)	amended by 98/1995 s 6	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
	substituted by 52/2016 s 4	1.4.2017
s 17	amended by 98/1995 s 7	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 17A	inserted by 32/2008 s 6	10.9.2009
s 17B	inserted by 32/2008 s 6	10.9.2009
s 17B(5)	amended by 3/2011 s 11	1.7.2011
s 17C	inserted by 32/2008 s 6	10.9.2009
s 17C(3)	amended by 3/2011 s 12	1.7.2011
s 18	substituted by 98/1995 s 8	4.1.1996
s 18(1)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 34/2000 Sch 1 cl 4(f)	6.7.2000
	substituted by 3/2011 s 13(1)	1.7.2011
s 18(1a)—(1c)	inserted by 3/2011 s 13(1)	1.7.2011
s 18(1d)	inserted by 3/2011 s 13(1)	1.7.2011
	amended by 52/2016 s 5	1.4.2017

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s 18(1e)	inserted by 3/2011 s 13(1)	1.7.2011
s 18(2)	amended by 59/1999 s 13 (Sch)	19.8.1999
	substituted by 3/2011 s 13(1)	1.7.2011
s 18(3)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 34/2000 Sch 1 cl 4(g)	6.7.2000
	amended by 80/2005 s 9	3.12.2007
s 18(4)	inserted by 59/1999 s 5	19.8.1999
s 18(5)	inserted by 3/2011 s 13(2)	1.7.2011
s 18A	inserted by 80/2005 s 10	3.12.2007
s 18A(a1)	inserted by 3/2011 s 14(1)	1.7.2011
s 18A(1)	amended by 3/2011 s 14(2)—(4)	1.7.2011
s 18A(2)	amended by 3/2011 s 14(5)	1.7.2011
s 18A(3)	amended by 3/2011 s 14(6)	1.7.2011
s 18A(4)	amended by 3/2011 s 14(7)	1.7.2011
s 18A(5)	amended by 3/2011 s 14(8)	1.7.2011
s 18A(6)	amended by 32/2008 s 7(1)	10.9.2009
	amended by 3/2011 s 14(9)	1.7.2011
s 18A(8)	substituted by 32/2008 s 7(2)	10.9.2009
s 19		
s 19(1)	s 19 amended by 98/1995 s 9	4.1.1996
	s 19 amended by 59/1999 s 13 (Sch)	19.8.1999
	s 19 redesignated as s 19(1) by 35/2007 s 4	1.7.2008
s 19(2)—(6)	inserted by 35/2007 s 4	1.7.2008
s 20		
s 20(1)	amended by 98/1995 s 10	
	amended by 59/1999 s 13 (Sch)	
	amended by 80/2005 s 11(1), (2)	
	amended by 3/2011 s 15(1)	1.7.2011
s 20(2)	substituted by 80/2005 s 11(3)	
	amended by 3/2011 s 15(1), (2)	1.7.2011
s 21		
s 21(1)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 80/2005 s 12(1), (2)	12.1.2006
s 21(2)	amended by 98/1995 s 11	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 21(4)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 Sch 1	1.7.2011
s 22		
s 22(1)	amended by 98/1995 s 12	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 34/2000 Sch 1 cl 4(h)	6.7.2000
s 23		
s 23(1)	amended by 98/1995 s 13	4.1.1996

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	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 s 16	1.7.2011
s 23(2)	amended by 59/1999 s 13 (Sch)	19.8.1999
s 24	substituted by 98/1995 s 14	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 s 17	1.7.2011
s 25	amended by 98/1995 s 15	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 s 18	1.7.2011
s 26	amended by 98/1995 s 16	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 s 19	1.7.2011
s 27	substituted by 98/1995 s 17	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 s 20	1.7.2011
s 28		
s 28(1)	amended by 98/1995 s 18	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 s 21(1)	1.7.2011
s 28(2)	amended by 3/2011 s 21(2)	1.7.2011
s 29	amended by 98/1995 s 19	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 s 22	1.7.2011
s 30		
s 30(1)	amended by 98/1995 s 20(a)	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 30(2)	amended by 98/1995 s 20(b)	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 30(2a)	inserted by 98/1995 s 20(c)	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 30(3)	amended by 59/1999 s 13 (Sch)	19.8.1999
Pt 4A	inserted by 42/2015 s 4	16.9.2016
Pt 5		
heading	substituted by 80/2005 s 13	3.12.2007
<i>Pt 5 Div 1 before substitution by 80/2005</i>		
s 31		
s 31(1)	<i>amended by 59/1999 s 13 (Sch)</i>	<i>19.8.1999</i>
s 31(2)	<i>amended by 64/1986 s 4</i>	<i>20.11.1986</i>
	<i>amended by 59/1999 s 13 (Sch)</i>	<i>19.8.1999</i>
s 31(3)	<i>amended by 59/1999 s 13 (Sch)</i>	<i>19.8.1999</i>
	<i>amended by 34/2000 Sch 1 cl 4(i)</i>	<i>6.7.2000</i>
s 31(4)	<i>amended by 59/1999 s 13 (Sch)</i>	<i>19.8.1999</i>

s 31(5)	<i>inserted by 59/1999 s 6</i>	19.8.1999
s 32		
s 32(1)	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999
s 32(2)	<i>amended by 59/1999 s 13 (Sch)</i> <i>amended by 34/2000 Sch 1 cl 4(j)</i>	19.8.1999 6.7.2000
s 32(3) and (4)	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999
s 32(5)	<i>amended by 64/1986 s 5</i> <i>amended by 29/1990 s 4(a)</i> <i>amended by 69/1991 s 16(a), (b)</i> <i>amended by 44/1992 s 3(a), (b)</i> <i>B(b)(iii) deleted by 44/1992 s 3(c)</i> <i>amended by 59/1999 s 13 (Sch)</i>	20.11.1986 26.9.1991 6.7.1992 6.7.1992 6.7.1992 19.8.1999
s 32(5a)	<i>inserted by 28/1990 s 2</i>	26.4.1990
s 32(6)	<i>substituted by 29/1990 s 4(b)</i>	26.9.1991
s 32(7)	<i>inserted by 59/1999 s 7</i>	19.8.1999
s 33		
s 33(1)	<i>amended by 64/1986 s 6(a)</i> <i>amended by 59/1999 s 13 (Sch)</i> <i>amended by 34/2000 Sch 1 cl 4(k)</i>	20.11.1986 19.8.1999 6.7.2000
s 33(1a)	<i>inserted by 64/1986 s 6(b)</i> <i>amended by 59/1999 s 13 (Sch)</i> <i>amended by 34/2000 Sch 1 cl 4(l)</i>	20.11.1986 19.8.1999 6.7.2000
s 33(2)	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999
s 33(3)	<i>amended by 64/1986 s 6(c)</i> <i>amended by 34/2000 Sch 1 cl 4(m)</i>	20.11.1986 6.7.2000
s 33(4)	<i>amended by 64/1986 s 6(d)</i> <i>amended by 34/2000 Sch 1 cl 4(n)</i>	20.11.1986 6.7.2000
s 33(5)	<i>amended by 64/1986 s 6(e)</i> <i>amended by 34/2000 Sch 1 cl 4(o), (p)</i>	20.11.1986 6.7.2000
s 33(6)	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999
Pt 5 Div 1	<i>substituted by 80/2005 s 14</i>	3.12.2007
s 31		
s 31(1)	<i>amended by 32/2008 s 8(1), (2)</i> <i>amended by 3/2011 s 23</i> <i>amended by 42/2015 s 5</i> <b>amended by 15/2017 Sch 1 cl 2(1)</b>	10.9.2009 1.7.2011 16.9.2016 <b>12.11.2017</b>
s 31(3)	<i>inserted by 32/2008 s 8(3)</i>	10.9.2009
<b>industrial hemp</b>	<b>inserted by 15/2017 Sch 1 cl 2(2)</b>	<b>12.11.2017</b>
Pt 5 Div 2	<i>substituted by 80/2005 s 14</i>	3.12.2007
Pt 5 Div 2 Subdiv 1		
s 32		
s 32(2)	<i>amended by 12/2012 s 18(1)</i>	17.6.2012
s 32(2a)	<i>inserted by 17/2010 s 5(1)</i>	28.11.2010

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	amended by 12/2012 s 18(2)	17.6.2012
s 32(3)	amended by 12/2012 s 18(3)	17.6.2012
s 32(4)	amended by 43/2012 s 6	1.7.2013
s 32(5)	amended by 17/2010 s 5(2)	28.11.2010
s 32(6)	inserted by 17/2010 s 5(3)	28.11.2010
Pt 5 Div 2 Subdiv 2		
s 33		
s 33(2)	amended by 12/2012 s 19(1)	17.6.2012
s 33(3)	amended by 12/2012 s 19(2)	17.6.2012
s 33(4)	substituted by 32/2008 s 9	10.9.2009
s 33A		
s 33A(1)	substituted by 25/2011 s 4	28.8.2011
	amended by 12/2012 s 20(1)	17.6.2012
s 33A(2)	substituted by 25/2011 s 4	28.8.2011
	amended by 12/2012 s 20(2)	17.6.2012
s 33A(3)	substituted by 25/2011 s 4	28.8.2011
	amended by 12/2012 s 20(3)	17.6.2012
s 33A(4)	amended by 12/2012 s 20(4)	17.6.2012
s 33A(5)	amended by 12/2012 s 20(5)	17.6.2012
Pt 5 Div 2 Subdiv 3		
s 33B		
s 33B(2)	amended by 12/2012 s 21(1)	17.6.2012
s 33B(3)	amended by 12/2012 s 21(2)	17.6.2012
s 33B(4)	amended by 43/2012 s 7	1.7.2013
s 33C		
s 33C(2)	amended by 12/2012 s 22(1)	17.6.2012
s 33C(3)	amended by 12/2012 s 22(2)	17.6.2012
s 33C(4)	amended by 43/2012 s 8	1.7.2013
Pt 5 Div 2 Subdiv 4		
heading	substituted by 25/2011 s 5	28.8.2011
s 33D	amended by 11/2008 Sch 1 cl 1	8.6.2008
s 33DA	inserted by 25/2011 s 6	28.8.2011
s 33DA(1)	amended by 12/2012 s 23	17.6.2012
Pt 5 Div 3		
	inserted by 80/2005 s 14	3.12.2007
s 33GA	inserted by 11/2008 Sch 1 cl 2	8.6.2008
s 33GB	inserted by 25/2011 s 7	28.8.2011
s 33GB(1)	amended by 12/2012 s 24	17.6.2012
Pt 5 Div 4		
	inserted by 80/2005 s 14	3.12.2007
s 33J		
s 33J(1)	s 33J redesignated as s 33J(1) by 32/2008 s 10	10.9.2009
s 33J(2)	inserted by 32/2008 s 10	10.9.2009
s 33K		
s 33K(1)	amended by 32/2008 s 11(1)	10.9.2009

s 33K(2)	amended by 32/2008 s 11(2)	10.9.2009
s 33K(3)	inserted by 32/2008 s 11(3)	10.9.2009
s 33L		
s 33L(1)	amended by 84/2013 s 6	16.2.2014
s 33LA	inserted by 50/2007 s 4	19.10.2008
	substituted by 25/2011 s 8	28.8.2011
s 33LAB	inserted by 25/2011 s 9	28.8.2011
s 33LB	inserted by 32/2008 s 12	10.9.2009
s 33LB(1) and (2)	substituted by 25/2011 s 10	28.8.2011
s 33LB(3) and (4)	<i>deleted by 25/2011 s 10</i>	28.8.2011
Pt 5 Div 4A	inserted by 84/2013 s 7	16.2.2014
Pt 5 Div 5	inserted by 80/2005 s 14	3.12.2007
s 33O		
s 33O(2)	amended by 3/2011 Sch 1	1.7.2011
s 33OA	inserted by 32/2008 s 13	10.9.2009
s 33S	amended by 84/2013 s 8	16.2.2014
s 33T	inserted by 84/2013 s 9	16.2.2014
Pt 5 Div 6		
heading	inserted by 80/2005 s 14	3.12.2007
s 34	substituted by 64/1986 s 7	29.3.1990
	amended by 59/1999 s 13 (Sch)	19.8.1999
	substituted by 87/2000 s 4	1.10.2001
	substituted by 38/2015 s 4	29.2.2016
s 35	amended by 59/1999 s 13 (Sch)	19.8.1999
	substituted by 87/2000 s 4	1.10.2001
s 36	amended by 59/1999 s 13 (Sch)	19.8.1999
	substituted by 87/2000 s 4	1.10.2001
s 36(1)	amended by 3/2011 Sch 1	1.7.2011
ss 37—39	amended by 59/1999 s 13 (Sch)	19.8.1999
	substituted by 87/2000 s 4	1.10.2001
s 40	substituted by 87/2000 s 4	1.10.2001
s 40A	inserted by 87/2000 s 4	1.10.2001
s 40B	<i>inserted by 87/2000 s 4</i>	1.10.2001
	<i>deleted by 48/2004 s 4</i>	30.9.2004
Pt 6	heading substituted by 59/1999 s 8	19.8.1999
Div 1 heading	<i>deleted by 59/1999 s 9</i>	19.8.1999
ss 41 and 42	amended by 59/1999 s 13 (Sch)	19.8.1999
	<i>deleted by 80/2005 s 15</i>	3.12.2007
s 43 before deletion by substituted by 17/1986 s 13 (Sch) 19/2005		1.3.1987
s 43(1) and (2)	<i>deleted by 69/1991 s 16(c)</i>	6.7.1992
s 43(3)	amended by 59/1999 s 13 (Sch)	19.8.1999
s 43	<i>deleted by 19/2005 Sch 1 cl 2</i>	2.4.2006

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s 43	inserted by 12/2012 s 25	17.6.2012
s 44		
s 44(1)	s 44 amended by 29/1990 s 5	26.9.1991
	s 44 amended by 59/1999 s 13 (Sch)	19.8.1999
	s 44 amended by 87/2000 s 5	1.10.2001
	s 44 amended by 19/2005 Sch 1 cl 3	2.4.2006
	s 44 amended by 80/2005 s 16(1)—(3)	3.12.2007
	s 44(db) deleted by 80/2005 s 16(3)	3.12.2007
	s 44 amended and redesignated as s 44(1) by 32/2008 s 14(1), (2)	10.9.2009
	amended by 3/2011 Sch 1	1.7.2011
s 44(2) and (3)	inserted by 32/2008 s 14(2)	10.9.2009
s 45	<i>amended by 59/1999 s 13 (Sch)</i>	<i>19.8.1999</i>
	<i>amended by 3/2011 Sch 1</i>	<i>1.7.2011</i>
	<i>deleted by 36/2011 s 10</i>	<i>1.1.2012</i>
s 45A	inserted by 64/1986 s 8	30.4.1987
s 45A(1)	amended by 49/1991 Sch 2	6.7.1992
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 Sch 1	1.7.2011
s 45A(2)	amended by 34/1996 s 4 (Sch cl 12)	3.2.1997
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 45A(3)	substituted by 34/1996 s 4 (Sch cl 12)	3.2.1997
s 45A(4)—(6)	<i>deleted by 34/1996 s 4 (Sch cl 12)</i>	<i>3.2.1997</i>
s 45A(8)	amended by 29/1990 s 6	26.9.1991
<i>artificially enhanced cultivation</i>	<i>inserted by 47/2002 s 3(a)</i>	<i>1.2.2003</i>
	<i>deleted by 32/2008 s 15</i>	<i>10.9.2009</i>
<i>child</i>	<i>deleted by 80/2005 s 17</i>	<i>3.12.2007</i>
simple cannabis offence	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 47/2002 s 3(b)	1.2.2003
	substituted by 80/2005 s 17	3.12.2007
Pt 6 Div 2	<i>amended by 17/1986 s 13 (Sch)</i>	<i>1.3.1987</i>
	<i>deleted by 59/1999 s 10</i>	<i>19.8.1999</i>
Pt 7	heading substituted by 59/1999 s 11	19.8.1999
s 49	inserted by 42/2015 s 6	16.9.2016
s 50		
s 50(1)	amended by 32/2008 s 16	10.9.2009
	amended by 3/2011 Sch 1	1.7.2011
s 50(2)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 s 24	1.7.2011
s 50(3)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 Sch 1	1.7.2011

s 51		
s 51(1)	amended by 43/1986 s 5(c)	16.10.1986
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 32/2008 s 17	10.9.2009
s 51(2)	amended by 43/1986 s 5(d)	16.10.1986
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 52		
s 52(1)	amended by 3/2011 Sch 1	1.7.2011
s 52(2)	amended by 17/1986 s 13 (Sch)	1.3.1987
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 80/2005 s 18(1)—(3)	12.1.2006
	amended by 3/2011 Sch 1	1.7.2011
s 52(3)	amended by 3/2011 Sch 1	1.7.2011
s 52(4)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 80/2005 s 18(4)	12.1.2006
	amended by 3/2011 s 25(1)—(3), Sch 1	1.7.2011
s 52(5)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 3/2011 s 25(4), Sch 1	1.7.2011
s 52(6)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 33/2008 s 5(1), (2)	23.10.2008
	amended by 3/2011 Sch 1	1.7.2011
s 52(7) and (8)	<i>amended by 59/1999 s 13 (Sch)</i>	<i>19.8.1999</i>
	<i>deleted by 33/2008 s 5(3)</i>	<i>23.10.2008</i>
s 52(9)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 33/2008 s 5(4), (5)	23.10.2008
	amended by 3/2011 Sch 1	1.7.2011
s 52(10)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 33/2008 s 5(6)	23.10.2008
	amended by 3/2011 Sch 1	1.7.2011
s 52(11)	amended by 59/1999 s 13 (Sch)	19.8.1999
	substituted by 80/2005 s 18(5)	12.1.2006
	substituted by 33/2008 s 5(7)	23.10.2008
	amended by 3/2011 Sch 1	1.7.2011
s 52(12)	<i>amended by 98/1995 s 21</i>	<i>4.1.1996</i>
	<i>amended by 59/1999 s 13 (Sch)</i>	<i>19.8.1999</i>
	<i>deleted by 33/2008 s 5(7)</i>	<i>23.10.2008</i>
s 52A—see s 52E		
s 52A	inserted by 33/2008 s 6	23.10.2008
s 52A(1), (6) and (7)	amended by 3/2011 Sch 1	1.7.2011
s 52B	inserted by 33/2008 s 6	23.10.2008
s 52B(4)—(7) and (9)	amended by 3/2011 Sch 1	1.7.2011

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s 52C	inserted by 33/2008 s 6	23.10.2008
s 52D	inserted by 33/2008 s 6	23.10.2008
s 52D(1)	amended by 3/2011 Sch 1	1.7.2011
s 52E	s 52A inserted by 27/1994 s 3	13.10.1994
	s 52A substituted by 59/1999 s 12	19.8.1999
	s 52A redesignated as s 52E by 33/2008 s 7	23.10.2008
s 52E(2)	amended by 80/2005 s 19(1)	3.12.2007
s 52E(6a)	inserted by 80/2005 s 19(2)	12.1.2006
	amended by 3/2011 Sch 1	1.7.2011
s 52E(7)	amended by 80/2005 s 19(3)	3.12.2007
s 52E(10)	amended by 80/2005 s 19(4)	3.12.2007
s 52E(12)	substituted by 19/2005 Sch 1 cl 4	2.4.2006
s 52E(13)		
prescribed period	the prescribed period amended to read prescribed period by 3/2011 Sch 1	1.7.2011
s 53		
s 53(1)	amended by 43/1986 s 5(e)	16.10.1986
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 53(1a)	inserted by 17/2010 s 6(1)	28.11.2010
s 53(2)	amended by 43/1986 s 5(f)	16.10.1986
	amended by 27/1994 s 4	13.10.1994
	amended by 80/2005 s 20	3.12.2007
	amended by 3/2011 s 26	1.7.2011
s 53(3)	amended by 3/2011 Sch 1	1.7.2011
s 53(4)	amended by 43/1986 s 5(g)	16.10.1986
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 34/2000 Sch 1 cl 4(r)	6.7.2000
	amended by 17/2010 s 6(2)	28.11.2010
	amended by 3/2011 Sch 1	1.7.2011
<i>s 54 before deletion by 84/2009</i>		
s 54(1)	<i>amended by 43/1986 s 5(h), (i)</i>	<i>16.10.1986</i>
	<i>(d) deleted by 43/1986 s 5(i)</i>	<i>16.10.1986</i>
	<i>amended by 59/1999 s 13 (Sch)</i>	<i>19.8.1999</i>
s 54(2)	<i>amended by 59/1999 s 13 (Sch)</i>	<i>19.8.1999</i>
s 54	<i>deleted by 84/2009 s 69</i>	<i>1.2.2010</i>
Pt 8		
s 55		
s 55(1)	amended by 34/2000 Sch 1 cl 4(s)	6.7.2000
s 55(2)	amended by 34/2000 Sch 1 cl 4(t)	6.7.2000
s 55(2a)	inserted by 64/1986 s 9(a)	20.11.1986
	amended by 98/1995 s 22	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999

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	amended by 3/2011 Sch 1	1.7.2011
s 55(2b)	inserted by 3/2011 s 27(1)	9.6.2011
s 55(3)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 34/2000 Sch 1 cl 4(u)	6.7.2000
	amended by 3/2011 s 27(2), Sch 1	9.6.2011
s 55(3)	amended by 3/2011 Sch 1	1.7.2011
s 55(4)	substituted by 64/1986 s 9(b)	20.11.1986
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 34/2000 Sch 1 cl 4(v), (w)	6.7.2000
	amended by 80/2005 s 21(1)	12.1.2006
s 55(5)—(7)	inserted by 64/1986 s 9(b)	20.11.1986
	substituted by 80/2005 s 21(2)	12.1.2006
s 55(8)	inserted by 80/2005 s 21(2)	12.1.2006
s 55(9)	inserted by 42/2015 s 7	16.9.2016
s 56		
s 56(1)	amended by 64/1986 s 10	20.11.1986
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 34/2000 Sch 1 cl 4(x)	6.7.2000
	substituted by 80/2005 s 22	3.12.2007
	amended by 32/2008 s 18	10.9.2009
	amended by 3/2011 s 28	1.7.2011
	amended by 84/2013 s 10	16.2.2014
s 56(2)	amended by 59/1999 s 13 (Sch)	19.8.1999
s 57		
s 57(1)	substituted by 64/1986 s 11(a)	20.11.1986
	amended by 34/2000 Sch 1 cl 4(y)	6.7.2000
	amended by 3/2011 Sch 1	1.7.2011
	amended by 52/2016 s 6	1.4.2017
s 57(2)	substituted by 64/1986 s 11(a)	20.11.1986
	amended by 34/2000 Sch 1 cl 4(z)	6.7.2000
s 57(3)	amended by 64/1986 s 11(b)	20.11.1986
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 34/2000 Sch 1 cl 4(za)	6.7.2000
	amended by 3/2011 Sch 1	1.7.2011
s 57(4)	amended by 98/1995 s 23	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 57(5)	amended by 64/1986 s 11(c)	20.11.1986
	substituted by 80/2005 s 23	12.1.2006
s 57(6)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 34/2000 Sch 1 cl (zb)	6.7.2000
	substituted by 80/2005 s 23	12.1.2006
s 57(7)	substituted by 80/2005 s 23	12.1.2006
s 57(8)	inserted by 80/2005 s 23	12.1.2006

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s 57A	inserted by 80/2005 s 24	12.1.2006
s 57A(2)	amended by 3/2011 s 29(1), (2)	1.7.2011
s 58		
s 58(1)	amended by 34/2000 Sch 1 cl 4(zc), (zd)	6.7.2000
	amended by 80/2005 s 25(1)—(3)	12.1.2006
	amended by 3/2011 s 30(1)—(3)	1.7.2011
	(d), (e) deleted by 3/2011 s 30(3)	1.7.2011
s 58(1a)	inserted by 80/2005 s 25(4)	12.1.2006
s 58(3)	amended by 59/1999 s 13 (Sch)	19.8.1999
s 59	<i>amended by 98/1995 s 24</i>	<i>4.1.1996</i>
	<i>amended by 59/1999 s 13 (Sch)</i>	<i>19.8.1999</i>
	<i>deleted by 80/2005 s 26</i>	<i>12.1.2006</i>
s 60		
s 60(1)	amended by 34/2000 Sch 1 cl 4(ze)	6.7.2000
	substituted by 80/2005 s 27	12.1.2006
s 60(2)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 34/2000 Sch 1 cl 4(ze), (zf)	6.7.2000
	amended by 3/2011 s 31(1), (2), Sch 1	1.7.2011
s 60(4)	amended by 98/1995 s 25	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
ss 60A and 60B	inserted by 80/2005 s 28	12.1.2006
s 61		
s 61(1)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 34/2000 Sch 1 cl 4(zg)	6.7.2000
	amended by 32/2008 s 19	10.9.2009
s 61(2)	amended by 43/1986 s 5(j)	16.10.1986
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 17/2010 s 7(1), (2)	28.11.2010
s 61(2a)	inserted by 80/2005 s 29(1)	3.12.2007
	amended by 17/2010 s 7(3), (4)	28.11.2010
s 61(3)	amended by 43/1986 s 5(k)	16.10.1986
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 61(4)	inserted by 80/2005 s 29(2)	3.12.2007
s 61A	<i>inserted by 64/1986 s 12</i>	<i>20.11.1986</i>
	<i>deleted by 87/2000 s 6</i>	<i>1.10.2001</i>
s 62	<i>amended by 59/1999 s 13 (Sch)</i>	<i>19.8.1999</i>
	<i>deleted by 3/2011 Sch 1</i>	<i>1.7.2011</i>
s 62A	inserted by 34/2000 Sch 1 cl 4(zh)	6.7.2000
s 63		
s 63(2)	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 50/2007 s 5	26.9.2008
	amended by 42/2015 s 8	16.9.2016
s 63(3)	amended by 64/1986 s 13(a)	20.11.1986

	amended by 29/1990 s 7	26.9.1991
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 80/2005 s 30(1)	3.12.2007
	amended by 3/2011 Sch 1	1.7.2011
s 63(4)	amended by 64/1986 s 13(b)	20.11.1986
	amended by 98/1995 s 26(a)	4.1.1996
	amended by 80/2005 s 30(2)—(5)	3.12.2007
	amended by 3/2011 s 32(1)—(6)	1.7.2011
	amended by 84/2013 s 11	16.2.2014
s 63(5)	substituted by 98/1995 s 26(b)	4.1.1996
	amended by 32/2008 s 20	10.9.2009
s 63(5a)	inserted by 98/1995 s 26(b)	4.1.1996
s 63(6)	amended by 80/2005 s 30(6)	3.12.2007
	amended by 33/2008 s 8	23.10.2008
s 63(7)	inserted by 3/2011 s 32(7)	1.7.2011

## Transitional etc provisions associated with Act or amendments

### *Statutes Repeal and Amendment (Courts) Act 1991*

#### 22—Transitional provisions—general

- (1) This section applies to amendments made by this Act or the *Justices Amendment Act 1991*.
- (2) The following transitional provisions apply in relation to those amendments:
  - (a) if the effect of the amendment is to reduce the penalty for an offence, the amendment applies whether the offence was committed before or after the amendment takes effect;
  - (b) if the effect of the amendment is to increase the penalty for an offence, the amendment applies only to offences committed after it takes effect;
  - (c) if the effect of the amendment is to increase or remove a time limit for commencing proceedings for an offence, the previous limit applies in respect of an offence committed before the amendment takes effect;
  - (d) an amendment affecting the classification of an offence as summary or indictable does not apply in relation to an offence committed before the amendment takes effect.

### *Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996*

#### 5—Transitional provision

An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

## ***Controlled Substances (Drug Offence Diversion) Amendment Act 2000***

### **7—Transitional provision**

- (1) Subject to subsection (2), Division 2 of Part 5 of the principal Act, as amended by this Act, applies in relation to a simple possession offence whether allegedly committed before or after the commencement of this Act.
- (2) Division 2 of Part 5 of the principal Act, as in force immediately before the commencement of this Act, continues to apply in relation to a simple possession offence committed before that commencement if the person alleged to have committed the offence has, at some time before that commencement, been given a notice requiring him or her to appear before an assessment panel in respect of that offence (and, for the purposes of this subsection, section 16 of the *Acts Interpretation Act 1915* applies).
- (3) The panels of legal practitioners and health professionals established by the Minister under section 34(2) and (3) of the principal Act, as in force immediately before the commencement of this Act—
  - (a) continue in existence and will be maintained by the Minister in the manner contemplated by that section; and
  - (b) together form a body that the Minister will accredit as a drug assessment service under and in accordance with the Act as in force after that commencement.

## ***Controlled Substances (Cannabis) Amendment Act 2002***

### **4—Transitional provision**

Section 45A of the principal Act, as in force immediately before the commencement of this Act, continues to apply in relation to offences alleged to have been committed before that commencement.

## ***Controlled Substances (Serious Drug Offences) Amendment Act 2005, Sch 1***

### **6—Transitional provision**

An amendment to the principal Act effected by a provision of this Act only applies in relation to an offence if the offence is committed on or after the commencement of the provision.

## ***Statutes Amendment (Courts Efficiency Reforms) Act 2012***

### **9—Transitional provision**

The amendments made to the *Controlled Substances Act 1984* by this Part—

- (a) do not apply in relation to the sentencing of a person following the commencement of this Part if the proceedings for the relevant offence were commenced before that commencement (and such sentencing is to occur as if this Act had not been enacted); and
- (b) apply in relation to the sentencing of a person following the commencement of this Part (including the sentencing of a person for an offence that occurred before that commencement) if the proceedings for the relevant offence were commenced on or after that commencement.

***Controlled Substances (Simple Possession Offences) Amendment Act 2015,  
Sch 1—Transitional provision***

Nothing in this Act affects the application of Part 5 Division 6 of the *Controlled Substances Act 1984* to a person referred to an assessment service under that Division before the commencement of this Act.

**Historical versions**

Reprint No 1—1.7.1991  
Reprint No 2—26.9.1991  
Reprint No 3—21.11.1991  
Reprint No 4—6.7.1992  
Reprint No 5—10.9.1992  
Reprint No 6—13.10.1994  
Reprint No 7—4.1.1996  
Reprint No 8—3.2.1997  
Reprint No 9—19.8.1999  
Reprint No 10—6.7.2000  
Reprint No 11—1.10.2001  
Reprint No 12—1.2.2003  
30.9.2004  
12.1.2006  
2.4.2006  
3.12.2007  
8.6.2008  
1.7.2008  
26.9.2008  
19.10.2008  
23.10.2008  
10.9.2009  
1.2.2010  
1.7.2010  
28.11.2010  
9.6.2011  
1.7.2011  
28.8.2011  
1.1.2012  
17.6.2012  
1.7.2013  
16.2.2014  
29.2.2016  
16.9.2016  
1.4.2017