

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, therapeutic and other substances, and of certain therapeutic devices; to repeal the *Food and Drugs Act 1908*; 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*.

### **3—Repeal**

(1) *The Food and Drugs Act 1908 is repealed.*<sup>1</sup>

Note—

1 Section 3(1) had not come into operation at the date of the publication of this version.

## 4—Interpretation

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

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

*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;

*assessment service* means a drug assessment service accredited under Division 2 of Part 5;

*authorised officer* means a person who is an authorised officer for the purposes of Part 7;

*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 contained in a mixture—
  - (i) a quantity of the drug that equals or exceeds the amount prescribed as a commercial quantity for the drug in its pure form; or

- (ii) a quantity of the mixture that equals or exceeds the amount (if any) prescribed as a commercial quantity for any mixture containing the drug; or
- (b) in any other case—a quantity of the drug, precursor or plant that equals or exceeds the amount prescribed as a commercial quantity for the drug, precursor or plant (as the case may be) in its pure form;

**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,

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 as a dentist under the *Dental Practice Act 2001*;

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

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

**large commercial quantity** of a controlled drug, controlled precursor 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 large commercial quantity for the drug in its pure form; or
  - (ii) a quantity of the mixture that equals or exceeds the amount (if any) prescribed as a large commercial quantity for any mixture containing the drug; or
- (b) in any other case—a quantity of the drug, precursor or plant that equals or exceeds the amount prescribed as a large commercial quantity for the drug, precursor or plant (as the case may be) in its pure form;

**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 practitioner** means a person registered under the *Medical Practitioners Act 1983*;

**nurse** means a person registered or enrolled under the *Nurses Act 1999*;

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

**pharmacist** means a person registered as a pharmacist under the *Pharmacists Act 1991* or exempt from the requirement to be so registered;

**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;

**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;

**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;

**therapeutic device** means a device declared by the regulations to be a therapeutic device for the purposes of this Act;

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

**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;

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**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 (if any) prescribed as a trafficable quantity for any mixture containing the drug; or
- (b) in any other case—a quantity of the drug or plant that equals or exceeds the amount prescribed as a trafficable quantity for the drug or plant (as the case may be) in its pure form;

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

**veterinary surgeon** means a person registered as a veterinary surgeon under the *Veterinary Surgeons Act 1985*;

**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, upon the nomination of the Minister, of whom—
  - (a) 1 (the presiding member) is an officer or employee of the Department; and
  - (b) 1 is a medical practitioner; and
  - (c) 1 is a member of the police force; 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) Where 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, upon 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) Upon 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.

## 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 upon 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 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.
- (5) *The Governor may, by regulation, declare, individually or by class, a substance that in the Governor's opinion is or may be used, or is designed to be used, as a therapeutic substance to be a therapeutic substance for the purposes of this Act.<sup>1</sup>*
- (6) *The Governor may, by regulation, declare, individually or by class, any device that in the Governor's opinion is or may be used, or is designed to be used—*
  - (a) *for a purpose related to the physical or mental health or hygiene of humans;*  
*or*
  - (b) *for the purposes of contraception; or*
  - (c) *for cosmetic purposes,*  
*to be a therapeutic device for the purposes of this Act.<sup>1</sup>*
- (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, drug of dependence, therapeutic substance or therapeutic device to a specified class or specified classes.

**Note—**

- 1 Section 12(5) & (6) had not come into operation at the date of the publication of this version.

## Part 4—General offences

### 13—Manufacture and packing

- (1) A person must not manufacture or pack a poison, therapeutic substance or therapeutic device to which this section applies unless the person—
  - (a) is a medical practitioner, pharmacist, dentist 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 drugs of dependence), therapeutic substances or therapeutic 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, therapeutic substance or therapeutic 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 drugs of dependence), therapeutic substances or therapeutic 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, therapeutic substance or therapeutic device to which this section applies unless the person—
  - (a) is a pharmacist, medical practitioner, dentist 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 drugs of dependence), therapeutic substances or therapeutic 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) Where 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 a record of—
  - (a) the names of the purchasers of those poisons; and
  - (b) the stated purposes for which they were purchased; and
  - (c) such other matters as may be prescribed.

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.

## 18—Sale, supply, administration and possession of prescription drugs

- (1) A person must not sell by retail, supply or administer to another person or to an animal, or prescribe for a person or an animal, a prescription drug (not being a drug of dependence) unless he or she is—
- (a) a medical practitioner, dentist, veterinary surgeon or nurse acting in the ordinary course of his or her profession; or
  - (b) a member of any other prescribed profession acting in the ordinary course of that profession and in accordance with the regulations; or
  - (c) a pharmacist dispensing the prescription of a medical practitioner, dentist, veterinary surgeon or member of a prescribed profession; or
  - (d) a person administering to another person or to an animal a prescription drug that has been lawfully prescribed for or supplied to that other person, or that animal; or
  - (e) a person licensed to do so by the Minister.

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

- (2) A member of a profession referred to in or prescribed under subsection (1) must not supply or administer to another person a prescribed prescription drug unless he or she holds prescribed qualifications.

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.

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

- (1) A medical practitioner or dentist 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 or dentist's knowledge, been prescribed or supplied by a medical practitioner or dentist, 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 or dentist knows or has reasonable cause to believe is dependent on drugs,

unless the practitioner or dentist 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 medical practitioner's or dentist'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 medical practitioner or dentist 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 medical practitioner or dentist 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 medical practitioner or dentist; and
  - (b) the period for which any such drug may be so prescribed or supplied.

- (6) In the case of an emergency, a member or officer of the Department, authorised generally or specifically by the Minister to do so, may issue a temporary authority to a person 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 may be 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**

*Note—*

*Section 20 had not come into operation at the date of the publication of this version.*

- (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, therapeutic substance or therapeutic device; or
    - (ii) sell or supply a poison, therapeutic substance or therapeutic 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, therapeutic substance or therapeutic device prescribed, or of a class 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) Upon 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, therapeutic substance or therapeutic 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, therapeutic substance or therapeutic 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, therapeutic substance or therapeutic device contrary to the regulations.

Maximum penalty: \$10 000.

## 26—Transport

A person must not transport a poison, therapeutic substance or therapeutic device contrary to the regulations.

Maximum penalty: \$10 000.

## 27—Use

A person must not—

- (a) use a poison, therapeutic substance or therapeutic device for a purpose or in a manner prohibited by the regulations; or
- (b) sell, supply, prescribe, or purchase a poison, therapeutic substance or therapeutic 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, therapeutic substance or therapeutic device to which this section applies is available for sale or supply.

Maximum penalty: \$10 000.

- (2) This section applies to such poisons, therapeutic substances and therapeutic 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, therapeutic substance or therapeutic 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 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 sale, manufacture, supply, administration or possession of a drug of dependence, the sale or possession of equipment for use in connection with the consumption or administration of such a drug or the preparation, for consumption or administration, of such a drug by—
    - (i) a medical practitioner, dentist, veterinary surgeon, pharmacist or nurse acting in the ordinary course of his or her profession; or
    - (ii) a member of any other prescribed profession acting in the course of that profession; or
    - (iii) a person acting in accordance with a licence issued by the Minister under this Act; or
  - (b) the possession of a drug of dependence, or of equipment for use in connection with the consumption or administration of a drug of dependence, 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 drug of dependence 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 drug of dependence 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.

## **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: \$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: \$50 000 or imprisonment for 10 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 2 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 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.

## **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: \$200 000 or imprisonment for 25 years, 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: \$50 000 or imprisonment for 10 years, or both.
- (4) If, 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, 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 sells a large commercial quantity of a controlled precursor, believing that the person to whom it is sold or another person intends to use any of it to unlawfully manufacture a controlled drug is guilty of an offence.  
Maximum penalty: \$200 000 or imprisonment for 25 years, or both.
- (2) A person who sells a commercial quantity of a controlled precursor, believing that the person to whom it is sold or another person intends to use any of it to unlawfully manufacture a controlled drug is guilty of an offence.  
Maximum penalty: \$75 000 or imprisonment for 15 years, or both.
- (3) A person who sells a controlled precursor, believing that the person to whom it is sold or another person intends to use any of it to unlawfully manufacture a controlled drug is guilty of an offence.  
Maximum penalty: \$50 000 or imprisonment for 10 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: \$50 000 or imprisonment for 10 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: \$50 000 or imprisonment for 10 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: \$200 000 or imprisonment for 25 years, 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: \$50 000 or imprisonment for 10 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 2 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: \$200 000 or imprisonment for 25 years, 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: \$50 000 or imprisonment for 10 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 2 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 for use in connection with consumption of controlled drugs**

##### **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.

#### **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.

### **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**

A person who manufactures a controlled drug is guilty of an offence.

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

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

- (1) A person who—
- (a) cultivates a controlled plant (other than a cannabis plant); 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: \$500.

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

- (1) A person who—
- (a) has possession of a controlled drug (other than 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 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 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.

## **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) Where 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.

### **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 or 33B; or
- (b) in circumstances prescribed by regulation.

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

### **34—Application of this Division**

This Division does not apply in relation to a child who is alleged to have committed a simple possession offence.

### **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) Where 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.

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- (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

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

In determining the penalty to be imposed upon a person convicted of an indictable or minor indictable offence against this Act, the court must take into consideration—

- (a) 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.

### 45—Offences committed by body corporate

Where a body corporate is guilty of an offence against this Act, each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence, unless the member proves that he or she exercised all reasonable diligence to prevent the commission of the offence by the body corporate.

### 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 member of the police force; 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—

*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;

*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**

### **50—Authorised officers**

- (1) The following persons are authorised officers for the purposes of this Part:
  - (a) a member of the police force; and
  - (b) any other person appointed by the Minister, by instrument in writing, to be an authorised officer for the purposes of this Part.
- (2) The Minister must provide an authorised officer appointed under subsection (1)(b) with a certificate of identification in the prescribed form.
- (3) An authorised officer appointed under subsection (1)(b) must, upon 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 Part.
- (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) where 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) where 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 member of the police force.
- (4) An authorised officer must not exercise the powers conferred by subsection (1)(a) and (b) except upon the authority of a warrant issued by an officer of police, a special magistrate or a justice, unless the powers are being exercised in relation to—
  - (a) premises that are used by a medical practitioner, pharmacist, dentist 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

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- (c) premises that are used for a non-residential purpose and in which the authorised officer reasonably suspects poisons, therapeutic substances, therapeutic devices or volatile solvents are being stored, used or sold, provided that the powers are exercised during ordinary business hours.
- (5) An officer of police, special magistrate or justice must not issue a warrant under subsection (4) unless satisfied, on information given upon 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) Subject to subsection (7), an authorised officer who is a member of the police force may search any person whom the officer believes on reasonable grounds has in his or her possession any substance or equipment in contravention of this Act.
- (7) Before a person is searched pursuant to subsection (6), the person must, if he or she so requires, be taken before a justice.
- (8) A justice before whom a person is taken pursuant to subsection (7) may order that the person be searched, or not be searched, as he or she thinks the justice of the case requires.
- (9) Where an authorised officer who is a member of the police force suspects on reasonable grounds that a substance 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 has reasonable cause to suspect affords evidence of an offence against this Act.
- (10) Nothing in this section derogates from the power of a member of the police force to do anything pursuant to a general search warrant issued under the *Summary Offences Act 1953*.
- (11) An authorised officer may, in exercising powers pursuant to a warrant issued under subsection (4) or any other powers under this Part, be assisted by such persons as the authorised officer considers necessary or desirable in the circumstances.
- (12) 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 this section.

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

### **52A—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) Where 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.

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- (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—
- the 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.
- (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 therapeutic substance, 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 upon payment of the prescribed fee.
- (4) An analyst or a botanist 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 member of the police force—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.

### 54—Immunity from liability

- (1) No personal liability attaches to—
  - (a) an authorised officer; or

- (b) a person accompanying an authorised officer; or
  - (c) an analyst,
- for an honest act or omission in the exercise or purported exercise, or discharge or purported discharge, of any power or duty under this Act.
- (2) A liability that would, but for subsection (1), lie against a person referred to in that subsection lies instead against the Crown.

## **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) Where 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.
- (3) Upon 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 prescribed 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.

## 56—Permits

- (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 poison, controlled drug, controlled plant, therapeutic substance or therapeutic 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) Where 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, 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 upon 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 therapeutic substance 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 therapeutic substance; or
  - (b) in relation to a device, if the device is a therapeutic device or is a device that the Minister is satisfied is or may be used, or is designed to be used—
    - (i) for a purpose related to the physical or mental health or hygiene of humans; or
    - (ii) for the purposes of contraception; or
    - (iii) for cosmetic purposes.
- (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 therapeutic substances in a quantity or manner that presents a risk to the person's health or has obtained or attempted to obtain a poison, therapeutic substance or therapeutic 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) medical practitioners; and
  - (c) dentists; and
  - (d) veterinary surgeons; and
  - (e) pharmacists; 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) Where 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 medical practitioner, dentist, veterinary surgeon, pharmacist, nurse 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 medical practitioner, dentist, veterinary surgeon or nurse—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 a member or officer of the Department 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; 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; 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.

## **62—Money for this Act to be appropriated**

The money required for the purposes of this Act will be paid out of money appropriated by Parliament for those purposes.

## **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.
- (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 upon 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, possession, use, handling, labelling, storing, transporting, disposal or advertising of any poison, controlled precursor, therapeutic substance, therapeutic 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, therapeutic substance or therapeutic device must conform;
  - (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 application for, grant, 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, therapeutic substance, therapeutic device or volatile solvent;
  - (g) provide for and regulate the inspection, examination, testing or analysis of any substance or goods;
  - (h) exempt, conditionally or unconditionally, any person, poison, controlled precursor, therapeutic substance or therapeutic device from any provision of this Act, 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 and a code, standard, pharmacopoeia or other document so referred to or incorporated has effect, as amended from time to time by the authority responsible for its publication, as if it were a regulation made under this Act.
- (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, poisons, controlled drugs, controlled precursors, controlled plants, therapeutic substances, therapeutic devices or volatile solvents; or
  - (b) the circumstances; or
  - (c) any other specified factor,
- to which the regulation is expressed to apply.

## Legislative history

### Notes

- In this version provisions that are uncommenced appear in italics.
- 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—uncommenced
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> )

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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>	9.6.2005	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> )
<b>2007</b>	<b>35</b>	<b><i>Statutes Amendment (Petroleum Products) Act 2007</i></b>	<b>20.9.2007</b>	<b>Pt 2 (s 4)—1.7.2008 (<i>Gazette 13.3.2008 p1006</i>)</b>
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—uncommenced
<b>2008</b>	<b>3</b>	<b><i>Health Care Act 2008</i></b>	<b>13.3.2008</b>	<b>Sch 4 (cl 4)—1.7.2008 (<i>Gazette 26.6.2008 p2563</i>)</b>
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	uncommenced
2008	33	<i>Controlled Substances (Drug Detection Powers) Amendment Act 2008</i>	31.7.2008	Pt 2 (ss 4—8)—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
Pt 1		
s 2	<i>deleted by 59/1999 s 13 (Sch)</i>	19.8.1999

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s 3		
s 3(2)	<i>deleted by 59/1999 s 13 (Sch)</i>	19.8.1999
s 4		
s 4(1)	s 4 redesignated as s 4(1) by 64/1986 s 3(b)	20.11.1986
analyst	substituted by 43/1986 s 5(a)	16.10.1986
<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
<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
controlled drug	inserted by 80/2005 s 4(1)	3.12.2007
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
the Department	inserted by 34/2000 Sch 1 cl 4(a)	6.7.2000
<b><i>the Health Commission</i></b>	<b><i>deleted by 3/2008 Sch 4 cl 4</i></b>	<b>1.7.2008</b>
large commercial quantity	inserted by 80/2005 s 4(3)	3.12.2007
manufacture	inserted by 80/2005 s 4(3)	3.12.2007
medical practitioner	amended by 59/1999 s 13 (Sch)	19.8.1999
nurse	amended by 64/1986 s 3(a)	20.11.1986
	amended by 80/2005 s 4(4)	12.1.2006
pharmacist	substituted by 13/1991 (Sch 2)	21.11.1991
<i>plant</i>	<i>deleted by 29/1990 s 3(c)</i>	26.9.1991
possession	substituted by 80/2005 s 4(5)	3.12.2007
<i>produce</i>	<i>deleted by 80/2005 s 4(6)</i>	3.12.2007
product	inserted by 80/2005 s 4(6)	3.12.2007
<i>prohibited substance</i>	<i>deleted by 80/2005 s 4(7)</i>	3.12.2007
<i>related person or body</i>	<i>deleted by 17/1986 s 13 (Sch)</i>	1.3.1987
sell	substituted by 80/2005 s 4(8)	3.12.2007
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
traffic	inserted by 80/2005 s 4(11)	3.12.2007

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trafficable quantity	inserted by 80/2005 s 4(11)	3.12.2007
veterinary surgeon	amended by 59/1999 s 13 (Sch)	19.8.1999
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
s 6(4)	amended by 59/1999 s 13 (Sch)	19.8.1999
s 7		
s 7(1)—(4)	amended by 59/1999 s 13 (Sch)	19.8.1999
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 11		
s 11(3), (5)—(7)	amended by 59/1999 s 13 (Sch)	19.8.1999
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)—(7)	amended by 59/1999 s 13 (Sch)	19.8.1999
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
	amended by 34/2000 Sch 1 cl 4(c)	6.7.2000
	amended by 80/2005 s 8(1)	3.12.2007
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



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	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 34/2000 Sch 1 cl 4(d)	6.7.2000
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
s 15(3)	inserted by 59/1999 s 4	19.8.1999
s 16		
s 16(1)—(4)	amended by 98/1995 s 6	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 17	amended by 98/1995 s 7	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
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
s 18(2)	amended by 59/1999 s 13 (Sch)	19.8.1999
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 18A	inserted by 80/2005 s 10	3.12.2007
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
	<b>s 19 redesignated as s 19(1) by 35/2007 s 4</b>	<b>1.7.2008</b>
<b>s 19(2)—(6)</b>	<b>inserted by 35/2007 s 4</b>	<b>1.7.2008</b>
s 20		
s 20(1)	amended by 98/1995 s 10	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
	amended by 80/2005 s 11(1), (2)	3.12.2007
s 20(2)	substituted by 80/2005 s 11(3)	3.12.2007
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
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		

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s 23(1)	amended by 98/1995 s 13	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
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
s 25	amended by 98/1995 s 15	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 26	amended by 98/1995 s 16	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 27	substituted by 98/1995 s 17	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 28		
s 28(1)	amended by 98/1995 s 18	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 29	amended by 98/1995 s 19	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
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 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>	<i>19.8.1999</i>
s 32		
s 32(1)	<i>amended by 59/1999 s 13 (Sch)</i>	<i>19.8.1999</i>
s 32(2)	<i>amended by 59/1999 s 13 (Sch)</i>	<i>19.8.1999</i>
	<i>amended by 34/2000 Sch 1 cl 4(j)</i>	<i>6.7.2000</i>
s 32(3) and (4)	<i>amended by 59/1999 s 13 (Sch)</i>	<i>19.8.1999</i>
s 32(5)	<i>amended by 64/1986 s 5</i>	<i>20.11.1986</i>
	<i>amended by 29/1990 s 4(a)</i>	<i>26.9.1991</i>

	<i>amended by 69/1991 s 16(a), (b)</i>	6.7.1992
	<i>amended by 44/1992 s 3(a), (b)</i>	6.7.1992
	<i>B(b)(iii) deleted by 44/1992 s 3(c)</i>	6.7.1992
	<i>amended by 59/1999 s 13 (Sch)</i>	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>	20.11.1986
	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999
	<i>amended by 34/2000 Sch 1 cl 4(k)</i>	6.7.2000
s 33(1a)	<i>inserted by 64/1986 s 6(b)</i>	20.11.1986
	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999
	<i>amended by 34/2000 Sch 1 cl 4(l)</i>	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>	20.11.1986
	<i>amended by 34/2000 Sch 1 cl 4(m)</i>	6.7.2000
s 33(4)	<i>amended by 64/1986 s 6(d)</i>	20.11.1986
	<i>amended by 34/2000 Sch 1 cl 4(n)</i>	6.7.2000
s 33(5)	<i>amended by 64/1986 s 6(e)</i>	20.11.1986
	<i>amended by 34/2000 Sch 1 cl 4(o), (p)</i>	6.7.2000
s 33(6)	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999
Pt 5 Div 1	substituted by 80/2005 s 14	3.12.2007
Pt 5 Div 2	substituted by 80/2005 s 14	3.12.2007
s 33D	amended by 11/2008 Sch 1 cl 1	8.6.2008
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
Pt 5 Div 4	inserted by 80/2005 s 14	3.12.2007
s 33LA	inserted by 50/2007 s 4	uncommenced—not incorporated
Pt 5 Div 5	inserted by 80/2005 s 14	3.12.2007
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
ss 35—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

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<i>ss 41 and 42</i>	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999
	<i>deleted by 80/2005 s 15</i>	3.12.2007
<i>s 43 before deletion by substituted by 17/1986 s 13 (Sch)</i>		1.3.1987
<i>19/2005</i>		
<i>s 43(1) and (2)</i>	<i>deleted by 69/1991 s 16(c)</i>	6.7.1992
<i>s 43(3)</i>	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999
<i>s 43</i>	<i>deleted by 19/2005 Sch 1 cl 2</i>	2.4.2006
<i>s 44</i>	<i>amended by 29/1990 s 5</i>	26.9.1991
	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999
	<i>amended by 87/2000 s 5</i>	1.10.2001
	<i>amended by 19/2005 Sch 1 cl 3</i>	2.4.2006
	<i>amended by 80/2005 s 16(1)—(3)</i>	3.12.2007
	<i>(db) deleted by 80/2005 s 16(3)</i>	3.12.2007
<i>s 45</i>	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999
<i>s 45A</i>	<i>inserted by 64/1986 s 8</i>	30.4.1987
<i>s 45A(1)</i>	<i>amended by 49/1991 Sch 2</i>	6.7.1992
	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999
<i>s 45A(2)</i>	<i>amended by 34/1996 s 4 (Sch cl 12)</i>	3.2.1997
	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999
<i>s 45A(3)</i>	<i>substituted by 34/1996 s 4 (Sch cl 12)</i>	3.2.1997
<i>s 45A(4)—(6)</i>	<i>deleted by 34/1996 s 4 (Sch cl 12)</i>	3.2.1997
<i>s 45A(8)</i>	<i>amended by 29/1990 s 6</i>	26.9.1991
<i>artificially enhanced cultivation</i>	<i>inserted by 47/2002 s 3(a)</i>	1.2.2003
<i>child</i>	<i>deleted by 80/2005 s 17</i>	3.12.2007
<i>simple cannabis offence</i>	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999
	<i>amended by 47/2002 s 3(b)</i>	1.2.2003
	<i>substituted by 80/2005 s 17</i>	3.12.2007
<i>Pt 6 Div 2</i>	<i>amended by 17/1986 s 13 (Sch)</i>	1.3.1987
	<i>deleted by 59/1999 s 10</i>	19.8.1999
<i>Pt 7</i>	<i>heading substituted by 59/1999 s 11</i>	19.8.1999
<i>s 50</i>		
<i>s 50(2) and (3)</i>	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999
<i>s 51</i>		
<i>s 51(1)</i>	<i>amended by 43/1986 s 5(c)</i>	16.10.1986
	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999
<i>s 51(2)</i>	<i>amended by 43/1986 s 5(d)</i>	16.10.1986
	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999
<i>s 52</i>		
<i>s 52(2)</i>	<i>amended by 17/1986 s 13 (Sch)</i>	1.3.1987
	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999
	<i>amended by 80/2005 s 18(1)—(3)</i>	12.1.2006
<i>s 52(4)</i>	<i>amended by 59/1999 s 13 (Sch)</i>	19.8.1999

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	amended by 80/2005 s 18(4)	12.1.2006
s 52(5)—(10)	amended by 59/1999 s 13 (Sch)	19.8.1999
s 52(11)	amended by 59/1999 s 13 (Sch)	19.8.1999
	substituted by 80/2005 s 18(5)	12.1.2006
s 52(12)	amended by 98/1995 s 21	4.1.1996
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 52A	inserted by 27/1994 s 3	13.10.1994
	substituted by 59/1999 s 12	19.8.1999
s 52A(2)	amended by 80/2005 s 19(1)	3.12.2007
s 52A(6a)	inserted by 80/2005 s 19(2)	12.1.2006
s 52A(7)	amended by 80/2005 s 19(3)	3.12.2007
s 52A(10)	amended by 80/2005 s 19(4)	3.12.2007
s 52A(12)	substituted by 19/2005 Sch 1 cl 4	2.4.2006
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(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
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
s 54		
s 54(1)	amended by 43/1986 s 5(h), (i)	16.10.1986
	(d) deleted by 43/1986 s 5(i)	16.10.1986
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 54(2)	amended by 59/1999 s 13 (Sch)	19.8.1999
s 55		
s 55(4)	amended by 80/2005 s 21(1)	12.1.2006
s 55(5)—(7)	substituted by 80/2005 s 21(2)	12.1.2006
s 55(8)	inserted by 80/2005 s 21(2)	12.1.2006
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
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
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

**Controlled Substances Act 1984—1.7.2008 to 25.9.2008**

## Legislative history

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s 55(5)—(7)	inserted by 64/1986 s 9(b)	20.11.1986
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
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
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
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
s 57A	inserted by 80/2005 s 24	12.1.2006
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
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
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
s 61(2)	amended by 43/1986 s 5(j)	16.10.1986
	amended by 59/1999 s 13 (Sch)	19.8.1999
s 61(2a)	inserted by 80/2005 s 29(1)	3.12.2007
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>	20.11.1986
	<i>deleted by 87/2000 s 6</i>	1.10.2001
s 62	amended by 59/1999 s 13 (Sch)	19.8.1999
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	uncommenced—not incorporated
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
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
s 63(5)	substituted by 98/1995 s 26(b)	4.1.1996
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

## 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.



## 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