

(Reprint No. 5)

**SOUTH AUSTRALIA**

**CONTROLLED SUBSTANCES ACT, 1984**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 10 September 1992.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

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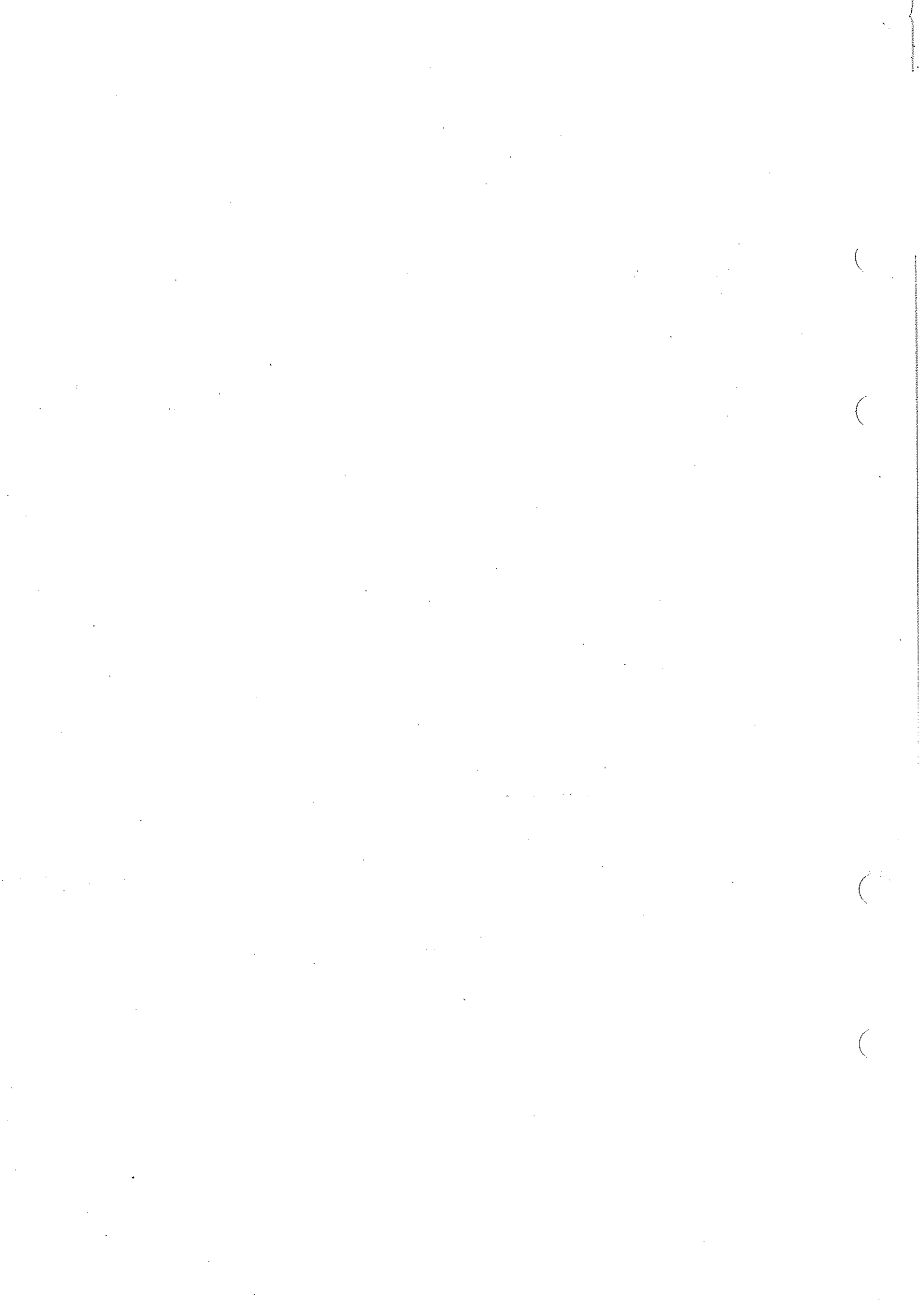
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# CONTROLLED SUBSTANCES ACT, 1984

being

Controlled Substances Act, 1984, No. 52 of 1984 [Assented to 24 May 1984]<sup>1</sup>

as amended by

Crimes (Confiscation of Profits) Act, 1986, No. 17 of 1986 [Assented to 20 March 1986]<sup>2</sup>  
Statutes Amendment (Analysts) Act, 1986, No. 43 of 1986 [Assented to 4 September 1986]<sup>3</sup>  
Controlled Substances Act Amendment Act, 1986, No. 64 of 1986 [Assented to 6 November 1986]<sup>4</sup>  
Controlled Substances Act Amendment Act, 1990, No. 28 of 1990 [Assented to 26 April 1990]  
Controlled Substances Act Amendment Act (No. 2), 1990, No. 29 of 1990 [Assented to 26 April 1990]<sup>5</sup>  
Pharmacists Act 1991 No. 13 of 1991 [Assented to 4 April 1991]<sup>6</sup>  
Director of Public Prosecutions Act 1991 No. 49 of 1991 [Assented to 21 November 1991]<sup>7</sup>  
Statutes Repeal and Amendment (Courts) Act 1991 No. 69 of 1991 [Assented to 12 December 1991]<sup>8</sup>  
Controlled Substances (Classification of Offences) Amendment Act 1992 No. 44 of 1992 [Assented to 10 September 1992]<sup>9</sup>

**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 the Narcotic and Psychotropic Drugs Act, 1934; and for other related purposes.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

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<sup>1</sup> Came into operation (except ss. 3(1), 12(5)-(7), 13-29) 9 May 1985: *Gaz.* 9 May 1985, p. 1399; s. 19 came into operation 3 March 1986: *Gaz.* 27 February 1986, p. 421; s. 22 came into operation 1 July 1988: *Gaz.* 19 May 1988, p. 1246; s. 21 came into operation 9 February 1989: *Gaz.* 9 February 1989, p. 354; ss. 3(1), 12(5)-(7), 13-18, 20, 23-29 had not been brought into operation at the date of this reprint.

<sup>2</sup> Came into operation 1 March 1987: *Gaz.* 19 February 1987, p. 381.

<sup>3</sup> Came into operation 16 October 1986: *Gaz.* 16 October 1986, p. 1373.

<sup>4</sup> Came into operation (except ss. 7 and 8) 20 November 1986: *Gaz.* 20 November 1986, p. 1638; s. 8 came into operation 30 April 1987: *Gaz.* 30 April 1987, p. 1133; s. 7 came into operation 29 March 1990: *Gaz.* 29 March 1990, p. 884.

<sup>5</sup> Came into operation 26 September 1991: *Gaz.* 26 September 1991, p. 890.

<sup>6</sup> Came into operation 21 November 1991: *Gaz.* 21 November 1991, p. 1328.

<sup>7</sup> Came into operation 6 July 1992: *Gaz.* 25 June 1992, p. 1869.

<sup>8</sup> Came into operation 6 July 1992: *Gaz.* 2 July 1992, p. 209.

<sup>9</sup> Came into operation 6 July 1992: s. 2.

*Note: 1. Asterisks indicate repeal or deletion of text.*

*2. For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.*

PART I  
PRELIMINARY

**Short title**

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

**Commencement**

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

**Repeal<sup>1</sup>**

3. (1) *The Food and Drugs Act, 1908, is repealed.*

(2) *The Narcotic and Psychotropic Drugs Act, 1934, is repealed.*

**Interpretation**

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

“the Advisory Council” means the Controlled Substances Advisory Council established under Part II:

“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 panel” means a drug assessment and aid panel established under Part V:

“authorized officer” means a person who is an authorized officer for the purposes of Part VII:

\* \* \* \* \*

“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:

<sup>1</sup>S. 3(1) had not been brought into operation at the date of this reprint.

- (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:

“dentist” means a person registered as a dentist under the *Dentists Act, 1931*:

“drug of dependence” means a poison declared by the regulations to be a drug of dependence:

“the Health Commission” means the South Australian Health Commission:

“medical practitioner” means a person registered under the *Medical Practitioners Act, 1982*:

“nurse” means a person registered or enrolled under the *Nurses Act, 1984*:

“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 includes control over the disposition of the substance:

“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:

“produce”, in relation to a substance, means to produce by any method whatsoever, including cultivation, and “production” has a corresponding meaning:

“prohibited substance” means a substance declared by the regulations to be a prohibited substance for the purposes of this Act:

\* \* \* \* \*

“school zone” means the grounds of a primary or secondary school and the area within 500 metres of the boundary of the school:

“sell” includes offer or expose for sale:

“simple possession offence” means an offence against section 31, other than—

- (a) an offence arising out of the possession of a prohibited substance, not being a substance declared by the regulations to be one that may lead to dependence in humans;

or

(b) an offence arising out of the possession, smoking or consumption of cannabis or cannabis resin or the possession of equipment for use in connection with the smoking of cannabis or cannabis resin or the preparation of cannabis or cannabis resin for smoking or consumption:

“substance” means any gaseous, liquid or solid substance and includes a plant or fungus:

“supply” means provide, distribute, barter or exchange, and includes offer to supply:

“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:

“vessel” means any ship, boat or other water craft:

“veterinary surgeon” means a person registered as a veterinary surgeon under the *Veterinary Surgeons Act, 1935*:

“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) An analogue of a drug of dependence or a prohibited substance (not being an analogue that is itself declared by regulation to be a drug of dependence or a prohibited substance) is by virtue of this subsection a prohibited substance.

#### **Application of Act**

5. (1) This Act binds the Crown.

(2) The provisions of this Act shall be in addition to, and shall not derogate from the obligations imposed by, the provisions of any other Act.

(3) The provisions of this Act shall not limit or derogate from any civil remedy at law or in equity.

## PART II

## CONTROLLED SUBSTANCES ADVISORY COUNCIL

**The Controlled Substances Advisory Council**

6. (1) There shall be a council entitled the "Controlled Substances Advisory Council".

(2) The Advisory Council shall consist of nine members appointed by the Governor, upon the nomination of the Minister, of whom—

- (a) one (the Chairman) is an employee of the Health Commission;
- (b) one is a medical practitioner;
- (c) one is a member of the police force;
- (d) two are persons who, in the opinion of the Minister, have qualifications and extensive experience in the field of chemistry, pharmacy or pharmacology;
- (e) one 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;
- (f) two 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) one 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 in his capacity as a member of the Advisory Council, his deputy may act as a member of the Advisory Council.

**Terms and conditions of office**

7. (1) A member of the Advisory Council shall be appointed for a term of office, not exceeding three years, specified in the instrument of his appointment and shall, 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 his office;
  - (b) neglect of duty;
- or
- (c) dishonourable conduct.

(3) The office of a member of the Advisory Council becomes vacant if—

- (a) he dies;
- (b) his term of office expires;
- (c) he resigns by giving notice in writing to the Minister;

or

- (d) he 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 shall be appointed to that office in accordance with this Act.

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

8. An act or proceeding of the Advisory Council shall not be 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.

#### **Allowances and expenses**

9. A member of the Advisory Council shall be entitled to receive such allowances and expenses as the Governor may from time to time determine

#### **Conduct of business**

10. (1) The Chairman or, in his absence, his deputy, shall preside at any meeting of the Advisory Council.

(2) In the absence of both the Chairman and his deputy from a meeting of the Advisory Council, the members present shall elect one of their number to preside at that meeting.

(3) Five members shall constitute a quorum of the Advisory Council, and no business shall 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 shall be a decision of the Advisory Council.

(5) The person presiding at a meeting of the Advisory Council shall, 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 shall be conducted in a manner determined by the Advisory Council.

#### **Functions of the Advisory Council**

11. (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;

(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;

(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 shall advise the Minister upon any matter referred by the Minister to the Advisory Council for advice.

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(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 shall 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 shall, not later than the thirty-first day of October in each year, report to the Minister on the administration and operation of this Act during the previous financial year.

(7) The Minister shall, as soon as practicable after his receipt of a report submitted to him under subsection (6), cause a copy of the report to be laid before each House of Parliament.

## PART III

## CONTROLLED SUBSTANCES

**Declaration of poisons, prescription drugs, drugs of dependence, prohibited substances, volatile solvent, therapeutic substances, therapeutic devices and volatile solvents<sup>1</sup>**

12. (1) The Governor may, by regulation, declare, individually or by class, any substance that in his 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 his 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 his opinion may lead to dependence in humans or is of exceptional danger to humans to be a prohibited substance for the purposes of this Act.

(5) *The Governor may, by regulation, declare, individually or by class, a substance that in his 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.*

(6) *The Governor may, by regulation, declare, individually or by class, any device that in his 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;*

*(b) for the purposes of contraception;*

*or*

*(c) for cosmetic purposes,*

*to be a therapeutic device for the purposes of this Act.*

(7) *The Governor may, by regulation, declare, individually or by class, any substance that in his 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.

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<sup>1</sup>S. 12(5) - (7) had not been brought into operation at the date of this reprint.

## PART IV

## GENERAL OFFENCES

*Manufacture, production and packing<sup>1</sup>*

13. (1) A person shall not manufacture, produce or pack a poison, therapeutic substance or therapeutic device to which this section applies unless—

(a) he is a medical practitioner, pharmacist, dentist or veterinary surgeon acting in the ordinary course of his profession;

or

(b) he is licensed to do so by the Health Commission.

*Penalty: Two thousand dollars.*

(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.

*Sale by wholesale*

14. (1) A person shall not sell by wholesale a poison, therapeutic substance or therapeutic device to which this section applies unless—

(a) he is a pharmacist acting in the ordinary course of his profession;

or

(b) he is licensed to do so by the Health Commission.

*Penalty: Two thousand dollars.*

(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.

*Sale by retail*

15. (1) A person shall not sell by retail a poison, therapeutic substance or therapeutic device to which this section applies unless—

(a) he is a pharmacist or veterinary surgeon acting in the ordinary course of his profession;

or

(b) he is licensed to do so by the Health Commission.

*Penalty: Two thousand dollars.*

(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.

*Sale of certain poisons*

16. (1) A person shall not sell a poison to which this section applies to a person under the age of eighteen years.

*Penalty: Two thousand dollars.*

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<sup>1</sup>Ss. 13-18 had not been brought into operation at the date of this reprint.

(2) A person shall 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 identity.

*Penalty:* Two thousand dollars.

(3) Where a person seeks to purchase a poison to which this section applies, the vendor shall ask the prospective purchaser the purpose for which he requires the poison, and shall not proceed with the sale unless the question is satisfactorily answered.

*Penalty:* Two thousand dollars.

(4) A person who sells poisons to which this section applies shall keep a record of—

(a) the names of the purchasers of such poisons;

(b) the stated purposes for which those poisons were purchased;

and

(c) such other matters as may be prescribed.

*Penalty:* Two thousand dollars.

(5) This section applies to such poisons as may be prescribed, individually or by class, by the regulations.

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

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

*Penalty:* Two thousand dollars.

#### *Supply and administration of prescription drugs*

18. A person shall not supply or administer to another person a prescription drug (not being a drug of dependence) unless he is—

(a) a medical practitioner, dentist, veterinary surgeon or nurse acting in the ordinary course of his profession;

(b) a member of any other prescribed profession acting in the ordinary course of that profession;

(c) a pharmacist dispensing the prescription of a medical practitioner, dentist or veterinary surgeon;

(d) a person administering to another person a prescription drug that has been lawfully prescribed for, or supplied to, that other person;

or

(e) a person licensed to do so by the Health Commission.

*Penalty:* Two thousand dollars or imprisonment for two years.

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

19. A person shall not sell or supply a volatile solvent to another person if he 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.

Penalty: Two thousand dollars or imprisonment for two years.

**Prohibition of automatic vending machines<sup>1</sup>**

20. (1) No person shall—

(a) whether on premises of which he is the owner or in any other place—

(i) install an automatic vending machine for the sale or supply of a poison, or of a therapeutic substance to which this section applies;

or

(ii) sell or supply any such poison or therapeutic substance 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 is the owner.

Penalty: One thousand dollars.

(2) This section applies to such therapeutic substances as may be prescribed, individually or by class, by the regulations.

**Sale or supply of other potentially harmful substances or devices**

21. (1) The Minister may, by notice published in the *Gazette*, prohibit the sale or the supply of—

(a) any substance or device specified in the order, being a substance or device that should not, in his opinion, be sold or supplied pending evaluation of its harmful properties;

and

(b) in the case of a substance, any preparation containing that substance.

(2) A person shall not contravene a notice published under subsection (1).

Penalty: Two thousand dollars or imprisonment for two 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 shall refer the subject matter of the notice to the Advisory Council for its consideration.

**Possession**

22. (1) A person shall not have in his possession a poison to which this section applies unless he is licensed to do so by the Health Commission.

Penalty: Two thousand dollars.

(2) This section applies to such poisons (other than drugs of dependence) as may be prescribed, individually or by class, by the regulations.

<sup>1</sup>S. 20 had not been brought into operation at the date of this reprint.

**Quality<sup>1</sup>**

23. (1) A person shall not sell by wholesale or by retail or supply a poison, therapeutic substance or therapeutic device that does not conform with the regulations.

Penalty: Two thousand dollars.

(2) It is a defence for a person charged with an offence against this section to prove that he 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.

**Packaging and labelling**

24. A person shall not sell by wholesale or by retail a poison, therapeutic substance or therapeutic device unless it—

(a) is enclosed in a package or container that conforms with the regulations;

and

(b) the package or container is labelled in accordance with the regulations.

Penalty: Two thousand dollars.

**Storage**

25. A person shall not store a poison, therapeutic substance or therapeutic device otherwise than in accordance with the regulations.

Penalty: Two thousand dollars.

**Transport**

26. A person shall not transport a poison, therapeutic substance or therapeutic device otherwise than in accordance with the regulations.

Penalty: Two thousand dollars.

**Use**

27. A person shall not use a poison, therapeutic substance or therapeutic device otherwise than in accordance with the regulations.

Penalty: Two thousand dollars.

**Prohibition of advertisement**

28. (1) A person shall not advertise that a poison, therapeutic substance or therapeutic device to which this section applies is available for sale or supply.

Penalty: Two thousand dollars.

(2) This section applies to such poisons, therapeutic substances and therapeutic devices as may be prescribed, individually or by class, by the regulations.

**Regulation of advertisement**

29. A person shall not, except in accordance with the regulations, advertise that a poison, therapeutic substance or therapeutic device is available for sale or supply.

Penalty: Two thousand dollars.

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<sup>1</sup>Ss. 23-29 had not been brought into operation at the date of this reprint.

**Forgery, etc., of prescriptions**

30. (1) A person shall not forge or fraudulently alter or utter a prescription or other document, or have in his possession such a prescription or document knowing it to be forged or fraudulently altered, with a view to obtaining a prescription drug.

Penalty: Five thousand dollars or imprisonment for five years.

(2) A person shall not knowingly, by false representation, obtain—

(a) a prescription drug;

or

(b) a prescription for a prescription drug.

Penalty: Two thousand dollars or imprisonment for two years.

(3) A pharmacist shall retain any prescription or other document that he has reasonable cause to believe has been forged or fraudulently altered and shall forthwith deliver any such prescription or document to the Commissioner of Police.

## PART V

SPECIAL PROVISIONS RELATING TO DRUGS OF DEPENDENCE AND  
PROHIBITED SUBSTANCES

## DIVISION I—OFFENCES

**Prohibition of possession or consumption of drug of dependence and prohibited substance**

31. (1) A person shall not—

(a) knowingly have in his possession a drug of dependence or a prohibited substance;

(b) smoke, consume or administer to himself, or permit another person to administer to him, a drug of dependence or a prohibited substance;

or

(c) have in his possession any piece of equipment for use in connection with the smoking, consumption or administration of such a drug or substance, or the preparation of such a drug or substance for smoking, consumption or administration.

(2) A person who contravenes this section shall be guilty of an offence and liable to a penalty as follows:

(a) in the case of an offence arising out of the possession, smoking or consumption of cannabis or cannabis resin, or the possession of equipment for use in connection with the smoking or consumption of cannabis or cannabis resin or the preparation of cannabis or cannabis resin for smoking or consumption—a penalty not exceeding five hundred dollars;

and

(b) in any other case—a penalty not exceeding two thousand dollars or imprisonment for two years, or both.

(3) Nothing in this section renders unlawful the possession of a drug of dependence or any equipment by—

(a) a medical practitioner, dentist, veterinary surgeon, pharmacist or nurse acting in the ordinary course of his profession;

(b) a member of any other prescribed profession acting in the ordinary course of that profession;

(c) a person for or to whom the drug has been lawfully prescribed or supplied;

or

(d) a person licensed to have the drug or equipment in his possession by the Health Commission.

(4) Nothing in this section renders unlawful the consumption or administration to himself of a drug of dependence, or the giving of permission for the administration to himself of a drug of dependence, by a person for whom the drug has been lawfully prescribed or supplied.

**Prohibition of manufacture, sale etc., of drug of dependence or prohibited substance**

32. (1) A person shall not knowingly—

(a) manufacture or produce a drug of dependence or a prohibited substance;

(b) take part in the manufacture or production of such a drug or substance;

- (c) sell, supply or administer such a drug or substance to another person;
- (d) take part in the sale, supply or administration of such a drug or substance to another person;

or

- (e) have such a drug or substance in his possession for the purpose of the sale, supply or administration of that drug or substance to another person.

(2) Nothing in this section renders unlawful the manufacture, production, sale, supply, administration or possession of a drug of dependence by—

- (a) a medical practitioner, dentist, veterinary surgeon, pharmacist or nurse acting in the ordinary course of his profession;
- (b) a member of any other prescribed profession acting in the course of his profession;

or

- (c) a person licensed to do so by the Health Commission,

or renders unlawful—

- (d) the administration or supply by a person to another person of a drug of dependence that has been lawfully prescribed for, or supplied to, that other person;

or

- (e) the taking part by any other person in the manufacture, production, sale, supply, administration or possession of a drug of dependence in the circumstances referred to in this subsection.

(3) For the purposes of this section, a person who knowingly has in his possession more than a prescribed amount of a drug of dependence or a prohibited substance, being an amount that is prescribed for the purposes of this subsection, shall, in the absence of proof to the contrary, be deemed to have that drug or substance in his possession for the purpose of the sale or supply of that drug or substance to another person.

(4) Without limiting the generality of this section, a person takes part in the manufacture, production, sale, supply or administration of a drug of dependence or prohibited substance if—

- (a) he takes, or participates in, any step, or causes any step to be taken, in the process of that manufacture, production, sale, supply or administration;
- (b) he provides or arranges finance for any such step in that process;

or

- (c) he provides the premises in which any such step in that process is taken, or suffers or permits any such step in that process to be taken in premises of which he is the owner, or in the management of which he participates.

(5) A person who contravenes this section shall be guilty of an offence and shall, subject to subsection (6), be liable to a penalty as follows:

A. *For the following offences in the following circumstances:*

- (1) *the sale, supply or administration, or taking part in the sale, supply or administration of a drug of dependence or prohibited substance to a child;*

(2) *being in possession, within a school zone, of a drug of dependence or a prohibited substance for the purpose of the sale, supply or administration of the drug or substance to another person:*

(a) where the substance the subject of the offence is cannabis or cannabis resin—

(i) if the quantity of the cannabis or cannabis resin involved in the commission of the offence equals or exceeds the amount prescribed in respect of cannabis or cannabis resin for the purposes of this subsection—a penalty of both a fine not exceeding \$1 000 000 and imprisonment for a term not exceeding 30 years;

(ii) in any other case—a fine not exceeding \$100 000 or imprisonment for a term not exceeding 15 years, or both;

(b) where the substance the subject of the offence is a drug of dependence or a prohibited substance (not being cannabis or cannabis resin)—

(i) if the quantity of the substance involved in the commission of the offence equals or exceeds the amount prescribed in respect of that substance for the purposes of this subsection—a penalty of both a fine not exceeding \$1 000 000 and imprisonment for life or such lesser term as the court thinks fit;

(ii) in any other case—a penalty of both a fine not exceeding \$400 000 or imprisonment for a term not exceeding 30 years, or both;

*B. For any other offence under this section:*

(a) where the substance the subject of the offence is cannabis or cannabis resin—

(i) if the quantity of the cannabis or cannabis resin involved in the commission of the offence equals or exceeds the amount prescribed in respect of cannabis or cannabis resin for the purposes of this subsection—a penalty of both a fine not exceeding \$500 000 and imprisonment for a term not exceeding 25 years;

(ii) if the quantity of cannabis or cannabis resin involved in the commission of the offence is less than the amount prescribed for the purposes of this subsection but one-fifth or more of that amount—a penalty not exceeding \$50 000 or imprisonment for ten years, or both;

or

(iii) if the quantity of cannabis or cannabis resin involved in the commission of the offence is less than one-fifth of the amount prescribed for the purposes of this subsection—a penalty not exceeding \$2 000 or imprisonment for two years, or both;

(b) where the substance the subject of the offence is a drug of dependence or a prohibited substance (not being cannabis or cannabis resin)—

(i) if the quantity of the substance involved in the commission of the offence equals or exceeds the amount prescribed in respect of that substance for the purposes of this subsection—a penalty of both a fine not exceeding \$500 000 and imprisonment for life or such lesser term as the court thinks fit;

or

(ii) if the quantity of the substance involved in the commission of the offence is less than the amount prescribed for the purposes of this subsection—a penalty not exceeding \$200 000 or imprisonment for 25 years, or both.

\* \* \* \* \*

(5a) The amounts of cannabis or cannabis resin prescribed for the purposes of subsection (5) are—

(a) for cultivation of cannabis plants—100 plants or, if a lesser number is prescribed by regulation, that number;

(b) for any other offence involving cannabis—10 kilograms or, if a lesser amount is prescribed by regulation, that amount;

(c) for an offence involving cannabis resin—2.5 kilograms or, if a lesser amount is prescribed by regulation, that amount.

(6) Where a person is found guilty of an offence involving cultivation of not more than the prescribed number of cannabis plants and the court is satisfied that the person cultivated the plants solely for his or her own smoking or consumption, the person is liable only to a penalty not exceeding \$500.

### Restriction of supply of drug of dependence in certain circumstances

33. (1) A medical practitioner shall not prescribe for or supply to—

(a) a person a drug of dependence for use by that person continuously for a period exceeding two months, or for a period which, together with any other period for which that drug has, to his knowledge, been prescribed or supplied by any other medical practitioner or by a dentist, would result in that drug being used by that person continuously for a period exceeding two months;

or

(b) a person whom he knows or has reasonable cause to believe is dependent on drugs a drug of dependence for the purpose of maintaining or treating that person's dependence,

unless he prescribes or supplies that drug in accordance with the regulations or an authority granted by the Health Commission under this section.

Penalty: Four thousand dollars or imprisonment for four years.

(1a) A dentist shall not prescribe a drug of dependence for, or supply a drug of dependence to—

(a) a person for use by that person continuously for a period exceeding 2 months, or for a period which, together with any other period for which that drug has, to the dentist's knowledge, been prescribed or supplied by any other dentist or by a medical practitioner, would result in that drug being used by that person continuously for a period exceeding 2 months;

or

(b) a person whom the dentist knows or has reasonable cause to believe to be dependent on drugs,

unless the dentist prescribes or supplies that drug in accordance with the regulations or an authority granted by the Health Commission under this section.

Penalty: \$4 000 or imprisonment for 4 years.

(2) For the purposes of this section, a person is dependent on drugs if—

(a) he has acquired as a result of the repeated administration of a drug of dependence an overpowering desire for the continued administration of any such drug;

and

(b) he is likely to suffer mental or physical distress or disorder upon cessation of the administration of the drug.

(3) An application for the authority of the Health Commission 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 Health Commission 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 any drug of dependence specified in the authority for therapeutic purposes.

(5) Any such authority—

(a) must specify the quantity of the drug of dependence that may be so prescribed or supplied by the medical practitioner or dentist;

(b) must specify the period for which any such drug may be so prescribed or supplied;

(c) may be given subject to such conditions as the Health Commission thinks fit and specifies in the authority;

and

(d) must be in writing unless, in the case of an emergency, it is given orally by a member or officer of the Health Commission authorized generally or specifically by the Health Commission to do so.

(6) An authority given orally shall be confirmed in writing as soon as possible after it is given.

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DIVISION II—PROCEDURE IN RELATION TO SIMPLE POSSESSION  
OFFENCES

**Establishment of assessment panels**

34. (1) There shall be such drug assessment and aid panels as are necessary for the purposes of this Act.

(2) For the purpose of constituting assessment panels, the Minister shall establish:

(a) a panel of legal practitioners;

and

(b) a panel of persons who, in the opinion of the Minister, have extensive knowledge of—

(i) the physical, psychological and social problems connected with the misuse of drugs of dependence or prohibited substances;

or

(ii) the treatment of persons experiencing such problems.

(3) The conditions of membership of a panel established under subsection (2) shall be as determined by the Minister and the Minister may make appointments from time to time for the purpose of maintaining or increasing the membership of any such panel.

(4) Each assessment panel shall consist of the following members selected by the Health Commission:

(a) a member of the panel established under subsection (2)(a);

and

(b) two members of the panel established under subsection (2)(b).

**Assessment of simple possession offences by panel**

35. (1) Where it is alleged that a person (not being a child) has committed a simple possession offence, the matter shall be referred to an assessment panel.

(2) Where a matter is so referred, the assessment panel may, by notice in writing given personally or by post, require the person alleged to have committed the offence to appear before the panel.

(3) Where a person to whom a notice under subsection (2) has been given is in custody, the superintendent of the prison in which he is detained shall cause him to be brought before the assessment panel in compliance with the notice.

(4) Where it appears to the assessment panel, after interviewing the person alleged to have committed the offence, that—

(a) the matter should be dealt with by a court;

or

(b) the person—

(i) does not admit the allegation;

or

(ii) does not desire the assessment panel to deal with the matter,

the assessment panel shall not proceed further with an assessment under this Division, and shall certify accordingly.

(5) Where a matter is to be dealt with by an assessment panel, the panel shall certify accordingly.

(6) Subject to subsection (7), where the assessment panel has certified that a matter is to be dealt with by a court, an information (if not already laid) shall be laid against the person.

(7) Nothing in this section derogates from the discretion of any person to decide at any time not to proceed with the prosecution of a person.

#### **Powers of panel upon an assessment**

36. (1) For the purpose of carrying out an assessment, an assessment panel may—

(a) by notice in writing, require any person to appear before the assessment panel for the purpose of providing information or to produce any books, papers or documents relevant to the matters before the assessment panel;

(b) require the person alleged to have committed the offence and any other person appearing before the assessment panel (whether he has been required to appear or not) to answer questions relevant to the matters before the assessment panel;

or

(c) require the person alleged to have committed the offence to submit to an examination to determine whether he is experiencing physical, psychological or social problems connected with the misuse of drugs and, if so, the treatment (if any) appropriate for that person.

(2) Subject to subsection (3), a person (not being the person alleged to have committed the offence) shall not—

(a) fail to comply with a notice requiring him to appear before an assessment panel;

or

(b) fail to answer truthfully any questions put to him by the assessment panel.

Penalty: Five hundred dollars.

(3) A person may decline to answer a question put to him by an assessment panel if the answer to the question would tend to incriminate him of an offence.

#### **Undertakings to panel**

37. (1) An assessment panel may, at 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 he will undertake;

(b) his participation in a programme of an educative, preventive or rehabilitative nature;

(c) any other matters that will, in the opinion of the assessment panel, assist that person to overcome any personal problems that may tend to lead, or that may have led, to the misuse of drugs.

(2) An undertaking under this section shall be effective for a period, not exceeding six months, determined by the assessment panel.

(3) An assessment panel may, upon application by a person bound by an undertaking under this section, or after consulting and with the agreement of that person, vary the terms of an undertaking under this section but not so as to exceed the period of the initial undertaking.

(4) An assessment panel may, at any time within the period of an undertaking, request the person to give a fresh undertaking in substitution for the existing undertaking, but not so as to exceed the period of the initial undertaking.

(5) An assessment panel may, at the completion of an assessment under this Division (whether or not it requires the person alleged to have committed the offence to enter into an undertaking under this section) warn or counsel the person alleged to have committed the offence.

### **Conduct of proceedings before a panel**

38. (1) Proceedings before an assessment panel shall be held without formality and in private.

(2) Upon a matter being referred to an assessment panel, the panel shall proceed to carry out and complete its assessment as expeditiously as is reasonably practicable.

(3) A person is not entitled to be represented before an assessment panel, but the assessment panel shall hear submissions from the person and may, at its discretion, hear submissions from any other person who has been treating, counselling, advising or aiding the person.

(4) No person other than the person alleged to have committed a simple possession offence, or any other person authorized by the assessment panel, shall be present at a sitting of an assessment panel.

(5) An assessment panel is not empowered to authorize a representative of the news media to be present at a sitting of the assessment panel.

(6) Subject to this Act, an assessment panel shall proceed in such manner as it thinks fit.

### **Prosecution for simple possession offence**

39. (1) A prosecution for a simple possession offence alleged to have been committed by a person (not being a child) shall not proceed except upon the authorization of an assessment panel.

(2) An assessment panel may authorize a prosecution against a person who is alleged to have committed a simple possession offence in any of the following cases:

- (a) where the person alleged to have committed the offence fails to appear before the assessment panel in accordance with a notice requiring him to appear;
- (b) where that person does not admit the allegation against him;
- (c) where that person does not desire the assessment panel to deal with the matter;
- (d) where that person hinders, or does not co-operate with, the assessment panel in carrying out its assessment;
- (e) where that person, having been required to submit to an examination in pursuance of this Division, refuses or fails to submit to that examination;
- (f) where that person refuses to give or contravenes or fails to comply with an undertaking given to the assessment panel in pursuance of this Division;

or

(g) where for any other reason the alleged offence should, in the opinion of the assessment panel, be dealt with by a court.

(3) This section does not prevent the laying of an information against a person alleged to have committed a simple possession offence, and the apprehension of any such person and his remand in custody or release upon bail, but a preliminary examination or other proceedings in respect of the offence shall not proceed unless the panel has authorized the prosecution.

(4) Where an assessment panel has certified that a matter is to be dealt with by a panel, the person alleged to have committed the offence shall, if he has been remanded in custody, be released from detention, or any recognizance entered into by him for the purposes of bail shall be discharged, as the case may require.

(5) The release of a person from detention, or the discharge of a recognizance, pursuant to subsection (4) shall not render that detention or recognizance unlawful.

(6) Where an information has been laid against a person for a simple possession offence and an assessment panel notifies the informant that it does not propose to authorize a prosecution, the information shall be withdrawn.

(7) Where an assessment panel authorizes the prosecution of a person, the panel shall notify the court in writing of its decision (but not of the reasons for the decision) and shall cause written notification to be given to the person of the decision and a short statement of its reasons for the decision.

#### **Inadmissibility of certain evidence**

**40.** Evidence of anything said or done in proceedings before an assessment panel is not admissible in any criminal or civil proceedings (other than proceedings for an offence under this Division).

## PART VI

## PENALTIES, FORFEITURE, ETC.

DIVISION I—GENERAL PROVISIONS RELATING TO OFFENCES  
AND PENALTIES**Aiding and abetting, etc.**

41. A person who—

(a) aids, abets, counsels or procures the commission of an offence against this Act;

or

(b) solicits or incites the commission of an offence against this Act,

shall be guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

**Alternative verdict in relation to offences against section 32**

42. If upon the trial of a person for an offence against section 32 the jury is not satisfied that the person is guilty of the offence charged, but is satisfied that he is guilty of an offence against section 31, the jury may bring in a verdict that he is guilty of the latter offence.

**Classification of offences**

43. \* \* \* \* \*

(3) Where a person produces, or takes part in the production of cannabis for his or her own smoking or consumption, the offence is, for the purposes of the *Crimes (Confiscation of Profits) Act, 1986*, a summary offence.

**Matters to be considered when court fixes penalty**

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

(a) the nature of the substance or goods involved in the commission of the offence;

(b) the quantity of the substance or goods involved in the commission of the offence;

(c) the personal circumstances of the convicted person (being a natural person), including the circumstances relating to his use (if at all) of any drug of dependence or prohibited substance;

(d) in the case of an offence involving the manufacture, production, sale or supply of a drug of dependence or prohibited substance, or the possession of a drug of dependence or prohibited substance with intent to sell or supply it to another—

(i) the commercial or other motives of the convicted person in committing the offence;

and

(ii) except where an application for forfeiture has been made under section 47, the financial gain that is likely to have accrued to the convicted person as a result of the commission of the offence;

- (da) in the case of an offence involving the sale, supply or administration, or taking part in the sale, supply or administration of a drug of dependence or prohibited substance to a child—whether the offence occurred within a school zone or at or near any other prescribed place;
  - (db) in the case of an offence of being in possession of a drug of dependence or a prohibited substance for the purpose of the sale, supply or administration of the drug or substance to another person (not being an offence committed within a school zone)—whether the offence occurred at or near any other prescribed place;
- and
- (e) any other relevant factor.

#### **Offences committed by body corporate**

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

#### **Expiation of simple cannabis offences**

45a. (1) A prosecution for a simple cannabis offence shall not be commenced except by—

- (a) the Director of Public Prosecutions;
  - (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 stating that the offence may be expiated by payment to the Commissioner of Police of the prescribed expiation fee before the expiration of 60 days from the date of the notice.

(3) An expiation notice—

- (a) must be in the prescribed form;
- and
- (b) may be given personally or by post addressed to the alleged offender's last known place of residence.

(4) Where the offence is expiated in accordance with the notice, the alleged offender shall not be prosecuted for that offence.

(5) The payment of an expiation fee shall not be regarded as an admission of guilt but any substance, equipment or object seized under this Act or any other Act in connection with the alleged offence that would have been liable to forfeiture in the event of a conviction shall, on payment of the expiation fee, be forfeited to the Crown.

(6) The expiation fee fixed in relation to an offence may vary according to the nature of the offence, the amount of cannabis or cannabis resin involved in the commission of the offence, or any other factor.

(7) Non-compliance with subsection (2) does not invalidate a prosecution.

(8) For the purposes of this section

“child”, in relation to a simple cannabis offence, means a person who was, on the date of the alleged commission of the offence, under the age of 18 years:

“simple cannabis offence” means—

- (a) an offence arising out of the possession of cannabis or cannabis resin, not being an offence involving the possession of quantities of cannabis or cannabis resin in excess of limits fixed by regulation for the purposes of this paragraph;
- (b) an offence arising out of the smoking or consumption of cannabis or cannabis resin except an offence alleged to have been committed in—
  - (i) a public place;
  - or
  - (ii) a place of a kind prescribed by regulation;
- (c) an offence arising out of the possession of equipment for use in connection with—
  - (i) the smoking or consumption of cannabis or cannabis resin;
  - or
  - (ii) the preparation of cannabis or cannabis resin for smoking or consumption,not being an offence involving the possession for such equipment for commercial purposes;
- (d) an offence arising out of the cultivation of not more than the prescribed number of cannabis plants.

#### DIVISION II—FORFEITURE

##### **Forfeiture of substance, equipment or device**

46. A court before which a person is convicted of an offence against this Act may, by order, forfeit to the Crown any substance, equipment or device the subject of the offence.

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## PART VII

## POWERS OF SEARCH, SEIZURE AND ANALYSIS

**Authorized officers**

50. (1) The following persons are authorized 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 authorized officer for the purposes of this Part.

(2) The Minister shall provide an authorized officer appointed under subsection (1)(b) with a certificate of identification in the prescribed form.

(3) An authorized officer appointed under subsection (1)(b) shall, upon demand by a person in relation to whom he is exercising any of his powers under this Act, produce his certificate of identification for the inspection of that person.

**Analysts**

51. (1) Subject to subsection (2), the Governor may appoint such number of persons to be analysts as he 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 shall be appointed as an analyst.

**Power to search, seize, etc.**

52. (1) Subject to this section, an authorized 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;

(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 authorized officer is in or on any premises pursuant to this section, he 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 or any substance, equipment or device;

(c) examine any books, papers or documents 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;

- (h) require the holder of a licence, authority or permit under this Act to produce that licence, authority or permit for his inspection;
- (i) where he suspects on reasonable grounds that an offence against this Act has been committed, seize and remove from the premises anything that he 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 his powers under this Act.

(3) The powers conferred by subsection (1)(b) may only be exercised by an authorized officer who is a member of the police force.

(4) An authorized officer shall 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 premises that are being used in the course of an activity in respect of which a licence, authority or permit has been granted under this Act.

(5) An officer of police, special magistrate or justice shall not issue a warrant under subsection (4) unless he is 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 authorized officer who is a member of the police force may search any person whom he believes on reasonable grounds has in his possession any substance or equipment in contravention of this Act.

(7) Before a person is searched pursuant to subsection (6), he shall, if he 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 that he not be searched, as he thinks the justice of the case requires.

(9) Where an authorized 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, he 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;

- (b) detain and search the vehicle, vessel or aircraft;

and

- (c) seize and remove from the vehicle, vessel or aircraft anything that he 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 to him under the *Police Offences Act, 1953*.

(11) In the exercise of his powers under this Part, an authorized officer may be accompanied by such persons as he considers necessary or desirable in the circumstances.

(12) A person shall not—

- (a) hinder or obstruct an authorized officer, or a person accompanying an authorized officer, in the exercise of the powers conferred by this Part;

or

(b) refuse or fail to comply with a requirement made of him, or a direction given to him, pursuant to this section.

Penalty: Two thousand dollars or imprisonment for two years.

**Analysis**

53. (1) An authorized officer may cause any substance seized or taken by him 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, prohibited substance or therapeutic substance, 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 shall, 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 authorized officer who is a member of the police force—shall forward the certificate to the Commissioner of Police;

(b) in the case of an analysis initiated by any other authorized officer—shall forward the certificate to the Health Commission;

or

(c) in any other case—shall forward the certificate to the person who initiated the analysis.

**Immunity from liability**

54. (1) No personal liability shall attach to—

(a) an authorized officer;

(b) a person accompanying an authorized officer;

or

(c) an analyst,

\* \* \* \* \*

for an act or omission on his part, in good faith, in the exercise or purported exercise, or discharge or purported discharge, of any power or duty conferred or imposed upon him under this Act.

(2) A liability that would, but for subsection (1), lie against a person referred to in that subsection shall lie against the Crown.

PART VIII  
MISCELLANEOUS

**Licences, authorities and permits**

55. (1) The Health Commission may, in its absolute discretion, grant or refuse a licence, authority or permit for the purposes of this Act.

(2) The Health Commission may grant a licence, authority or permit subject to such conditions as it 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.

Penalty: \$1 000.

(3) Upon the expiry of the term of a licence granted under this Act, the Health Commission shall, 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 Health Commission may, by notice in writing given personally or by post to the holder of a licence, authority or permit granted under this Act, revoke the licence, authority or permit if—

- (a) the holder obtained it improperly;
- (b) the holder is found guilty of an offence against this Act;
- (c) the holder has, in the opinion of the Commission, contravened or failed to comply with a condition of the licence, authority or permit.

(5) A person whose licence, authority or permit is revoked pursuant to subsection (4)(c) may appeal to the Supreme Court against the revocation.

(6) Where an appeal has been instituted under this section against a revocation, the revocation continues to have effect unless, upon application to the Supreme Court, the Court orders that the revocation be suspended until the appeal is determined or withdrawn.

(7) The Supreme Court may, on an appeal under this section, quash or affirm the revocation.

**Research permits**

56. (1) The Health Commission may issue a permit authorizing, subject to such conditions as may be specified in the permit, the person named in the permit to manufacture, produce, sell, supply or have in his possession a poison, prohibited substance, therapeutic substance or therapeutic device for the purposes of research, instruction or training.

(2) Notwithstanding any other provision of this Act, the holder of a permit issued under this section shall not be guilty of an offence against this Act in respect of anything done by him pursuant to and in accordance with the permit.

**Prohibition by Health Commission of manufacture, production, packaging, sale, supply, prescription or possession of specified substances or devices by certain persons**

57. (1) Where a person—

- (a) has been convicted of an offence against this Act;

(b) has, in the opinion of the Health Commission, 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 Health Commission, prescribed, supplied or administered a prescription drug in an irresponsible manner,

the Health Commission 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 Health Commission may, by subsequent order, revoke an order under subsection (1).

(3) The Health Commission shall publish an order made under subsection (1) or (2) in the *Gazette* and shall cause a copy of the order to be served personally or by post upon the person to whom it applies.

(4) A person shall not contravene an order made under this section.

Penalty: Two thousand dollars or imprisonment for two years.

(5) A person to whom an order under subsection (1) applies may appeal to the Supreme Court against that order.

(6) Where an appeal has been instituted under this section against an order of the Health Commission, the order shall continue to have effect unless, upon application to the Supreme Court, the Court orders that the order be suspended until the appeal is determined or withdrawn.

(7) The Supreme Court may, on an appeal under this section, quash, vary or affirm the order the subject of the appeal.

#### **Publication of information relating to persons who unlawfully obtained certain drugs**

58. (1) If the Health Commission believes on reasonable grounds that a person has obtained or attempted to obtain a prescription drug by false pretences or other unlawful means, it may, for the purpose of preventing or restricting the supply of such a drug 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 drugs to patients attending the hospitals or nursing homes;

(b) medical practitioners;

(c) dentists;

(d) veterinary surgeons;

(e) pharmacists;

and

(f) any other prescribed class of persons, being persons who deal in or supply drugs in the ordinary course of their business or profession.

(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 shall 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.

**Duty not to divulge information relating to trade processes**

59. No person shall intentionally divulge, or use for his own gain, any information relating to trade processes obtained by him in the course of administering or enforcing this Act, except as he may be authorized or required to do so by law or by his principal or employer.

Penalty: Two thousand dollars.

**Health Commission may require certain information to be given**

60. (1) For the purpose of ascertaining whether any substance or device is, or ought to be, one to which this Act applies, the Health Commission 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 Health Commission such information relating to the substance or device as may be specified in the notice.

(2) Where the Health Commission has reasonable cause to believe that there is extensive misuse of a prescription drug or a volatile solvent in a particular area, it 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 to furnish to the Health Commission 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;
- (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.

(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 fourteen days, as may be specified in the notice.

(4) A person to whom a notice under this section has been given shall not fail to comply with the notice.

Penalty: One thousand dollars.

**Evidentiary provisions**

61. (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 Health Commission 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 shall, 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 shall, 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 authorized officer, or an analyst, as the case may be, shall, in the absence of proof to the contrary, be proof of the matter certified.

**Assessment panels may prepare, or assist in, the preparation of a pre-sentence report**

61a. An assessment panel may prepare, or assist in the preparation of, a pre-sentence report.

**Moneys for this Act to be appropriated**

62. The moneys required for the purposes of this Act shall be paid out of moneys appropriated by Parliament for those purposes.

**Regulations**

63. (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 shall consult with the Advisory Council in relation to any regulation proposed to be made under this Act.

(3) No regulation shall be made prescribing an amount relating to a drug of dependence or prohibited substance for the purposes of section 32 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, 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, 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, prohibited substance, 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, 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 one thousand dollars, for breach of, or non-compliance with, any regulation.

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(5) The regulations may, by reference to any standard, code, pharmacopoeia or other document published inside or outside of this State, incorporate that standard, code, pharmacopoeia or document as part of the regulations, with or without modification, and any such standard, code, pharmacopoeia or document, as amended from time to time by the authority responsible for its publication, shall have force and effect as regulations under this Act.

(6) Any regulation under this Act may be of general or limited application according to—

(a) the classes of persons, poisons, therapeutic substances, therapeutic devices or volatile solvents;

(b) the circumstances;

or

(c) any other specified factor,

to which the regulation is expressed to apply.

## APPENDIX

## LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

## Transitional Provisions

*Transitional provisions from Statutes Repeal and Amendment (Courts) Act 1991, s. 22*

22. (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.

## Legislative History

Section 4:	redesignated as s. 4(1) by 64, 1986, s. 3(b) definition of "analyst" substituted by 43, 1986, s. 5(a) definition of "botanist" repealed by 43, 1986, s. 5(b) definition of "cannabis" substituted by 29, 1990, s. 3(a) definition of "cannabis oil" substituted by 29, 1990, s. 3(a) definition of "cannabis resin" substituted by 29, 1990, s. 3(a) definition of "child" substituted by 29, 1990, s. 3(b) definition of "nurse" amended by 64, 1986, s. 3(a) definition of "pharmacist" substituted by 13, 1991, Sched. 2 definition of "plant" repealed by 29, 1990, s. 3(c) definition of "related person or body" repealed by 17, 1986, s. 13 (Sched.) definition of "school zone" inserted by 29, 1990, s. 3(d)
Section 4(2) and (3):	inserted by 64, 1986, s. 3(b)
Section 31(2):	amended by 64, 1986, s. 4
Section 32(5):	amended by 64, 1986, s. 5; 29, 1990, s. 4(a); 69, 1991, s. 16(a), (b); <b>44, 1992, s. 3(a), (b)</b>
Section 32(5)B(b)(iii):	<b>repealed by 44, 1992, s. 3(c)</b>
Section 32(5a):	inserted by 28, 1990, s. 2
Section 32(6):	substituted by 29, 1990, s. 4(b)
Section 33(1):	amended by 64, 1986, s. 6(a)
Section 33(1a):	inserted by 64, 1986, s. 6(b)
Section 33(3):	amended by 64, 1986, s. 6(c)
Section 33(4):	amended by 64, 1986, s. 6(d)
Section 33(5):	amended by 64, 1986, s. 6(e)
Section 34:	substituted by 64, 1986, s. 7
Section 43:	substituted by 17, 1986, s. 13 (Sched.)
Section 43(1) and (2):	repealed by 69, 1991, s. 16(c)
Section 44:	amended by 29, 1990, s. 5
Section 45a:	inserted by 64, 1986, s. 8; amended by 29, 1990, s. 6; 49, 1991, Sched. 2
Sections 47-49:	repealed by 17, 1986, s. 13 (Sched.)
Section 51(1):	amended by 43, 1986, s. 5(c)
Section 51(2):	amended by 43, 1986, s. 5(d)
Section 52(2):	amended by 17, 1986, s. 13 (Sched.)
Section 53(1):	amended by 43, 1986, s. 5(e)
Section 53(2):	amended by 43, 1986, s. 5(f)
Section 53(4):	amended by 43, 1986, s. 5(g)
Section 54(1):	amended by 43, 1986, s. 5(h), (i)
Section 54(1)(d):	repealed by 43, 1986, s. 5(i)
Section 55(2a):	inserted by 64, 1986, s. 9(a)
Section 55(4):	substituted by 64, 1986, s. 9(b)
Section 55(5)-(7):	inserted by 64, 1986, s. 9(b)
Section 56(1):	amended by 64, 1986, s. 10
Section 57(1) and (2):	substituted by 64, 1986, s. 11(a)
Section 57(3):	amended by 64, 1986, s. 11(b)
Section 57(5):	amended by 64, 1986, s. 11(c)
Section 61(2):	amended by 43, 1986, s. 5(j)
Section 61(3):	amended by 43, 1986, s. 5(k)
Section 61a:	inserted by 64, 1986, s. 12
Section 63(3):	amended by 64, 1986, s. 13(a); 29, 1990, s. 7
Section 63(4):	amended by 64, 1986, s. 13(b)