



New South Wales

# Drug Misuse and Trafficking Regulation 2000

under the

Drug Misuse and Trafficking Act 1985

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Drug Misuse and Trafficking Act 1985*.

BOB DEBUS, M.P.,

Attorney General

## Explanatory note

This Regulation replaces the *Drug Misuse and Trafficking Regulation 1994* which is repealed on 1 September 2000 under section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation, which makes some minor changes to the repealed Regulation:

- (a) provides for the Director-General of the Department of Health to approve needle exchange programs and to authorise persons to participate in such programs, and
- (b) exempts certain persons from provisions of the *Drug Misuse and Trafficking Act 1985* that might otherwise prohibit them from possessing and supplying syringes, needles and associated equipment, and giving out information, in connection with an approved needle exchange program, and
- (c) exempts pharmacists, and persons who act under the supervision of pharmacists, from certain provisions of the Act that might otherwise prohibit them from possessing and supplying equipment that can be used to administer prohibited drugs, and
- (d) provides for the analysis of drug exhibits by an analyst whenever a commercial quantity of a prohibited drug is seized or comes into the possession of a member of the Police Service, the seal on a package

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Explanatory note

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previously so analysed is broken or the package is opened or tampered with or an order is made under Part 3A of the Act for the destruction of the drug exhibit, and

(e) prescribes short descriptions for certain offences under the Act.

This Regulation is made under the *Drug Misuse and Trafficking Act 1985*, including sections 11 (1B), 39S and 45 (the general regulation-making power).

This Regulation comprises or relates to matters of a machinery nature and to matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Clause 1 Drug Misuse and Trafficking Regulation 2000

Part 1 Preliminary

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# Drug Misuse and Trafficking Regulation 2000

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Drug Misuse and Trafficking Regulation 2000*.

### 2 Commencement

This Regulation commences on 1 September 2000.

**Note.** This Regulation replaces the *Drug Misuse and Trafficking Regulation 1994* which is repealed on 1 September 2000 under section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

*analyst* has the same meaning as in section 43 of the Act.

*approved needle exchange program* means a program approved by the Director-General of the Department of Health, as referred to in clause 4.

*authorised person* means a person who is authorised by the Director-General of the Department of Health to participate in an approved needle exchange program, as referred to in clause 4.

*the Act* means the *Drug Misuse and Trafficking Act 1985*.

(2) In this Regulation, a reference to anything done by an analyst includes a reference to anything done by a person under the supervision of an analyst.

(3) The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

## Part 2 General

### 4 Approval by Director-General of Health of needle exchange programs

- (1) The Director-General of the Department of Health may authorise a specified person or specified class of persons to participate in a program approved by the Director-General to facilitate:
  - (a) the supply to intravenous drug users of sterile hypodermic syringes and sterile hypodermic needles, and any associated equipment, to prevent the spread of contagious disease and minimise health risks associated with intravenous drug use, and
  - (b) the giving out of information concerning hygienic practices in the use of hypodermic syringes and hypodermic needles to prevent the spread of contagious disease.
- (2) An authorisation under this clause is to be granted, and may be revoked, in the same manner as an authorisation under the Act.

### 5 Exemption for authorised persons participating in approved program

- (1) An authorised person is exempt from the provisions of sections 11, 19 and 20 of the Act, to the extent necessary to authorise the person:
  - (a) to have in his or her possession, and to distribute, hypodermic syringes and hypodermic needles, and any associated equipment, for use in the administration of a prohibited drug capable of being so administered, and
  - (b) to give out information concerning hygienic practices in the use of hypodermic syringes and hypodermic needles to prevent the spread of contagious disease.
- (2) The exemption applies only for the purpose of enabling the authorised person to participate in an approved needle exchange program.

### 6 Exemption for giving out information about approved program

Any person is exempt from the provisions of sections 19 and 20 of the Act, to the extent necessary to authorise the person to give out information about the location and hours of operation of an approved needle exchange program.

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Part 2                        General

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### **7    General exemption for pharmacists and staff**

A pharmacist acting in the ordinary course of his or her profession, and any person acting under the supervision of the pharmacist, is exempt from the provisions of sections 11, 19 and 20 of the Act, to the extent necessary to authorise the pharmacist or person:

- (a)    to have in his or her possession, and to distribute, hypodermic syringes and hypodermic needles, and any associated equipment, for use in the administration of a prohibited drug capable of being so administered, and
- (b)    to give out information concerning hygienic practices in the use of hypodermic syringes and hypodermic needles to prevent the spread of contagious disease.

## **Part 3 Custody and analysis of drug exhibits**

### **8 Application of this Part**

- (1) This Part applies to a substance that a member of the Police Service knows or suspects to be a prohibited drug and:
  - (a) that is in the custody of a member of the Police Service, and
  - (b) the quantity of which is not less than the traffickable quantity for the prohibited drug concerned.
- (2) It is immaterial whether a prohibited drug to which this Part applies is or has come into the custody of a member of the Police Service through seizure or other means.

### **9 Delivery of substance for analysis**

- (1) As soon as practicable (but in no case later than 14 days) after a substance to which this Part applies comes into the custody of a member of the Police Service, the whole of the substance must be given to an analyst for analysis.
- (2) Immediately after a member of the Police Service opens a package that has been sealed under this Part or becomes aware that a package sealed under this Part has been opened or tampered with, the whole of the contents of the package must be given to an analyst for analysis.

### **10 Order for destruction**

- (1) Immediately after an order is made under Part 3A of the Act for the destruction of a prohibited drug to which this Part applies, the person having the custody of the prohibited drug must arrange for an analyst to inspect the package or packages containing the prohibited drug to determine whether or not any package has been opened or tampered with since it was last sealed.
- (2) The person having the custody of the prohibited drug must give the whole of the contents of a package that is found to have been opened or tampered with to the analyst for analysis.

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Clause 11 Drug Misuse and Trafficking Regulation 2000

Part 3 Custody and analysis of drug exhibits

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### **11 Carrying out of analysis**

- (1) An analyst to whom a substance is given for analysis under clause 9 or 10 must carry out an analysis of it to determine whether it is a prohibited drug and, if it is, to determine:
  - (a) the identity of the prohibited drug, and
  - (b) the quantity or mass of the prohibited drug, and
  - (c) the purity of the prohibited drug.
- (2) If the substance is cannabis leaf, the analyst, after identifying the substance, need only determine the quantity or mass of the cannabis leaf.

### **12 Procedure after analysis**

- (1) After removing a sample of a substance that is given to an analyst for analysis under clause 9 or 10, the analyst must place the balance of the substance not required for analysis into one or more packages, securely seal each package and mark each package with an identifying mark.
- (2) After complying with subclause (1), the analyst must deliver each sealed package, or cause each sealed package to be delivered, to the Commissioner of Police or to a person, or to a person of a class of persons, specified by the Commissioner for the purpose.

### **13 Storage of sealed packages**

- (1) A person to whom a package is delivered under clause 12 (2) must store the package in a secure place determined by the Commissioner of Police.
- (2) Subclause (1) has effect subject to any order made under Part 3A of the Act requiring destruction of the prohibited drug concerned, and accordingly does not have effect to the extent that is necessary to secure compliance with the order.



**14 Analyst's certificate**

An analyst who, under this Part, analyses a substance that is a prohibited drug must prepare a certificate under section 43 (1) of the Act of the result of the analysis that includes the following:

- (a) the identity of the prohibited drug,
- (b) the quantity or mass of the prohibited drug,
- (c) except in the case of cannabis leaf, the purity of the prohibited drug.

**15 Significant variations in analysts' certificates**

If a difference occurs between the findings recorded in two or more certificates of an analyst concerning the same drug exhibit and the analyst providing the later or latest certificate is of the opinion that the difference is significant, that analyst must immediately forward a copy of all certificates relating to the drug exhibit to the Director of Public Prosecutions.

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Clause 16 Drug Misuse and Trafficking Regulation 2000

Part 4 Miscellaneous

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### Part 4 Miscellaneous

#### 16 Short descriptions of offences

- (1) For the purposes of section 145B of the *Justices Act 1902*, the prescribed expression for an offence created by a provision of the Act specified in Column 1 of Schedule 1 is:
  - (a) the expression specified in Column 2 of that Schedule, or
  - (b) if a choice of words is indicated in that expression, the words remaining after the omission of the words irrelevant to the offence.
- (2) For the purposes of any proceedings for an offence created by a provision of the Act specified in Column 1 of Schedule 1, the prescribed expression for the offence is taken to relate to the offence created by the provision, as the provision was in force when the offence is alleged to have been committed.
- (3) The amendment or repeal of a prescribed expression does not affect the validity of any information, complaint, summons, warrant, notice, order or other document in which the expression is used, and any such document continues to have effect as if that expression had not been amended or repealed.
- (4) Subclause (3) applies to any information, complaint, summons, warrant, notice, order or other document (whether issued, given or made before or after the amendment or repeal) that relates to an offence alleged to have been committed before the amendment or repeal.

#### 17 Savings provision

Any act, matter or thing that, immediately before the repeal of the *Drug Misuse and Trafficking Regulation 1994*, had effect under that Regulation is taken to have effect under this Regulation.

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## Schedule 1 Short descriptions of certain offences

(Clause 16)

<b>Column 1</b>	<b>Column 2</b>
<b>Offence</b>	<b>Prescribed expression</b>
Section 10 (1)	possess prohibited drug
Section 11 (1)	possess equipment to administer prohibited drug
Section 11A (2) (a)	sell waterpipe
Section 11A (2) (b)	supply waterpipe (commercial transaction)
Section 11A (3) (a)	display waterpipe in shop
Section 11A (3) (b)	display waterpipe in connection with shop
Section 12 (1)	self administer/attempt to self administer prohibited drug
Section 13 (1)	administer/attempt to administer prohibited drug to another
Section 14 (1)	permit another person to administer/attempt to administer to him/her prohibited drug
Section 15	knowingly forge/fraudulently alter/utter a prescription of a medical practitioner/nurse practitioner/veterinary surgeon including a prohibited drug
Section 16 (a)	knowingly obtain from a medical practitioner/nurse practitioner/veterinary surgeon a prohibited drug by false representation/induce pharmacist to dispense forged/fraudulently altered prescription
Section 16 (b)	possess forged/fraudulently altered prescription including a prohibited drug/prescription obtained by false representation
Section 17	obtain/attempt to obtain prohibited drug by false representation

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Schedule 1 Short descriptions of certain offences

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<b>Column 1</b>	<b>Column 2</b>
<b>Offence</b>	<b>Prescribed expression</b>
Section 18	obtain/attempt to obtain prohibited drug/prescription that includes prohibited drug without informing medical practitioner/nurse practitioner of details of other prohibited drugs prescribed during previous 2 months where failure/refusal to inform is made with intent to deceive
Section 18A (1) (a)	advertise/hold out that premises are available for use for the administration of prohibited drugs
Section 18A (1) (b)	cause/suffer/permit person to advertise/hold out that premises are available for use for the administration of prohibited drugs

BY AUTHORITY