

**POISONS (FURTHER AMENDMENT) ACT, 1977**

**New South Wales**



ANNO VICESIMO SEXTO

**ELIZABETHÆ II REGINÆ**

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**Act No. 110, 1977.**

**An Act to amend the Poisons Act, 1966, so as to prohibit the cultivation of certain plants capable of being used for the purpose of producing drugs of addiction or prohibited drugs; to authorise the Director-General of Agriculture to destroy any such plants in certain circumstances; to increase the penalties for certain offences relating to drugs of addiction and prohibited drugs; and for other purposes. [Assented to, 29th November, 1977.]**

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*Poisons (Further Amendment).*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

**Short title.**     **1.** This Act may be cited as the "Poisons (Further Amendment) Act, 1977".

**Commence-  
ment.**         **2.** This Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Schedules.**     **3.** This Act contains the following Schedules :—

SCHEDULE 1.—AMENDMENTS TO THE POISONS ACT,  
1966.

SCHEDULE 2.—AMENDMENTS TO THE POISONS ACT,  
1966, BY WAY OF STATUTE LAW REVISION.

**Amend-  
ment of  
Act No.  
31,1966.**         **4.** The Poisons Act, 1966, is amended in the manner set forth in Schedules 1 and 2.

SCHEDULE

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*Poisons (Further Amendment).*

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SCHEDULE 1.

Sec. 4.

AMENDMENTS TO THE POISONS ACT, 1966.

- (1) (a) Section 2, matter relating to Part IV—

From the matter omit “AND PROHIBITED DRUGS  
—ss. 20–33”, insert instead “, PROHIBITED  
DRUGS AND PROHIBITED PLANTS—ss. 21–33C”

- (b) Section 2, matter relating to Part IV, Division 1—  
Omit “20”, insert instead “21”.

- (c) Section 2, matter relating to Part IV, Division 3—  
After the matter, insert :—

DIVISION 4.—*Prohibited Plants*—ss. 33A–33C.

- (2) (a) Section 4 (1), definition of “Cultivate”—

After the definition of “Container”, insert :—

“Cultivate”, in relation to a prohibited plant,  
includes grow, sow or scatter the seed  
produced by, plant, nurture, tend or  
harvest that prohibited plant.

- (b) Section 4 (1), definition of “Indian hemp”—

After the definition of “Drug of addiction”  
insert :—

“Indian hemp” means—

- (a) any plant or part of a plant of the  
genus *Cannabis*;

SCHEDULE

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*Poisons (Further Amendment).*


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**SCHEDULE 1—continued.**
**AMENDMENTS TO THE POISONS ACT, 1966—continued.**

(b) the resin, whether crude or purified, or any other extract obtained from any plant or part of a plant of the genus *Cannabis*;  
**or**

(c) any preparation containing any such resin or extract,

by whatever name that plant, part, resin, extract or preparation may be called, and includes the achene or seed of any such plant but does not include any fibre of any such plant or part from which the resin has been extracted or a prohibited plant of the genus *Cannabis*.

(c) Section 4 (1), definitions of “Opium” and “Owner”—

After the definition of “License”, insert :—

“Opium” means the coagulated juice obtained from the capsules of the opium poppy (*Papaver somniferum*).

“Owner”, in relation to any premises, includes the person entitled to receive the rent of the premises and the person to whom the rent of the premises is paid.

(d) Section 4 (1), definitions of “Premises” and “Prepared opium”—

After the definition of “Poisons List”, insert :—

“Premises” includes land or ship, aeroplane or other vehicle or vessel.

**SCHEDULE**

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*Poisons (Further Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE POISONS ACT, 1966—*continued.*

“Prepared opium” means any preparation of opium in a form capable of being used for the purpose of smoking, and includes dross and any other residues remaining after opium has been smoked.

(e) Section 4 (1), definition of “Prohibited plant”—

After the definition of “Prohibited drug”, insert :—

“Prohibited plant” means—

- (a) any growing plant of the genus Cannabis or Erythroxyton or of the species Papaver somniferum or Papaver orientale, also known as Papaver bracteatum; and
- (b) any growing plant of a description specified in a proclamation in force under subsection (3),

but does not include any growing plant, referred to in paragraph (a), of a description prescribed for the purpose of this definition.

(f) Section 4 (1), definition of “Smoking”—

After the definition of “Sell”, insert :—

“Smoking” includes inhaling fumes produced by heating or burning any substance.

SCHEDULE

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*Poisons (Further Amendment).*

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**SCHEDULE 1—*continued.*****AMENDMENTS TO THE POISONS ACT, 1966—*continued.*****(g) Section 4 (1), definition of “Substance”—**

After “any substance”, insert “but does not include any prohibited plant”.

**(h) Section 4 (3), (4)—**

After section 4 (2), insert :—

(3) For the purposes of paragraph (b) of the definition of “Prohibited plant” in subsection (1), the Minister may, by proclamation published in the Gazette, declare any description of any plant that in his opinion is capable of being used for the purpose of producing a drug of addiction or a prohibited drug to be a prohibited plant.

(4) The Minister may, in like manner, repeal, alter or amend any proclamation made under subsection (3).

**(3) Section 5 (2)—**

Omit “or drugs of addiction”, insert instead “, drugs of addiction, prohibited drugs or prohibited plants”.

**(4) Part IV, heading—**

Omit “AND PROHIBITED DRUGS”, insert instead “, PROHIBITED DRUGS AND PROHIBITED PLANTS”.

**SCHEDULE**

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*Poisons (Further Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE POISONS ACT, 1966—*continued.*

(5) Section 20—

Omit the section.

(6) Section 21 (1A), (1B), (1C)—

After section 21 (1), insert :—

(1A) Subsection (1) does not apply in respect of the supply or possession by any person of Indian hemp in accordance with an authority granted under subsection (1B).

(1B) The Minister may grant to—

- (a) any person who he is satisfied is engaged or intends to engage in scientific research or study an authority to have in his possession Indian hemp; or
- (b) any person an authority to supply Indian hemp, or to have Indian hemp in his possession for the purpose of supply, to a person referred to in paragraph (a).

(1C) An authority under subsection (1B) may be granted subject to such conditions as the Minister thinks fit and may be revoked at any time by notice served on the person to whom it was granted or, if the Minister thinks fit, by notice published in the Gazette.

(7) Part IV, Division 4—

After section 33, insert :—

DIVISION 4.—*Prohibited Plants.*

SCHEDULE

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*Poisons (Further Amendment).*


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**SCHEDULE 1—continued.**
**AMENDMENTS TO THE POISONS ACT, 1966—continued.**

Offences  
with  
respect to  
prohibited  
plants.

33A. (1) Any person who—

- (a) cultivates any prohibited plant;
- (b) supplies or otherwise deals in any prohibited plant;
- (c) has in his possession any prohibited plant;
- (d) being the occupier, owner or lessee of any premises, permits those premises to be used for the purpose of the cultivation or supply of, or the dealing in, any prohibited plant; or
- (e) is concerned in the management of any premises referred to in paragraph (d),

shall be guilty of an offence against this Division.

(2) It is a sufficient defence to a prosecution of a person for an offence arising under subsection (1) if—

- (a) he requests the court to take into account the defence available to him under this subsection; and
- (b) he adduces evidence which satisfies the court that, having regard to all of the circumstances, including his conduct, in which the act constituting the offence was done or preparatory to the doing of that act, he did not know or suspect and could not reasonably be expected to have known or suspected that the prohibited plant was a prohibited plant.

**SCHEDULE**



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*Poisons (Further Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE POISONS ACT, 1966—*continued.*

(3) Where a defendant makes a request referred to in subsection (2) (a), evidence of any previous conviction of the defendant for any offence, being evidence which may tend to rebut the evidence referred to in subsection (2) (b), may be adduced by the prosecutor.

(4) Any prohibited plant in the order or disposition of any person shall be deemed to be in his possession.

33B. (1) In this section, "Director-General" means the Director-General of Agriculture.

Destruction  
of prohibited  
plants by  
Director-  
General of  
Agriculture.

(2) Upon information on oath by a member of the police force that he suspects or believes that any prohibited plants are on any premises, a stipendiary magistrate may, upon reasonable ground being shown in that information for the member of the police force so suspecting or believing, issue a warrant authorising the Director-General to exercise his powers under subsection (3) with respect to those premises.

(3) After the issue of any such warrant, the Director-General may himself or by any persons authorised by him enter any premises specified in the warrant and take such steps as he thinks necessary for the purpose of destroying any prohibited plants on those premises and preventing any regrowth of those plants and may subsequently from time to time again enter those premises and take steps for those purposes until he is satisfied that the prohibited plants have been completely destroyed and their regrowth effectively prevented.

SCHEDULE

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*Poisons (Further Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE POISONS ACT, 1966—*continued.*

(4) The power conferred on the Director-General by subsection (3) extends not only in respect of prohibited plants on any premises specified in any such warrant but also in respect of any other plants on those premises the destruction of which cannot, in the opinion of the Director-General, be avoided in his exercise of that power.

(5) The Director-General or any other person is not liable in respect of any thing done bona fide in the exercise of the power conferred by subsection (3).

(6) Any costs or expenses incurred by the Director-General in the exercise of the power conferred by subsection (3) may be recovered by him, in any court of competent jurisdiction, as a debt from any person convicted of an offence arising under section 33A (1) in relation to the premises in respect of which the Director-General exercised that power.

**Penalties.**

33C. (1) Every person guilty of an offence against this Division shall in respect of each offence be liable to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 2 years, or to both such fine and imprisonment.

(2) If any person attempts to commit an offence against this Division, or solicits or incites another person to commit such an offence, he shall, without prejudice to any other liability, be liable to the same punishment as if he had committed an offence against this Division.

## SCHEDULE

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*Poisons (Further Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE POISONS ACT, 1966—*continued.*

(3) Any term of imprisonment imposed on any person by a court of summary jurisdiction in respect of the non-payment of a fine for an offence against this Division may be ordered to commence at the expiration of any term of imprisonment imposed on that person for the same offence in addition to the fine.

(8) (a) Section 43 (1) (a)—

After “prohibited drug”, insert “or prohibited plant”.

(b) Section 43 (1) (a)—

After “drug” where secondly occurring insert “or any premises on which there are any prohibited plants”.

(c) Section 43 (1) (c)—

After “drug”, insert “or of any prohibited plants”.

(d) Section 43 (1) (d), (e)—

Omit “or drug” wherever occurring, insert instead “, drug or plant”.

(e) Section 43 (2) (a), (b), (3) (a)—

Omit “or any prohibited drug” wherever occurring, insert instead “, any prohibited drug or any prohibited plant”.

(f) Section 43 (2) (a)—

After “premises”, insert “or any prohibited plant is on any premises”.

SCHEDULE

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*Poisons (Further Amendment).*


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**SCHEDULE 1—*continued.***
**AMENDMENTS TO THE POISONS ACT, 1966—*continued.***

## (g) Section 43 (3), (4) (b)—

Omit “or drug” wherever occurring, insert instead  
 “, drug or plant”.

## (h) Section 43 (3A)—

After section 43 (3), insert :—

(3A) The power conferred by subsection (1) (e) or (2) to seize any substance, drug or plant includes a power to remove it from the premises on which it was seized.

## (9) (a) Section 45A (1) (b)—

Omit “section; and”, insert instead “section;”.

## (b) Section 45A (1) (c)—

Omit “subsection (1) of section 32.”, insert instead “section 32 (1); and”.

## (c) Section 45A (1) (d)—

After section 45A (1) (c), insert :—

(d) any offence arising under section 33A.

## (d) Section 45A (3), (3A)—

Omit section 45A (3), insert instead :—

(3) A person convicted on indictment of an offence to which this section applies shall be liable—

- (a) except as provided in paragraph (b), to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 15 years, or to both such fine and imprisonment; or

**SCHEDULE**

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*Poisons (Further Amendment).*

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**SCHEDULE 1—*continued.***

**AMENDMENTS TO THE POISONS ACT, 1966—*continued.***

(b) where the offence relates only to Indian hemp in leaf form, to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or to both such fine and imprisonment.

(3A) The reference in subsection (3) (b) to Indian hemp in leaf form is a reference to—

(a) Indian hemp which does not contain more than 3 per centum by weight, determined in the prescribed manner, of tetrahydrocannabinol; or

(b) a prohibited plant of the genus Cannabis.

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**SCHEDULE 2.**

Sec. 4.

**AMENDMENTS TO THE POISONS ACT, 1966, BY WAY OF STATUTE LAW REVISION.**

(1) (a) Section 3 (2)—

Omit “as amended by subsequent Acts.”.

(b) Section 3 (3)—

Omit “Poisons Act, 1952–1965,” insert instead “Poisons Act, 1952.”.

**SCHEDULE**

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*Poisons (Further Amendment).*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE POISONS ACT, 1966, BY WAY OF  
STATUTE LAW REVISION—*continued.*

- (2) (a) Section 4 (1), definition of “Dentist”—  
Omit “, as amended by subsequent Acts”.
- (b) Section 4 (1), definition of “Label”—  
Omit “addiction; and “labelled” has a corresponding interpretation.”, insert instead “addiction.”.
- (c) Section 4 (1), definition of “Pharmacist”—  
Omit “, as amended by subsequent Acts”.
- (d) Section 4 (1), definition of “Pharmacy trainee”—
- (i) Omit “paragraph (c) of subsection (1)”, insert instead “subsection (1) (c)”.
  - (ii) Omit “paragraph (d) of section 15,”, insert instead “section 15 (d)”.
  - (iii) Omit “paragraph (a) of section 16”, insert instead “section 16 (a)”.
- (e) Section 4 (1), definition of “Veterinary surgeon”—  
Omit “, as amended by subsequent Acts”.
- (3) (a) Section 5 (1) (a)—  
Omit “, as amended by subsequent Acts”.
- (b) Section 5 (1) (b)—  
Omit “, as amended by subsequent Acts”.

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*Poisons (Further Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE POISONS ACT, 1966, BY WAY OF  
STATUTE LAW REVISION—*continued.*

(4) (a) Section 6 (3)—

Omit “paragraph (a) of subsection (2)”, insert  
instead “subsection (2) (a)”.

(b) Section 6 (4)—

Omit “paragraph (b) of subsection (2)”, insert  
instead “subsection (2) (b)”.

(c) Section 6 (9)—

Omit “subparagraph (v) of paragraph (g) of  
subsection (2),”, insert instead “subsection (2)  
(g) (v).”.

(d) Section 6 (10) (c)—

Omit “, as amended by subsequent Acts”.

(e) Section 6 (13)—

Omit “as amended by subsequent Acts,”.

(5) Section 12 (1)—

Omit “subsection (2) of section 11.”, insert instead  
“section 11 (2).”.

(6) Section 13 (1)—

Omit “subsection (2) of section 11.”, insert instead  
“section 11 (2).”.

SCHEDULE

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*Poisons (Further Amendment).*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE POISONS ACT, 1966, BY WAY OF  
STATUTE LAW REVISION—*continued.*

## (7) Section 14 (3)—

Omit “paragraph (a) of subsection (1)”, insert instead “subsection (1) (a)”.

## (8) Section 16 (1) (c)—

Omit “paragraph (b) of subsection (1) of section 19;”, insert instead “section 19 (1) (b);”.

## (9) Section 18—

(i) Omit “eight hundred dollars;”, insert instead “\$800;”.

(ii) Omit “twenty dollars”, insert instead “\$20”.

## (10) Section 18A (1)—

Omit “two thousand dollars”, insert instead “\$2,000”.

## (11) (a) Section 19 (1)—

Omit “Paragraph (b) of subsection (1) of section 9”, insert instead “Section 9 (1) (b)”.

## (b) Section 19 (1A)—

Omit “paragraph (b) of subsection (1)”, insert instead “subsection (1) (b)”.

## (c) Section 19 (1B)—

Omit “paragraph (b) of subsection (1);”, insert instead “subsection (1) (b);”.

SCHEDULE



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*Poisons (Further Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE POISONS ACT, 1966, BY WAY OF  
STATUTE LAW REVISION—*continued.*

(d) Section 19 (2)—

Omit "Subsection (1) of section 16", insert  
instead "Section 16 (1)".

(12) (a) Section 24 (3) (a)—

Omit ", as amended by subsequent Acts".

(b) Section 24 (3) (b)—

Omit "as amended by subsequent Acts,".

(13) (a) Section 26 (1)—

Omit "two thousand dollars or to imprisonment  
with or without hard labour", insert instead  
"\$2,000 or to imprisonment".

(b) Section 26 (3)—

Omit "one hundred dollars,", insert instead  
"\$100,".

(14) Section 30 (4)—

Omit "subsection (2) of section 29", insert instead  
"section 29 (2)".

(15) Section 33 (1)—

Omit "two thousand dollars or to imprisonment with  
or without hard labour", insert instead "\$2,000 or to  
imprisonment".

**SCHEDULE**

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*Poisons (Further Amendment).*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE POISONS ACT, 1966, BY WAY OF  
STATUTE LAW REVISION—*continued.*

## (16) Section 36 (2)—

- (i) Omit “two hundred dollars”, insert instead “\$200”.
- (ii) Omit “twenty dollars”, insert instead “\$20”.

## (17) Section 44—

Omit “two hundred dollars”, insert instead “\$200”.

## (18) (a) Section 45A (1) (a)—

Omit “subsection (1) of section 21”, insert instead “section 21 (1)”.

## (b) Section 45A (1) (b)—

Omit “subsection (2A) of that section”, insert instead “section 21 (2A)”.

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