

POISONS (AMENDMENT) ACT 1987 No. 246

NEW SOUTH WALES



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POISONS (AMENDMENT) ACT 1987 No. 246

NEW SOUTH WALES



Act No. 246, 1987

An Act to amend the Poisons Act 1966 to reconstitute the Poisons Advisory Committee; to make further provision with respect to the Poisons List and the prescription of drugs of addiction; and for other purposes. [Assented to 16 December 1987]

Poisons (Amendment) 1987

The Legislature of New South Wales enacts:**Short title**

1. This Act may be cited as the Poisons (Amendment) Act 1987.

Commencement

2. (1) Except as provided by this section, this Act shall commence on a day or days to be appointed by proclamation.

(2) Schedule 5, and section 3 in its application to that Schedule, shall commence on the date of assent to this Act.

(3) Section 4 and Schedule 6 shall commence on the date of assent to this Act.

Amendment of Act No. 31, 1966

3. The Poisons Act 1966 is amended as set out in Schedules 1-5.

Savings and transitional provisions

4. Schedule 6 has effect.
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**SCHEDULE 1—AMENDMENTS RELATING TO THE POISONS
ADVISORY COMMITTEE**

(Sec. 3)

(1) Sections 6, 6A, 6B—

Omit section 6, insert instead:

Poisons Advisory Committee

6. (1) There is constituted by this Act a Poisons Advisory Committee consisting of—

- (a) 6 nominated members; and
 - (b) 10 members appointed by the Governor.
- (2) Of the nominated members—
- (a) 1 shall be an officer of the Department of Health for the time being nominated by the Minister;
 - (b) 1 shall be the Head of the Department of Pharmacy, University of Sydney, or a person he or she nominates for the time being;
 - (c) 1 shall be a member of the Police Force for the time being nominated by the Commissioner of Police;
 - (d) 1 shall be an officer of the Department of Agriculture for the time being nominated by the Minister for Agriculture;

**SCHEDULE 1—AMENDMENTS RELATING TO THE POISONS
ADVISORY COMMITTEE—*continued***

- (e) 1 shall be an officer of the State Pollution Control Commission for the time being nominated by the Minister for Planning and Environment; and
 - (f) 1 shall be an officer of the Department of Industrial Relations and Employment for the time being nominated by the Minister for Industrial Relations.
- (3) Of the members appointed by the Governor—
- (a) 1 shall be a medical practitioner nominated by the Australian Medical Association, New South Wales Branch;
 - (b) 1 shall be a pharmacologist nominated by the Minister;
 - (c) 1 shall be a person nominated by the Minister for Agriculture to represent agricultural and pastoral organisations;
 - (d) 1 shall be a representative of the Proprietary Association of Australia Incorporated;
 - (e) 1 shall be a representative of the Australian Pharmaceutical Manufacturers Association Inc.;
 - (f) 1 shall be a representative of the Agricultural and Veterinary Chemicals Association of Australia Ltd.;
 - (g) 1 shall be a representative of the Pharmacy Guild of Australia (New South Wales Branch);
 - (h) 1 shall be a representative of The Pharmaceutical Society of Australia (New South Wales Branch) Ltd.;
 - (i) 1 shall be a representative of the Country Division of The Retail Traders' Association of New South Wales; and
 - (j) 1 shall be a dentist representing The Australian Dental Association, New South Wales Branch.
- (4) Schedule 1 has effect with respect to the members of the Advisory Committee.
- (5) Schedule 2 has effect with respect to the procedure of the Advisory Committee.

Subcommittees

6A. (1) The Advisory Committee may establish subcommittees to assist it in the exercise of its functions.

(2) Subject to the inclusion of at least 1 member of the Advisory Committee, it does not matter that the members of a subcommittee include persons who are not members of the Advisory Committee.

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SCHEDULE 1—AMENDMENTS RELATING TO THE POISONS
ADVISORY COMMITTEE—*continued*

(3) The procedure for the calling of meetings of a subcommittee and for the conduct of business at those meetings shall be as determined by the Advisory Committee or (subject to any determination of the Advisory Committee) by the subcommittee.

Delegation

6B. The Advisory Committee may delegate to a subcommittee of the Advisory Committee any of its functions other than—

- (a) this power of delegation; and
- (b) any function required by the regulations to be exercised only by the Advisory Committee.

(2) Section 7 (Functions of Advisory Committee)—**(a) Section 7 (1)—**

Omit “Committee”, insert instead “Advisory Committee”.

(b) Section 7 (2)—

Omit “In addition to the duty imposed upon the Committee by section 8 it shall be the duty of the Committee”, insert instead “It is the duty of the Advisory Committee”.

(3) Schedules 1, 2—

After section 48, insert:

**SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE
ADVISORY COMMITTEE**

(Sec. 6)

Definition

1. In this Schedule—

“appointed member” means a member appointed by the Governor;

“member” means a member of the Advisory Committee.

Chairperson of the Advisory Committee

2. The Chairperson of the Advisory Committee is the officer of the Department of Health nominated by the Minister under section 6 (2) as a member.

Acting appointed members

3. (1) The Governor may, from time to time, appoint a person to act in the office of an appointed member and the person, while so acting, has all the functions of a member and shall be deemed to be an appointed member.

(2) The Governor may remove from office a person appointed under subclause (1).

(3) A person while acting in the office of an appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

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**SCHEDULE 1—AMENDMENTS RELATING TO THE POISONS
ADVISORY COMMITTEE—*continued***
Term of office

4. Subject to this Schedule, an appointed member holds office for such period not exceeding 3 years as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

5. A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Vacancy in office of appointed member

6. (1) The office of an appointed member becomes vacant if the member—
- (a) dies;
 - (b) completes a term of office and is not re-appointed;
 - (c) resigns the office by instrument in writing addressed to the Minister;
 - (d) is removed from office by the Governor under this clause;
 - (e) is absent from 4 consecutive meetings of the Advisory Committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the Secretary or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Secretary for having been absent from those meetings;
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
 - (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
 - (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted in New South Wales or elsewhere of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Governor may remove an appointed member from office at any time.

Filling of vacancy in office of member

7. If the office of an appointed member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Effect of certain other Acts

8. (1) The Public Service Act 1979 does not apply to the appointment of an appointed member and an appointed member is not, as a member, subject to that Act.

- (2) If by or under any other Act provision is made—
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office;
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

*Poisons (Amendment) 1987***SCHEDULE 1—AMENDMENTS RELATING TO THE POISONS
ADVISORY COMMITTEE—*continued***

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

**SCHEDULE 2—PROVISIONS RELATING TO THE
PROCEDURE OF THE ADVISORY COMMITTEE**

(Sec. 6)

General procedure

1. The procedure for the calling of meetings of the Advisory Committee and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Advisory Committee.

Quorum

2. The quorum for a meeting of the Advisory Committee shall be as prescribed by the regulations.

Presiding member

3. (1) The Chairperson of the Advisory Committee or, in the absence of the Chairperson, another member elected to chair the meeting by the members present shall preside at a meeting of the Advisory Committee.

(2) The person presiding at a meeting of the Advisory Committee has a deliberative vote and, in the event of an equality of votes, a second or casting vote.

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Advisory Committee at which a quorum is present is a decision of the Advisory Committee.

Minutes

5. The Advisory Committee must cause full and accurate minutes to be kept of the proceedings at each meeting of the Advisory Committee.

**SCHEDULE 2—AMENDMENTS RELATING TO THE POISONS
LIST**

(Sec. 3)

Section 8 (Poisons List)—**(1) Section 8 (1)—**

Omit the subsection, insert instead:

(1) The proclamation of the Poisons List in force under this section immediately before the commencement of Schedule 2 to the Poisons (Amendment) Act 1987 continues in force at that commencement as the proclamation of the Poisons List for the purposes of this Act.

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SCHEDULE 2—AMENDMENTS RELATING TO THE POISONS LIST—*continued*

- (2) Section 8 (2)—
Omit “list to be prepared and submitted to the Minister under subsection (1)” insert instead “Poisons List”.
- (3) Section 8 (2)—
Omit “to be” where secondly occurring.
- (4) Section 8 (2)—
Omit “(*Dangerous Poisons*)”, “(*Medicinal Poisons*)”, “(*Potent Substances*)”, “(*Restricted Substances*)”, “(*Domestic Poisons*)”, “(*Industrial and Agricultural Poisons*)”, “(*Special Poisons*)” and “(*Drugs of Addiction*)”.
- (5) Section 8 (2)—
Omit “section 10”, insert instead “Part III”.
- (6) Section 8 (3), (4), (5)—
Omit the subsections.
- (7) Section 8 (6), (7)—
Omit section 8 (6), insert instead:
 (6) The Poisons List may be amended by proclamation made on the recommendation of the Minister.
 (7) An amendment of the Poisons List may be made by applying, adopting or incorporating, with or without modification, a standard published by the National Health and Medical Research Council or any other published standard.

SCHEDULE 3—AMENDMENTS RELATING TO POISONS AND RESTRICTED SUBSTANCES

(Sec. 3)

- (1) Section 9 (**Supply of certain substances prohibited**)—
Section 9 (1) (a)—
Omit “under section 10”, insert instead “as prescribed”.
- (2) Section 9A (**Obtaining substances by false representation**)—
Omit “section 10”, insert instead “this Part”.
- (3) Sections 10–15—
Omit the sections.

*Poisons (Amendment) 1987***SCHEDULE 3—AMENDMENTS RELATING TO POISONS AND RESTRICTED SUBSTANCES—*continued***

- (4) **Section 16 (Offences relating to prescribed restricted substances)—**
- (a) Section 16 (1) (c)—
Omit “or” where secondly occurring.
- (b) Section 16 (1) (d), (e)—
After section 16 (1) (d), insert:
; or
(e) the person is licensed or otherwise authorised by the regulations to obtain possession of the substance for the purposes of his or her profession or employment.
- (5) **Section 18 (Penalty for offences under Part III)—**
Section 18 (b)—
Omit “section 10”, insert instead “this Part”.
- (6) **Section 19 (Limitation of application of certain provisions of Division 1)—**
- (a) Section 19 (3)—
Omit the subsection.
- (b) Section 19 (4)—
Omit “Sections 9, 11, 12, 13, 14 and 15 do”, insert instead “Section 9 does”.
- (c) Section 19 (4) (b)—
After “Three”, insert “of the Poisons List”.

SCHEDULE 4—AMENDMENTS RELATING TO DRUGS OF ADDICTION

(Sec. 3)

- (1) **Section 27—**
Omit the section, insert instead:
Definitions
27. In this Division—
“addict” means a person who has acquired, as a result of repeated administration of—
- (a) a drug of addiction; or
- (b) a prohibited drug within the meaning of the Drug Misuse and Trafficking Act 1985,

SCHEDULE 4—AMENDMENTS RELATING TO DRUGS OF
ADDICTION—*continued*

an overpowering desire for the continued administration of such a drug;

“approved prescriber” means a medical practitioner approved under section 28A as a prescriber of drugs of addiction.

(2) Section 28 (**Prohibition on prescribing drugs of addiction in certain cases**)—

(a) Section 28 (a)—

Before “therapeutic” wherever occurring, insert “continuous”.

(b) Section 28 (a)—

Omit “continuously” wherever occurring.

(c) Section 28 (a)—

Omit “that drug has, to his”, insert instead “he or she has prescribed that or any other such drug or, together with any other period for which that or any other such drug has, to his or her”.

(d) Section 28 (a)—

After “that drug” where secondly occurring insert “, or that drug together with any other such drug,”.

(3) Section 28A—

After section 28, insert:

Approval of prescribers of drugs of addiction

28A. (1) The Secretary may, on the recommendation of the Medical Committee, approve a medical practitioner as a prescriber of drugs of addiction for the purposes of section 29 (2) (b).

(2) Application for such an approval must be made to the Secretary in writing and must be referred by the Secretary to the Medical Committee for its recommendation.

(3) An applicant must provide the Secretary—

(a) in the application; and

(b) before approval of the application,

with such information relevant to the application as the Secretary requires.

(4) The Secretary may give an unconditional approval or an approval subject to specified conditions.

(5) An approval given subject to conditions is ineffective unless the conditions are complied with.

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 SCHEDULE 4—AMENDMENTS RELATING TO DRUGS OF ADDICTION—*continued*

- (6) The Secretary may, on the recommendation of the Medical Committee—
- (a) revoke an approval or a condition of an approval;
 - (b) amend a condition of an approval;
 - (c) impose a condition of an approval that was an unconditional approval; or
 - (d) impose an additional condition of an approval.
- (7) The Secretary may, pending receipt of a recommendation for the purposes of subsection (6)—
- (a) suspend an approval; or
 - (b) impose or amend a condition of an approval.
- (8) The Secretary may arrange for an approval to be referred from time to time to the Medical Committee for review and a report and recommendation to the Secretary as a result of the review.
- (9) Nothing in this section prevents the Secretary from refusing an application or from referring for report and recommendation by the Medical Committee any question arising under this section.
- (4) **Section 29 (Secretary may authorise prescription or supply of drugs of addiction)—**
- (a) Section 29 (1), (4)—
Omit “constituted under section 30” wherever occurring.
 - (b) Section 29 (2) (b)—
After “it”, insert “is not made by an approved prescriber and”.
 - (c) Section 29 (4A)—
After section 29 (4), insert:
(4A) If an application has been referred to the Medical Committee under subsection (2), the Secretary may issue a temporary authority to the applicant expiring on a specified date that is not later than 4 months after its issue.
 - (d) Section 29 (5)—
Omit “Any such authority”, insert instead “An authority (whether or not a temporary authority)”.
 - (e) Section 29 (7)—
After section 29 (6), insert:
(7) The Secretary may revoke an authority (including a temporary authority) given under this section.

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SCHEDULE 4—AMENDMENTS RELATING TO DRUGS OF ADDICTION—*continued*

- (5) Section 30 (**Medical Committee**)—
- (a) Section 30 (4)—
After “section”, insert “28A or”.
- (b) Section 30 (4)—
Omit “authority should be given to prescribe for or supply to the person to whom the application relates any drug of addiction”, insert instead “approval or authority of the kind applied for should be given and whether, if given, it should be unconditional or subject to specified conditions”.
- (6) Sections 30A, 30B—
After section 30, insert:
- Subcommittees**
- 30A. (1) The Medical Committee may establish subcommittees to assist it in the exercise of its functions.
- (2) It does not matter that any or all of the members of a subcommittee are not members of the Medical Committee.
- (3) The procedure for the calling of meetings of a subcommittee and for the conduct of business at those meetings shall be as determined by the Medical Committee or (subject to any determination by the Medical Committee) by the subcommittee.
- Delegation**
- 30B. The Medical Committee may delegate to a subcommittee of the Medical Committee any of its functions other than—
- (a) this power of delegation; and
- (b) any function required by the regulations to be exercised only by the Medical Committee.

SCHEDULE 5—MISCELLANEOUS AMENDMENTS

(Sec. 3)

- (1) Section 1—
Omit the section, insert instead:
Short title
1. This Act may be cited as the Poisons Act 1966.
- (2) Section 3 (**Repeal and savings**)—
Omit the section.
- (3) Section 4 (**Definitions**)—

*Poisons (Amendment) 1987*SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued*

Section 4 (1)—

- (a) Before the definition of “Automatic machine”, insert:

“Advisory Committee” means the Poisons Advisory Committee constituted by section 6.

- (b) Definition of “Committee”—

Omit the definition.

- (c) Definition of “Medical Committee”—

After the definition of “Licence”, insert:

“Medical Committee” means the Medical Committee constituted under section 30.

- (d) Definition of “Supply”—

After “includes” where firstly occurring, insert “dispense,”.

- (e) Definition of “Supply”—

Omit “to supply” wherever occurring, insert instead “to dispense or supply”.

- (f) Definition of “Supply”—

Omit “for supply” wherever occurring, insert instead “for dispensing or supply”.

- (4) Section 24 (
- Regulations under Div. 1 of Part IV**
-)—

Section 24 (3)—

Omit the subsection.

- (5) Section 35 (
- Secretary may require information as to substances**
-)—

- (a) Section 35 (1)—

Omit “Committee” wherever occurring, insert instead “Secretary”.

- (b) Section 35 (1)—

Omit “intended for therapeutic use”, insert instead “that is included, or might warrant inclusion, in the Poisons List”.

- (c) Section 35 (1)—

After “furnish”, insert “in writing”.

- (d) Section 35 (1)—

After “days,”, insert “or to such person,”.

- (e) After section 35 (3), insert:

(4) A person on whom a notice referred to in subsection (1) is served shall not, in purported compliance with the notice, knowingly provide any information that is false or misleading in a material particular.

*Poisons (Amendment) 1987***SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued*****(6) Section 43 (Powers of entry and search)—****(a) Section 43 (1) (d)—**

Omit “books or documents”, insert instead “record”.

(b) Section 43 (3B)—

After section 43 (3A), insert:

(3B) A reference in subsection (1)—

(a) to a record includes a reference to any book, account, document, paper, or other source of information compiled, recorded, or stored in written form, or on microfilm, or by electronic process, or on any other manner or by any other means; and

(b) to production of a record includes, if the record is not in writing or is not written in English or is not decipherable on sight, a reference to production of a statement in English that is decipherable on sight and sets out the contents of the record.

(c) Section 43 (4) (b)—

Omit “books, documents”, insert instead “record”.

(7) Schedule—

Omit the Schedule.

SCHEDULE 6—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 4)

Definitions**1. In this Schedule—**

“appointed day” means the day on which Schedule 1 commences;

“new Advisory Committee” means the Poisons Advisory Committee constituted by the Poisons Act 1966 as amended by this Act;

“old Advisory Committee” means the Poisons Advisory Committee constituted by the Poisons Act 1966, before the appointed day.

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SCHEDULE 6—SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Members holding office before appointed day**

2. (1) A person who, immediately before the appointed day, held office as a member of the old Advisory Committee—

- (a) ceases to hold office as such on that day; and
- (b) is eligible (if otherwise qualified) to be nominated or appointed as a member of the new Advisory Committee.

(2) A person who ceases to hold office as a member of the old Advisory Committee because of the amendments made by this Act is not entitled to be paid any remuneration or compensation because of ceasing to hold that office.

Nominations and appointments before appointed day

3. For the purpose only of enabling the new Advisory Committee to be constituted on or after (but not before) the appointed day, nominations and appointments may be made, and any other act, matter or thing may be done, before that day as if Schedule 1, and section 3 in its application to that Schedule, commenced on the date of assent to this Act, but so that no nomination or appointment as a member of the new Advisory Committee takes effect before the appointed day.

Licence to continue in force

4. A licence in force under section 10 of the Poisons Act 1966 immediately before the repeal of that section by this Act continues in force until its expiration as if it were a licence issued under the regulations.

Approved prescribers of drugs of addiction

5. If, during the period of 2 months that next succeeds the commencement of section 28A of the Poisons Act 1966, a medical practitioner applies under that section to be an approved prescriber of drugs of addiction, he or she shall, for the purposes of section 29 (2) (b) of that Act, as so amended, and until a decision on the application is given effect, be deemed to be an approved prescriber.

Regulations

6. (1) The regulations under the Poisons Act 1966, as amended by this Act, may contain other provisions of a savings or transitional nature consequent on the amendment.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the day of commencement of the amendment on which it is consequential or from a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the date of its publication; or

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SCHEDULE 6—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done, or omitted to be done, before the date of its publication.
- (4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect despite any other clause of this Schedule (clause 2 excepted).