

# Drug Misuse and Trafficking Act 1985 No 226

[1985-226]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Veterinary Practice Act 2003 No 87](#) (not commenced)
  - [Drug Misuse and Trafficking Amendment Act 2006 No 39](#) (not commenced)
- **See also**
  - [Pharmacy Practice Bill 2006](#)

### Authorisation

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# Drug Misuse and Trafficking Act 1985 No 226



New South Wales

## Contents

<b>Long title</b> .....	7
<b>Part 1 Preliminary</b> .....	7
1 Name of Act .....	7
2 Commencement .....	7
3 Definitions .....	7
4 Admixtures .....	10
5 Meaning of “use” and “administer” .....	10
6 Meaning of “take part in” .....	10
7 Deemed possession of prohibited drug etc .....	11
8 Relationship with Poisons Act 1966 .....	11
<b>Part 2 Offences</b> .....	11
<b>Division 1 Summary offences</b> .....	11
9 Summary prosecution .....	11
10 Possession of prohibited drugs .....	11
11 Possession of equipment for administration of prohibited drugs .....	12
11A Sale, supply and display of waterpipes .....	12
12 Self-administration of prohibited drugs .....	13
13 Administration of prohibited drugs to others .....	13
14 Permitting another to administer prohibited drugs .....	14
15 Forging etc prescriptions .....	14
16 Obtaining etc prescription by false representation .....	14

17 Obtaining prohibited drug by false representation .....	14
18 Obtaining prohibited drugs from medical practitioners, nurse practitioners or midwife practitioners .....	15
18A Advertising or holding out that premises are available for use for unlawful administration of prohibited drugs .....	15
19 Aiding, abetting etc commission of offence in New South Wales.....	15
20 Aiding, abetting etc commission of offence outside New South Wales .....	16
21 Penalties .....	16
<b>Division 2 Indictable offences</b> .....	16
22 Indictable prosecution .....	16
23 Offences with respect to prohibited plants .....	16
23A Offences with respect to enhanced indoor cultivation of prohibited plants in presence of children .....	18
24 Manufacture and production of prohibited drugs.....	20
24A Possession of precursors for manufacture or production of prohibited drugs.....	20
25 Supply of prohibited drugs .....	21
25A Offence of supplying prohibited drugs on an ongoing basis .....	22
26 Conspiring .....	24
27 Aiding, abetting etc commission of offence in New South Wales.....	24
28 Conspiring to commit and aiding etc commission of offence outside New South Wales .....	24
29 Traffickable quantity—possession taken to be for supply .....	24
30 Indictable offences—summary disposal of unless prosecution elects otherwise .....	25
31 Indictable offences—summary disposal of unless prosecution or accused elects otherwise .....	25
32 Penalty for offences dealt with on indictment not involving commercial quantities .....	26
33 Penalties for offences involving commercial quantities or cultivation for a commercial purpose ....	27
33AA Penalties for offences involving supply to persons under 16 years.....	28
33AB Penalty for offence involving possession of precursors for manufacture or production of prohibited drugs .....	28
33AD Penalties for offences with respect to enhanced indoor cultivation of prohibited plants in presence of children .....	28
33A Provisions relating to life sentences .....	29

<b>Division 3 Supplementary</b> .....	30
34 Commencement of term of imprisonment.....	30
35 Order for forfeiture etc of certain articles .....	30
36 Contravention of Act etc by corporations .....	30
<b>Part 2A Medically supervised injecting centres</b> .....	30
<b>Division 1 Preliminary</b> .....	30
36A Limited operation of Part 2A.....	31
36B Review during trial period .....	31
36C Expiry of Part.....	31
36D Definitions.....	32
<b>Division 2 Licensing of injecting centres</b> .....	33
36E Licence .....	33
36F Restrictions on issue of licence.....	33
36G Duration of licence .....	34
36H Conditions of licences generally.....	34
36I Statutory conditions of licences.....	34
36J Contraventions .....	34
36K Reviews .....	35
<b>Division 3 Internal management protocols</b> .....	35
36L Matters for consideration in relation to internal management protocols .....	35
36M Amendment and replacement of internal management protocols.....	37
<b>Division 4 Exemptions from liability</b> .....	37
36N Exemption from criminal liability for users of licensed injecting centre .....	37
36O Exemption from criminal liability for persons engaged in conduct of licensed injecting centre ....	38
36P Exemption from civil liability in connection with conduct of licensed injecting centre .....	38
<b>Division 5 Miscellaneous</b> .....	39
36Q Application of Environmental Planning and Assessment Act 1979.....	39
36R Certificate evidence .....	39
36S Regulations.....	39

36T Effect of extension of trial period.....	40
<b>Part 2B Offences involving drug premises</b> .....	40
36TA Definitions .....	40
36U Prohibited drugs to which Part does not apply .....	40
36V Possession or presence of prohibited drugs or prohibited plants on premises .....	40
36W Evidence that premises are drug premises .....	41
36X Offence of entering, or being on, drug premises .....	43
36Y Allowing use of premises as drug premises—offence by owner or occupier .....	43
36Z Offence of organising drug premises.....	44
36ZA Proceedings for offences .....	44
36ZB Offences by corporations .....	44
36ZC Forfeiture to Crown .....	45
<b>Part 3 Enforcement</b> .....	45
37 (Repealed) .....	45
38 Destruction of prohibited plants by Director-General .....	46
39 Seizure and forfeiture of cannabis plants and certain prohibited drugs .....	46
<b>Part 3A Destruction of exhibits</b> .....	46
<b>Division 1 Pre-trial orders</b> .....	46
39A Definitions .....	47
39B Extent of order for destruction .....	47
39C Order for destruction by certain police officers .....	47
39D Application to Magistrate for order with respect to destruction .....	47
39E Determination of Magistrate with respect to destruction on first mention of charge .....	48
39F Matters for consideration on determination for retention of prohibited drug .....	48
39G Adjournment .....	49
39H Review of determination for retention of prohibited drug .....	49
39I Destruction of prohibited drugs .....	49
39J Use of prohibited drug for research etc .....	49
39K Order on committal for trial.....	50
39L Order on initial hearing of trial.....	50
39M Amount of prohibited drug less than minimum amount .....	50

<b>Division 2 Post-trial orders</b> .....	50
39N Order on determination of proceedings before Magistrate.....	50
39O Order on appeal to District Court.....	51
39P Order on determination of proceedings before District Court or Supreme Court.....	51
<b>Division 2A Order for disposal of dangerous exhibit</b> .....	51
39PA Order for disposal of dangerous exhibit.....	51
<b>Division 3 Supplementary</b> .....	52
39Q Presumption on appeal .....	52
39R Return of prohibited drug to lawful owner.....	52
39RA Use of prohibited plants and prohibited drugs in controlled operations and integrity testing programs .....	53
39S Regulations.....	53
<b>Part 4 Miscellaneous</b> .....	54
40 Effect of certain representations .....	54
40A Proof of certain matters.....	54
41 Authorisation of Secretary of Department of Health .....	54
42 Certificate of Secretary of Department of Health prima facie evidence .....	54
43 Certificate evidence.....	55
44 Amendment of Schedule 1 .....	55
45 Regulations.....	56
<b>Schedule 1</b> .....	56

# Drug Misuse and Trafficking Act 1985 No 226



New South Wales

An Act to prohibit the manufacture, supply, possession and use of certain drugs, and for related purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Drug Misuse and Trafficking Act 1985*.

### 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette, being a day that is not earlier than the day appointed and notified under section 2 (2) of the *Search Warrants Act 1985*.

### 3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

***cannabis leaf*** means any plant or part of a plant of the genus *Cannabis* by whatever name that plant or part may be called, and includes the achene and seed of any such plant, but does not include:

- (a) cannabis oil,
- (b) any fibre of any such plant or part from which the resin has been extracted, or
- (c) cannabis plant.

***cannabis oil*** means any liquid containing tetrahydrocannabinol.

***cannabis plant*** means any growing plant of the genus *Cannabis*.

***cannabis resin*** means the separated resin (whether crude or purified) obtained from cannabis leaf, but does not include cannabis oil.

**commercial quantity**, in relation to a prohibited plant or a prohibited drug, means a number or amount, if any, specified opposite the prohibited plant or prohibited drug in Column 4 of Schedule 1.

**cultivate**, in relation to a prohibited plant, includes:

- (a) sow or scatter the seed produced by the prohibited plant, and
- (b) plant, grow, tend, nurture or harvest the prohibited plant.

**cultivation by enhanced indoor means**, in relation to a prohibited plant, means cultivation of the plant:

- (a) that occurs inside a building or structure, and
- (b) that involves any one or more of the following:
  - (i) the nurture of the plant in nutrient-enriched water (with or without mechanical support),
  - (ii) the application of an artificial source of light or heat,
  - (iii) suspending the plant's roots and spraying them with nutrient solution.

**dentist** means a person registered, or deemed to be registered, as a dentist under the [Dentists Act 1934](#).

**discrete dosage unit**, in relation to a prohibited drug, means an amount of the prohibited drug, not greater than the amount, if any, specified opposite the prohibited drug in Column 6 of Schedule 1, which is prepared or apparently prepared for the purpose of being administered as a single dose.

**heroin** means diamorphine and includes the salts of diamorphine.

**indictable quantity**, in relation to a prohibited plant or a prohibited drug, means the number or amount, if any, specified opposite the prohibited plant or prohibited drug in Column 3 of Schedule 1.

**manufacture**, in relation to a prohibited drug, includes the process of extracting or refining the prohibited drug.

**midwife** means a registered midwife within the meaning of the [Nurses and Midwives Act 1991](#).

**midwife practitioner** means a person authorised under the [Nurses and Midwives Act 1991](#) to practise as a midwife practitioner.

**nurse** means a registered nurse within the meaning of the [Nurses and Midwives Act 1991](#).



**nurse practitioner** means a person authorised under the *Nurses and Midwives Act 1991* to practise as a nurse practitioner.

**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.

**pharmacist** means a pharmacist within the meaning of the *Pharmacy Act 1964*.

**Poisons List** means the list proclaimed under section 8 of the *Poisons Act 1966*, being that list as in force for the time being.

**premises** includes any structure, building, aircraft, vehicle, vessel or place (whether built upon or not), and any part of any such structure, building, aircraft, vehicle, vessel or place.

**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.

**profession** includes business, trade and industry.

**prohibited drug** means any substance, other than a prohibited plant, specified in Schedule 1.

**prohibited plant** means:

- (a) a cannabis plant cultivated by enhanced indoor means, or
- (a1) a cannabis plant cultivated by any other means, or
- (b) any growing plant of the genus *Erythroxyton* or of the species *Papaver Somniferum* or *Papaver orientale*, also known as *Papaver bracteatum*, or
- (c) any growing plant of a description specified in an order in force under subsection (2),

but does not include any growing plant, referred to in paragraph (a), (a1) or (b), of a description prescribed for the purposes of this definition.

**regulations** means regulations made under this Act.

**sell** includes sell whether by wholesale or retail and barter and exchange, and also includes dealing in, agreeing to sell, or offering or exposing for sale, or keeping or having in possession for sale, or sending, forwarding, delivering or receiving for sale or on sale, or authorising, directing, causing, suffering, permitting or attempting any of those acts or things.

**small quantity**, in relation to a prohibited plant or a prohibited drug, means the number or amount, if any, specified opposite the prohibited plant or prohibited drug in

Column 2 of Schedule 1.

**substance** includes preparation and admixture and all salts, isomers, esters or ethers of any substance and all salts of those isomers, esters and ethers.

**supply** includes sell and distribute, and also includes agreeing to supply, or offering to supply, or keeping or having in possession for supply, or sending, forwarding, delivering or receiving for supply, or authorising, directing, causing, suffering, permitting or attempting any of those acts or things.

**traffickable quantity**, in relation to a prohibited plant or a prohibited drug, means the number or amount, if any, specified opposite the prohibited plant or prohibited drug in Column 1 of Schedule 1.

**veterinary surgeon** means a person registered as a veterinary surgeon under the [Veterinary Surgeons Act 1923](#).

**wholesale** means supply for the purposes of resale.

- (2) For the purposes of paragraph (c) of the definition of **prohibited plant** in subsection (1), the Minister may, by order published in the Gazette, declare any description of any plant that in the opinion of the Minister is capable of being used for the purpose of producing a prohibited drug to be a prohibited plant.

#### 4 Admixtures

In this Act, a reference to a prohibited drug includes a reference to any preparation, admixture, extract or other substance containing any proportion of the prohibited drug.

#### 5 Meaning of “use” and “administer”

In this Act, a reference to the use or administration of a prohibited drug includes a reference to the ingestion, injection and inhalation of a prohibited drug, the smoking of a prohibited drug, the inhalation of fumes caused by the heating or burning of a prohibited drug and any other means of introducing a prohibited drug into any part of the body of a person.

#### 6 Meaning of “take part in”

For the purposes of this Act and the regulations, a person takes part in the cultivation or supply of a prohibited plant or the manufacture, production or supply of a prohibited drug if:

- (a) the person takes, or participates in, any step, or causes any step to be taken, in the process of that cultivation, manufacture, production or supply,
- (b) the person provides or arranges finance for any such step in that process, or
- (c) the person 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 the person is the owner, lessee or occupier or in the management of which the person participates.

## **7 Deemed possession of prohibited drug etc**

For the purposes of this Act and the regulations, a prohibited drug or prohibited plant in the order or disposition of a person, or that is in the order or disposition of the person jointly with another person by agreement between the persons, shall be deemed to be in the possession of the person.

## **8 Relationship with [Poisons Act 1966](#)**

Nothing in this Act affects any provision made by or under the [Poisons Act 1966](#) or renders unlawful anything done in accordance with any such provision.

# **Part 2 Offences**

## **Division 1 Summary offences**

### **9 Summary prosecution**

An offence under this Division shall be prosecuted summarily before a Local Court.

### **10 Possession of prohibited drugs**

- (1) A person who has a prohibited drug in his or her possession is guilty of an offence.
- (2) Nothing in this section renders unlawful the possession of a prohibited drug by:
  - (a) a person licensed or authorised to have possession of the prohibited drug under the [Poisons Act 1966](#),
  - (b) a person acting in accordance with an authority granted by the Secretary of the Department of Health where the Secretary is satisfied that the possession of the prohibited drug is for the purpose of scientific research, instruction, analysis or study,
  - (b1) a person acting in accordance with a direction given by the Commissioner of Police under section 39RA,
  - (c) a person for or to whom the prohibited drug has been lawfully prescribed or supplied, or
  - (d) a person who:
    - (i) has the care of, or is assisting in the care of, another person for or to whom the prohibited drug has been lawfully prescribed or supplied, and

- (ii) has the prohibited drug in his or her possession for the sole purpose of administering, or assisting in the self-administration of, the prohibited drug to the other person in accordance with the prescription or supply.

### **11 Possession of equipment for administration of prohibited drugs**

- (1) A person who has in his or her possession any item of equipment for use in the administration of a prohibited drug is guilty of an offence.
  - (1A) Subsection (1) does not apply to or in respect of a hypodermic syringe or a hypodermic needle.
  - (1B) Subsection (1) does not apply to or in respect of a person prescribed by the regulations, or a person who is of a class of persons prescribed by the regulations, who has in his or her possession any item of equipment that is required to minimise health risks associated with the intravenous administration of a prohibited drug.
- (2) Nothing in this section renders unlawful the possession of an item of equipment by:
  - (a) a medical practitioner, dentist, veterinary surgeon, pharmacist, nurse or midwife acting in the ordinary course of his or her profession,
  - (b) a member of any other prescribed profession acting in the ordinary course of that profession,
  - (c) a person licensed or authorised to have possession of the item of equipment under the *Poisons Act 1966*,
  - (d) a person authorised to have possession of the item of equipment by the Secretary of the Department of Health, or
  - (e) a person for use in the administration of a prohibited drug lawfully prescribed or supplied.

### **11A Sale, supply and display of waterpipes**

- (1) In this section:

**shop** includes:

- (a) so much of a building or place as is used for the sale, or supply in the course of commercial transactions, of goods, and
- (b) a stall or other structure used for such sale or supply of goods at a market or elsewhere,

but does not include anything prescribed by the regulations as not being a shop for the purposes of this section.

**waterpipe** means:

- (a) a device capable of being used for the administration of a prohibited drug, by means of the drawing of smoke or fumes (resulting from the heating or burning of the drug) through water or another liquid, or
- (b) a device that is apparently intended to be such a device but that is not capable of being so used because it needs an adjustment, modification or addition,

and includes a device known as a bong, but does not include a device of a class or description prescribed by the regulations as not being a waterpipe for the purposes of this section.

(2) A person who:

- (a) sells a waterpipe, or
- (b) supplies a waterpipe in the course of or in connection with a commercial transaction,

is guilty of an offence.

(3) A person who displays a waterpipe:

- (a) in a shop, or
- (b) near but in connection with a shop,

is guilty of an offence, unless the person satisfies the court that the display was not for a commercial purpose.

(4) For the purposes of this section, it is immaterial that the waterpipe was used or intended to be used for a purpose other than the administration of a prohibited drug.

## **12 Self-administration of prohibited drugs**

- (1) A person who administers or attempts to administer a prohibited drug to himself or herself is guilty of an offence.
- (2) Nothing in this section renders unlawful the administration or attempted administration by a person to himself or herself of a prohibited drug which has been lawfully prescribed for or supplied to the person.

## **13 Administration of prohibited drugs to others**

- (1) A person who administers or attempts to administer a prohibited drug to another person is guilty of an offence.
- (2) Nothing in this section renders unlawful the administration or attempted administration of a prohibited drug to another person by:

(a) a person licensed or authorised to do so under the *Poisons Act 1966*, or

(b) a person authorised to do so by the Secretary of the Department of Health.

(3) Nothing in this section renders unlawful the administration or attempted administration of a prohibited drug to a person for or to whom the prohibited drug has been lawfully prescribed or supplied.

#### **14 Permitting another to administer prohibited drugs**

(1) A person who permits another person to administer or attempt to administer to him or her a prohibited drug is guilty of an offence.

(2) Nothing in this section renders unlawful the giving of permission for the administration or attempted administration of a prohibited drug by a person for whom or to whom the prohibited drug has been lawfully prescribed or supplied.

#### **15 Forging etc prescriptions**

A person who forges or fraudulently alters or utters, knowing it to be forged or fraudulently altered, a prescription of a medical practitioner, nurse practitioner, midwife practitioner or veterinary surgeon including a prohibited drug is guilty of an offence.

#### **16 Obtaining etc prescription by false representation**

A person:

(a) who knowingly by any false representation (whether verbal, or in writing, or by conduct):

(i) obtains from a medical practitioner, nurse practitioner, midwife practitioner or veterinary surgeon a prescription including a prohibited drug, or

(ii) induces a pharmacist to dispense a forged or fraudulently altered prescription obtained in contravention of this paragraph knowing it to be forged or so altered or obtained, or

(b) who is in actual possession of a forged or fraudulently altered prescription including a prohibited drug or a prescription obtained in contravention of paragraph (a), knowing it to be forged or so altered or so obtained,

is guilty of an offence.

#### **17 Obtaining prohibited drug by false representation**

A person who knowingly by any false representation (whether verbal, or in writing, or by conduct), obtains or attempts to obtain a prohibited drug from a medical practitioner, nurse practitioner, midwife practitioner, dentist, pharmacist or veterinary surgeon is guilty of an offence.

**18 Obtaining prohibited drugs from medical practitioners, nurse practitioners or midwife practitioners**

(1) A person who, by any representation (whether verbal, or in writing, or by conduct), obtains or attempts to obtain:

(a) a prohibited drug, or

(b) a prescription that includes a prohibited drug,

from an authorised person without previously informing the authorised person of the quantity of that or any other prohibited drug or prohibited drugs for which the person has obtained prescriptions from authorised persons within the period of 2 months immediately preceding the time of the representation, where the failure or refusal to inform the authorised person is made with intent to deceive the authorised person, is guilty of an offence.

(2) In this section:

**authorised person** means a medical practitioner, nurse practitioner or midwife practitioner.

**18A Advertising or holding out that premises are available for use for unlawful administration of prohibited drugs**

(1) A person responsible for any premises is guilty of an offence if:

(a) the person advertises or holds out in any way that the premises are available for use for the administration of prohibited drugs (whether or not for financial or material reward), or

(b) the person causes, suffers or permits any other person to advertise or hold out in any way that the premises are available for use for the administration of prohibited drugs (whether or not for financial or material reward).

(2) For the purposes of this section, a person is responsible for premises if the person is the owner, lessee or occupier of the premises, or if the person participates in the management of the premises.

(3) This section does not apply to or in respect of a licensed injecting centre within the meaning of Part 2A.

**19 Aiding, abetting etc commission of offence in New South Wales**

A person who aids, abets, counsels, procures, solicits or incites the commission of an offence under this Division is guilty of an offence and liable to the same punishment, pecuniary penalties and forfeiture as the person would be if the person had committed the firstmentioned offence.

## **20 Aiding, abetting etc commission of offence outside New South Wales**

A person who, in New South Wales, aids, abets, counsels, procures, solicits or incites the commission of an offence in any place outside New South Wales, being an offence punishable under the provisions of a law in force in that place which corresponds to a provision of this Division, is guilty of an offence and liable to the same punishment, pecuniary penalties and forfeiture as the person would be if the person had committed the firstmentioned offence in New South Wales.

## **21 Penalties**

The penalty for an offence under this Division is a fine of 20 penalty units or imprisonment for a term of 2 years, or both.

## **Division 2 Indictable offences**

### **22 Indictable prosecution**

- (1) An offence under this Division shall be prosecuted on indictment.
- (2) The provisions of section 179 of the *Criminal Procedure Act 1986* shall not apply to any indictable offences dealt with summarily in accordance with the provisions of this Division.

### **23 Offences with respect to prohibited plants**

- (1) A person who:
  - (a) cultivates, or knowingly takes part in the cultivation of, a prohibited plant,
  - (b) supplies, or knowingly takes part in the supply of, a prohibited plant, or
  - (c) has a prohibited plant in his or her possession,is guilty of an offence.
- (1A) A person who:
  - (a) cultivates by enhanced indoor means, or knowingly takes part in the cultivation by enhanced indoor means of, a number of prohibited plants which is:
    - (i) not less than the small quantity applicable to the prohibited plants, and
    - (ii) less than the commercial quantity applicable to those prohibited plants, and
  - (b) cultivates, or knowingly takes part in the cultivation of, those prohibited plants for a commercial purpose,is guilty of an offence.



(1B) If, on the trial of a person for an offence under subsection (1A), the jury is not satisfied that the number of prohibited plants involved is equal to or more than the small quantity applicable to the prohibited plants, the jury may acquit the person of the offence charged and find the person guilty of an offence under subsection (1) (a), and the person is liable to punishment accordingly.

(1C) If, on the trial of a person for an offence under subsection (1A), the jury is not satisfied that the person cultivated, or knowingly took part in the cultivation of, a prohibited plant for a commercial purpose, the jury may acquit the person of the offence charged and find the person guilty of an offence under subsection (1) (a), and the person is liable to punishment accordingly.

(2) A person who:

- (a) cultivates, or knowingly takes part in the cultivation of, a number of prohibited plants which is not less than the commercial quantity applicable to prohibited plants,
- (b) supplies, or knowingly takes part in the supply of, a number of prohibited plants which is not less than the commercial quantity applicable to prohibited plants, or
- (c) has a number of prohibited plants in his or her possession which is not less than the commercial quantity applicable to prohibited plants,

is guilty of an offence.

(3) If, on the trial of a person for an offence under subsection (2) (other than in relation to the cultivation of prohibited plants by enhanced indoor means), the jury is not satisfied that the number of prohibited plants involved is equal to or more than the commercial quantity applicable to the prohibited plants, the jury may acquit the person of the offence charged and find the person guilty of an offence under subsection (1), and the person is liable to punishment accordingly.

(3A) If, on the trial of a person for an offence under subsection (2) in relation to the cultivation of prohibited plants by enhanced indoor means, the jury is not satisfied that the number of prohibited plants involved is equal to or more than the commercial quantity applicable to the prohibited plants, the jury may acquit the person of the offence charged and find the person guilty of:

- (a) an offence under subsection (1A), if the jury is satisfied that the person contravened subsection (1A), or
- (b) an offence under subsection (1) (a), if the jury is not satisfied that the person contravened subsection (1A), but is satisfied that the person contravened subsection (1) (a),

and the person is liable to punishment accordingly.

- (4) Nothing in this section renders unlawful any act relating to the cultivation, supply or possession of a prohibited plant by:
- (a) a person:
    - (i) who informs the court before which the person is prosecuted that the person proposes to adduce evidence as referred to in subparagraph (ii), and
    - (ii) who adduces evidence which satisfies the court that, having regard to all the circumstances, including the person's conduct, in which the act constituting the offence was done or preparatory to the doing of the act, the person did not know or suspect and could not reasonably be expected to have known or suspected that the prohibited plant was a prohibited plant, or
  - (b) a person acting in accordance with an authority granted by the Secretary of the Department of Health where the Secretary is satisfied that the cultivation, supply or possession of the prohibited plant is for the purpose of scientific research, instruction, analysis or study, or
  - (c) a person acting in accordance with a direction given by the Commissioner of Police under section 39RA.
- (5) Where a person informs a court as referred to in subsection (4) (a) (i), evidence of any previous conviction of the person for any offence, being evidence which may intend to rebut the evidence referred to in subsection (4) (a) (ii), may, with the leave of the court, be adduced by the prosecutor.
- (6) In this section and section 23A, ***cultivating a prohibited plant for a commercial purpose*** includes cultivating the plant:
- (a) with the intention of selling it or any of its products, or
  - (b) with the belief that another person intends to sell it or any of its products.

**23A Offences with respect to enhanced indoor cultivation of prohibited plants in presence of children**

- (1) A person who:
- (a) cultivates, or knowingly takes part in the cultivation of, a prohibited plant by enhanced indoor means, and
  - (b) exposes a child to that cultivation process, or to substances being stored for use in that cultivation process,
- is guilty of an offence.
- (2) A person who:

- (a) cultivates, or knowingly takes part in the cultivation of, a number of prohibited plants by enhanced indoor means which is not less than the commercial quantity applicable to those plants, and
- (b) exposes a child to that cultivation process, or to substances being stored for use in that cultivation process,

is guilty of an offence.

(3) A person who:

- (a) cultivates by enhanced indoor means, or knowingly takes part in the cultivation by enhanced indoor means of, a number of prohibited plants which is:
  - (i) not less than the small quantity applicable to the prohibited plants, and
  - (ii) less than the commercial quantity applicable to those prohibited plants, and
- (b) cultivates, or knowingly takes part in the cultivation of, those prohibited plants for a commercial purpose, and
- (c) exposes a child to that cultivation process, or to substances being stored for use in that cultivation process,

is guilty of an offence.

(4) If, on the trial of a person for an offence under subsection (2), the jury is not satisfied that the number of prohibited plants involved is equal to or more than the commercial quantity applicable to the prohibited plants, the jury may acquit the person of the offence charged and find the person guilty of:

- (a) an offence under subsection (3), if the jury is satisfied that the person contravened subsection (3), or
- (b) an offence under subsection (1), if the jury is not satisfied that the person contravened subsection (3), but is satisfied that the person contravened subsection (1),

and the person is liable to punishment accordingly.

(5) If, on the trial of a person for an offence under subsection (3), the jury is not satisfied that the person cultivated, or knowingly took part in the cultivation of, a prohibited plant for a commercial purpose, the jury may acquit the person of the offence charged and find the person guilty of an offence under subsection (1), and the person is liable to punishment accordingly.

(6) It is a defence to a prosecution for an offence under subsection (1), (2) or (3) if the defendant establishes that the exposure of the child to the prohibited plant cultivation process, or to substances being stored for use in that process, did not endanger the

health or safety of the child.

- (7) If, on the trial of a person for an offence under subsection (1), (2) or (3), the jury:
- (a) is not satisfied that a child was exposed to the cultivation of a prohibited plant by enhanced indoor means, or to substances being stored for use in such a cultivation process, or
  - (b) is satisfied that the defence referred to in subsection (6) has been made out,
- the jury may acquit the person of the offence charged and find the person guilty of an offence under section 23 (1) (a), (2) (a) or (1A), respectively, and the person is liable to punishment accordingly.
- (8) In this section, **child** means a person who is under the age of 16 years.

#### **24 Manufacture and production of prohibited drugs**

- (1) A person who manufactures or produces, or who knowingly takes part in the manufacture or production of, a prohibited drug is guilty of an offence.
- (2) A person who manufactures or produces, or who knowingly takes part in the manufacture or production of, an amount of a prohibited drug which is not less than the commercial quantity applicable to the prohibited drug is guilty of an offence.
- (3) Where, on the trial of a person for an offence under subsection (2), the jury are not satisfied that the amount of prohibited drug involved is equal to or more than the commercial quantity applicable to the prohibited drug, they may acquit the person of the offence charged and find the person guilty of an offence under subsection (1), and the person shall be liable to punishment accordingly.
- (4) Nothing in this section renders unlawful the manufacture or production of a prohibited drug by:
  - (a) a person licensed or authorised to do so under the *Poisons Act 1966*, or
  - (b) a person acting in accordance with an authority granted by the Secretary of the Department of Health where the Secretary is satisfied that the manufacture or production of the prohibited drug is for the purpose of scientific research, instruction, analysis or study,

or renders unlawful the taking part by any other person in the manufacture or production of a prohibited drug by a person to whom paragraph (a) or (b) applies.

#### **24A Possession of precursors for manufacture or production of prohibited drugs**

- (1) A person who has possession of a precursor intended by the person for use in the manufacture or production, by that person or another person, of a prohibited drug is guilty of an offence.

- (2) Nothing in this section renders unlawful the manufacture or production of a prohibited drug by:
- (a) a person licensed or authorised to do so under the *Poisons and Therapeutic Goods Act 1966*, or
  - (b) a person acting in accordance with an authority granted by the Director-General of the Department of Health where the Director-General is satisfied that the manufacture or production of the prohibited drug is for the purpose of scientific research, instruction, analysis or study,
- or renders unlawful the taking part by any other person in the manufacture or production of a prohibited drug by a person to whom paragraph (a) or (b) applies.
- (2A) The regulations may make provision for or with respect to prohibiting or regulating the cash sale of precursors.
- (3) In this section, **precursor** means a substance specified or described in the regulations as a precursor for the purposes of this section.

## 25 Supply of prohibited drugs

- (1) A person who supplies, or who knowingly takes part in the supply of, a prohibited drug is guilty of an offence.
- (1A) A person of or above the age of 18 years who supplies, or who knowingly takes part in the supply of, a prohibited drug (other than cannabis leaf) to a person under the age of 16 years is guilty of an offence.
- (2) A person who supplies, or who knowingly takes part in the supply of, an amount of a prohibited drug which is not less than the commercial quantity applicable to the prohibited drug is guilty of an offence.
- (2A) A person of or above the age of 18 years who supplies, or who knowingly takes part in the supply of, an amount of a prohibited drug (other than cannabis leaf) which is not less than the commercial quantity applicable to the prohibited drug to a person under the age of 16 years is guilty of an offence.
- (2B) Where, on the trial of a person for an offence under subsection (1A) or (2A), the jury are satisfied that the person charged had, at the time the offence is alleged to have been committed, reasonable cause to believe, and did in fact believe, that the person to whom the prohibited drug was supplied was of or above the age of 16 years, they may acquit the person of the offence charged and find the person guilty of an offence under subsection (1) or (2), respectively, and the person is liable to punishment accordingly.
- (3) Where, on the trial of a person for an offence under subsection (2), the jury are not

satisfied that the amount of prohibited drug involved is equal to or more than the commercial quantity applicable to the prohibited drug, they may acquit the person of the offence charged and find the person guilty of an offence under subsection (1), and the person shall be liable to punishment accordingly.

- (4) Nothing in this section renders unlawful the supply of a prohibited drug by:
- (a) a person licensed or authorised to do so under the *Poisons Act 1966*, or
  - (b) a person acting in accordance with an authority granted by the Secretary of the Department of Health where the Secretary is satisfied that the supply of the prohibited drug is for the purpose of scientific research, instruction, analysis or study, or
  - (c) a person acting in accordance with a direction given by the Commissioner of Police under section 39RA,
- or renders unlawful the taking part by any other person in the supply of a prohibited drug by a person to whom paragraph (a), (b) or (c) applies.
- (5) Nothing in this section renders unlawful the administration of a prohibited drug to a person being cared for by another person in the circumstances described in section 10 (2) (d).

#### **25A Offence of supplying prohibited drugs on an ongoing basis**

- (1) **Offence provision** A person who, on 3 or more separate occasions during any period of 30 consecutive days, supplies a prohibited drug (other than cannabis) for financial or material reward is guilty of an offence.
- Maximum penalty: 3,500 penalty units or imprisonment for 20 years, or both.
- (2) **Same prohibited drug not necessary** A person is liable to be convicted of an offence under this section whether or not the same prohibited drug is supplied on each of the occasions relied on as evidence of commission of the offence.
- (3) **Jury must be satisfied as to same 3 occasions of supply** If, on the trial of a person for an offence under this section, more than 3 occasions of supplying a prohibited drug are relied on as evidence of commission of the offence, all the members of the jury must be satisfied as to the same 3 occasions in order to find the person guilty of the offence.
- (4) **Alternative verdict—relevant supply offences** If, on the trial of a person for an offence under this section, the jury is not satisfied that the offence is proven but is satisfied that the person has, in respect of any of the occasions relied on as evidence of commission of the offence under this section, committed a relevant supply offence, the jury may acquit the person of the offence charged and find the person guilty of the relevant supply offence, and the person is liable to punishment accordingly.

- (5) **Double jeopardy provisions** A person who has been convicted of an offence under this section is not liable to be convicted:
- (a) of a relevant supply offence, or
  - (b) of a separate offence under this section,
- on the same, or substantially the same, facts as those relied on as evidence of commission of the offence in respect of which the person has been convicted.
- (6) A person who has been acquitted of an offence under this section is not liable to be convicted:
- (a) except as provided by subsection (4)—of a relevant supply offence, or
  - (b) of a separate offence under this section,
- on the same, or substantially the same, facts as those relied on as evidence of commission of the offence in respect of which the person has been acquitted.
- (7) A person who has been:
- (a) convicted of a relevant supply offence, or
  - (b) acquitted of a relevant supply offence,
- is not liable to be convicted for an offence under this section on the same, or substantially the same, facts as those relied on as evidence of commission of the relevant supply offence.
- (8) **Liability for relevant supply offences not affected by offence under this section** Subject to subsections (5) and (6), this section does not:
- (a) remove the liability of any person to be convicted of a relevant supply offence, or
  - (b) affect the punishment that may be imposed for any such offence.
- (9) **Exemption—lawful supply** Nothing in this section renders unlawful the supply of a prohibited drug by:
- (a) a person licensed or authorised to do so under the *Poisons and Therapeutic Goods Act 1966*, or
  - (b) a person acting in accordance with an authority granted by the Director-General of the Department of Health where the Director-General is satisfied that the supply of the prohibited drug is for the purpose of scientific research, instruction, analysis or study.
- (10) **Definitions** In this section:

**cannabis** means cannabis leaf, cannabis oil, cannabis plant and cannabis resin.

**relevant supply offence** means any offence under this Act (other than under this section) relating to the supply of a prohibited drug.

## **26 Conspiring**

A person who conspires with another person or other persons to commit an offence under this Division is guilty of an offence and liable to the same punishment, pecuniary penalties and forfeiture as the person would be if the person had committed the firstmentioned offence.

## **27 Aiding, abetting etc commission of offence in New South Wales**

A person who aids, abets, counsels, procures, solicits or incites the commission of an offence under this Division is guilty of an offence and liable to the same punishment, pecuniary penalties and forfeiture as if the person had committed the firstmentioned offence.

## **28 Conspiring to commit and aiding etc commission of offence outside New South Wales**

A person who, in New South Wales:

- (a) conspires with another person or persons to commit an offence in any place outside New South Wales, being an offence punishable under the provisions of a law in force in that place which corresponds to a provision of this Division, or
- (b) aids, abets, counsels, procures, solicits or incites the commission of an offence in any place outside New South Wales, being an offence punishable under the provisions of a law in force in that place which corresponds to a provision of this Division,

is guilty of an offence and liable to the same punishment, pecuniary penalties and forfeiture as the person would be if the person had committed the offence which was committed outside New South Wales.

## **29 Traffickable quantity—possession taken to be for supply**

A person who has in his or her possession an amount of a prohibited drug which is not less than the traffickable quantity of the prohibited drug shall, for the purposes of this Division, be deemed to have the prohibited drug in his or her possession for supply, unless:

- (a) the person proves that he or she had the prohibited drug in his or her possession otherwise than for supply, or
- (b) except where the prohibited drug is prepared opium, cannabis leaf, cannabis oil, cannabis resin, heroin or 6-monoacetylmorphine or any other acetylated derivatives of morphine, the person proves that he or she obtained possession of the prohibited drug on and in accordance with the prescription of a medical practitioner, nurse practitioner, midwife practitioner, dentist or veterinary surgeon.



**30 Indictable offences—summary disposal of unless prosecution elects otherwise**

- (1) This section applies to the following offences:
- (a) an offence under section 23 (1) or 23A (1),
  - (b) an offence under section 24 (1),
  - (c) an offence under section 25 (1) or (1A),
  - (c1) an offence under section 26 of conspiring to commit an offence referred to in paragraph (a), (b) or (c),
  - (d) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a), (b) or (c), and
  - (e) an offence under section 28 of conspiring to commit, or of aiding, abetting, counselling, procuring, soliciting or inciting the commission of, an offence under a law in force outside New South Wales which corresponds to section 23 (1), 23A (1), 24 (1) or 25 (1) or (1A),

where the court is satisfied on the balance of probabilities that the number or amount of the prohibited plant or prohibited drug concerned in the commission of the offence is not more than the small quantity applicable to the prohibited plant or prohibited drug.

- (2) Chapter 5 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence to which this section applies.
- (3) If such an offence is dealt with summarily, the maximum penalty for the offence is a fine of 50 penalty units or imprisonment for 2 years, or both.

**31 Indictable offences—summary disposal of unless prosecution or accused elects otherwise**

- (1) This section applies to the following offences:
- (a) an offence under section 23 (1) or 23A (1),
  - (b) an offence under section 24 (1),
  - (c) an offence under section 25 (1) or (1A),
  - (c1) an offence under section 26 of conspiring to commit an offence referred to in paragraph (a), (b) or (c),
  - (d) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting

or inciting the commission of an offence referred to in paragraph (a), (b) or (c),  
and

- (e) an offence under section 28 of conspiring to commit, or of aiding, abetting, counselling, procuring, soliciting or inciting the commission of, an offence under a law in force outside New South Wales which corresponds to section 23 (1), 23A (1), 24 (1) or 25 (1) or (1A),

where the court is satisfied on the balance of probabilities that the number or amount of the prohibited plant or prohibited drug concerned in the commission of the offence is not more than the indictable quantity applicable to the prohibited plant or prohibited drug.

(1A) This section also applies to an offence under section 24A.

(2) Chapter 5 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence to which this section applies.

(3) If such an offence is dealt with summarily, the maximum penalty for the offence is a fine of 100 penalty units or imprisonment for 2 years, or both.

### **32 Penalty for offences dealt with on indictment not involving commercial quantities**

(1) Except as provided by sections 30 and 31, the penalty for:

- (a) an offence under section 23 (1),
- (b) an offence under section 24 (1),
- (c) an offence under section 25 (1) or (1A),
- (d) an offence under section 26 of conspiring to commit an offence referred to in paragraph (a), (b) or (c),
- (e) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a), (b) or (c), or
- (f) an offence under section 28 of conspiring to commit, or of aiding, abetting, counselling, procuring, soliciting or inciting the commission of, an offence under a law in force outside New South Wales which corresponds to section 23 (1), 24 (1) or 25 (1) or (1A),

is:

- (g) except as provided by paragraph (h), a fine of 2,000 penalty units or imprisonment for a term of 15 years, or both, or
- (h) where the offence relates to cannabis plant or cannabis leaf, a fine of 2,000

penalty units or imprisonment for a term of 10 years, or both.

- (2) Chapter 5 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence referred to in subsection (1) where the offence relates to cannabis plant or cannabis leaf. If such an offence is dealt with summarily, the maximum penalty for the offence is a fine of 100 penalty units or imprisonment for 2 years, or both.

### **33 Penalties for offences involving commercial quantities or cultivation for a commercial purpose**

- (1) This section applies to the following offences:

- (a) an offence under section 23 (1A) or (2), 24 (2) or 25 (2) or (2A),
- (b) an offence under section 26 of conspiring to commit an offence referred to in paragraph (a),
- (c) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a),
- (d) an offence under section 28 of conspiring to commit, or of aiding, abetting, counselling, procuring, soliciting or inciting the commission of, an offence under a law in force outside New South Wales which corresponds to section 23 (1A) or (2), 24 (2) or 25 (2) or (2A).

- (2) The penalty for an offence is:

- (a) except as provided by paragraph (b), a fine of 3,500 penalty units or imprisonment for 20 years, or both, or
- (b) where the offence relates to cannabis plant or cannabis leaf, a fine of 3,500 penalty units or imprisonment for 15 years, or both.

- (3) Despite subsection (2), if the court is satisfied that the offence involved not less than the large commercial quantity of the prohibited plant or prohibited drug concerned, the penalty for the offence is:

- (a) except as provided by paragraph (b), a fine of 5,000 penalty units or imprisonment for life, or both, or
- (b) where the offence relates to cannabis plant or cannabis leaf, a fine of 5,000 penalty units or imprisonment for 20 years, or both.

- (4) In this section:

**large commercial quantity**, in relation to a prohibited plant or prohibited drug, means the number or amount, if any, specified opposite the plant or drug in Column 5

of Schedule 1.

**33AA Penalties for offences involving supply to persons under 16 years**

- (1) This section applies if:
- (a) a person is found guilty of an offence under section 25 (1A) or (2A), or
  - (b) a person is found guilty of:
    - (i) an offence under section 26 of conspiring to commit an offence referred to in paragraph (a), or
    - (ii) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a), or
    - (iii) an offence under section 28 of conspiring to commit, or of aiding, abetting, counselling, procuring, soliciting or inciting the commission of, an offence under a law in force outside New South Wales which corresponds to section 25 (1A) or (2A).
- (2) The penalty for the offence is the penalty that would otherwise be imposed by this Act but increased:
- (a) in the case of a penalty for imprisonment for 2 years—to a penalty of imprisonment for 2 years and 6 months, and
  - (b) in the case of the penalty for an offence under section 25 (2A)—to a penalty of a fine of 4,200 penalty units or imprisonment for 25 years, or both, and
  - (c) in the case of any other penalty, whether a pecuniary penalty or imprisonment by one-fifth.
- (3) This section has effect despite any other provision of this Act.

**33AB Penalty for offence involving possession of precursors for manufacture or production of prohibited drugs**

The penalty for an offence under section 24A is a fine of 2,000 penalty units or imprisonment for a term of 10 years, or both, except as provided by section 31.

**33AD Penalties for offences with respect to enhanced indoor cultivation of prohibited plants in presence of children**

- (1) This section applies to the following offences:
- (a) an offence under section 23A (1), (2) or (3),
  - (b) an offence under section 26 of conspiring to commit an offence referred to in

paragraph (a),

(c) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a),

(d) an offence under section 28 of conspiring to commit, or of aiding, abetting, counselling, procuring, soliciting or inciting the commission of, an offence under a law in force outside New South Wales which corresponds to section 23A (1), (2) or (3).

(2) Except as provided by sections 30 and 31, the penalty for an offence under section 23A (1), or an offence referred to in subsection (1) (b)–(d) that relates to an offence under section 23A (1), is a fine of 2,400 penalty units or imprisonment for 12 years, or both.

(3) The penalty for an offence under section 23A (2) or (3), or an offence referred to in subsection (1) (b)–(d) that relates to an offence under section 23A (2) or (3), is a fine of 4,200 penalty units or imprisonment for 18 years, or both.

(4) Despite subsection (3), if the court is satisfied that an offence referred to in that subsection involved not less than the large commercial quantity of the prohibited plant concerned, the penalty for the offence is a fine of 6,000 penalty units or imprisonment for 24 years, or both.

(5) In this section:

**large commercial quantity**, in relation to a prohibited plant, means the number or amount, if any, specified opposite the plant in Column 5 of Schedule 1.

### **33A Provisions relating to life sentences**

(1) A person sentenced to imprisonment for life for an offence under this Division is to serve that sentence for the term of the person's natural life.

(2) Where a person is liable to imprisonment for life for an offence under this Division, the court may nevertheless pass a sentence of imprisonment of fixed duration.

(3) This section applies to offences under this Division committed before or after the commencement of this section. However, this section does not apply where committal proceedings (or proceedings by way of ex officio indictment) for the offence were instituted against the convicted person before the commencement of this section.

(4) Nothing in this section affects the prerogative of mercy.

## **Division 3 Supplementary**

### **34 Commencement of term of imprisonment**

A term of imprisonment imposed on a person by a court of summary jurisdiction in respect of the non-payment of a fine for an offence against any of the provisions of this Act 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.

### **35 Order for forfeiture etc of certain articles**

A court which convicts a person of an offence against any of the provisions of this Act or the regulations may order that any article (other than a prohibited plant or prohibited drug) in respect of which the offence was committed shall be forfeited to Her Majesty and that any article so forfeited shall be destroyed or otherwise disposed of as the court thinks fit.

### **36 Contravention of Act etc by corporations**

- (1) Where a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person, being a director of the corporation or an officer concerned in the management of the corporation, shall be deemed to have contravened the same provision and to be liable to the same extent as the corporation in respect of the contravention unless the person satisfies the court that:
  - (a) the corporation contravened the provision without the person's knowledge,
  - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
  - (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and an order or conviction may be made in respect of the person pursuant to subsection (1) whether or not the corporation has been proceeded against or an order or conviction has been made in respect of the corporation.
- (3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which a contravention to which that subsection applies is actually committed.

## **Part 2A Medically supervised injecting centres**

### **Division 1 Preliminary**

### **36A Limited operation of Part 2A**

- (1) Despite any other provision of this Part, this Part operates to allow the responsible authorities to issue only one licence, in respect of only one premises, to have effect only during a trial period starting on a day to be fixed by proclamation as the start of the trial period and ending on 31 October 2007.

**Editorial note—**

Proclaimed day: 1.5.2001. See Gazette No 66 of 9.4.2001, p 1843.

- (2) However, nothing in this Part prevents the responsible authorities:
  - (a) from issuing a further licence to a person other than the holder of an earlier licence, or
  - (b) from issuing a further licence in respect of premises other than those specified in an earlier licence,so long as the earlier licence has been revoked or has otherwise ceased to have effect.
- (3) A licence must not be issued after the end of the trial period.

### **36B Review during trial period**

- (1) The responsible authorities are to arrange for a review to be conducted of:
  - (a) the operation and use of the licensed injecting centre operating during the trial period, and
  - (b) the provisions of this Part and of any regulations made for the purposes of this Part,in order to ascertain whether the provisions of this Part (or any other provisions of this Act or the regulations) should be amended.
- (2) The review is to commence as soon as practicable after the start of the trial period and is to be completed by 1 May 2007.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament as soon as practicable after its completion.

### **36C Expiry of Part**

- (1) This Part (except for this section), and any licence issued under this Part, expire at the end of the trial period.
- (2) The expiry of this Part does not affect the operation of Division 4, or section 36R, in relation to matters arising before this Part expired.

### 36D Definitions

In this Part:

**child** means a person who is under the age of 18 years.

**director**, in relation to a licensed injecting centre, means a medical practitioner appointed as director of the centre, and includes any other medical practitioner appointed to act as director of the centre during the illness or absence of the director or during a vacancy in the office of the director.

**internal management protocols**, in relation to a licensed injecting centre, means the protocols finalised for the centre as referred to in section 36F or, if the protocols are amended or replaced as referred to in section 36M, the protocols as so amended or replaced.

**law** includes common law.

**licence** means a licence in force under this Part.

**licensed injecting centre** means the premises that are the subject of a licence.

**prescribed drug** means a prohibited drug or a substance prescribed by the regulations for the purposes of this definition.

**qualified health professional** means a medical practitioner, a nurse or a person having qualifications or experience specified or described by order of the Minister published in the Gazette.

**responsible authorities** means the Commissioner of Police and the Director-General of the Department of Health.

**staff**, in relation to a licensed injecting centre, includes:

- (a) all persons engaged to provide services at the centre, whether under a contract of employment or otherwise, and
- (b) all persons authorised to provide voluntary assistance at the centre in accordance with the centre's licence conditions and internal management protocols.

The employer of a person referred to in paragraph (a) or (b) is the person by or on whose behalf the person so referred to is engaged to provide services or authorised to provide voluntary assistance, as the case requires.

**supervisor**, in relation to a licensed injecting centre, means the director of the centre or a qualified health professional nominated by the director to supervise the centre.

**trial period** means the trial period referred to in section 36A (1).



## Division 2 Licensing of injecting centres

### 36E Licence

- (1) The responsible authorities may issue a licence authorising the holder of the licence to conduct specified premises as an injecting centre.
- (2) Nothing in this Part entitles a person to be issued with a licence, and the responsible authorities may refuse an application for a licence if the requirements of section 36F are not satisfied or for any other reason.

### 36F Restrictions on issue of licence

- (1) A licence for the conduct of premises as an injecting centre must not be issued unless the responsible authorities are of the opinion:
  - (a) that the internal management protocols for the proposed centre have been finalised and are of a satisfactory standard, and
  - (b) that there is a sufficient level of acceptance, at community and local government level, for the establishment of an injecting centre at the premises, and
  - (c) that the premises are suitable for use as an injecting centre, having regard to all relevant matters including the following:
    - (i) public health and safety,
    - (ii) the visibility of the premises from the street,
    - (iii) the proximity of the premises to schools, child care centres and community centres,
    - (iv) any matters prescribed by the regulations for the purposes of this section.
- (2) If a community drug action plan is in force in relation to the area within which the premises of the proposed injecting centre are situated, the responsible authorities must have regard to that plan in forming an opinion as to the matters referred to in subsection (1) (b) and (c).
- (3) Without limiting subsection (1), a licence for the conduct of premises as an injecting centre must not be issued unless the responsible authorities are of the opinion:
  - (a) that any building work that is carried out for the purposes of the centre will be carried out in accordance with the *Building Code of Australia*, and
  - (b) that any building that is used for the purposes of the centre will comply with the *Building Code of Australia*.
- (4) In subsection (3), **building**, **Building Code of Australia** and **building work** have

the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.

### **36G Duration of licence**

- (1) Unless sooner surrendered or revoked, a licence has effect for the whole of the trial period.
- (2) The holder of a licence may, after consultation with the responsible authorities or their representatives, surrender the licence.

### **36H Conditions of licences generally**

- (1) A licence is subject to such conditions as may be imposed from time to time by the responsible authorities, either in the licence or in a separate order in writing served on the holder of the licence.
- (2) Conditions of the kind referred to in subsection (1) may not be imposed without prior consultation with the holder or proposed holder of the licence.
- (3) A licence is also subject to such conditions as are imposed by or under this Part or the regulations.

### **36I Statutory conditions of licences**

The following provisions are conditions of a licence for an injecting centre:

- (a) No child is to be admitted to that part of the centre that is used for the purpose of the administration of prescribed drugs.
- (b) The centre's internal management protocols are to be observed.

### **36J Contraventions**

- (1) A contravention of this Division or the regulations in relation to a licensed injecting centre, or of the licence conditions for a licensed injecting centre, may be dealt with:
  - (a) by one or more of the following:
    - (i) a warning or reprimand administered in writing by the responsible authorities,
    - (ii) a fine (not exceeding an amount equal to 100 penalty units) imposed by the responsible authorities,
    - (iii) suspension of the licence by the responsible authorities for a specified period or until further notice, or
  - (b) by revocation of the licence by the responsible authorities.
- (2) If the contravention also gives rise to an offence:

- (a) the fact that action has been taken under this section in relation to the contravention does not prevent a penalty from being imposed for the offence, and
  - (b) the fact that a penalty has been imposed for the offence does not prevent action from being taken under this section in relation to the contravention.
- (3) A fine imposed under this section is payable to either responsible authority within the period specified by the responsible authorities, and is to be paid into the Consolidated Fund.
- (4) If a licensee fails to pay a fine imposed under this section (in whole or in part), the responsible authorities may suspend or revoke the licence.
- (5) Nothing in this section prevents the responsible authorities from amending or imposing a condition as a consequence of a contravention referred to in subsection (1).
- (6) The responsible authorities are authorised to suspend or revoke a licence for the purposes of this section.
- (7) A contravention referred to in subsection (1):
- (a) does not limit the operation of section 36O, except to the extent that the contravention gives rise to an offence under the regulations made for the purposes of this Part, and
  - (b) does not limit the operation of section 36P.
- (8) A contravention relating to the admission of a child to a licensed injecting centre is not committed if the licensee establishes that, having regard to the relevant provisions of the centre's internal management protocols, it was not apparent to the centre's staff that the person concerned was a child.

### **36K Reviews**

The responsible authorities are to arrange for the ongoing or periodical review of any licensed injecting centre.

## **Division 3 Internal management protocols**

### **36L Matters for consideration in relation to internal management protocols**

In considering the internal management protocols for a proposed injecting centre for the purposes of section 36F, the responsible authorities must have regard to whether provision needs to be made to ensure that any or all of the following requirements are met:

- (a) The centre must be under the supervision of a supervisor.

- (b) The supervisor must have a general overseeing role of the centre's clinical operations and responsibility for ensuring the adequacy of the clinical procedures used in the centre. This paragraph does not prevent the supervisor from being personally involved in clinical activities in the centre.
- (c) All staff directly supervising injecting activities in the centre must be qualified health professionals.
- (d) The centre must contain or have satisfactory access to:
  - (i) primary health care services, including medical consultation and medical assessment services, and
  - (ii) drug and alcohol counselling services, and
  - (iii) health education services, and
  - (iv) drug and alcohol detoxification and rehabilitation services, and
  - (v) the services of a methadone provider, and
  - (vi) services for testing for blood-borne and sexually transmissible diseases, and
  - (vii) services involving a needle and syringe exchange program.
- (e) Procedures are to be established to enable staff to ascertain in appropriate cases whether a person seeking admission to the centre is a child.
- (f) At least one member of staff:
  - (i) must be a person with satisfactory qualifications or experience in child protection and youth support, and
  - (ii) must be in attendance at the centre, or available on call to attend the centre, at all times while it is being used as an injecting centre.
- (g) The health and safety of staff and users of the centre are to be protected, having regard to the design and services of the centre.
- (h) Services are to be available and procedures established to ensure compliance or ability to comply, at or in connection with the centre, with the relevant requirements of:
  - (i) this Part, and
  - (ii) the regulations, and
  - (iii) the centre's licence conditions, and
  - (iv) any other provisions of the centre's internal management protocols.

- (i) Any requirements prescribed by the regulations for the purposes of this section.

### **36M Amendment and replacement of internal management protocols**

A licensed injecting centre's internal management protocols may be amended or replaced, subject to the regulations and the centre's licence conditions.

## **Division 4 Exemptions from liability**

### **36N Exemption from criminal liability for users of licensed injecting centre**

- (1) In this section:

**exempt quantity**, in relation to a prescribed drug, means:

- (a) in the case of a prohibited drug, a small quantity of the drug (subject to paragraph (b)), or
  - (b) in any case, such quantity of the drug as is prescribed by the regulations.
- (2) Despite any other provision of this Act or of any other Act or law (other than a provision prescribed by the regulations):
    - (a) it is not unlawful for a person at a licensed injecting centre:
      - (i) to be in possession of (otherwise than for supply) no more than an exempt quantity of a prescribed drug, or
      - (ii) to be in possession of an item of equipment for use in the administration of a prescribed drug, or
      - (iii) to administer or attempt to administer to himself or herself no more than an exempt quantity of a prescribed drug, and
    - (b) in particular, a person at a licensed injecting centre:
      - (i) who has in his or her possession (otherwise than for supply) no more than an exempt quantity of a prescribed drug, or
      - (ii) who has in his or her possession an item of equipment for use in the administration of a prescribed drug, or
      - (iii) who administers or attempts to administer to himself or herself no more than an exempt quantity of a prescribed drug,
- does not commit an offence under section 10, 11 or 12, or any other offence prescribed by the regulations, just because of that fact.

- (3) Subsection (2) does not affect the operation of:

- (a) the conditions of any recognizance to which a person is subject (whether under

the *Crimes Act 1900* or otherwise), or

(b) any bail conditions to which a person is subject under the *Bail Act 1978*, or

(c) the conditions of any program to which a person is subject under the *Drug Court Act 1998*.

(4) Nothing in this section prevents a police officer from exercising a discretion not to charge a person with an offence under section 10 or 11:

(a) in respect of the possession of a prescribed drug, or

(b) in respect of the possession of an item of equipment for use in the administration of a prescribed drug,

while the person is travelling to or from, or is in the vicinity of, a licensed injecting centre.

(5) The reference in subsection (4) to a discretion includes a reference to a discretion referred to in any guidelines applicable to police discretions.

### **360 Exemption from criminal liability for persons engaged in conduct of licensed injecting centre**

Despite any other provision of this Act or of any other Act or law (other than a provision prescribed by the regulations):

(a) it is not unlawful for a person to engage, participate or otherwise be involved in the conduct of a licensed injecting centre, and

(b) in particular, a person who is engaged, participates or is otherwise involved in the conduct of a licensed injecting centre does not commit an offence under section 14 or 19, or any other offence prescribed by the regulations, just because of that fact.

### **36P Exemption from civil liability in connection with conduct of licensed injecting centre**

(1) Anything done or omitted to be done in connection with the conduct of a licensed injecting centre does not subject:

(a) the person by whom that thing was done or omitted, or

(b) any other person (including the licensee, the State and any Minister of the Crown in right of the State),

to any action, liability, claim or demand if the thing was done or omitted to be done in good faith for the purpose of executing this Part, and was not done or omitted to be done in a reckless or grossly negligent manner.

(2) This section does not affect any rights or obligations as between a member of the staff of a licensed injecting centre and his or her employer.

## **Division 5 Miscellaneous**

### **36Q Application of *Environmental Planning and Assessment Act 1979***

- (1) Development for the purposes of a licensed injecting centre is permissible during the trial period without the need for development consent under the *Environmental Planning and Assessment Act 1979*.
- (2) Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply to or in respect of development during the trial period for the purposes of a licensed injecting centre.

### **36R Certificate evidence**

In any legal proceedings under this Act, a certificate purporting to be signed by either of the responsible authorities:

- (a) that premises specified in the certificate were or were not, on a date so specified, a licensed injecting centre, or
- (b) that a person specified in the certificate was or was not, on a date so specified, engaged in the conduct of a licensed injecting centre,

is prima facie evidence of the fact stated in the certificate without proof of the signature or of the official character of the person purporting to have signed the certificate.

### **36S Regulations**

Without limiting section 45, the regulations may make provision, for the purposes of this Part, for or with respect to any of the following matters:

- (a) the standards for a licensed injecting centre, including the elaboration of internal management protocols for a licensed injecting centre,
- (b) the provisions to be observed in the operation of a licensed injecting centre,
- (c) the rules of conduct to be observed by persons using a licensed injecting centre,
- (d) the qualifications of persons engaged in the conduct of a licensed injecting centre,
- (e) the functions of persons engaged in the conduct of a licensed injecting centre,
- (f) the preparation, form and content of a community drug action plan,
- (g) the maintenance and amendment of a community drug action plan,
- (h) the public and community consultation processes to be undertaken with respect to the development and review of a community drug action plan.

### **36T Effect of extension of trial period**

- (1) The licence in force immediately before the commencement of the *Drug Summit Legislative Response Amendment (Trial Period Extension) Act 2003*:
  - (a) is, by operation of this section, extended for the whole of the trial period despite any of its provisions to the contrary, and
  - (b) may not be challenged or called into question in proceedings before any court or tribunal as a consequence of its having been so extended.
- (2) For avoidance of doubt, it is declared that section 36Q applies with respect to the whole of the trial period.

## **Part 2B Offences involving drug premises**

### **36TA Definitions**

In this Part:

**commercial cultivation**, in relation to prohibited plants, means:

- (a) the cultivation of a number of prohibited plants which is not less than the commercial quantity applicable to those plants, or
- (b) the cultivation of a number of prohibited plants which is:
  - (i) not less than the small quantity applicable to those plants, and
  - (ii) less than the commercial quantity applicable to those plants,where the plants or their products are intended by any person for sale.

**drug premises** means any premises that are used for either or both of the following:

- (a) the unlawful supply or manufacture of prohibited drugs,
- (b) the unlawful commercial cultivation of prohibited plants by enhanced indoor means.

### **36U Prohibited drugs to which Part does not apply**

In this Part, **prohibited drug** does not include cannabis leaf, cannabis oil or cannabis resin.

### **36V Possession or presence of prohibited drugs or prohibited plants on premises**

In proceedings for an offence against this Part, it is not necessary to prove that the person had a prohibited drug or a prohibited plant in his or her possession or that a prohibited drug or a prohibited plant was found on any premises involved in the offence.



**36W Evidence that premises are drug premises**

- (1) A court must not find a person guilty of an offence against this Part unless the prosecution satisfies the court beyond a reasonable doubt that at the time the offence is alleged to have been committed any premises involved in the offence were being used for either or both of the following:
  - (a) the unlawful supply or manufacture of any prohibited drug,
  - (b) the unlawful commercial cultivation by enhanced indoor means of any prohibited plant.
- (2) Without limiting matters to which regard may be had in determining whether premises involved in the offence were being used for the unlawful supply or manufacture of any prohibited drug, regard may be had to any or all of the following:
  - (a) evidence that a police officer authorised by law to enter the premises was wilfully prevented from, or obstructed or delayed in, entering or re-entering those premises or any part of those premises,
  - (b) evidence of the external or internal construction of the premises, including any external or internal door of, or means of access to, those premises that is found to be likely to have been fitted with a bolt, bar, chain, or any means or device for the purpose of preventing, delaying or obstructing the entry or re-entry into those premises of such a police officer or any other person, or for giving an alarm in case of such entry or re-entry,
  - (c) evidence of a person acting as a lookout to warn persons on the premises of the approach of police officers or other persons,
  - (d) evidence that there was found on those premises, or in the possession of a person on those premises, any syringe or other means or device used in the supply, manufacture or use of a prohibited drug,
  - (e) evidence that there was found on the premises, or in the possession of a person on the premises, a firearm or prohibited weapon the possession of which is unlawful,
  - (f) evidence that there was found on those premises any documents or other records, including any computer records, that appear to have been kept or used in connection with the unlawful supply or manufacture of a prohibited drug,
  - (g) evidence that there was found on the premises any large amount of money that is not accounted for by the owner or occupier of the premises,
  - (h) evidence that there were found on those premises persons who appeared to be affected by a prohibited drug.

- (3) Without limiting matters to which regard may be had in determining whether premises involved in the offence were being used for the commercial cultivation by enhanced indoor means of any prohibited plant, regard may be had to any or all of the following:
- (a) evidence that a police officer authorised by law to enter the premises was wilfully prevented from, or obstructed or delayed in, entering or re-entering those premises or any part of those premises,
  - (b) evidence of the external or internal construction of the premises, including any external or internal door of, or means of access to, those premises that is found to be likely to have been fitted with a bolt, bar, chain, or any means or device for the purpose of preventing, delaying or obstructing the entry or re-entry into those premises of such a police officer or any other person, or for giving an alarm in case of such entry or re-entry,
  - (c) evidence of a person acting as a lookout to warn persons on the premises of the approach of police officers or other persons,
  - (d) evidence that there was found on those premises equipment such as:
    - (i) electric lights of 250 watts or higher, or
    - (ii) fluorescent lights that combine the red and blue part of the light spectrum, or
    - (iii) light units comprising high intensity discharge lamps, ballasts, lamp mounts and reflectors (also called ballast boxes), or
    - (iv) growing chambers with spray arm manifolds, hydro-controls and digital timers,
  - (e) evidence that there was found on those premises, or in the possession of a person on the premises, documents or literature concerned with hydroponic or other enhanced indoor cultivation methods or with cannabis cultivation or both,
  - (f) evidence that there was found on those premises, or in the possession of a person on the premises, cannabis seeds, cut cannabis leaf, cannabis plants or plant clones,
  - (g) evidence that there was found on those premises, or in the possession of a person on the premises, minerals, chemicals or nutrients, or their packaging, typically used in enhanced indoor cultivation of cannabis plants,
  - (h) evidence that there was abnormally high or low electricity consumption for those premises in relation to other premises of that type not used for such cultivation,
  - (i) evidence of an apparently unauthorised connection to, or bypass of, the electricity supply to those premises,

- (j) evidence that there was found on those premises blacked out or boarded up windows or condensation on windows,
- (k) evidence that there was found on those premises air vents, fan systems or exhaust fans in unusual places or in unusual numbers,
- (l) evidence that generators were continuously running on those premises,
- (m) evidence that security devices (such as security cameras) have been installed on those premises,
- (n) evidence that draft excluders have been fitted to any external doors or those premises,
- (o) evidence that there was found on those premises any documents or other records, including any computer records, that appear to have been kept or used in connection with the unlawful cultivation by enhanced indoor means of a prohibited plant,
- (p) evidence that there was found on those premises any large amount of money that is not accounted for by the owner or occupier of those premises,
- (q) evidence that there were found on those premises persons who appeared to be affected by a prohibited drug manufactured from the prohibited plant concerned,
- (r) any other matters as are prescribed by the regulations.

**36X Offence of entering, or being on, drug premises**

- (1) A person who is found on, or who is found entering or leaving, drug premises is guilty of an offence.

Maximum penalty:

- (a) for a first offence—50 penalty units or imprisonment for 12 months (or both), and
- (b) for a second or subsequent offence—500 penalty units or imprisonment for 5 years (or both).

- (2) A person is not guilty of an offence under this section if the person satisfies the court that he or she was on, or was entering or leaving, the drug premises for a lawful purpose or with a lawful excuse.

**36Y Allowing use of premises as drug premises—offence by owner or occupier**

A person who is the owner or occupier of any premises must not knowingly allow the premises to be used as drug premises.

Maximum penalty:

- (a) for a first offence—50 penalty units or imprisonment for 12 months (or both), and
- (b) for a second or subsequent offence—500 penalty units or imprisonment for 5 years (or both).

**36Z Offence of organising drug premises**

- (1) A person must not organise or conduct, or assist in organising or conducting, any drug premises.

Maximum penalty:

- (a) for a first offence—50 penalty units or imprisonment for 12 months (or both), and
  - (b) for a second or subsequent offence—500 penalty units or imprisonment for 5 years (or both).
- (2) For the purposes of this section, a person assists in organising or conducting drug premises if, for example, the person acts as a lookout, door attendant or guard in respect of any premises that are organised or conducted as drug premises.
  - (3) A person is not guilty of an offence under this section of organising or conducting drug premises or of assisting in organising or conducting drug premises if the person satisfies the court that he or she did not know, and could not reasonably be expected to have known, that the premises were being organised or conducted as drug premises.

**36ZA Proceedings for offences**

- (1) Except as provided by subsection (2), proceedings for an offence under this Part are to be dealt with summarily before a Local Court.
- (2) A second or subsequent offence under section 36X, 36Y or 36Z is to be prosecuted on indictment.
- (3) If proceedings for an offence under this Part are dealt with summarily before a Local Court, the maximum penalty that may be imposed is 100 penalty units or imprisonment for 2 years (or both), or the maximum penalty provided for the offence, whichever is the lesser.

**36ZB Offences by corporations**

- (1) If a corporation contravenes (whether by act or omission) any provision of this Part, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision, unless the person satisfies the court that:
  - (a) the corporation contravened the provision without the actual, imputed or constructive knowledge of the person, or

- (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
  - (c) the person, if in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
  - (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Part or regulations made under this Part.
  - (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular intention, is evidence that the corporation had that intention.

### **36ZC Forfeiture to Crown**

- (1) If a person is convicted of an offence under this Part:
  - (a) any money or thing that is kept or used in connection with, or that relates to, any activity prohibited by or under this Act, that is seized in relation to the offence, and
  - (b) any documents or other records, including any computer records, devices or programs, that are kept or used in connection with, or that relate to, any activity prohibited under this Act and that are seized in relation to the offence, and
  - (c) any firearm or prohibited weapon that is seized on the premises connected with an offence under any other Act,is or are forfeited to the Crown.
- (2) If a person is convicted of an offence under this Part, the court may order the forfeiture to the Crown of any money or thing, and any such documents or other records in the person's possession at the time of the offence if the court is satisfied that the prohibited drug, or such thing, were used by the person for or in connection with the commission of the offence.
- (3) A police officer may seize and carry away any thing that may reasonably be suspected to be liable to forfeiture under this section.

## **Part 3 Enforcement**

### **37 (Repealed)**

### **38 Destruction of prohibited plants by Director-General**

(1) In this section:

**Director-General** means the Director-General of the Department of Agriculture and Fisheries.

- (2) Upon information on oath by a member of the police force that the member suspects or believes that any prohibited plants are on any premises, a Magistrate may, upon reasonable ground being shown in the information for the member of the police force so suspecting or believing, issue a warrant authorising the Director-General to exercise the powers of the Director-General under subsection (3) with respect to those premises.
- (3) After the issue of any such warrant, the Director-General may personally or by any persons authorised by the Director-General enter any premises specified in the warrant and take such steps as the Director-General 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 the Director-General is satisfied that the prohibited plants have been completely destroyed and their regrowth effectively prevented.
- (4) The powers conferred on the Director-General under subsection (3) extend 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 the exercise of those powers.
- (5) The Director-General or any other person is not liable in respect of any thing done in good faith in the exercise of powers conferred under subsection (3).
- (6) Any costs or expenses incurred by the Director-General in the exercise of the powers conferred under subsection (3) may be recovered by the Director-General, in any court of competent jurisdiction, as a debt from any person convicted of an offence under section 23 in relation to the premises in respect of which the Director-General exercises those powers.

### **39 Seizure and forfeiture of cannabis plants and certain prohibited drugs**

Any cannabis plant, cannabis leaf, cannabis resin, cannabis oil or any heroin or 6-monoacetylmorphine or any other acetylated derivatives of morphine in the possession of any person may be seized by any member of the police force and any cannabis plant or prohibited drug so seized shall be forfeited to Her Majesty.

## **Part 3A Destruction of exhibits**

### **Division 1 Pre-trial orders**

### **39A Definitions**

In this Division:

***minimum amount*** means:

- (a) in relation to a prohibited drug other than heroin, the traffickable quantity of the prohibited drug, and
- (b) in relation to heroin, 1 gram.

### **39B Extent of order for destruction**

An order under this Division for the destruction of a prohibited drug shall not authorise the destruction of so much of the prohibited drug as comprises three times the amount that is required for the purpose of sampling and analysis.

### **39C Order for destruction by certain police officers**

Where no order has been made under this Division for the retention of a prohibited drug seized by a member of the police force, a member of the police force of or above the rank of Superintendent may, whether or not any person has been charged with an offence with respect to the prohibited drug, order that the prohibited drug be destroyed if the member is of the opinion that, by reason of the amount of the prohibited drug or otherwise, the prohibited drug could not reasonably be securely retained pending an order under this Division of a Magistrate.

### **39D Application to Magistrate for order with respect to destruction**

- (1) Where an amount which is not less than the minimum amount of a prohibited drug is seized by a member of the police force, a member of the police force shall, within the period of 21 days after the date of the seizure, make application to a Magistrate for an order with respect to the destruction of the prohibited drug.
- (2) On the hearing of the application, the Magistrate shall make a determination whether the prohibited drug should be retained.
- (3) Nothing in subsection (1) requires an application to be made if, within the period of 21 days:
  - (a) a person is charged with an offence with respect to the prohibited drug, or
  - (b) the prohibited drug is destroyed pursuant to an order under section 39C.
- (4) An application shall lapse if, before the application is heard:
  - (a) a person is charged with an offence with respect to the prohibited drug, or
  - (b) the prohibited drug is destroyed pursuant to an order under section 39C.

**39E Determination of Magistrate with respect to destruction on first mention of charge**

- (1) Where a person is charged with an offence with respect to a prohibited drug involving an amount which is not less than the minimum amount of the prohibited drug, a Magistrate shall, on the first occasion on which the charge is mentioned before a Magistrate, ascertain whether the prohibited drug has been destroyed.
- (2) The Magistrate shall, where the prohibited drug has not been destroyed, make a determination whether the prohibited drug should be retained.
- (3) Where the accused is legally represented and no party objects to the destruction of the prohibited drug, the Magistrate shall order:
  - (a) that the prohibited drug, if it is not otherwise required to be forfeited to Her Majesty, be so forfeited, and
  - (b) that the prohibited drug be destroyed.
- (4) Where the accused is not present before the Magistrate, or is present but is not legally represented, or if any party objects to the destruction of the prohibited drug, the Magistrate shall order:
  - (a) except where the Magistrate is satisfied as referred to in paragraph (b):
    - (i) that the prohibited drug, if it is not otherwise required to be forfeited to Her Majesty, be so forfeited, and
    - (ii) that the prohibited drug be destroyed, or
  - (b) where the Magistrate is satisfied that it is in the interests of justice to do so or that there is other sufficient reason, that the prohibited drug be retained.

**39F Matters for consideration on determination for retention of prohibited drug**

In determining whether to order under this Division that a prohibited drug be retained, a Magistrate shall consider:

- (a) the amount of the prohibited drug,
- (b) whether the prohibited drug can reasonably be securely retained,
- (c) the period of retention,
- (d) the purpose of retention,
- (e) the amount of the prohibited drug required for the purpose of sampling and analysis,
- (f) a report, if any, of an analyst relating to the prohibited drug,
- (g) whether the arrest of any person in relation to the prohibited drug is imminent,



- (h) the number of persons charged with offences in relation to the prohibited drug,
- (i) when the hearing of the charge relating to the prohibited drug is likely to be concluded,
- (j) whether there is any other order under this Part relating to the prohibited drug,
- (k) any claim of a person to be lawfully entitled to the prohibited drug, and
- (l) any other matter which, in the opinion of the Magistrate, is relevant.

### **39G Adjournment**

- (1) A Magistrate shall adjourn the hearing of an application under section 39D or the making of a determination under section 39E (2) whether a prohibited drug should be retained:
  - (a) where no order under this Division with respect to the prohibited drug has previously been made and a party to the proceedings requests the adjournment, or
  - (b) where, in the opinion of the Magistrate, the hearing or making of the determination should be adjourned.
- (2) An adjournment shall be for a reasonable period not exceeding 14 days.

### **39H Review of determination for retention of prohibited drug**

Where a Magistrate determines that a prohibited drug be retained, the Magistrate shall fix a date not more than 2 months after the date of the determination in order to make a further determination whether the prohibited drug should be retained.

### **39I Destruction of prohibited drugs**

- (1) A prohibited drug shall be destroyed as soon as practicable after the expiration of the period of 7 days, or such longer period as a Magistrate may have specified, after the date on which it was ordered to be destroyed.
- (2) A Magistrate may rescind or vary an order for the destruction of a prohibited drug.
- (3) The requirements of subsection (1) do not apply if an order for destruction is rescinded under subsection (2) or if the prohibited drug to which the order relates becomes the subject of a request under section 39J or a direction under section 39RA.

### **39J Use of prohibited drug for research etc**

Where, after a Magistrate has ordered that a prohibited drug be destroyed and before the prohibited drug is destroyed, the Secretary of the Department of Health requests the Commissioner of Police, in writing, to give the prohibited drug to a person or body

specified in the request for the purpose of scientific research, instruction, analysis or study, the prohibited drug shall be dealt with in accordance with the request.

**39K Order on committal for trial**

- (1) On the committal for trial of a person for an offence with respect to a prohibited drug involving an amount which is not less than the minimum amount of the prohibited drug and which has not been ordered to be destroyed, the Magistrate shall make a determination whether the prohibited drug should be retained.
- (2) Where the Magistrate determines that the prohibited drug be retained, the Magistrate shall give the reasons for the determination.

**39L Order on initial hearing of trial**

Where a person is committed for trial for an offence with respect to a prohibited drug involving an amount which is not less than the minimum amount of the prohibited drug and which has not been ordered to be destroyed, the court hearing the trial shall, on the first occasion on which the matter is mentioned before the court, make a determination whether the prohibited drug should be retained.

**39M Amount of prohibited drug less than minimum amount**

- (1) Where an amount which is less than the minimum amount of a prohibited drug is seized by a member of the police force, a member of the police force may, at any time, make application to a Magistrate for an order with respect to the destruction of the prohibited drug.
- (2) This Division applies to and in respect of an application under subsection (1) in the same way as it applies to and in respect of an application under section 39D (1).

**Division 2 Post-trial orders**

**39N Order on determination of proceedings before Magistrate**

- (1) On the determination of proceedings before a Magistrate for an offence with respect to a prohibited plant or prohibited drug which has not been destroyed, the Magistrate shall:
  - (a) except as provided by paragraph (b), order that the prohibited plant or prohibited drug be destroyed, or
  - (b) where:
    - (i) any party objects to the destruction of the prohibited plant or prohibited drug, or
    - (ii) the Magistrate is satisfied that it is in the interests of justice to do so or that there is other sufficient reason,

order that the prohibited plant or prohibited drug be retained.

- (2) Where a Magistrate orders that the prohibited plant or prohibited drug be retained, the prohibited plant or the prohibited drug shall be destroyed after the expiration of the period of 3 months after the date of the order unless an appeal against any determination of the Magistrate with respect to the offence has been lodged before the expiration of that period.
- (3) The requirements of subsection (1) do not apply if the prohibited plant or prohibited drug becomes the subject of a direction under section 39RA.

### **39O Order on appeal to District Court**

Where an appeal is made to the District Court in respect of an offence involving a prohibited plant or prohibited drug which has not been destroyed, the Court shall, on the first occasion on which the appeal is mentioned before the Court, make a determination whether the prohibited plant or prohibited drug should be retained.

### **39P Order on determination of proceedings before District Court or Supreme Court**

On the determination of proceedings before the District Court or the Supreme Court for an offence with respect to a prohibited plant or prohibited drug which has not been destroyed, the District Court or the Supreme Court, as the case requires, may make such order with respect to the retention, forfeiture, destruction or other disposal of the prohibited plant or prohibited drug as it thinks fit.

## **Division 2A Order for disposal of dangerous exhibit**

### **39PA Order for disposal of dangerous exhibit**

- (1) At any time, a police officer of or above the rank of Superintendent may order in writing that any substance or article (whether or not it consists of or includes a prohibited drug or prohibited plant) is to be destroyed or otherwise disposed of if:
  - (a) the substance or article has been seized and is being retained for the purpose of proceedings for an offence relating to the manufacture, production, supply or use of a prohibited drug or the cultivation of a prohibited plant, and
  - (b) an analyst has certified in writing that, in the interest of health or safety, the substance or article is required to be destroyed or otherwise disposed of.
- (2) Before any substance or article is destroyed or otherwise disposed of in accordance with such an order:
  - (a) evidence of the substance or article is to be recorded, whether by photographing or otherwise, and
  - (b) where practicable in the case of a substance, two samples of the substance are to

be taken and retained, each of a sufficient quantity to allow its analysis, and

- (c) the owner or occupier of the premises at which the substance or article was seized, and any person charged with an offence to which the substance or article relates, are to be given at least 35 days' written notice (by post or otherwise) of the proposal to destroy or otherwise dispose of it. However, such a notice need not be given if an analyst certifies in writing that, in the interest of health or safety, it needs to be destroyed immediately.
- (3) A court may defer the carrying out of, or revoke, an order under this section in the course of any proceedings in which it may make an order for the restitution or disposal of property under section 126 or 134 of the *Criminal Procedure Act 1986*.
- (4) Subject to subsections (2) and (3), any substance or article (whether seized before or after the commencement of this section) may be destroyed or otherwise disposed of in accordance with an order under this section.
- (5) In this section, **analyst** means:
- (a) any person employed by the Government of New South Wales, or by an area health service, as an analyst, or
  - (b) any person who is an analyst within the meaning of the *Poisons and Therapeutic Goods Act 1966*, or
  - (c) any person prescribed as an analyst for the purposes of this section by the regulations.

### **Division 3 Supplementary**

#### **39Q Presumption on appeal**

Where:

- (a) a person who was legally represented before a Magistrate on the trial of an offence with respect to a prohibited plant or prohibited drug pleaded guilty to the charge,
- (b) an appeal is made against any determination of the Magistrate with respect to the offence, and
- (c) before the appeal is heard, the prohibited plant or prohibited drug is destroyed pursuant to an order under this Part,

any particular in the information as to the nature or quantity of the prohibited plant or prohibited drug shall, for the purposes of the appeal, be presumed to be true.

#### **39R Return of prohibited drug to lawful owner**

- (1) Nothing in this Part prevents a person lawfully entitled to a prohibited drug seized by

a member of the police force from applying to a Magistrate, the District Court or the Supreme Court, as the case requires, for an order that the prohibited drug be returned to the person and the Magistrate or court may, subject to section 39, order the return of so much of the prohibited drug as has not been destroyed.

- (2) Nothing in this Part prevents a Magistrate or court from ordering the return of a prohibited drug to a person lawfully entitled to the prohibited drug whether or not an application for the return of the prohibited drug has been made by the person.

### **39RA Use of prohibited plants and prohibited drugs in controlled operations and integrity testing programs**

- (1) The Commissioner of Police may, by order in writing, direct that any prohibited plant or prohibited drug that has been seized by a police officer be retained by a police officer specified in the direction for the purpose of its being used in connection with:
- (a) a controlled operation under the *Law Enforcement (Controlled Operations) Act 1997*, or
  - (b) an integrity testing program under Part 10A of the *Police Service Act 1990*.
- (2) A direction under this section may be given in relation to a prohibited plant or prohibited drug:
- (a) whether it is intended for immediate use or for use at some later time, and
  - (b) whether it is intended for use by the police officer specified in the direction or for use by some other person.
- (3) A direction under this section may be given subject to such conditions as the Commissioner of Police considers appropriate and is subject to a further condition to the effect that the prohibited plant or prohibited drug to which the direction relates is to be kept securely until it is used in connection with a controlled operation or integrity testing program.
- (4) A direction under this section need not identify a particular controlled operation or integrity testing program, nor need a particular controlled operation or integrity testing program be in contemplation before such a direction may be made.
- (5) Despite any other Act or law to the contrary, the functions of the Commissioner of Police under this section may not be delegated except to a Deputy Commissioner of Police.

### **39S Regulations**

The regulations may make provision, whether for the purposes of this Part or otherwise, for or with respect to the handling, storage and destruction of prohibited plants or prohibited drugs seized by members of the police force, the sampling and analysis of

those prohibited plants or prohibited drugs and the return of any such prohibited drugs to a person lawfully entitled to them.

## **Part 4 Miscellaneous**

### **40 Effect of certain representations**

- (1) A substance (not being a prohibited drug) which, for the purpose of its being supplied, is represented (whether verbally, in writing or by conduct) as being a prohibited drug or a specified prohibited drug shall, for the purposes of this Act and the regulations, be deemed to be a prohibited drug or the specified prohibited drug, as the case requires.
- (2) A growing plant (not being a prohibited plant) which, for the purpose of its being supplied, is represented (whether verbally, in writing or by conduct) as being a prohibited plant or a specified prohibited plant shall, for the purposes of this Act and the regulations, be deemed to be a prohibited plant or the specified prohibited plant, as the case requires.

### **40A Proof of certain matters**

- (1) The onus of proving that a substance is fibre of cannabis leaf from which the resin has been extracted shall lie on the accused.
- (2) The onus of proving any act, matter or thing which is not rendered unlawful by virtue of section 10 (2), 11 (2), 12 (2), 13 (2), 14 (2), 23 (4) (b), 24 (4) or 25 (4) shall lie on the accused.

### **41 Authorisation of Secretary of Department of Health**

An authorisation under this Act of the Secretary of the Department of Health:

- (a) shall be in writing,
- (b) may be granted subject to such conditions as the Secretary thinks fit, and
- (c) may be revoked at any time by notice served on the person to whom it was granted or, if the Secretary thinks fit, by notice published in the Gazette.

### **42 Certificate of Secretary of Department of Health prima facie evidence**

In any legal proceedings under this Act, a certificate purporting to be signed by the Secretary of the Department of Health or by an officer of the Department of Health authorised generally or specially by the Secretary in that behalf to do so and to certify that any person is or is not a person who holds a licence, permit or authority under the [Poisons Act 1966](#) shall, without proof of the signature or of the official character or authority of the person purporting to have signed the certificate, be prima facie evidence of the fact stated in the certificate.

### 43 Certificate evidence

- (1) Any analyst analysing any plant or substance submitted to the analyst or under whose supervision the analysis of any plant or substance submitted to the analyst is carried out may give a certificate of the result of the analysis.
- (2) In any legal proceedings under this Act, the production of a certificate, purporting to be signed by an analyst, shall be prima facie evidence of the identity of the plant or substance analysed, the quantity or mass of the plant or substance analysed and of the result of the analysis, without proof of the signature, employment or appointment of the person appearing to have signed the certificate.
- (3) Any appointed person analysing any plant submitted to the person may give a certificate of the result of the analysis.
- (4) In any legal proceedings under this Act, the production of a certificate, purporting to be signed by an appointed person, is prima facie evidence of:
  - (a) the identity of the plant analysed, and
  - (b) the quantity or mass of that plant,without proof of the signature or appointment of the person appearing to have signed the certificate, but only if the plant identified is cannabis plant or cannabis leaf.
- (5) The Director-General of the Department of Agriculture and Fisheries may appoint a person to give certificates for the purposes of this section if the Director-General considers the person to be suitably qualified.

- (6) In this section:

**analyst** means:

- (a) any person employed by the Government of New South Wales, or by an area health service, as an analyst, and
- (b) any person who is an analyst within the meaning of the *Poisons and Therapeutic Goods Act 1966*.

**appointed person** means a person appointed under subsection (5).

**plant** includes any part of a plant, and the achene and seed of a plant.

### 44 Amendment of Schedule 1

The Governor may, from time to time, by regulation amend Schedule 1:

- (a) by adding the name or description of or relating to a prohibited plant or a substance and numbers and amounts relating to the prohibited plant or substance, or

- (b) by amending a name or description of or relating to a prohibited plant or prohibited drug for the purpose of more accurately describing the plant or substance concerned.

#### 45 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may, in relation to such prohibited plants or prohibited drugs as may be specified in the regulations, exempt any person or any class or description of persons from such of the provisions of this Act or the regulations as may be so specified in such circumstances, if any, as may be so specified.
- (3) A regulation may impose a penalty not exceeding 10 penalty units for any contravention of the regulation.
- (4) An offence under the regulations may be prosecuted summarily before a Local Court.
- (5) A provision of a regulation may:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
 or may do any combination of those things.

### Schedule 1

(Sections 3 (1), 33 (4), 44)

Prohibited plant or prohibited drug	Column 1	Column 2	Column 3	Column 4	Column 5
	Traffickable quantity	Small quantity	Indictable quantity	Commercial quantity	Large commercial quantity
Acetorphine	3.0g	1.0g	5.0g	0.5kg	2.0kg
Acetyl-alpha-methylfentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0.005kg
N-acetylamphetamine	3.0g	1.0g	5.0g	250.0g	1.0kg
Acetyldihydrocodeine	15.0g	5.0g	25.0g	2.5kg	10.0kg
Acetylmethadol	3.0g	1.0g	5.0g	0.5kg	2.0kg



N-acetylmethylamphetamine	3.0g	1.0g	5.0g	250.0g	1.0kg
Alfentanil	0.0075g	0.0025g	0.0125g	0.00125kg	0.005kg
Allylprodine	3.0g	1.0g	5.0g	0.5kg	2.0kg
Alpha-acetylmethadol	3.0g	1.0g	5.0g	0.5kg	2.0kg
Alphameprodine	0.3g	0.1g	0.5g	0.05kg	0.2kg
Alphamethylfentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0.005kg
Alpha-methylthiofentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0.005kg
Alphaprodine	37.5g	12.5g	62.5g	6.25kg	25.0kg
5-(2-aminopropyl)indan	3g	1g	5g	0.25kg	1kg
Amphetamine	3.0g	1.0g	5.0g	250.0g	1.0kg
Amylobarbitone except where Schedule Four of the Poisons List applies	30.g	10.0g	50.0g	5.0kg	20.0kg
Anileridine	3.0g	1.0g	5.0g	0.25kg	1.0kg
Benzethidine	15.0g	5.0g	25.0g	2.5kg	10.0kg
Benzylmorphine (3-benzylmorphine)	7.5g	2.5g	12.5g	1.25kg	5.0kg
1-Benzylpiperazine	3.0g	1.0g	5.0g	0.25kg	1.0kg
Beta-hydroxyfentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0.005kg
Beta-hydroxy-3-methylfentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0.005kg
Betameprodine	7.5g	2.5g	12.5g	1.25kg	5.0kg
Betaprodine	7.5g	2.5g	12.5g	1.25kg	5.0kg
Bezitramide	7.5g	2.5g	12.5g	1.25kg	5.0kg
4-Bromo-2,5-dimethoxyamphetamine	15 DDU or 0.075g	4 DDU or 0.02g	25 DDU or 0.125g	0.0125kg	0.05kg
4-Bromo-3,5-dimethoxyamphetamine	15 DDU or 0.075g	4 DDU or 0.02g	25 DDU or 0.125g	0.0125kg	0.05kg
4-Bromo-2,5-dimethoxyphenethylamine	15 DDU or 0.3g	4 DDU or 0.08	25 DDU or 0.5g	0.025kg	0.1kg
3-Bromo-4-methoxyamphetamine	15 DDU or 0.075g	4 DDU or 0.02g	25 DDU or 0.125g	0.0125kg	0.05kg
4-Bromo-3-methoxyamphetamine	15 DDU or 0.075g	4 DDU or 0.02g	25 DDU or 0.125g	0.0125kg	0.05kg
Bufotenine and its derivatives being those derivatives having hallucinogenic properties	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	500.0g	2.0kg
Buprenorphine	0.06g	0.02g	0.1g	0.01kg	0.04kg

Butobarbitone	30.0g	10.0g	50.0g	5.0kg	20.0kg
Butorphanol	3.0g	1.0g	5.0g	0.25kg	1.0kg
Cannabis leaf	300.0g	30.0g	1 000.0g	25.0kg	100.0kg
Cannabis oil	5.0g	2.0g	10.0g	500.0g	2.0kg
Cannabis plant cultivated by enhanced indoor means	—	5	50	50	200
Cannabis plant—other	—	5	50	250	1 000
Cannabis resin	30.0g	5.0g	90.0g	2.5kg	10.0kg
Carfentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0.005kg
Cathinone	3.0g	1.0g	5.0g	0.5kg	2.0kg
1-Chloro-1-phenyl-2-aminopropane	3.0g	1.0g	5.0g	0.25kg	1.0kg
1-Chloro-1-phenyl-2-methylamino-propane	3.0g	1.0g	5.0g	0.25kg	1.0kg
1-(3-Chlorophenyl)-piperazine	3.0g	1.0g	5.0g	0.25kg	1.0kg
Clonitazene	7.5g	2.5g	12.5g	1.25kg	5.0kg
Coca leaf	30.0g	5.0g	90.0g	2.5kg	10.0kg
Cocaine	3.0g	1.0g	5.0g	250.0g	1.0kg
Codeine except where Schedule Two or Four of the Poisons List applies	15.0g	5.0g	25.0g	2.5kg	10.0kg
Codeine-N-oxide	15.0g	5.0g	25.0g	2.5kg	10.0kg
Codoxime	15.0g	5.0g	25.0g	2.5kg	10.0kg
Concentrate of poppy straw	30.0g	10.0g	50.0g	2.5kg	10.0kg
4-Cyano-2-dimethyl-amino-4,4-diphenyl-butane (methadone intermediate)	3.0g	1.0g	5.0g	0.5kg	2.0kg
4-Cyano-1-methyl-4-phenylpiperidine (pethidine intermediate A)	3.0g	1.0g	5.0g	0.25kg	1.0kg
Cyclobarbitone	30.0g	10.0g	50.0g	5.0kg	20.0kg
Delta-9-tetrahydrocannabinol (dronabinol) where prepared and packed for therapeutic use	0.6g	0.2g	1.0g	0.1kg	0.5kg
Desomorphine	3.0g	1.0g	5.0g	0.5kg	2.0kg
Dexamphetamine	3.0g	1.0g	5.0g	250.0g	1.0kg
Dextromoramide	3.0g	1.0g	5.0g	0.5kg	2.0kg
Dextropropoxyphene except where Schedule Four of the Poisons List applies	30.0g	10.0g	50.0g	2.5kg	10.0kg
Diamorphine—see heroin					

Diampromide	7.5g	2.5g	12.5g	1.25kg	5.0kg
Diethylthiambutene	7.5g	2.5g	12.5g	1.25kg	5.0kg
N:N-Diethyltryptamine	3.0g	1.0g	5.0g	0.5kg	2.0kg
Difenoxin except where Schedule Four of the Poisons List applies	0.6g	0.2g	1.0g	0.1kg	0.4kg
Dihydrocodeine except where Schedule Two, Three or Four of the Poisons List applies	15.0g	5.0g	25.0g	2.5kg	10.0kg
Dihydromorphine	15.0g	5.0g	25.0g	2.5kg	10.0kg
Dimenoxadol	15.0g	5.0g	25.0g	2.5kg	10.0kg
Dimepheptanol	15.0g	5.0g	25.0g	2.5kg	10.0kg
2,4-Dimethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
2,5-Dimethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
3,4-Dimethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
2,5-Dimethoxy-4-bromoamphetamine (DOB)	15 DDU or 0.075g	4 DDU or 0.02g	25 DDU or 0.125g	0.0125kg	0.05kg
3,4-Dimethoxy-5-ethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
2,5-Dimethoxy-4-ethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
4,5-Dimethoxy-2-ethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
2,5-Dimethoxy-4-ethylamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
2,5-Dimethoxy-4-methylamphetamine and other substances structurally derived from methoxyphenylethylamine being those substances having hallucinogenic properties	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
Dimethylthiambutene	30.0g	10.0g	50.0g	5.0kg	20.0kg
2,3-Dimethoxy-4,5-methylenedioxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
2,5-Dimethoxy-3,4-methylenedioxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
3,4-Dimethoxyphenylethylamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
N, N-Dimethylamphetamine	3.0g	1.0g	5.0g	0.25kg	1.0kg

3-(1,2-Dimethylheptyl)-1-hydroxy-7,8,9,10-tetrahydro-6,6, 9-trimethyl-6H-dibenzo (b,d)pyran	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.5kg	2.0kg
N:N-Dimethyltryptamine and its derivatives being those derivatives having hallucinogenic properties	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.5kg	2.0kg
Dioxaphetyl butyrate	3.0g	1.0g	5.0g	0.5kg	2.0kg
Diphenoxylate except where Schedule Three or Four of the Poisons List applies	3.0g	1.0g	5.0g	0.5kg	2.0kg
Dipipanone	15.0g	5.0g	25.0g	2.5kg	10.0kg
Drotebanol	3.0g	1.0g	5.0g	0.25kg	1.0kg
Ecgonine, its esters and derivatives which are convertible to ecgonine and cocaine	3.0g	1.0g	5.0g	250.0g	1.0kg
Ephedrine	15.0g	5.0g	25.0g	1.25kg	5.0kg
Ergotamine	0.3g	0.1g	0.5g	0.025kg	0.1kg
Erythroxyton species	30.0g	5.0g	90.0g	2.5kg	10.0kg
Ethylamphetamine	3.0g	1.0g	5.0g	250.0g	1.0kg
4,5-Ethylenedioxy-3-methoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.5kg	2.0kg
N-Ethyl-3,4-methylenedioxyamphetamine	0.75g	0.25g	1.25g	0.125kg	0.5kg
Ethylmethylthiambutene	15.0g	5.0g	25.0g	2.5kg	10.0kg
Ethylmorphine except where Schedule Two or Four of the Poisons List applies	3.0g	1.0g	5.0g	0.5kg	2.0kg
N-Ethyl-1-phenylcyclohexylamine	3.0g	1.0g	5.0g	0.25kg	1.0kg
Etonitazene	7.5g	2.5g	12.5g	1.25kg	5.0kg
Etorphine	7.5g	2.5g	12.5g	1.25kg	5.0kg
Etoxadine	7.5g	2.5g	12.5g	1.25kg	5.0kg
Fenethylamine	3.0g	1.0g	5.0g	0.5kg	2.0kg
Fentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0.005kg
Flunitrazepam	0.6g	0.2g	1g	0.1kg	0.5kg
N-formylamphetamine	3.0g	1.0g	5.0g	250.0g	1.0kg
N-formylmethamphetamine	3.0g	1.0g	5.0g	250.0g	1.0kg
Furethidine	1.5g	0.5g	2.5g	0.25kg	1.0kg
Harmaline	15 DDU or 0.003g	4 DDU or 0.0008g	25 DDU or 0.005g	0.0005kg	0.002kg

Harmine	15 DDU or 0.003g	4 DDU or 0.0008g	25 DDU or 0.005g	0.0005kg	0.002kg
Heroin	3.0g	1.0g	5.0g	250.0g	1.0kg
3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo (b,d)pyran	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.5kg	2.0kg
Hydrocodone	3.0g	1.0g	5.0g	0.5kg	2.0kg
Hydromorphanol	3.0g	1.0g	5.0g	0.5kg	2.0kg
Hydromorphone	3.0g	1.0g	5.0g	0.5kg	2.0kg
4-Hydroxybutanoic acid, except 4-Hydroxy-butanoic acid lactone (also known as gamma butyrolactone as referred to in Schedule 2 to the <i>Drug Misuse and Trafficking Regulation 2000</i> )	30.0g	10.0g	50.0g	1.0kg	4.0kg
N-Hydroxy-3,4-methylenedioxyamphetamine	0.75g	0.25g	1.25g	0.125kg	0.5kg
Hydroxypethidine	7.5g	5.0g	12.5g	1.25kg	5.0kg
P-Iodo-N-isopropyl-amphetamine	3.0g	1.0g	5.0g	0.25kg	1.0kg
Isomethadone	3.0g	1.0g	5.0g	0.5kg	2.0kg
Ketamine	7.5g	2.5g	12.5g	1.25kg	5.0kg
Ketobemidone	3.0g	1.0g	5.0g	0.5kg	2.0kg
Levamphetamine	3.0g	1.0g	5.0g	0.25kg	1.0kg
Levomethamphetamine	3.0g	1.0g	5.0g	0.25kg	1.0kg
Levomethorphan	3.0g	1.0g	5.0g	0.5kg	2.0kg
Levomoramide	3.0g	1.0g	5.0g	0.5kg	2.0kg
Levophenacymorphan	3.0g	1.0g	5.0g	0.5kg	2.0kg
Levorphanol	1.5g	0.5g	2.5g	0.25kg	1.0kg
Lysergic acid and its derivatives being those derivatives having hallucinogenic properties	15 DDU or 0.003g	4 DDU or 0.0008g	25 DDU or 0.005g	0.0005kg	0.002kg
Lysergide and its derivatives being those derivatives having hallucinogenic properties	15 DDU or 0.003g	4 DDU or 0.0008g	25 DDU or 0.005g	0.0005kg	0.002kg
Mecloqualone	75.0g	25.0g	125.0g	12.5kg	50.0kg
Mescaline	15 DDU or 11.25g	4 DDU or 3.0g	50 DDU or 18.75g	1.875kg	7.5kg
Metazocine	10.5g	3.5g	17.5g	1.75kg	7.0kg
Methadone	3.0g	1.0g	5.0g	0.5kg	2.0kg
Methaqualone	75.0g	25.0g	125.0g	12.5kg	50.0kg

Methcathinone	3.0g	1.0g	5.0g	0.5kg	2.0kg
Methorphan	3.0g	1.0g	5.0g	0.25kg	1.0kg
4-Methoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
4-Methoxymethylamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
2-Methoxy-3,4-methylenedioxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
2-Methoxy-4,5-methylenedioxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
3-Methoxy-4,5-methylenedioxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
4-Methoxy-2,3-methylenedioxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
5-Methoxy-3,4-methylenedioxyamphetamine (MMDA)	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.5kg	2.0kg
2-Methoxy-3,4-methylenedioxyphenylethylamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
3-Methoxy-4,5-methylenedioxyphenylethylamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
1-(3-methoxy-4,5-methylenedioxyphenyl)-2-propanamine	0.75g	0.25g	1.25g	0.125kg	0.5kg
4-Methoxyphenylethylamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
1-(4-Methoxyphenyl)-piperazine	3.0g	1.0g	5.0g	0.25kg	1.0kg
Methylamphetamine	3.0g	1.0g	5.0g	0.25kg	1.0kg
Methyldesorphine	3.0g	1.0g	5.0g	0.5kg	2.0kg
Methyldihydromorphine	3.0g	1.0g	5.0g	0.5kg	2.0kg
3,4-Methylenedioxyamphetamine	0.75g	0.25g	1.25g	0.125kg	0.5kg
3,4-Methylenedioxymethylamphetamine	0.75g	0.25g	1.25g	0.125kg	0.5kg
3,4-Methylenedioxy-phenyl-2-propanone	0.75g	0.25g	1.25g	0.125kg	0.5kg
3-Methylfentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0.005kg
N-Methyl-1-(3,4-methylenedioxyphenyl)-butanamine	0.75g	0.25g	1.25g	0.125g	0.5kg
N-Methyl-1-(3,4-methylenedioxyphenyl)-2-butanamine	0.75g	0.25g	1.25g	0.125g	0.5kg
2-Methyl-3-morpholino-1,1-diphenylpropane carboxylic acid (Moramide intermediate)	3.0g	1.0g	5.0g	0.25kg	1.0kg

Methylphenidate	3.0g	1.0g	5.0g	0.5kg	2.0kg
1-Methyl-4-phenylpiperidine-4-carboxylic acid (Pethidine intermediate C)	3.0g	1.0g	5.0g	0.25kg	1.0kg
1-Methyl-4-phenyl-4-propionoxypiperidine	3.0g	1.0g	5.0g	0.25kg	1.0kg
4-Methylthioamphetamine	3.0g	1.0g	5.0g	0.25kg	1.0kg
3-Methylthiofentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0.005kg
Metopon	3.0g	1.0g	5.0g	0.5kg	2.0kg
Monoacetylmorphine	3.0g	1.0g	5.0g	0.25kg	1.0kg
6-Monoacetylmorphine and other acetylated derivatives of morphine	3.0g	1.0g	5.0g	0.25kg	1.0kg
Moramide	3.0g	1.0g	5.0g	0.5kg	2.0kg
Morphan	3.0g	1.0g	5.0g	0.25kg	1.0kg
Morpheridine	3.0g	1.0g	5.0g	0.5kg	2.0kg
Morphine	3.0g	1.0g	5.0g	0.25kg	1.0kg
Morphine methobromide	3.0g	1.0g	5.0g	0.25kg	1.0kg
Morphine-N-oxide	3.0g	1.0g	5.0g	0.25kg	1.0kg
Myrophine	30.0g	10.0g	50.0g	5.0kg	20.0kg
Nabilone	0.6g	0.2g	1.0g	0.1kg	0.5kg
Nicocodine	3.0g	1.0g	5.0g	0.5kg	2.0kg
Nicodicodine	3.0g	1.0g	5.0g	0.5kg	2.0kg
Nicomorphine	3.0g	1.0g	5.0g	0.5kg	2.0kg
Noracylmethadol	3.0g	1.0g	5.0g	0.5kg	2.0kg
Norcodeine	3.0g	1.0g	5.0g	0.5kg	2.0kg
Norlevorphanol	3.0g	1.0g	5.0g	0.5kg	2.0kg
Normethadone	7.5g	2.5g	12.5g	1.25kg	5.0kg
Normorphine	30.0g	10.0g	50.0g	5.0kg	20.0kg
Norpipanone	15.0g	5.0g	25.0g	2.5kg	10.0kg
Opium except the alkaloids noscapine where Schedule Two of the Poisons List applies and papaverine where Schedule Two or Four of the Poisons List applies	30.0g	10.0g	50.0g	1.0kg	4.0kg
Opium, prepared	30.0g	10.0g	50.0g	1.0kg	4.0kg
Oxycodone	7.5g	2.5g	12.5g	1.25kg	5.0kg

Oxymorphone	3.0g	1.0g	5.0g	0.5kg	2.0kg
Papaver somniferum and papaver orientale	30.0g	10.0g	50.0g	2.5kg	10.0kg
Paraflurofentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0.005kg
Paramethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.5kg	2.0kg
Pentazocine	15.0g	5.0g	25.0g	2.5kg	10.0kg
Pentobarbitone except where Schedule Four of the Poisons List applies	30.0g	10.0g	50.0g	5.0kg	20.0kg
Pethidine	3.0g	1.0g	5.0g	0.25kg	1.0kg
Phenacymorphan	3.0g	1.0g	5.0g	0.25kg	1.0kg
Phenadoxone	15.0g	5.0g	25.0g	2.5kg	10.0kg
Phenampromide	15.0g	5.0g	25.0g	2.5kg	10.0kg
Phenazocine	1.5g	0.5g	2.5g	0.25kg	1.0kg
Phencyclidine	3.0g	1.0g	5.0g	250.0g	1.0kg
Phendimetrazine	7.5g	2.5g	12.5g	1.25kg	5.0kg
Phenmetrazine	7.5g	2.5g	12.5g	1.25kg	5.0kg
Phenomorphane	7.5g	2.5g	12.5g	1.25kg	5.0kg
Phenoperidine	1.5g	0.5g	2.5g	0.25kg	1.0kg
1-Phenyl-2-chloropropane	3.0g	1.0g	5.0g	0.25kg	1.0kg
1-(1-phenylcyclohexyl) pyrrolidine	3.0g	1.0g	5.0g	0.25kg	1.0kg
1-Phenylethyl-4-acetoxypiperidine	3.0g	1.0g	5.0g	0.25kg	1.0kg
1-Phenyl-2-nitropropene	3.0g	1.0g	5.0g	0.25kg	1.0kg
4-Phenylpiperidine-4-carboxylic acid ethyl ester (Pethidine intermediate B)	3.0g	1.0g	5.0g	0.25kg	1.0kg
1-Phenyl-2-propanol	3.0g	1.0g	5.0g	0.25kg	1.0kg
Phenylpropanolamine except where Schedule Three of the Poisons List applies	15.0g	5.0g	25.0g	1.25kg	5.0kg
1-Phenyl-2-propanone	3.0g	1.0g	5.0g	0.25kg	1.0kg
1-Phenyl-2-propanone oxime	3.0g	1.0g	5.0g	0.25kg	1.0kg
Pholcodine except where Schedule Two or Four of the Poisons List applies	7.5g	2.5g	12.5g	1.25kg	5.0kg
Piminodine	15.0g	5.0g	25.0g	2.5kg	10.0kg
Piritramide	1.5g	0.5g	2.5g	0.25kg	1.0kg



Proheptazine	1.5g	0.5g	2.5g	0.25kg	1.0kg
Prohibited plant, other than cannabis plant	—	5	50	250	1000
Properidine	37.5g	12.5g	62.5g	6.25kg	25.0kg
Propiram	3.0g	1.0g	5.0g	0.25kg	1.0kg
Pseudoephedrine except where Schedule Two or Three of the Poisons List applies	15.0g	5.0g	25.0g	1.25kg	5.0kg
Psilocin and its derivatives being those derivatives having hallucinogenic properties	15 DDU or 0.15g	4 DDU or 0.04g	25 DDU or 0.25g	25.0g	100.0g
Psilocybin and its derivatives being those derivatives having hallucinogenic properties	15 DDU or 0.15g	4 DDU or 0.04g	25 DDU or 0.25g	25.0g	100.0g
Quinalbarbitone	30.0g	10.0g	50.0g	5.0kg	20.0kg
Racemethorphan	3.0g	1.0g	5.0g	0.5kg	2.0kg
Racemoramide	3.0g	1.0g	5.0g	0.5kg	2.0kg
Racemorphan	3.0g	1.0g	5.0g	0.5kg	2.0kg
Remifentanil	0.3g	0.1g	0.5g	0.05kg	0.2kg
Secbutobarbitone	30.0g	10.0g	50.0g	5.0kg	20.0kg
Sufentanil	0.0075g	0.0025g	0.0125g	0.00125kg	0.005kg
Tetrahydrocannabinol and its alkyl homologues except:					
(a) where separately specified in this Schedule, or					
(b) in hemp seed oil, containing 50mg/kg or less of tetrahydrocannabinols, when labelled "Not for internal use" or "Not to be taken", or	3.0g	1.0g	5.0g	0.5kg	2.0kg
(c) in products for purposes other than internal human use containing 50 mg/kg or less of tetrahydrocannabinols					
2,3,4,5-Tetramethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
Thebacon	3.0g	1.0g	5.0g	0.5kg	2.0kg
Thebaine	3.0g	1.0g	5.0g	0.5kg	2.0kg
1-(1-(2-thienyl) cyclohexyl)-piperidine	3.0g	1.0g	5.0g	0.25kg	1.0kg
Thiofentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0.005kg
Tilidine	3.0g	1.0g	5.0g	0.25kg	1.0kg
1-(3-Trifluoromethylphenyl)-piperazine	3.0g	1.0g	5.0g	0.25kg	1.0kg
Trimeperidine	15.0g	5.0g	25.0g	2.5kg	10.0kg

2,3,4-Trimethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
2,3,5-Trimethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
2,3,6-Trimethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
2,4,5-Trimethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
2,4,6-Trimethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
3,4,5-Trimethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
1-(3,4,5-Trimethoxyphenyl)-2-aminobutane	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg
2,4,5-Trimethoxyphenylethylamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1.0kg

### Prohibited plant or prohibited drug

Any substance that is an analogue of a drug prescribed in this Schedule, being a substance that has psychotropic properties, is not separately specified in this Schedule and is, in relation to the drug, any of the following:

- (a) a structural isomer having the same constituent groups as the drug,
- (b) a structural modification obtained in one or more of the following ways:
  - (i) the replacement of up to 2 carbocyclic or heterocyclic ring structures with different carbocyclic or heterocyclic ring structures,
  - (ii) the addition of hydrogen atoms to 1 or more unsaturated bonds,
  - (iii) the addition of 1 or more of the following groups having up to 6 carbon atoms in any alkyl residue, namely, alkoxy, cyclic diether, acyl, acyloxy, monoalkylamino and dialkylamino groups,
  - (iv) the addition of 1 or more of the following groups having up to 6 carbon atoms in the group and being attached to oxygen, namely, alkyl, alkenyl and alkynyl groups (for example, ester groups and ether groups),
  - (v) the addition of 1 or more of the following groups having up to 6 carbon atoms in the group and being attached to nitrogen, sulphur or carbon, namely, alkyl, alkenyl and alkynyl groups,
  - (vi) the addition of 1 or more of the following groups, namely, halogen, hydroxy, nitro and amino groups,
  - (vii) the replacement of 1 or more of the groups specified in subparagraphs (iii)–(vi) with 1 or more other groups so specified,
  - (viii) the conversion of a carboxyl or an ester group into an amide group.

**Column 1**

**Traffickable quantity**

The quantity specified above (if any) of the drug to which the analogous substance is related (or, if there is more than one such drug, the largest among the quantities specified above (if any) of those drugs).

**Column 2**

**Small quantity**

The quantity specified above (if any) of the drug to which the analogous substance is related (or, if there is more than one such drug, the largest among the quantities specified above (if any) of those drugs).

**Column 3**

**Indictable quantity**

The quantity specified above (if any) of the drug to which the analogous substance is related (or, if there is more than one such drug, the largest among the quantities specified above (if any) of those drugs).

**Column 4**

**Commercial quantity**

The quantity specified above (if any) of the drug to which the analogous substance is related (or, if there is more than one such drug, the largest among the quantities specified above (if any) of those drugs).

**Column 5**

**Large commercial quantity**

The quantity specified above (if any) of the drug to which the analogous substance is related (or, if there is more than one such drug, the largest among the quantities specified above (if any) of those drugs).

**Column 6**

**Discrete dosage unit (DDU)**

The quantity specified above (if any) of the drug to which the analogous substance is related (or, if there is more than one such drug, the largest among the quantities specified above (if any) of those drugs).