Drug Misuse and Trafficking Regulation 2006

[2006-509]

New South Wales

Status Information

Currency of version

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Does not include amendments by**
  Drug Misuse and Trafficking Amendment (Precursors) Regulation 2007 (38) (GG No 24 of 2.2.2007, p 609), Sch 1 [3]–[9] (not commenced — to commence on 1.3.2007)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the Interpretation Act 1987.

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New South Wales

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Drug Misuse and Trafficking Regulation 2006*.

2 Commencement

(1) This Regulation commences on 1 September 2006, except as provided by subclause (2).

Note—

This Regulation replaces the *Drug Misuse and Trafficking Regulation 2000*, which is repealed on 1 September 2006 by section 10 (2) of the *Subordinate Legislation Act 1989*.

(2) Clauses 10 (1) (b) and (c), (2)–(5), (7) and (8) and 11 and Schedule 2 commence on 1 March 2007.

3 Definitions

(1) In this Regulation:

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

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

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

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

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

(3) Notes included in this Regulation do not form part of this Regulation.

Part 2 General

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

(1) The Director-General of the Department of Health may authorise a specified person or a specified class of persons to participate in a program approved by the Director-General to facilitate:

(a) the supply to intravenous drug users of sterile hypodermic syringes and sterile hypodermic needles, and any associated equipment, to prevent the spread of contagious disease and minimise health risks associated with intravenous drug use, and

(b) the giving out of information concerning hygienic practices in the use of hypodermic syringes and hypodermic needles to prevent the spread of contagious disease.

(2) An authorisation under this clause is to be granted, and may be revoked, in the same manner as an authorisation under the Act.

5 Exemption for Scene of Crime Officers

A member of NSW Police who has been designated by the Commissioner of Police as a Scene of Crime Officer is exempt from the provisions of sections 10, 23 (1) and (2) and 25 (1) and (2) of the Act in relation to every prohibited plant or prohibited drug to the extent necessary to enable the member to carry out his or her duties as such an officer.

6 Exemption for authorised persons participating in approved program

(1) An authorised person is exempt from the provisions of sections 11, 19 and 20 of the Act, to the extent necessary to authorise the person:

(a) to have in his or her possession, and to distribute, hypodermic syringes and hypodermic needles, and any associated equipment, for use in the administration of a prohibited drug capable of being so administered, and

(b) to give out information concerning hygienic practices in the use of hypodermic syringes and hypodermic needles to prevent the spread of contagious disease.

(2) The exemption applies only for the purpose of enabling the authorised person to participate in an approved needle exchange program.

7 Exemption for giving out information about approved program

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

8 General exemption for pharmacists and staff

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

(a) to have in his or her possession, and to distribute, hypodermic syringes and hypodermic needles, and any associated equipment, for use in the administration of a prohibited drug capable of being so administered, and

(b) to give out information concerning hygienic practices in the use of hypodermic syringes and hypodermic needles to prevent the spread of contagious disease.

Part 3 Precursors and drug manufacture or production apparatus

9 Precursors and drug manufacture or production apparatus

(1) The substances listed in Schedule 1 are specified as precursors for the purposes of section 24A of the Act.

(2) The substances listed in Schedules 1 and 2 are prescribed as precursors for the purposes of section 45 of the Act.

(3) The types of apparatus listed in Schedule 3 are prescribed for the purposes of section 45 of the Act.

Note—

The term ***substance*** is defined in section 3 of the Act as including preparation and admixture and all salts, isomers, esters or ethers of any substance and all salts of those isomers, esters and ethers.

10 Sales and storage of Schedule 1 precursors

(1) A person (***supplier***) must not supply any Schedule 1 precursor to a person (***receiver***) unless the receiver:

(a) has an account with the supplier and payment for the supply is made through the account, and

(b) has provided the supplier with an end user declaration, and

(c) has furnished the supplier with proof of the receiver's identity (for example, a driver licence or passport).

(2) A supplier must not supply any Schedule 1 precursor to a receiver unless at least 24 hours have passed following the completion by the receiver of the requirements set out in subclause (1) (b) and (c).

(3) A supplier of any Schedule 1 precursor must store the precursor in a manner that prevents any access to it by any person other than:

(a) the supplier, or

(b) a person authorised in writing by the supplier to have access to the precursor.

(4) A supplier who authorises in writing another person to have access to any Schedule 1 precursor in accordance with subclause (3) (b) must:

(a) keep a copy of that authorisation for the period of its effect and the period of at least 2 years following the authorisation ceasing to have effect, and

(b) make any such copy available for inspection on request by a police officer during business hours.

(5) A supplier must not supply any Schedule 1 precursor to a person unless the supplier has recorded:

(a) the name and quantity of the Schedule 1 precursor supplied, and

(b) the date of supply of the Schedule 1 precursor from the supplier's premises.

(6) Subclauses (1), (2), (4) and (5) do not apply to the supply of a substance referred to in paragraph (b) of the definition of ***Schedule 1 precursor*** in subclause (9) if:

(a) the substance is supplied for therapeutic use within the meaning of the relevant therapeutic goods laws, and

(b) the substance is packaged and labelled in accordance with the relevant therapeutic goods laws, and

(c) the supplier is authorised, by the relevant therapeutic goods laws, to supply the substance.

(7) A supplier must make each end user declaration provided to the supplier in accordance with subclause (1) (b), and each record made under subclause (5), available for inspection on request by a police officer during business hours.

(8) A supplier must keep each end user declaration provided to the supplier in accordance with subclause (1) (b), and each record made under subclause (5), for a period of at least 5 years.

(9) In this clause:

end user declaration means a document, completed by a proposed receiver of a Schedule 1 precursor, that specifies the following:

(a) the name and address of the receiver,

(b) details of the receiver's proof of identity furnished to the supplier concerned (for example, details of a driver licence or passport),

(c) the name and quantity of the Schedule 1 precursor to be supplied,

(d) the proposed date of supply of the Schedule 1 precursor from the supplier's premises.

relevant therapeutic goods laws means:

(a) the *Poisons and Therapeutic Goods Act 1966*, and

(b) the regulations under that Act, and

(c) the Commonwealth therapeutic goods laws within the meaning of that Act as those laws apply as a law of this State.

Schedule 1 precursor means any of the following substances:

(a) a substance listed in Schedule 1 (other than a substance referred to in paragraph (b) or (c)),

(b) Ephedrine, Phenylpropanolamine or Pseudoephedrine or a salt of Ephedrine, Phenylpropanolamine or Pseudoephedrine,

(c) Phenylacetic acid or a salt or ester of Phenylacetic acid.

Note—

The term ***substance*** in this clause does not include a preparation, admixture, salts, isomers, esters or ethers of any substance or a salt of those isomers, esters and ethers (see subclause (10)). Accordingly, the definition of ***Schedule 1 precursor*** does not include a preparation, admixture, salts, isomers, esters or ethers of any substance or a salt of those isomers, esters and ethers, except where specifically provided for.

(10) In this clause, a reference to a substance does not include a reference to a preparation, admixture, salt, isomer, ester or ether of a substance listed in Schedule 1 or a salt of such an isomer, ester or ether, unless otherwise specified.

Maximum penalty:

(a) in the case of a corporation—100 penalty units for a first offence or 150 penalty units for a second or subsequent offence, or

(b) in the case of an individual—30 penalty units for a first offence or 50 penalty units for a second or subsequent offence.

11 Sales of Schedule 2 precursors

(1) A person (***supplier***) must not supply any Schedule 2 precursor to a person (***receiver***) unless the receiver:

(a) has an account with the supplier and payment for the supply is made through the account, and

(b) has provided the supplier with an end user declaration, and

(c) has furnished the supplier with proof of the receiver's identity (for example, a driver licence or passport).

(2) A supplier must not supply any Schedule 2 precursor to a person unless the supplier has recorded:

(a) the name and quantity of the Schedule 2 precursor supplied, and

(b) the date of supply of the Schedule 2 precursor from the supplier's premises.

(3) A supplier must make each end user declaration provided to the supplier in accordance with subclause (1) (b), and each record made under subclause (2), available for inspection on request by a police officer during business hours.

(4) A supplier must keep each end user declaration provided to the supplier in accordance with subclause (1) (b), and each record made under subclause (2), for a period of at least 2 years.

(5) In this clause:

end user declaration means a document, completed by a proposed receiver of a Schedule 2 precursor, that specifies the following:

(a) the name and address of the receiver,

(b) details of the receiver's proof of identity furnished to the supplier concerned (for example, details of a driver licence or passport),

(c) the name and quantity of the Schedule 2 precursor to be supplied.

Schedule 2 precursor means any substance listed in Schedule 2.

(6) In this clause, a reference to a substance does not include a reference to a preparation, admixture, salt, isomer, ester or ether of a substance listed in Schedule 2 or a salt of such an isomer, ester or ether, unless otherwise specified.

Maximum penalty:

(a) in the case of a corporation—100 penalty units for a first offence or 150 penalty units for a second or subsequent offence, or

(b) in the case of an individual—30 penalty units for a first offence or 50 penalty units for a second or subsequent offence.

Part 4 Custody and analysis of drug exhibits

12 Application of Part

(1) This Part applies to a substance that a member of NSW Police knows or suspects to be a prohibited drug and:

(a) that is in the custody of a member of NSW Police, and

(b) the quantity of which is not less than the traffickable quantity for the prohibited drug concerned.

(2) It is immaterial whether a prohibited drug to which this Part applies is or has come into the custody of a member of NSW Police through seizure or other means.

13 Delivery of substance for analysis

(1) As soon as practicable (but in no case later than 14 days) after a substance to which this Part applies comes into the custody of a member of NSW Police, the whole of the substance must be given to an analyst for analysis.

(2) Immediately after a member of NSW Police opens a package that has been sealed under this Part or becomes aware that a package sealed under this Part has been opened or tampered with, the whole of the contents of the package must be given to an analyst for analysis.

14 Order for destruction

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

(2) The person having the custody of the prohibited drug must give the whole of the contents of a package that is found to have been opened or tampered with to the analyst for analysis.

15 Carrying out of analysis

(1) An analyst to whom a substance is given for analysis under clause 13 or 14 must carry out an analysis of it to determine whether it is a prohibited drug and, if it is, to determine:

(a) the identity of the prohibited drug, and

(b) the quantity or mass of the prohibited drug, and

(c) the purity of the prohibited drug.

(2) If the substance is cannabis leaf, the analyst, after identifying the substance, need only determine the quantity or mass of the cannabis leaf.

16 Procedure after analysis

(1) After removing a sample of a substance that is given to an analyst for analysis under clause 13 or 14, the analyst must place the balance of the substance not required for analysis into one or more packages, securely seal each package and mark each package with an identifying mark.

(2) After complying with subclause (1), the analyst must deliver each sealed package, or cause each sealed package to be delivered, to the Commissioner of Police or to a person, or to a person of a class of persons, specified by the Commissioner for the purpose.

17 Storage of sealed packages

(1) A person to whom a package is delivered under clause 16 (2) must store the package in a secure place determined by the Commissioner of Police.

(2) Subclause (1) has effect subject to any order made under Part 3A of the Act requiring destruction of the prohibited drug concerned and, accordingly, does not have effect to the extent that is necessary to secure compliance with the order.

18 Analyst's certificate

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

(a) the identity of the prohibited drug,

(b) the quantity or mass of the prohibited drug,

(c) except in the case of cannabis leaf, the purity of the prohibited drug.

19 Significant variations in analysts' certificates

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

Part 5 Miscellaneous

20 Savings

Any act, matter or thing that, immediately before the repeal of the *Drug Misuse and*

Trafficking Regulation 2000, had effect under that Regulation is taken to have effect under this Regulation.

21 Certificate evidence from interstate analysts: section 43

For the purposes of the definition of ***analyst*** in section 43 (6) of the Act, the following persons are prescribed:

(a) an analyst within the meaning of the *Drugs of Dependence Act 1989* of the Australian Capital Territory,

(b) an analyst within the meaning of the *Poisons and Drugs Act 1978* of the Australian Capital Territory,

(c) an analyst within the meaning of the *Misuse of Drugs Act* of the Northern Territory,

(d) an analyst within the meaning of the *Drugs Misuse Act 1986* of Queensland,

(e) an analyst within the meaning of the *Controlled Substances Act 1984* of South Australia,

(f) an analyst within the meaning of the *Poisons Act 1971* of Tasmania,

(g) an analyst within the meaning of section 120 of the *Drugs, Poisons and Controlled Substances Act 1981* of Victoria,

(h) an analyst within the meaning of the *Misuse of Drugs Act 1981* of Western Australia (being an analyst registered under section 203 of the *Health Act 1911* of Western Australia).

Schedule 1 Precursors—clause 10

(Clauses 9 and 10)

Acetic anhydride

4-Amino butanoic acid (also known as Piperidinic acid)

Boron tribromide

Bromo safrole

Bromobenzene

1,4-Butanediol (also known as Tetramethyelene glycol, hydroxybutanol or 1,4BD)

1-Chloro-1-phenyl-2-aminopropane

Ephedrine

Ephedrone

Ethyl phenyl acetate

Gamma butyrolactone (also known as 4-hydroxybutanoic acid lactone or gBL)

Gamma hydroxybutanoic acid (including salts) (also known as Gamma hydroxybutyric acid)

Hydriodic acid

4-Hydroxybutanal (also known as 4-Hydroxybutyraldehyde)

4-Hydroxy-butanoic acid nitrile (also known as 4-Hydroxybutyronitrile)

4-Hydroxy-pentanoic acid (also known as Gamma valerolactone)

2-Hydroxytetrahydrofuran (also known as Tetrahydro-2-furanol)

Hypophosphite salts

Hypophosphorous acid

3,4-Methylenedioxyphenylpropan-2-one (also known as 3,4-Methylenedioxy-phenyl-2-propanone)

N-Methylephedrine

Methyl phenylacetate

N-Methylpseudoephedrine

Norpseudoephedrine

Phenylacetamide

Phenylacetic acid

Phenylacetonitrile

Phenylacetyl chloride

Phenylpropanolamine

1-Phenyl-2-chloropropane

1-Phenyl-2-nitropropene

1-Phenyl-2-propanol

1-Phenyl-1-propanone (also known as Phenylethylketone, Propiophenone)

1-Phenyl-2-propanone

1-Phenyl-2-propanone oxime

Phosphorus (red or white)

Phosphorous acid (also known as Phosphonic acid)

Piperonal (also known as 3,4-Methylenedioxy-benzaldehyde or Heliotopine)

Pseudoephedrine

Pyridine

2-Pyrrolidone (also known as Gamma butyrolactam)

Safrole (also known as 5-(2-Propenyl)-1,3-Benzodioxide)

Sassafras oil

Schedule 2 Precursors—clause 11

(Clauses 9 and 11)

N-Acetylanthranilic acid (also known as 2-Acetamidobenzoic acid)

Allybenzene (also known as 3-Phenyl-1-propene or 2-Propenyl-benzene)

Ammonium formate

Anthranilic acid (also known as 2-Aminobenzoic acid)

Benzaldehyde

Benzyl bromide (also known as a-Bromotoluene)

Benzyl chloride (also known as a-Chlorotoluene)

Calcium

Chromic acid (including salts)

Chromium trioxide (also known as Chromium (VI) oxide)

Ergometrine (also known as Ergonovine)

Ergotamine

Ethanamine (also known as Monoethylamine)

N-Ethylephedrine

N-Ethylpseudoephedrine

Formamide

Hydrobromic acid (also known as Hydrogen bromide solution)

Iodine (including iodine salts)

Isosafrole (also known as 5-(1 Propenyl)-1,3-benzodioxile)

Lithium

Lysergic acid

Magnesium

Mercuric chloride (also known as Mercury (II) chloride or Mercury bichloride)

Methylamine (gas) (also known as Aminomethane or Monomethylamine)

Methylammonium salts

N-Methylformamide

Nitroethane

Nitromethane

Palladium (including salts)

Phenylalanine

Piperidine

Potassium

Propionic anhydryde

Raney nickel

Sodium

Sodium borohydride

Thionyl chloride

Thorium (including salts)

Schedule 3 Drug manufacture or production apparatus—clause 11A

(Clauses 9 and 11A)

Hydrogen sulfide gas cylinder

Hydrogen chloride gas cylinder

Hydrogen gas cylinder

Ammonia gas cylinder

Methylamine gas cylinder

Round bottom reaction flask (capacity 500ml or greater)

Condenser (joint size B19 or greater)

Splash head

Distillation head

Heating mantle (capacity 500ml or greater)

Pill or tablet press (whether manual or mechanical)

Rotary evaporator