

# Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016 No 6

[2016-6]



New South Wales

## Status Information

### Currency of version

Historical version for 22 March 2016 to 24 October 2016 (accessed 26 April 2025 at 10:48)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

None of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **See also**  
[Justice Portfolio Legislation \(Miscellaneous Amendments\) Bill 2016](#)
- **Note**  
Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### 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](#).

File last modified 12 October 2016

# Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016 No 6



New South Wales

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# Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016 No 6



New South Wales

An Act to amend the *Drug Misuse and Trafficking Act 1985* and the *Drug Misuse and Trafficking Regulation 2011* with respect to dealing with prohibited plants, prohibited drugs and other substances in police custody; and for other purposes.

## 1 Name of Act

This Act is the *Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016*.

## 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

## Schedule 1 Amendment of *Drug Misuse and Trafficking Act 1985* No 226

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

**analyst** means any of the following:

- (a) a person employed by the Government of New South Wales as an analyst for the purposes of this Act (including a person employed as an analyst in the NSW Health Service),
- (b) a person who is an analyst within the meaning of the *Poisons and Therapeutic Goods Act 1966*,
- (c) a person who is, or belongs to a class, prescribed by the regulations for the purposes of this definition.

### [2] Sections 10 (2) (b1), 23 (4) (c) and 25 (4) (c)

Omit “section 39RA” wherever occurring. Insert instead “section 39G”.

**[3] Part 3A**

Omit the Part. Insert instead:

## **Part 3A Exhibits and testing procedures**

### **Division 1 Preliminary**

#### **39A Application of Part**

- (1) This Part applies to a substance that a member of the NSW Police Force knows or suspects to be any of the following and that is in the custody of a member of the NSW Police Force (whether because it has been seized or for any other reason):
  - (a) a prohibited plant,
  - (b) a prohibited drug,
  - (c) a Schedule 9 substance,
  - (d) a psychoactive substance.
- (2) For the purposes of this section, a substance is taken to be in the custody of a member of the NSW Police Force if it is in the custody of an analyst for the purposes of this Part or is being transported for any such purpose.

#### **39B Interpretation**

- (1) In this Part:
  - destroy** means destroy or otherwise dispose of.
  - qualified police officer** means a police officer of or above the rank of superintendent.
- (2) In this Part, a reference to the quantity of a drug is a reference to the quantity of the drug originally in the custody of a member of the NSW Police Force.

### **Division 2 Retention and testing of substances**

#### **39C Retention of substances**

A member of the NSW Police Force or other person is entitled to retain a substance to which this Part applies for the purpose of dealing with the substance in accordance with this Part and the regulations.

### **39D Regulations relating to testing and other matters**

The regulations may make provision for or with respect to the following matters:

- (a) the retention of all or part of a substance to which this Part applies,
- (b) the weighing, testing and analysis of substances to which this Part applies,
- (c) the recording, handling, storage, transport and destruction of substances to which this Part applies,
- (d) the return of substances to which this Part applies to persons lawfully entitled to them,
- (e) evidentiary certificates, and prima facie evidence, relating to the identity, quantity, mass, testing, analysis, retention, handling, storage and transport of substances for the purposes of this Part.

## **Division 3 Destruction of substances**

### **39E Forfeiture of substances for purposes of destruction**

A substance to which this Part applies is forfeited to the Crown, if it is not otherwise forfeited, if an order is made under this Part or the regulations that the substance is to be destroyed.

### **39F Power to destroy substances**

- (1) A substance to which this Part applies may, subject to any requirements of this Part or the regulations, be destroyed in accordance with an order made under this Part or the regulations.
- (2) An order must not authorise the destruction of so much of an amount of a substance to which this Part applies that is required by the regulations to be retained.

### **39G Destruction of substance where no likelihood of prosecution**

- (1) A qualified police officer may order in writing that a substance to which this Part applies is to be destroyed if the police officer is satisfied that no person has been charged with an offence with respect to the substance and no person is likely to be charged.
- (2) The substance (other than a prohibited plant) must not be destroyed earlier than 21 days after the day on which the substance first came into the custody of any member of the NSW Police Force.
- (3) Before the substance is destroyed, evidence of the substance is to be recorded

by photographing or other means and the particulars (if any) prescribed by the regulations are to be recorded.

- (4) Subsection (3) does not apply to a prohibited drug, or suspected prohibited drug, if the quantity of the drug is less than the traffickable quantity in relation to the drug.

### **39H Destruction of prohibited plants after identification**

A qualified police officer may order in writing that any prohibited plants to which this Part applies are to be destroyed if the police officer is satisfied that:

- (a) a person of a class prescribed by the regulations for the purposes of this section has issued a certificate identifying the plants as specified prohibited plants, and
- (b) evidence of the plants has been recorded by photographing or other means and the particulars (if any) prescribed by the regulations have been recorded.

### **39I Destruction of substances where analysis takes place**

- (1) A qualified police officer may order in writing that a substance (other than a prohibited plant) to which this Part applies is to be destroyed if the police officer is satisfied that:
- (a) any samples of the substance that are required by the regulations to be taken and retained have been taken and retained, and
- (b) a certificate of analysis of one of the samples has been given to the defendant or accused person in any proceedings relating to the substance.
- (2) The substance must not be destroyed earlier than 28 days after the day on which written notice by a qualified police officer of the proposed destruction is served on the defendant or accused person in any proceedings for an offence relating to the substance.
- (3) Before the substance is destroyed, evidence of the substance is to be recorded by photographing or other means and the particulars (if any) prescribed by the regulations are to be recorded.
- (4) The Local Court may, on application by a member of the NSW Police Force, make an order authorising the destruction of a substance under this section if the Court is satisfied that:
- (a) written notice of the proposed destruction cannot practicably be served on the defendant or accused person, and
- (b) an order that the substance be destroyed has been made in accordance with this section.

**Note—**

A substance cannot be destroyed under this section while a quantity review application is being determined or before any consequent determination of the mass of the substance has been completed (see section 39M).

- (5) This section does not apply to a prohibited drug, or suspected prohibited drug, if the quantity of the drug is less than the traffickable quantity in relation to the drug.

**39J Destruction of drug where less than traffickable quantity**

- (1) A qualified police officer may order in writing that a prohibited drug, or suspected prohibited drug, is to be destroyed if the amount of the drug is less than the traffickable quantity in relation to the drug.
- (2) The substance must not be destroyed earlier than 28 days after the end of any proceedings for an offence relating to the substance (including the end of any appeal proceedings or, if no appeal is made, the end of the period within which an appeal may be made).

**39K Destruction of dangerous substances or articles**

- (1) A qualified police officer may order in writing that a substance or article (whether or not it consists of or includes a substance to which this Part applies) is to be destroyed if the police officer is satisfied that:
- (a) the substance or article has been seized and is being retained for the purpose of proceedings for an offence under this Act, and
  - (b) an analyst has certified in writing that, in the interests of health or safety, the substance or article is required to be destroyed, and
  - (c) evidence of the substance or article has been recorded by photographing or other means and, if practicable, the particulars (if any) prescribed by the regulations have been recorded, and
  - (d) if practicable, any samples of any substance that are required by the regulations to be taken and retained have been taken and retained.
- (2) The substance or article must not be destroyed earlier than 28 days after the day on which written notice by a qualified police officer of the proposed destruction is served on the defendant or accused person in any proceedings for an offence relating to the substance or article.
- (3) Despite subsection (2), a substance or article may be destroyed at any time if an analyst certifies in writing that, in the interests of health or safety, the substance or article is required to be destroyed before the expiry of the period

specified by that subsection.

- (4) The Local Court may, on application by a member of the NSW Police Force, make an order authorising the destruction of a substance or article under this section if the Court is satisfied that:
  - (a) written notice of the proposed destruction cannot practicably be served on the defendant or accused person, and
  - (b) an order that the substance or article be destroyed has been made in accordance with this section.

**Note—**

A substance cannot be destroyed under this section while a quantity review application is being determined or before any consequent determination of the mass of the substance has been completed (see section 39M).

**39L Immediate destruction where security or other issues**

A qualified police officer may make an order to destroy a substance in accordance with a provision of this Division at any time if the officer is of the opinion that, because of the amount of the substance or for any other reason, the substance could not reasonably be securely retained for the period of notice that would otherwise be required under that provision.

**39M Mass review applications**

- (1) This section applies if a certificate as to the initial mass of a substance to which this Part applies is given under the regulations by a member of the NSW Police Force or an analyst.
- (2) The Local Court may, on the application of a defendant or accused person in any proceedings for an offence relating to the substance, make a quantity review order for a substance.
- (3) The application must be made not later than 60 days after the certificate is served on the defendant or accused person.
- (4) The Local Court may make a quantity review order only if it is satisfied that:
  - (a) there has been a substantial failure to comply with this Act or the regulations in respect of the substance, or
  - (b) there is a real doubt as to the accuracy of the certificate issued by the member of the NSW Police Force or analyst in respect of the substance.
- (5) A quantity review order made by the Local Court may require:
  - (a) that a member of the NSW Police Force make all of the substance in the



custody of the NSW Police Force available to an employee of the Ministry of Health for determination of the mass of the substance, and

- (b) that the person to whom the substance is made available determine, or arrange the determination of, the mass of the substance, and
  - (c) that a further certificate under the regulations specifying the mass of the substance so determined be provided to the applicant.
- (6) If an application is made for a quantity review order for a substance in accordance with this section, the substance, including any sample previously provided for analysis, may be destroyed under another provision of this Part or the regulations only if:
- (a) the application is withdrawn or refused, or
  - (b) the application is granted and a certificate has been provided to the applicant in accordance with the quantity review order.
- (7) Subsection (6) does not prevent the destruction of a substance in accordance with this Part if destruction is necessary before that subsection is complied with in the interests of health or safety or because the substance cannot reasonably be securely retained.

## **Division 4 General**

### **39N Presumption on appeal**

If:

- (a) a person who was legally represented before the Local Court on the trial of an offence with respect to a substance to which this Part applies pleaded guilty to the offence, and
- (b) an appeal is made against any determination of the Local Court with respect to the offence, and
- (c) before the appeal is heard, the substance is destroyed after an order for its destruction is made under this Part or the regulations,

any particular in the court attendance notice as to the nature, quantity or mass of the substance is, for the purposes of the appeal, presumed to be true.

### **39O Return of substance to lawful owner**

- (1) A court may, on the application of a person who is lawfully entitled to a substance to which this Part applies or on its own motion, make an order that the substance be returned to the person if the substance has not been destroyed

under this Part or the regulations.

- (2) This Part does not prevent an order being made under section 43 of the *Criminal Procedure Act 1986* in relation to a substance to which this Part applies.
- (3) An application for an order under this section, and an order under this section, may be made despite sections 39C and 39E.
- (4) An application for an order under this section may be made to:
  - (a) a court in which proceedings for an offence relating to the substance have been commenced, or
  - (b) if proceedings have not commenced, or any such proceedings have been completed, the Local Court.
- (5) This section is subject to section 39.

### **39P Return of substances**

- (1) A member of the NSW Police Force who seizes a substance to which this Part applies or has custody of a substance to which this Part applies must return the substance to the owner or person who had lawful possession of the thing before it was seized or came into custody if the member of the NSW Police Force is satisfied that:
  - (a) its retention as evidence is not required, and
  - (b) it is lawful for the person to have possession of the substance.
- (2) This section is subject to any order made for the destruction of the substance under this Part or any other provision of this Act and to any order made under section 39O.
- (3) This section is subject to section 39.

### **39Q Use of substances in controlled operations and integrity testing programs**

- (1) The Commissioner of Police may, by order in writing, direct that any substance to which this Part applies 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 Act 1990*.

- (2) A direction under this section may be given in relation to a substance:
- (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 is subject to the following conditions:
- (a) that the substance to which the direction relates is to be kept securely until it is used in connection with a controlled operation or integrity testing program,
  - (b) any other condition that the Commissioner of Police considers appropriate.
- (4) A direction under this section need not identify a particular controlled operation or integrity testing program and a particular controlled operation or integrity testing program need not be in contemplation before a direction under this section 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) a Deputy Commissioner of Police, or
  - (b) a person who is appointed to a NSW Police Force Senior Executive Service position and to whom the function under section 6 (1) of the *Law Enforcement (Controlled Operations) Act 1997* of authorising the conduct of a controlled operation has been delegated in accordance with that Act.

**[4] Section 41 Authorisation of Secretary of Ministry of Health**

Omit "Department of Health". Insert instead "Ministry of Health".

**[5] Section 41A Authorities for low-THC hemp not to be granted**

Omit "Director-General of the Department of Health".

Insert instead "Secretary of the Ministry of Health".

**[6] Section 42 Certificate of Secretary of Ministry of Health prima facie evidence**

Omit "Department of Health or by an officer of the Department of Health".

Insert instead "Ministry of Health or by a person employed in the Ministry of Health".

**[7] Section 43 Certificate evidence**

Omit "Director-General of the Department of Industry and Investment" from section 43 (5).

Insert instead “Secretary of the Ministry of Health”.

**[8] Section 43 (5)**

Omit “Director-General” where secondly occurring. Insert instead “Secretary”.

**[9] Section 43 (6)**

Omit the definition of *analyst*.

**[10] Schedule 3**

Insert after Schedule 2:

## **Schedule 3 Savings and transitional provisions**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **2 Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016**

- (1) Part 3A of this Act, as substituted by the *Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016*, applies, with any necessary modifications, to a substance referred to in that Part that was in the custody of a member of the NSW Police Force on the commencement of that Part.
- (2) A direction made under section 39RA of this Act, before its repeal by the *Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016*, in relation to a prohibited plant or prohibited drug that was not used in connection with a controlled operation or integrity testing program before that repeal is taken to have been given under section 39Q of this Act as inserted by that Act.

## Schedule 2 Amendment of Drug Misuse and Trafficking Regulation 2011

### Part 3

Omit the Part. Insert instead:

## Part 3 Dealings with and analysis of drug exhibits

### Division 1 Preliminary

#### 8 Interpretation

(1) In this Part:

**A sample**—see clause 14 (2).

**approved** means approved by the Commissioner of Police for the purposes of this Part.

**B sample**—see clause 16 (2).

**drug exhibit bag** means a bag or other container that is an approved tamper evident bag.

**qualified plant identifier** means a person referred to in clause 12 (2) (b).

(2) A reference in this Part to anything done by an analyst includes a reference to anything done by a person under the supervision of an analyst.

(3) Words and expressions in this Part have the same meaning as they have in Part 3A of the Act.

#### 9 Application of Part

This Part applies to a substance to which Part 3A of the Act applies.

#### 10 Analysts

For the purposes of the definition of **analyst** in section 3 (1) of the Act, a person who is an analyst (however described) under a law of another State or Territory that corresponds to the Act is an analyst.

### Division 2 Samples and analysis

#### 11 Initial quantity or mass of substances to be recorded and certificate

**provided**

- (1) As soon as practicable after a substance to which this Part applies first comes into the custody of any member of the NSW Police Force, and before any samples are taken for analysis, an approved member of the NSW Police Force must record the quantity or mass of the substance (the ***initial quantity or mass***) or provide the substance to an analyst for that purpose.
- (2) The member of the NSW Police Force or analyst must give a certificate as to the initial quantity or mass of a substance and must cause a copy of the certificate to be served on the defendant or accused person in any proceedings under the Act relating to the substance.
- (3) In any legal proceedings under the Act, the production of a certificate, purporting to be signed by an approved member of the NSW Police Force or analyst, is prima facie evidence of the quantity or mass of the substance and the matters stated in it.
- (4) Subclause (3) does not apply if an order for the determination of the mass of the substance is made under section 39M of the Act.
- (5) In any legal proceedings under the Act, the production of a certificate, purporting to be signed by a person who determined the mass of a substance in accordance with a quantity review order under section 39M of the Act, is prima facie evidence of the mass of the substance and the matters stated in it.

**12 Prohibited plants**

- (1) As soon as practicable after plants to which this Part applies first come into the custody of any member of the NSW Police Force, a qualified plant identifier or an analyst must be given access to or provided with an amount of the plants that is sufficient to allow their identification.
- (2) The following persons are prescribed for the purposes of section 39H of the Act:
  - (a) a person who is an analyst,
  - (b) a person approved by the Secretary of the Department of Industry, Skills and Regional Development for the purposes of identifying whether or not plants are prohibited plants.

**Note—**

Prohibited plants may be destroyed once identification has been obtained and other identification procedures carried out, see section 39H of the Act.

**13 Taking and retention of amounts for samples of substances (other than**

**plants)**

- (1) An amount of a substance to which this Part applies (other than a plant) that is sufficient to allow for 3 times the amount required for 2 samples for analysis must, if practicable, be retained by:
  - (a) a member of the NSW Police Force, or
  - (b) an analyst (if the bulk of the substance is provided to the analyst).
- (2) An amount of a substance that is required to be provided to an analyst under this Part is to be provided by an approved member of the NSW Police Force.

**Note—**

Clause 16D provides for the transport of substances by approved couriers.

**14 Drugs of more than traffickable quantity and other substances**

- (1) This clause applies to the following substances:
  - (a) a Schedule 9 substance,
  - (b) a psychoactive substance,
  - (c) a prohibited drug, or suspected prohibited drug, if the quantity of the drug is not less than the traffickable quantity for the drug.
- (2) As soon as reasonably practicable after a substance to which this clause applies first comes into the custody of a member of the NSW Police Force, an amount that is sufficient to allow analysis of the substance must be provided to an analyst for analysis (an **A sample**) from the amount retained under clause 13.
- (3) A sample of a substance is not required to be provided under this clause if the substance is to be destroyed under section 39G or 39L of the Act or if an analyst has already retained an amount of the substance under clause 13.

**15 Drugs of less than traffickable quantity**

- (1) This clause applies to a substance that is a prohibited drug, or suspected prohibited drug, if the quantity of the substance is less than the traffickable quantity for the substance.
- (2) As soon as reasonably practicable after it is known that the identity of a substance to which this clause applies is to be in dispute in proceedings for an offence, the substance must be provided to an analyst for analysis.

**16 Analysis of B sample**

- (1) This clause applies to the following:

- (a) a substance that is a prohibited drug or suspected prohibited drug, if the quantity of the substance is not less than the traffickable quantity for the substance,
  - (b) a Schedule 9 substance or a psychoactive substance, if a sufficient amount has been retained.
- (2) A defendant or an accused person in proceedings for an offence relating to a substance to which this clause applies may request that an analysis be made of a further sample (a **B sample**) of the substance.
- (3) The request is to be made by notice in writing to a qualified police officer not later than 28 days after a certificate of analysis of the A sample of the substance is served on the defendant or accused person.
- (4) The defendant or accused person may in the notice request:
  - (a) that the analysis of the B sample be witnessed by a nominated person, or
  - (b) that the analysis be carried out by a nominated analyst who is of a class of approved analysts.
- (5) The qualified police officer is to arrange for an amount that is sufficient to allow analysis of the B sample to be provided to an analyst for analysis.
- (6) The analyst is to provide a copy of the results of the analysis to the qualified police officer who arranged for the analysis and to the defendant or accused person who requested it.
- (7) The cost of the analysis is to be borne by the defendant or accused person.

#### **16A Carrying out of analysis**

- (1) An analyst to whom a substance is given for analysis under this Part may carry out an analysis of the substance to determine whether it is a prohibited drug, Schedule 9 substance or psychoactive substance and, if it is, to determine:
  - (a) the identity of the substance, and
  - (b) the quantity or mass of the substance, and
  - (c) if the substance is a prohibited drug of or more than the commercial quantity, the purity of the substance, if it is capable of being tested and it is reasonably practicable to do so.
- (2) If the substance is cannabis leaf, the analyst, after identifying the substance, need only determine the mass of the cannabis leaf.



### **16B Analyst's certificate**

An analyst who analyses a substance under this Part may 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 substance,
- (b) the quantity or mass of the substance,
- (c) if the substance is a prohibited drug of not less than the commercial quantity, the purity of the substance, if it is capable of being tested and it is reasonably practicable to do so.

### **16C Significant variations**

If a difference occurs between the findings recorded in 2 or more certificates of any 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.

### **16D Transport of substances for analysis**

- (1) A substance that is being provided to a qualified plant identifier or an analyst for identification or analysis may be transported to the qualified plant identifier or analyst by an approved courier, if the plant or substance is contained in a drug exhibit bag.
- (2) An approved courier who transports or delivers a substance in accordance with the Act or this Part is exempt from the provisions of the Act relating to the possession or supply of the substance to the extent necessary to enable the courier to carry out those functions.

## **Division 3 Records, storage and security**

### **16E Evidence of substances before destruction**

- (1) For the purposes of sections 39G (3), 39I (3) and 39K (1) (c) of the Act, the following particulars must be recorded in relation to a substance (other than a plant):
  - (a) a photograph of the substance,
  - (b) the mass of the substance.
- (2) For the purposes of sections 39G (3), 39H (b) and 39K (1) (c) of the Act, the following particulars must be recorded in relation to a substance that is a plant:
  - (a) a photograph of the plant,

- (b) if practicable, the height of the plant,
- (c) if there is more than one plant, the number of plants.

#### **16F NSW Police Force exhibits management system**

- (1) As soon as practicable after the first occasion on which a substance to which this Part applies comes into the custody of any member of the NSW Police Force, the particulars of the substance must be entered into the NSW Police Force exhibits management system in accordance with the requirements of that system.
- (2) The following must also be entered into the NSW Police Force exhibits management system in accordance with the requirements of that system:
  - (a) particulars of any occasion on which a drug exhibit bag that is in the custody of a member of the NSW Police Force and that contains a substance to which this Part applies is opened after being sealed,
  - (b) particulars of any change in identification details or location of a drug exhibit bag that is in the custody of a member of the NSW Police Force, or is transported to a qualified plant identifier or an analyst for the purposes of this Part, and that contains a substance to which this Part applies (whether transport of the bag is provided by a member of the NSW Police Force or by an approved courier),
  - (c) particulars of the receipt of any such bag.

#### **16G Drug exhibit bags**

- (1) A substance to which this Part applies is to be placed in a drug exhibit bag as soon as practicable after the substance first comes into the custody of any member of the NSW Police Force.
- (2) The drug exhibit bag must be sealed and labelled in the approved manner.
- (3) The label must:
  - (a) contain the name of the member of the NSW Police Force in charge of the investigation to which the exhibit relates and the name of the person who sealed the bag, and
  - (b) contain the date, time, offender's name (if known) and the registered number of the exhibit, and
  - (c) be signed by the person who sealed the bag.
- (4) Particulars of the issue of each drug exhibit bag, and of drug exhibit bags

containing a substance to which this Part applies, are to be recorded in approved registers.

- (5) A sealed drug exhibit bag may be opened before analysis only if:
  - (a) a qualified police officer (or a delegate of a qualified police officer) who is of the opinion that exceptional circumstances warrant the action being taken approves the action in writing, or
  - (b) access is required by a member of the NSW Police Force for weighing, presumptive testing or taking a sample.
- (6) A sealed drug exhibit bag that is opened before analysis must be opened in the presence of the person who requires access to the substance, the member of the NSW Police Force in charge of the investigation to which the exhibit relates or the case exhibit officer.

#### **16H Storage of drug exhibit bags**

A drug exhibit bag that is in the custody of a member of the NSW Police Force and that contains a substance to which this Part applies must, unless it is being transported, be kept:

- (a) in a locked vault or cabinet that has a dual locking mechanism that requires at least 2 separate keys to unlock it, or
- (b) in an approved facility.

### **Division 4 Destruction of substances**

#### **16I Destruction of sample material**

- (1) A part of any substance given to an analyst for analysis under this Part that is not required for the analysis, or a sample for which a certificate of analysis has been given under this Part, may be destroyed with the authority of an Executive Director or a nominated Director of the Forensic and Analytical Science Service of the Ministry of Health.
- (2) A qualified police officer may order in writing that a part of any substance retained under this Part, for which analysis is not carried out under this Part, be destroyed at any time after the end of any relevant proceedings for an offence relating to the substance.
- (3) In this clause, the ***end of any relevant proceedings*** includes the end of any appeal proceedings or, if no appeal is made, the end of the period within which an appeal may be made.

## **16J Inspection before destruction**

If an order for the destruction of a substance to which this Part applies is made under Part 3A of the Act or this Division by a qualified police officer, the person who has custody of the substance must arrange for a police officer of or above the rank of inspector to inspect the drug exhibit bag containing the substance to determine whether or not the bag has been opened or tampered with since it was last sealed.

## **16K Manner of destruction**

A substance that is destroyed under Part 3A of the Act or this Division on the order of a qualified police officer must be destroyed in the presence of all of the following persons:

- (a) a police officer of or above the rank of inspector,
- (b) an independent witness,
- (c) a member of the NSW Police Force who is capable of identifying the exhibit being destroyed as the substance ordered to be destroyed.

## **Division 5 Evidentiary certificates**

### **16L Evidentiary provision—NSW Police Force exhibits management system**

In any proceedings for an offence against the Act or an appeal relating to any such proceedings, the production of one or more exhibit detail sheets certified by a member of the NSW Police Force to have been issued under the authority of the NSW Police Force exhibits management system, and relating to the whole or part of a drug exhibit identified in the sheets, is prima facie evidence of the dealings with that exhibit that are listed in the sheets.

### **16M Evidentiary provision—continuity evidence**

- (1) In any proceedings for an offence against the Act, the production of all of the following certificates is prima facie evidence that a substance (other than a prohibited drug, or suspected prohibited drug, of less than the traffickable quantity) retained by a member of the NSW Police Force was the same substance that was analysed under this Part, if each certificate identifies the same drug exhibit bag:
- (a) a certificate by a member of the NSW Police Force certifying that the substance was placed in a drug exhibit bag identified in the certificate and that the bag was sealed and labelled by the member of the NSW Police Force,
  - (b) a certificate by an officer of the New South Wales Forensic and Analytical Science Service of the Ministry of Health or other approved person who

received a substance for analysis that a specified substance submitted for analysis was received in a drug exhibit bag identified in the certificate, and that, when received, the seal of the drug exhibit bag was not broken or otherwise tampered with,

(c) a certificate by an analyst under section 43 (1) of the Act certifying the results of analysis of a substance contained in a drug exhibit bag identified in the certificate.

(2) In any proceedings for an offence against the Act, the production of all of the following certificates is prima facie evidence that a substance (other than a prohibited drug, or suspected prohibited drug, of less than the traffickable quantity) retained by a member of the NSW Police Force was the same substance that was analysed under this Part, if each certificate identifies the same drug exhibit bag or another drug exhibit bag into which the substance was placed (as referred to in one of the certificates):

(a) a certificate by a member of the NSW Police Force certifying that the substance was placed in a drug exhibit bag identified in the certificate and that the bag was sealed and labelled by the member of the NSW Police Force,

(b) a certificate by a member of the NSW Police Force certifying that the drug exhibit bag identified in the certificate:

(i) was received by the member and that, when received, the seal of the drug exhibit bag was not broken or otherwise tampered with, and

(ii) was opened by the member and that an amount of the substance was removed from the bag, tested or otherwise dealt with as specified in the certificate, and placed in the same drug exhibit bag with a new seal, or another drug exhibit bag, identified in the certificate, that was sealed and labelled by the member,

(c) a certificate by an officer of the New South Wales Forensic and Analytical Science Service of the Ministry of Health or other approved person who received a substance for analysis that a specified substance submitted for analysis was received in a drug exhibit bag identified in the certificate (being the drug exhibit bag referred to in paragraph (b) (ii)), and that, when received, the seal of the drug exhibit bag was not broken or otherwise tampered with,

(d) a certificate by an analyst under section 43 (1) of the Act certifying the results of analysis of a substance contained in a drug exhibit bag identified in the certificate.

- (3) In any proceedings for an offence against the Act, the production of all of the following certificates is prima facie evidence that a prohibited drug or suspected prohibited drug of less than the traffickable quantity retained by a member of the NSW Police Force was the same substance that was analysed under this Part, if each certificate identifies the same drug exhibit bag:
- (a) a certificate by a member of the NSW Police Force certifying that the substance was placed in a drug exhibit bag identified in the certificate and that the bag was sealed and labelled by the member of the NSW Police Force,
  - (b) a certificate by a member of the NSW Police Force certifying that the drug exhibit bag identified in the certificate:
    - (i) was received by the member and that, when received, the seal of the drug exhibit bag was not broken or otherwise tampered with, and
    - (ii) was or was not opened by the member, and
    - (iii) if the bag was opened, an amount of the substance was removed from the bag, tested or otherwise dealt with as specified in the certificate, and placed in the same drug exhibit bag with a new seal, or another drug exhibit bag, identified in the certificate, that was sealed and labelled by the member,
  - (c) a certificate by an officer of the New South Wales Forensic and Analytical Science Service of the Ministry of Health or other approved person who received a substance for analysis that a specified substance submitted for analysis was received in a drug exhibit bag identified in the certificate (being the drug exhibit bag referred to in paragraph (b) (iii)), and that, when received, the seal of the drug exhibit bag was not broken or otherwise tampered with,
  - (d) a certificate by an analyst under section 43 (1) of the Act certifying the results of analysis of a substance contained in a drug exhibit bag identified in the certificate.

**16N Proof of signatures, appointments and approval for purposes of evidentiary certificates unnecessary**

In any legal proceedings under the Act in which a certificate under this Part is produced as prima facie evidence of the matters stated in it, the certificate is prima facie evidence of those matters without proof of the signature, appointment or approval of the person purporting to sign the certificate.

**Schedule 3 Consequential amendment of [Law Enforcement \(Powers](#)**

## **and Responsibilities) Act 2002 No 103**

### **Section 216 Application to property**

Insert after section 216 (2) (a):

- (a1) a substance to which Part 3A of the *Drug Misuse and Trafficking Act 1985* applies or an article disposed of under section 39K of that Act,