

Drug Misuse and Trafficking Act 1985 No 226

[1985-226]



New South Wales

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- **Does not include amendments by**

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Drug Misuse and Trafficking Act 1985 No 226



New South Wales

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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—

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.

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.

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.

drug encapsulator means a device that is capable of being used to produce a prohibited drug in a capsule or similar form, and includes a unique part of any such device.

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.

low-THC hemp has the same meaning as in the [Hemp Industry Act 2008](#).

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

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.

Poisons List means the list proclaimed under section 8 of the [Poisons and Therapeutic Goods 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*, *Papaver orientale* or *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.

psychoactive substance—see section 36ZD.

regulations means regulations made under this Act.

Schedule 9 substance means a Schedule 9 substance within the meaning of the [Poisons and Therapeutic Goods Act 1966](#).

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.

tablet press means a device that is capable of being used to produce a prohibited drug in a pill, tablet or other similar form, and includes a unique part of such a device.

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 practitioner has the same meaning as in the [Veterinary Practice Act 2003](#).

wholesale means supply for the purposes of resale.

Note—

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

(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.

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

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 or psychoactive substance 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, Schedule 9 substance (not being 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 and Therapeutic Goods Act 1966](#)

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

8A Relationship with [Hemp Industry Act 2008](#)

- (1) Nothing in this Act affects any provision of or made under the [Hemp Industry Act 2008](#) or renders unlawful anything done in accordance with any such provision.
- (2) Without limiting the generality of subsection (1), nothing in this Act renders unlawful—
 - (a) cultivating or supplying, or taking part in cultivating or supplying, low-THC hemp under the authority conferred by the [Hemp Industry Act 2008](#), or
 - (b) manufacturing or producing, or taking part in manufacturing or producing, low-THC hemp or anything containing low-THC hemp if that hemp was cultivated or supplied under the authority conferred by the [Hemp Industry Act 2008](#) or under a corresponding authority, or
 - (c) possessing low-THC hemp or anything containing low-THC hemp if that hemp was

cultivated or supplied under the authority conferred by the *Hemp Industry Act 2008* or under a corresponding authority.

(3) In this section, **corresponding authority** has the same meaning as in the *Hemp Industry Act 2008*.

8B Relationship with *Poppy Industry Act 2016*

Nothing in this Act affects any provision of or made under the *Poppy Industry Act 2016* 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 the 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 and Therapeutic Goods Act 1966*,
 - (a1) a person acting under a poppy licence under the *Poppy Industry Act 2016*,
 - (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 39Q,
 - (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 practitioner, pharmacist, registered nurse or registered 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 and Therapeutic Goods 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 and ice pipes

- (1) In this section—

ice pipe means—

- (a) a device capable of being used for the administration of a prohibited drug by means of the smoking or inhaling of the smoke or fumes resulting from the heating or burning of the drug in a crystal or powder form, 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 an ice pipe or a crack pipe, but does not include a device of a class or description prescribed by the regulations as not being an ice pipe for the purposes of 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 an ice pipe, or
- (b) supplies a waterpipe or an ice pipe in the course of or in connection with a commercial transaction,

is guilty of an offence.

- (3) A person who displays a waterpipe or an ice pipe—

- (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 or ice pipe was used or intended to be used for a purpose other than the administration of a prohibited drug.

11B Possession of tablet press or drug encapsulator

- (1) A person who has in his or her possession a tablet press or drug encapsulator is guilty of an offence.
- (2) It is a defence to a prosecution for an offence under subsection (1) if the defendant establishes—

- (a) that the tablet press or drug encapsulator is used in connection with an activity that is not unlawful, or
- (b) that the defendant otherwise has a reasonable excuse for possessing the tablet press or drug encapsulator.

11C Possession of instructions for manufacture or production of prohibited drugs

- (1) A person who has in his or her possession a document that contains instructions for the manufacture or production of a prohibited drug is guilty of an offence.
- (2) It is a defence to a prosecution for an offence under subsection (1) if the defendant establishes—
 - (a) that the defendant is licensed or authorised under the *Poisons and Therapeutic Goods Act 1966* to manufacture or produce the prohibited drug to which the instructions relate, or
 - (b) that the defendant is 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 to which the instructions relate is for the purpose of scientific research, instruction, analysis or study, or
 - (c) that the defendant is in possession of the document for the purposes of an activity that is not unlawful, or
 - (d) that the defendant otherwise has a reasonable excuse for possessing the document.

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 and Therapeutic Goods 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 practitioner 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 practitioner 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 practitioner 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.

18B Manufacture, production, possession and supply of certain Schedule 9 substances

(1) A person who manufactures or produces, or who knowingly takes part in the manufacture or production of, a Schedule 9 substance (not being a prohibited drug within the meaning of this Act) is guilty of an offence.

(2) A person who supplies, or who knowingly takes part in the supply of, a Schedule 9 substance (not being a prohibited drug within the meaning of this Act) is guilty of an

offence.

- (3) A person who has in his or her possession a Schedule 9 substance (not being a prohibited drug within the meaning of this Act) is guilty of an offence.

Maximum penalty (subsection (3)): 20 penalty units or imprisonment for 12 months, or both.

- (4) Nothing in this section renders unlawful the manufacture, production, possession or supply of a Schedule 9 substance (not being 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 in accordance with an authorisation given by the Secretary of the Ministry of Health under section 17D of that Act,

or renders unlawful the taking part by any other person in the manufacture, production or supply of such a substance by a person to whom paragraph (a) or (b) applies or the possession of the substance by the other person for those purposes.

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

- (1) 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.
- (2) A person does not commit an offence because of this section for any act or omission that is an offence under section 43B.

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

- (1) 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.
- (2) A person does not commit an offence because of this section for any act or omission that is an offence under section 43B.

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, except as otherwise expressly provided by this Division.

Division 2 Indictable offences

22 Indictable prosecution

- (1) Subject to the provisions of this Division and the *Criminal Procedure Act 1986*, an offence under this Division is to be prosecuted on indictment.
- (2) (Repealed)

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

(a1) a person acting under a poppy licence or poppy permit under the *Poppy Industry*

Act 2016, 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 39Q.
- (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.

(1A) A person who—

(a) manufactures or produces, or who knowingly takes part in the manufacture or production of, a prohibited drug, and

(b) exposes a child to that manufacturing or production process, or to substances being stored for use in that manufacturing or production process,

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.

(2A) A person who—

(a) 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, and

(b) exposes a child to that manufacturing or production process, or to substances being stored for use in that manufacturing or production process,

is guilty of an offence.

(3) If, on the trial of a person for an offence under subsection (2) or (2A), 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, the jury may acquit the person of the offence charged and find the person guilty of an offence under subsection (1) or (1A), respectively, and the person is liable to punishment accordingly.

(3A) It is a defence to a prosecution for an offence under subsection (1A) or (2A) if the defendant establishes that the exposure of the child to the prohibited drug manufacturing or production process, or to substances being stored for use in that manufacturing or production process, did not endanger the health or safety of the child.

(3B) If, on the trial of a person for an offence under subsection (1A) or (2A), the jury—

(a) is not satisfied that a child was exposed to a prohibited drug manufacturing or production process, or to substances being stored for use in such a manufacturing or production process, or

(b) is satisfied that the defence referred to in subsection (3A) has been made out, the jury 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.

(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 and Therapeutic Goods Act 1966*, or

(a1) a person acting under a poppy licence under the *Poppy Industry Act 2016*, 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), (a1) or (b) applies.

(5) In this section, **child** means a person who is under the age of 16 years.

24A Possession of precursors and certain apparatus for manufacture or production of prohibited drugs

(1) A person who has possession of—

(a) a precursor, or

(b) a drug manufacture apparatus,

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 possession of a precursor or drug manufacture apparatus for use in 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

(a1) a person acting under a poppy licence under the *Poppy Industry Act 2016*, 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.

(2A) (Repealed)

(3) In this section—

drug manufacture apparatus means an apparatus specified or described in the regulations as a drug manufacture apparatus for the purposes of this section.

precursor means a substance specified or described in the regulations as a precursor for the purposes of this section.

24B Possession of prohibited drug precursors

- (1) A person who has in his or her possession a precursor of a quantity not less than the quantity prescribed by the regulations in relation to that precursor is guilty of an offence.
- (2) It is a defence to a prosecution for an offence under subsection (1) if the defendant establishes—
 - (a) that the defendant is in possession of the precursor for the purposes of an activity that is not unlawful, or
 - (b) that the defendant otherwise has a reasonable excuse for possessing the precursor.
- (3) In this section, **precursor** means a substance—
 - (a) that is capable of being used to manufacture or produce a prohibited drug, and
 - (b) that is 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.
- (2C) A person of or above the age of 18 years who procures a person under the age of 16 years to supply, or take part in the supply of, a prohibited drug (other than cannabis leaf) to another person is guilty of an offence.
- (2D) A person of or above the age of 18 years who procures a person under the age of 16 years to supply, or take 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 is guilty of an offence.
- (2E) It is a defence to a prosecution for an offence under subsection (2C) or (2D) if the defendant establishes that the defendant had, at the time the offence is alleged to have been committed, reasonable cause to believe, and did in fact believe, that the person who was procured to supply, or take part in the supply of, the prohibited drug was of or above the age of 16 years.
- (3) Where, on the trial of a person for an offence under subsection (2) or (2D), 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) or (2C), respectively, 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 and Therapeutic Goods 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 39Q,
- 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.

25B (Repealed)

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

(1) 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.

- (2) A person does not commit an offence because of this section for any act or omission that is an offence under section 43B.

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

- (1) 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.

- (2) A person does not commit an offence because of this section for any act or omission that is an offence under section 43B.

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 practitioner.

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) or (1A),
- (c) an offence under section 25 (1), (1A) or (2C),
- (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 (1A) or 25 (1), (1A) or (2C),

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) or (1A),
 - (c) an offence under section 25 (1), (1A) or (2C),
 - (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 (1A) or 25 (1), (1A) or (2C),

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 or 24B.
- (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

- (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),
 - (c1) an offence under section 25 (1A),
 - (d) an offence under section 26 of conspiring to commit an offence referred to in paragraph (a), (b), (c) or (c1),
 - (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), (c) or (c1), 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) (Repealed)

Note—

Offences referred to in this section may be dealt with summarily in certain cases. See Chapter 5 of and Schedule 1 to the *Criminal Procedure Act 1986*.

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 Penalties for offences involving possession of prohibited drug precursors

- (1) 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.
- (2) The penalty for an offence under section 24B is a fine of 1,000 penalty units or imprisonment for a term of 5 years, or both, except as provided by section 31.

33AC Penalties for offences involving manufacture or production in presence of children or procuring children to supply prohibited drugs

- (1) This section applies to the following offences—
 - (a) an offence under section 24 (1A) or (2A) or 25 (2C) or (2D),
 - (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 24 (1A) or (2A) or 25 (2C) or (2D).

- (2) The penalty for an offence under section 24 (1A) or 25 (2C), or an offence referred to in subsection (1) (b)–(d) that relates to an offence under section 24 (1A) or 25 (2C), is a fine of 2,400 penalty units or imprisonment for 18 years, or both.
- (3) The penalty for an offence under section 24 (2A) or 25 (2D), or an offence referred to in subsection (1) (b)–(d) that relates to an offence under section 24 (2A) or 25 (2D), is a fine of 4,200 penalty units or imprisonment for 25 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 drug concerned, the penalty for the offence is a fine of 6,000 penalty units or imprisonment for life, or both.
- (5) In this section—

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

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.

35A Defence to certain offences involving substances used in industry

Despite any other provision of this Act, it is not an offence against this Act for—

- (a) a person to manufacture, produce, possess or supply a substance listed in Schedule 2 if the substance is contained in a product from which the substance cannot be readily extracted or readily synthesized, or

- (b) a person to manufacture, produce, possess or supply a substance listed in Schedule 2 if the substance is contained in a product that is not for human consumption and the person manufactures, produces, possesses or supplies the product in connection with an activity that is not unlawful, or
- (c) a person to possess or supply a substance listed in Schedule 2 if the person possesses or supplies the substance for the purpose of its disposal as waste or its destruction.

36 (Repealed)

Part 2A Medically supervised injecting centres

Division 1 Preliminary

36A Limited operation of Part

- (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.
- (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 is surrendered or revoked before the further licence takes effect.
- (3) (Repealed)

36B Objects of Part

The objects of this Part are as follows—

- (a) to reduce the number of deaths from drug overdoses,
- (b) to provide a gateway to treatment and counselling for clients of the licensed injecting centre,
- (c) to reduce the number of discarded needles and syringes and the incidence of drug injecting in public places,
- (d) to assist in reducing the spread of blood-borne diseases, such as HIV infection or Hepatitis C.

36C Review of Part

- (1) The Minister is to review this Part to determine whether the policy objectives of this

Part remain valid and whether the terms of this Part remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of the *Drug Misuse and Trafficking Amendment (Medically Supervised Injecting Centre) Act 2010*.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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 registered 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.

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) Except during any period of suspension, a licence remains in force until it is surrendered or revoked.
- (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 of licence

- (1) The responsible authorities may arrange for the ongoing or periodical review of any licensed injecting centre.
- (2) The responsible authorities must arrange for the review of the economic viability of a licensed injecting centre if they are satisfied that the service activity level of the centre has dropped below 75 per cent of the service activity level prescribed by the regulations.

- (3) Regulations referred to in subsection (2) may express the level of service activity as a specified number of client visits in any period or may express that level in any other manner.
- (4) The responsible authorities may revoke a licence if, after considering the results of a review under subsection (2), they are of the opinion that the licensed injecting centre has ceased to be economically viable.

36KA Revocation of licence

- (1) The responsible authorities may revoke a licence for any of the following reasons—
 - (a) the responsible authorities are satisfied that it is more appropriate for a licence to be issued in respect of different premises,
 - (b) the responsible authorities are satisfied that the licence holder is not a fit and proper person to hold the licence or, if the licence holder is a corporation, a director or person concerned in the management of the corporation is not a fit and proper person to hold a licence,
 - (c) such other reasons as may be prescribed by the regulations.
- (2) A licence may also be revoked under section 36J or 36K.

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 2013*, 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.

36O 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 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 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 Application of [Drug Misuse and Trafficking Amendment \(Medically Supervised Injecting Centre\) Act 2010](#)

The amendments made to this Part by the [Drug Misuse and Trafficking Amendment \(Medically Supervised Injecting Centre\) Act 2010](#) extend to a licence in force under this Part immediately before the commencement of that Act.

Part 2B Offences involving drug premises

36TA Definitions

In this Part—

child means a person who is under the age of 16 years.

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

- (1) A person who is the owner or occupier of any premises and who knowingly allows the premises to be used as 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 who is the owner or occupier of any premises is guilty of an offence if—

- (a) the person knowingly allows the premises to be used as drug premises, and
- (b) the person knows that a child has access to the premises and, as a consequence of that access, the child is exposed to—
 - (i) a prohibited drug or prohibited plant, or
 - (ii) a drug supply process, or
 - (iii) any equipment capable of being used to administer a prohibited drug.

Maximum penalty—

- (a) for a first offence—60 penalty units or imprisonment for 14 months (or both), and
 - (b) for a second or subsequent offence—600 penalty units or imprisonment for 6 years (or both).
- (3) It is a defence to a prosecution for an offence under subsection (2) if the defendant establishes that the exposure of the child to a prohibited drug or prohibited plant, to a drug supply process, or to equipment capable of being used to administer a prohibited drug, did not endanger the health or safety of the child.
- (4) If, on the trial of a person for an offence under subsection (2), the jury—
- (a) is not satisfied that the person knew a child had access to the premises, or
 - (b) is not satisfied that a child was exposed to a prohibited drug or prohibited plant, a drug supply process or equipment capable of being used to administer a prohibited drug, or
 - (c) is satisfied that the defence referred to in subsection (3) has been made out,
- 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.
- (5) For the purposes of this section, a **drug supply process** is any method used to supply or manufacture prohibited drugs or to cultivate prohibited plants.

36Z Offence of organising drug premises

- (1) A person who organises or conducts, or assists in organising or conducting, any 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 who organises or conducts, or assists in organising or conducting, any drug premises is guilty of an offence if the person knows that a child has access to the premises and, as a consequence of that access, the child is exposed to—
- (a) a prohibited drug or prohibited plant, or
 - (b) a drug supply process, or
 - (c) any equipment capable of being used to administer a prohibited drug.
- Maximum penalty—

- (a) for a first offence—60 penalty units or imprisonment for 14 months (or both), and
 - (b) for a second or subsequent offence—600 penalty units or imprisonment for 6 years (or both).
- (3) 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.
- (4) It is a defence to a prosecution for an offence under subsection (1) or (2) if the defendant establishes that he or she did not know, and could not reasonably be expected to have known, that the premises to which the charge relates were being organised or conducted as drug premises.
- (5) It is a defence to a prosecution for an offence under subsection (2) if the defendant establishes that the exposure of the child to a prohibited drug or prohibited plant, to a drug supply process, or to equipment capable of being used to administer a prohibited drug, did not endanger the health or safety of the child.
- (6) If, on the trial of a person for an offence under subsection (2), the jury—
- (a) is not satisfied that the person knew a child had access to the premises, or
 - (b) is not satisfied that a child was exposed to a prohibited drug or prohibited plant, a drug supply process or equipment capable of being used to administer a prohibited drug, or
 - (c) is satisfied that the defence referred to in subsection (5) has been made out,
- 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.
- (7) For the purposes of this section, a **drug supply process** is any method used to supply or manufacture prohibited drugs or to cultivate prohibited plants.

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 the Local Court.
- (2) A second or subsequent offence under section 36X, 36Y or 36Z (whether or not under the same subsection of the section concerned) is to be prosecuted on indictment.
- (3) If proceedings for an offence under this Part are dealt with summarily before the 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 Evidence as to state of mind of corporation

- (1) This section applies in relation to proceedings for an offence committed by a corporation under this Part or regulations made under this Part.
- (2) 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 state of mind, is evidence that the corporation had that state of mind.
- (3) In this section, the ***state of mind*** of a person includes—
 - (a) the knowledge, intention, opinion, belief or purpose of the person, and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

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 2C Offences involving psychoactive substances

36ZD Definitions

- (1) In this Part—

advertisement means—

- (a) any words, whether written or spoken, or
- (b) any pictorial representation or design, or
- (c) any other representation by any means at all.

display, in relation to an advertisement, includes cause or permit to be displayed.

manufacture, in relation to a psychoactive substance, means to make up, prepare, produce, process (including by extracting or refining), package or label the psychoactive substance.

psychoactive effect, in relation to a person who is consuming or has consumed a psychoactive substance, means—

- (a) stimulation or depression of the central nervous system of the person, resulting in hallucinations or a significant disturbance in, or significant change to, motor function, thinking, behaviour, perception, awareness or mood, or
- (b) causing a state of dependence, including physical or psychological addiction.

psychoactive substance means any substance (other than a substance to which this Part does not apply) that, when consumed by a person, has the capacity to induce a psychoactive effect.

publish includes distribute, disseminate, circulate, exhibit and cause or permit to be published.

substance includes any plant, fungus or natural organism.

tobacco product means tobacco, or a cigarette or cigar, or any other product containing tobacco and designed for human consumption or use.

usage instruction, in relation to a psychoactive substance, includes any direction, caution, warning, advice or recommendation in relation to the consumption of the substance.

- (2) In this Part, a reference to the **consumption** of a psychoactive substance includes a reference to the ingestion, injection or inhalation of a psychoactive substance, the smoking of a psychoactive substance, the inhalation of fumes caused by the heating or burning of a psychoactive substance and any other means of introducing a psychoactive substance into any part of the body of a person.

36ZE Substances to which this Part does not apply

- (1) This Part does not apply to the following substances—
 - (a) a substance specified in Schedule 1,

- (b) a precursor within the meaning of section 24A,
 - (c) a poison, restricted substance or drug of addiction within the meaning of the *Poisons and Therapeutic Goods Act 1966*,
 - (d) therapeutic goods included in the Australian Register of Therapeutic Goods maintained under the *Therapeutic Goods Act 1989* of the Commonwealth or that are exempted from the operation of Part 3-2 of that Act by regulations made under section 18 of that Act,
 - (e) a food within the meaning of the *Food Act 2003*,
 - (f) alcohol,
 - (g) a tobacco product,
 - (h) any plant or fungus, or extract from a plant or fungus, that is not, or does not contain, a substance specified in Schedule 1,
 - (i) controlled drugs, controlled plants and controlled precursors within the meaning of Part 9.1 of the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth,
 - (j) a substance supplied by a health practitioner (within the meaning of the *Health Care Complaints Act 1993*) in the course of the provision of a health service (within the meaning of that Act),
 - (k) any other substance prescribed by the regulations for the purposes of this section.
- (2) A reference to a substance in subsection (1) does not include any substance that contains, or has had added to it, any psychoactive substance that is not specified in subsection (1).

36ZF Offence of supplying or manufacturing psychoactive substances

- (1) A person must not manufacture or knowingly take part in the manufacture of a psychoactive substance for supply to another person—
- (a) knowing that it is being supplied to the person primarily for human consumption or for supply by that person to another person for that purpose, or
 - (b) being reckless as to whether it is being so supplied.
- Maximum penalty—20 penalty units or imprisonment for 2 years, or both.
- (2) A person must not supply a psychoactive substance—
- (a) knowing that it is being acquired primarily for human consumption, or
 - (b) being reckless as to whether it is being so acquired.

Maximum penalty—20 penalty units or imprisonment for 2 years, or both.

- (3) A court may be satisfied that a person knowingly or recklessly manufactured or supplied a psychoactive substance despite a usage instruction concerning the substance (given in any manner, way, medium or form) that indicates that it is not a psychoactive substance or is not intended for human consumption.
- (4) In any proceedings for an offence under this section, the court may have regard to the following in determining whether a person knew or was reckless as to whether a substance was being acquired or supplied primarily for human consumption—
 - (a) any advertising matter published or displayed by the person, or usage instruction concerning the substance given by the person, whether before or after the commencement of this subsection, that indicates that the substance—
 - (i) has or may have a psychoactive effect, or
 - (ii) has or may have a similar effect to a prohibited drug or may be used in a similar way to a prohibited drug,
 - (b) whether it would be reasonable in all the circumstances to find that the substance concerned was being manufactured or supplied for a lawful purpose.
- (5) Subsection (4) does not limit the matters that the court may consider.

36ZG Prohibition of advertising of psychoactive substances

A person is guilty of an offence if the person publishes or displays in any manner, way, medium or form any advertisement—

- (a) knowing or being reckless as to whether the advertisement promotes, or apparently promotes, directly or indirectly, the consumption, supply or sale of a substance for its psychoactive effects, and
- (b) providing information on how or where the psychoactive substance may be acquired.

Maximum penalty—20 penalty units or imprisonment for 2 years, or both.

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 Industry and Investment.

- (2) Upon information on oath by a member of the NSW 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 NSW 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 NSW Police Force and any cannabis plant or prohibited drug so seized shall be forfeited to Her Majesty.

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.

39CA Testing of substances

After determining the quantity of a substance to which this Part applies, the identity of the substance may be determined on the basis of the testing and analysis of a representative sample of the substance in accordance with 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 390.

(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.

39R-39S (Repealed)

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.
- (1A) 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 Schedule 9 substance or a specified Schedule 9 substance is, for the purposes of this Act and the regulations, taken to be a Schedule 9 substance or the specified Schedule 9 substance, 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.
- (3) A substance (not being a psychoactive substance) which, for the purpose of its being supplied, is represented (whether verbally, in writing or by conduct) as being a psychoactive substance or a specified psychoactive substance is, for the purposes of this Act and the regulations, to be taken to be a psychoactive substance or the specified psychoactive substance, 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), 25 (4) or 35A shall lie on the accused.

41 Authorisation of Secretary of Ministry of Health

An authorisation under this Act of the Secretary of the Ministry 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.

41A Authorities for low-THC hemp or alkaloid poppy plants not to be granted

The Secretary of the Ministry of Health is not authorised to grant an authority under section 10 (2) (b), 11C (2) (b), 23 (4) (b), 24 (4) (b), 25 (4) (b) or 25A (9) (b) in relation to low-THC hemp or an authority under section 23 (4) (b) in relation to an alkaloid poppy plant within the meaning of the *Poppy Industry Act 2016* or an authority under section 24 (4) (b) or 24A (2) (b) in relation to the manufacture of a prohibited drug using alkaloid poppy material within the meaning of the *Poppy Industry Act 2016*.

42 Certificate of Secretary of Ministry of Health prima facie evidence

In any legal proceedings under this Act, a certificate purporting to be signed by the Secretary of the Ministry of Health or by a person employed in the Ministry 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 and Therapeutic Goods 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 Secretary of the Department of Industry, Skills and Regional Development may

appoint a person to give certificates for the purposes of this section if the Secretary considers the person to be suitably qualified.

(6) In this section—

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

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

43A Liability of directors etc for offences by corporation—offences attracting executive liability

(1) For the purposes of this section, an **executive liability offence** is an offence against the regulations—

(a) that is prescribed by the regulations as an offence to which this section applies, and

(b) that is committed by a corporation.

(2) A person commits an offence against this section if—

(a) a corporation commits an executive liability offence, and

(b) the person is—

(i) a director of the corporation, or

(ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and

(c) the person—

(i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and

(ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty—The maximum penalty for the executive liability offence if committed by an individual.

(3) The prosecution bears the legal burden of proving the elements of the offence against this section.

(4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.

(5) This section does not affect the liability of the corporation for the executive liability

offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.

(6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.

(7) In this section—

director has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

reasonable steps, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances—

(a) action towards—

(i) assessing the corporation's compliance with the provision creating the executive liability offence, and

(ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,

(b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,

(c) action towards ensuring that—

(i) the plant, equipment and other resources, and

(ii) the structures, work systems and other processes,

relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,

(d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

43B Liability of directors etc for offences by corporation—accessory to the commission of the offences

(1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 43A.

- (2) A person commits an offence against this section if—
- (a) a corporation commits a corporate offence, and
 - (b) the person is—
 - (i) a director of the corporation, or
 - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
 - (c) the person—
 - (i) aids, abets, counsels or procures the commission of the corporate offence, or
 - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
 - (iii) conspires with others to effect the commission of the corporate offence, or
 - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty—The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

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.

44A Amendment of Schedule 2

The Governor may, from time to time, by regulation amend Schedule 2—

- (a) by adding the name or description of or relating to a substance, or
- (b) by amending a name or description of or relating to a substance for the purpose of more accurately describing the substance.

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, prohibited drugs or psychoactive substances 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.
- (2A) The regulations may make provision for or with respect to prohibiting or regulating the sale and storage of—
 - (a) precursors, and
 - (b) any apparatus that is capable of being used in the manufacture or production of a prohibited drug,being such precursors and apparatus as are prescribed by the regulations for the purposes of this section.
- (3) A regulation may create an offence punishable by a penalty, including a distinct penalty in the case of a second or subsequent offence, not exceeding—
 - (a) 150 penalty units in the case of a corporation, or
 - (b) 50 penalty units in the case of an individual.
- (4) An offence under the regulations may be prosecuted summarily before the 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.

46 Transitional provision—repeal of section 25B and re-enactment as summary offence

- (1) An offence under section 25B, and any related offence, is taken to be, and to always have been, an offence that is required to be prosecuted summarily before the Local Court.
- (2) Subsection (1) does not apply to an offence if an indictment for the offence was presented or filed before the commencement of this section.
- (3) If an indictment for an offence under section 25B, or any related offence, was presented or filed before the commencement of this section and proceedings on the indictment have not commenced, the court may remit the matter to the Local Court to be disposed of summarily if it considers it is in the interests of justice to do so.
- (4) This section does not affect the validity of anything done or omitted before the commencement of this section in connection with proceedings for an offence that, but for subsection (1), would have been validly done or omitted.
- (5) Despite section 179 of the *Criminal Procedure Act 1986*, proceedings for an offence to which subsection (1) applies may be commenced not later than 6 months after the commencement of this section.
- (6) A reference to section 25B is a reference to section 25B, as in force before its repeal by the *Crimes Legislation Amendment Act 2014*.
- (7) In this section—

related offence means—

- (a) an offence under section 26 of conspiring to commit an offence under section 25B, or
- (b) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence against section 25B, or
- (c) an offence under section 28 of conspiring to commit an offence under a provision of a law that corresponds to section 25B, or
- (d) an offence under section 28 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence under a provision of a law that corresponds to section 25B, or
- (e) an offence under section 43B that is committed if a corporation commits a corporate offence and the corporate offence is an offence under section 25B.

Schedule 1

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

Prohibited plant or prohibited drug	Column 1	Column 2	Column 3	Column 4	C
	Traffickable quantity	Small quantity	Indictable quantity	Commercial quantity	LC
Acetorphine	3.0g	1.0g	5.0g	0.5kg	2
Acetyl-alpha-methylfentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0
N-acetylamphetamine	3.0g	1.0g	5.0g	250.0g	1
Acetyldihydrocodeine	15.0g	5.0g	25.0g	2.5kg	1
Acetylmethadol	3.0g	1.0g	5.0g	0.5kg	2
N-acetylmethylamphetamine	3.0g	1.0g	5.0g	250.0g	1
N-(1-adamantyl)-1-pentyl-indazole-3-carboxamide (APINACA or AKB48)	30g	10g	50g	1kg	4
Alfentanil	0.0075g	0.0025g	0.0125g	0.00125kg	0
Allylprodine	3.0g	1.0g	5.0g	0.5kg	2
Alpha-acetylmethadol	3.0g	1.0g	5.0g	0.5kg	2
Alphameprodine	0.3g	0.1g	0.5g	0.05kg	0
Alphamethylfentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0
Alpha-methylthiofentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0
Alphaprodine	37.5g	12.5g	62.5g	6.25kg	2
Alpha-pyrrolidinovalerophenone (alpha-PVP)	3g	1g	5g	0.5kg	2
Alprazolam	15g	5g	25g	1.25kg	5
N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (AB-CHMINACA)	30g	10g	50g	1kg	4
N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (AB-PINACA)	30g	10g	50g	1kg	4
N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (AB-FUBINACA)	30g	10g	50g	1kg	4
2-aminoindane	3g	1g	5g	0.5kg	2
6-(2-aminopropyl)benzofuran (6-APB)	3g	1g	5g	0.5kg	2
5-(2-aminopropyl)indan	3g	1g	5g	0.25kg	1

Amphetamine	3.0g	1.0g	5.0g	250.0g	1
Amylobarbitone	30.g	10.0g	50.0g	5.0kg	2
Anabolic and androgenic steroidal agents, other than in implant preparations for use in animals	500g	50g	750g	5kg	–
Anileridine	3.0g	1.0g	5.0g	0.25kg	1
Atamestane	500g	50g	750g	5kg	–
Benzethidine	15.0g	5.0g	25.0g	2.5kg	1
Benzylmorphine (3-benzylmorphine)	7.5g	2.5g	12.5g	1.25kg	5
1-Benzylpiperazine	3.0g	1.0g	5.0g	0.25kg	1
Beta-hydroxyfentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0
Beta-hydroxy-3-methylfentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0
Betameprodine	7.5g	2.5g	12.5g	1.25kg	5
Betaprodine	7.5g	2.5g	12.5g	1.25kg	5
Bezitramide	7.5g	2.5g	12.5g	1.25kg	5
Bolandiol	500g	50g	750g	5kg	–
Bolasterone	500g	50g	750g	5kg	–
Bolazine	500g	50g	750g	5kg	–
Boldenone	500g	50g	750g	5kg	–
Bolenol	500g	50g	750g	5kg	–
4-Bromo-2,5-dimethoxyamphetamine	15 DDU or 0.075g	4 DDU or 0.02g	25 DDU or 0.125g	0.0125kg	0
4-Bromo-3,5-dimethoxyamphetamine	15 DDU or 0.075g	4 DDU or 0.02g	25 DDU or 0.125g	0.0125kg	0
4-Bromo-2,5-dimethoxyphenethylamine	15 DDU or 0.3g	4 DDU or 0.08g	25 DDU or 0.5g	0.025kg	0
3-Bromo-4-methoxyamphetamine	15 DDU or 0.075g	4 DDU or 0.02g	25 DDU or 0.125g	0.0125kg	0
4-Bromo-3-methoxyamphetamine	15 DDU or 0.075g	4 DDU or 0.02g	25 DDU or 0.125g	0.0125kg	0
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
Buprenorphine	12g	4g	20g	2kg	8
1,4-Butanediol	30.0g	10.0g	50.0g	1.0kg	4
Butobarbitone	30.0g	10.0g	50.0g	5.0kg	2

Butorphanol	3.0g	1.0g	5.0g	0.25kg	1
1-Butyl-3-(1-naphthoyl)indole (JWH-073)	3.0g	1.0g	5.0g	0.5kg	2
Calusterone	500g	50g	750g	5kg	–
Cannabis leaf (excluding any exception listed under the matter relating to Tetrahydrocannabinol and its alkyl homologues)	300.0g	30.0g	1 000.0g	25.0kg	1
Cannabis oil (excluding any exception listed under the matter relating to Tetrahydrocannabinol and its alkyl homologues)	5.0g	2.0g	10.0g	500.0g	2
Cannabis plant cultivated by enhanced indoor means	—	5	50	50	2
Cannabis plant—other	—	5	50	250	1
Cannabis resin	30.0g	5.0g	90.0g	2.5kg	1
[3-(3-carbamoylphenyl)phenyl] N-cyclohexylcarbamate (URB-597)	30g	10g	50g	1kg	4
Carfentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0
Cathinone	3.0g	1.0g	5.0g	0.5kg	2
Chlorandrostenolone	500g	50g	750g	5kg	–
1-Chloro-1-phenyl-2-aminopropane	3.0g	1.0g	5.0g	0.25kg	1
1-Chloro-1-phenyl-2-methylamino-propane	3.0g	1.0g	5.0g	0.25kg	1
1-(3-Chlorophenyl)-piperazine	3.0g	1.0g	5.0g	0.25kg	1
Clonitazene	7.5g	2.5g	12.5g	1.25kg	5
Clostebol	500g	50g	750g	5kg	–
Coca leaf	30.0g	5.0g	90.0g	2.5kg	1
Cocaine	3.0g	1.0g	5.0g	250.0g	1
Codeine	15.0g	5.0g	25.0g	2.5kg	1
Codeine-N-oxide	15.0g	5.0g	25.0g	2.5kg	1
Codoxime	15.0g	5.0g	25.0g	2.5kg	1
Concentrate of poppy straw	30.0g	10.0g	50.0g	2.5kg	1
4-Cyano-2-dimethyl-amino-4,4-diphenyl-butane (methadone intermediate)	3.0g	1.0g	5.0g	0.5kg	2
4-Cyano-1-methyl-4-phenylpiperidine (pethidine intermediate A)	3.0g	1.0g	5.0g	0.25kg	1
Cyclobarbitone	30.0g	10.0g	50.0g	5.0kg	2
Cyclohexyl-[1,1-biphenyl]-3-ylcarbamate (URB-602)	30g	10g	50g	1kg	4
1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (RCS-8)	30g	10g	50g	1kg	4
Danazol	500g	50g	750g	5kg	–

Desomorphine	3.0g	1.0g	5.0g	0.5kg	2
Desoxypipradrol (2-DPMP)	3g	1g	5g	0.5kg	2
Dexamphetamine	3.0g	1.0g	5.0g	250.0g	1
Dextromoramide	3.0g	1.0g	5.0g	0.5kg	2
Dextropropoxyphene	30.0g	10.0g	50.0g	2.5kg	1
Diamorphine—see heroin					
Diampromide	7.5g	2.5g	12.5g	1.25kg	5
Diethylthiambutene	7.5g	2.5g	12.5g	1.25kg	5
N,N-Diethyltryptamine	3.0g	1.0g	5.0g	0.5kg	2
Difenoxin	0.6g	0.2g	1.0g	0.1kg	0
Dihydrocodeine	15.0g	5.0g	25.0g	2.5kg	1
Dihydrolone	500g	50g	750g	5kg	–
Dihydromorphine	15.0g	5.0g	25.0g	2.5kg	1
Dimenoxadol	15.0g	5.0g	25.0g	2.5kg	1
Dimepheptanol	15.0g	5.0g	25.0g	2.5kg	1
Dimethandrostanolone	500g	50g	750g	5kg	–
2,4-Dimethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
2,5-Dimethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
3,4-Dimethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
2,5-Dimethoxy-4-bromoamphetamine (DOB)	15 DDU or 0.075g	4 DDU or 0.02g	25 DDU or 0.125g	0.0125kg	0
3,4-Dimethoxy-5-ethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
2,5-Dimethoxy-4-ethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
4,5-Dimethoxy-2-ethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
2,5-Dimethoxy-4-ethylamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
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

Dimethylthiambutene	30.0g	10.0g	50.0g	5.0kg	2
2,3-Dimethoxy-4,5-methylenedioxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
2,5-Dimethoxy-3,4-methylenedioxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
2-(2,5-dimethoxy-4-methylphenyl)-N- [(2-methoxyphenyl)methyl]ethanamine (25D-NBOMe)	15 DDU or 0.003g	4DDU or 0.0008g	25 DDU or 0.005g	0.0005kg	0
3,4-Dimethoxyphenylethylamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
N, N-Dimethylamphetamine	3.0g	1.0g	5.0g	0.25kg	1
1,3-dimethylamylamine (DMAA or methylhexanamine)	3g	1g	5g	0.5kg	2
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
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP 47, 497)	3.0g	1.0g	5.0g	0.5kg	2
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (Cannabicyclohexanol or CP 47, 497 C8 Homologue)	3.0g	1.0g	5.0g	0.5kg	2
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
Dioxaphetyl butyrate	3.0g	1.0g	5.0g	0.5kg	2
Diphenoxylate	3.0g	1.0g	5.0g	0.5kg	2
Dipipanone	15.0g	5.0g	25.0g	2.5kg	1
Dronabinol (Delta-9-tetrahydrocannabinol)	0.6g	0.2g	1.0g	0.1kg	0
Drostanolone	500g	50g	750g	5kg	-
Drotebanol	3.0g	1.0g	5.0g	0.25kg	1
Ecgonine and its esters and derivatives which are convertible to ecgonine and cocaine	3.0g	1.0g	5.0g	250.0g	1
Enestebol	500g	50g	750g	5kg	-
Ephedrine	15.0g	5.0g	25.0g	1.25kg	5
Epitiostanol	500g	50g	750g	5kg	-
Ergotamine	0.3g	0.1g	0.5g	0.025kg	0
Erythroxyton species	30.0g	5.0g	90.0g	2.5kg	1
Ethylamphetamine	3.0g	1.0g	5.0g	250.0g	1
Ethyldienolone	500g	50g	750g	5kg	-

4,5-Ethylenedioxy-3-methoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.5kg	2
N-Ethyl-3,4-methylenedioxyamphetamine	0.75g	0.25g	1.25g	0.125kg	0
Ethylmethylthiambutene	15.0g	5.0g	25.0g	2.5kg	1
Ethylmorphine	3.0g	1.0g	5.0g	0.5kg	2
Ethylloestrenol	500g	50g	750g	5kg	-
N-Ethyl-1-phenylcyclohexylamine	3.0g	1.0g	5.0g	0.25kg	1
Etonitazene	7.5g	2.5g	12.5g	1.25kg	5
Etorphine	7.5g	2.5g	12.5g	1.25kg	5
Etoxidine	7.5g	2.5g	12.5g	1.25kg	5
Fenethylamine	3.0g	1.0g	5.0g	0.5kg	2
Fentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0
Flunitrazepam	0.6g	0.2g	1g	0.1kg	0
Fluoromethylamphetamine	3g	1g	5g	0.5kg	2
1-(5-fluoropentyl)-3-(1-adamantylamido)indole (STS-135)	30g	10g	50g	1kg	4
[1-(5-fluoropentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (XLR-11)	30g	10g	50g	1kg	4
1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM-694)	30g	10g	50g	1kg	4
1-(5-fluoropentyl)-3-(4-methyl-1-naphthoyl)indole (MAM-2201)	30g	10g	50g	1kg	4
1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM-2201)	30g	10g	50g	1kg	4
Fluoxymesterone	500g	50g	750g	5kg	-
Formebolone	500g	50g	750g	5kg	-
N-formylamphetamine	3.0g	1.0g	5.0g	250.0g	1
N-formylmethylamphetamine	3.0g	1.0g	5.0g	250.0g	1
Furazabol	500g	50g	750g	5kg	-
Furethidine	1.5g	0.5g	2.5g	0.25kg	1
Gamma butyrolactone	30.0g	10.0g	50.0g	1.0kg	4
Harmaline	15 DDU or 0.003g	4 DDU or 0.0008g	25 DDU or 0.005g	0.0005kg	0
Harmine	15 DDU or 0.003g	4 DDU or 0.0008g	25 DDU or 0.005g	0.0005kg	0
Heroin	3.0g	1.0g	5.0g	250.0g	1

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
1-hexyl-3-(1-naphthoyl)indole (JWH-019)	30g	10g	50g	1kg	4
Hydrocodone	3.0g	1.0g	5.0g	0.5kg	2
Hydromorphanol	3.0g	1.0g	5.0g	0.5kg	2
Hydromorphone	3.0g	1.0g	5.0g	0.5kg	2
4-Hydroxybutanoic acid	30.0g	10.0g	50.0g	1.0kg	4
9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (HU-210)	30g	10g	50g	1kg	4
N-Hydroxy-3,4-methylenedioxyamphetamine	0.75g	0.25g	1.25g	0.125kg	0
Hydroxypethidine	7.5g	5.0g	12.5g	1.25kg	5
Hydroxystenozol	500g	50g	750g	5kg	-
P-Iodo-N-isopropyl-amphetamine	3.0g	1.0g	5.0g	0.25kg	1
Isomethadone	3.0g	1.0g	5.0g	0.5kg	2
Ketamine	7.5g	2.5g	12.5g	1.25kg	5
Ketobemidone	3.0g	1.0g	5.0g	0.5kg	2
Levamphetamine	3.0g	1.0g	5.0g	0.25kg	1
Levomethamphetamine	3.0g	1.0g	5.0g	0.25kg	1
Levomethorphan	3.0g	1.0g	5.0g	0.5kg	2
Levomoramide	3.0g	1.0g	5.0g	0.5kg	2
Levophenacymorphan	3.0g	1.0g	5.0g	0.5kg	2
Levorphanol	1.5g	0.5g	2.5g	0.25kg	1
Lisdexamfetamine	3.0g	1.0g	5.0g	0.25kg	1
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
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
Mebolazine	500g	50g	750g	5kg	-
Mecloqualone	75.0g	25.0g	125.0g	12.5kg	5
Mepitiostane	500g	50g	750g	5kg	-
Mesabolone	500g	50g	750g	5kg	-
Mescaline	15 DDU or 11.25g	4 DDU or 3.0g	50 DDU or 18.75g	1.875kg	7

Mestanolone	500g	50g	750g	5kg	-
Mesterolone	500g	50g	750g	5kg	-
Metazocine	10.5g	3.5g	17.5g	1.75kg	7
Methadone except in oral liquid form	3.0g	1.0g	5.0g	0.5kg	2
Methadone in oral liquid form	600ml	200ml	1L	100L	4
Methandienone	500g	50g	750g	5kg	-
Methandriol	500g	50g	750g	5kg	-
Methaqualone	75.0g	25.0g	125.0g	12.5kg	5
Methcathinone	3.0g	1.0g	5.0g	0.5kg	2
Methenolone	500g	50g	750g	5kg	-
Methiopropamine	3g	1g	5g	0.5kg	2
Methorphan	3.0g	1.0g	5.0g	0.25kg	1
Methoxetamine	7.5g	2.5g	12.5g	1.25kg	5
4-Methoxyamphetamine (also known as Paramethoxyamphetamine)	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
N-(2-methoxybenzyl)-2,5-dimethoxy-4-bromophenethylamine (25B-NBOMe)	15 DDU or 0.003g	4DDU or 0.0008g	25 DDU or 0.005g	0.0005kg	0
N-(2-methoxybenzyl)-2,5-dimethoxy-4-chlorophenethylamine (25C-NBOMe)	15 DDU or 0.003g	4DDU or 0.0008g	25 DDU or 0.005g	0.0005kg	0
N-(2-methoxybenzyl)-2,5-dimethoxy-4-iodophenethylamine (25I-NBOMe)	15 DDU or 0.003g	4DDU or 0.0008g	25 DDU or 0.005g	0.0005kg	0
4-Methoxymethylamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
2-Methoxy-3,4-methylenedioxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
2-Methoxy-4,5-methylenedioxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
3-Methoxy-4,5-methylenedioxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
4-Methoxy-2,3-methylenedioxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
5-Methoxy-3,4-methylenedioxyamphetamine (MMDA)	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.5kg	2
2-Methoxy-3,4-methylenedioxyphenylethylamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1

3-Methoxy-4,5-methylenedioxyphenylethylamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
1-(3-methoxy-4,5-methylenedioxyphenyl)-2-propanamine	0.75g	0.25g	1.25g	0.125kg	0
4-methoxyphenyl(1butyl-1H-indol-3-yl)-methanone (RCS-4 (C4))	3g	1g	5g	0.5kg	2
4-Methoxyphenylethylamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
2-(4-methoxyphenyl)-1-(1-pentyl-1h-indol-3-yl)-ethanone (JWH 201)	30g	10g	50g	1kg	4
2-(2-Methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone (JWH-250)	3.0g	1.0g	5.0g	0.5kg	2
2-(3-methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone (JWH302)	30g	10g	50g	1kg	4
1-(4-Methoxyphenyl)-piperazine	3.0g	1.0g	5.0g	0.25kg	1
Methylamphetamine	3.0g	1.0g	5.0g	0.25kg	0
Methylclostebol	500g	50g	750g	5kg	-
Methyl-desorphone	3.0g	1.0g	5.0g	0.5kg	2
Methyldihydromorphine	3.0g	1.0g	5.0g	0.5kg	2
5,6-methylenedioxy-2-aminoindane (MDAI)	3g	1g	5g	0.5kg	2
3,4-Methylenedioxyamphetamine	0.75g	0.25g	1.25g	0.125kg	0
3,4-methylenedioxymethcathinone (methylone)	3g	1g	5g	0.5kg	2
3,4-Methylenedioxymethylamphetamine	0.75g	0.25g	1.25g	0.125kg	0
3,4-Methylenedioxy-phenyl-2-propanone	0.75g	0.25g	1.25g	0.125kg	0
3,4-methylenedioxypropylvalerone (MDPV)	3g	1g	5g	0.5kg	2
4-methylethylcathinone (4-MEC)	3g	1g	5g	0.5kg	2
3-Methylfentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0
N-Methyl-1-(3,4-methylenedioxyphenyl)-butanamine	0.75g	0.25g	1.25g	0.125g	0
N-Methyl-1-(3,4-methylenedioxyphenyl)-2-butanamine	0.75g	0.25g	1.25g	0.125g	0
2-Methyl-3-morpholino-1,1-diphenylpropane carboxylic acid (Moramide intermediate)	3.0g	1.0g	5.0g	0.25kg	1
Methylphenidate	3.0g	1.0g	5.0g	0.5kg	2
1-Methyl-4-phenylpiperidine-4-carboxylic acid (Pethidine intermediate C)	3.0g	1.0g	5.0g	0.25kg	1
1-Methyl-4-phenyl-4-propionoxypiperidine	3.0g	1.0g	5.0g	0.25kg	1
1-[(N-methylpiperidin-2-yl)methyl]3-(1-adamantoyl)indole (AM-1248)	30g	10g	50g	1kg	4

1-[(N-methylpiperidin-2-yl)methyl]3-(2-iodobenzoyl) indole (AM-2233)	30g	10g	50g	1kg	4
1-[(N-methylpiperidin-2-yl)methyl]3-(4-methyl-1-naphthoyl)indole (MAM-1220)	30g	10g	50g	1kg	4
1-[(N-methylpiperidin-2-yl)methyl]3-(1-naphthoyl)indole (AM-1220)	30g	10g	50g	1kg	4
Methyltestosterone	500g	50g	750g	5kg	-
4-Methylthioamphetamine	3.0g	1.0g	5.0g	0.25kg	1
3-Methylthiofentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0
Methyltrienolone	500g	50g	750g	5kg	-
Metopon	3.0g	1.0g	5.0g	0.5kg	2
Metribolone	500g	50g	750g	5kg	-
Mibolerone	500g	50g	750g	5kg	-
Monoacetylmorphine	3.0g	1.0g	5.0g	0.25kg	1
6-Monoacetylmorphine and other acetylated derivatives of morphine	3.0g	1.0g	5.0g	0.25kg	1
Moramide	3.0g	1.0g	5.0g	0.5kg	2
Morphan	3.0g	1.0g	5.0g	0.25kg	1
Morpheridine	3.0g	1.0g	5.0g	0.5kg	2
Morphine	3.0g	1.0g	5.0g	0.25kg	1
Morphine methobromide	3.0g	1.0g	5.0g	0.25kg	1
Morphine-N-oxide	3.0g	1.0g	5.0g	0.25kg	1
1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200)	3.0g	1.0g	5.0g	0.5kg	2
Myrophine	30.0g	10.0g	50.0g	5.0kg	2
Nabilone	0.6g	0.2g	1.0g	0.1kg	0
Nandrolone	500g	50g	750g	5kg	-
Naphthylpyrovalerone (Naphyrone)	3g	1g	5g	0.5kg	2
Nicocodine	3.0g	1.0g	5.0g	0.5kg	2
Nicodicodine	3.0g	1.0g	5.0g	0.5kg	2
Nicomorphine	3.0g	1.0g	5.0g	0.5kg	2
Noracylmethadol	3.0g	1.0g	5.0g	0.5kg	2
Norandrostenolone	500g	50g	750g	5kg	-
Norbolethone	500g	50g	750g	5kg	-

Norclostebol	500g	50g	750g	5kg	-
Norcodeine	3.0g	1.0g	5.0g	0.5kg	2
Norethandrolone	500g	50g	750g	5kg	-
Norlevorphanol	3.0g	1.0g	5.0g	0.5kg	2
Normethadone	7.5g	2.5g	12.5g	1.25kg	5
Normethandrone	500g	50g	750g	5kg	-
Normorphine	30.0g	10.0g	50.0g	5.0kg	2
Norpipanone	15.0g	5.0g	25.0g	2.5kg	1
Opium	30.0g	10.0g	50.0g	1.0kg	4
Ovandrotone	500g	50g	750g	5kg	-
Oxabolone	500g	50g	750g	5kg	-
Oxandrolone	500g	50g	750g	5kg	-
Oxycodone	7.5g	2.5g	12.5g	1.25kg	5
Oxymesterone	500g	50g	750g	5kg	-
Oxymetholone	500g	50g	750g	5kg	-
Oxymorphone	3.0g	1.0g	5.0g	0.5kg	2
Papaver somniferum and papaver orientale	30.0g	10.0g	50.0g	2.5kg	1
Parafluorofentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0
Pentazocine	15.0g	5.0g	25.0g	2.5kg	1
Pentobarbitone	30.0g	10.0g	50.0g	5.0kg	2
1-pentyl-3-(1-adamantoyl)indole (AB-001)	30g	10g	50g	1kg	4
1-pentyl-3-(4-chloro-1-naphthoyl)indole (JWH-398)	30g	10g	50g	1kg	4
1-pentyl-3-(2-chlorophenylacetyl)indole (JWH 203)	30g	10g	50g	1kg	4
1-pentyl-3-(4-ethyl-1-naphthoyl)indole (JWH 210)	30g	10g	50g	1kg	4
(1-pentylindol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144)	30g	10g	50g	1kg	4
1-pentyl-3-[(4-methoxy)-benzoyl]indole (RCS-4)	30g	10g	50g	1kg	4
1-pentyl-3-(2-methoxybenzoyl)indole (RCS-4 (2-methoxy isomer))	30g	10g	50g	1kg	4
1-pentyl-3-(4-methoxy-1-naphthoyl)indole (JWH-081)	30g	10g	50g	1kg	4
1-Pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122)	3.0g	1.0g	5.0g	0.5kg	2
1-Pentyl-3-(1-naphthoyl)indole (JWH-018)	3.0g	1.0g	5.0g	0.5kg	2

Pethidine	3.0g	1.0g	5.0g	0.25kg	1
Phenacymorphan	3.0g	1.0g	5.0g	0.25kg	1
Phenadoxone	15.0g	5.0g	25.0g	2.5kg	1
Phenampromide	15.0g	5.0g	25.0g	2.5kg	1
Phenazocine	1.5g	0.5g	2.5g	0.25kg	1
Phencyclidine	3.0g	1.0g	5.0g	250.0g	1
Phendimetrazine	7.5g	2.5g	12.5g	1.25kg	5
Phenmetrazine	7.5g	2.5g	12.5g	1.25kg	5
Phenomorphane	7.5g	2.5g	12.5g	1.25kg	5
Phenoperidine	1.5g	0.5g	2.5g	0.25kg	1
1-Phenyl-2-chloropropane	3.0g	1.0g	5.0g	0.25kg	1
1-(1-phenylcyclohexyl) pyrrolidine	3.0g	1.0g	5.0g	0.25kg	1
1-Phenylethyl-4-acetoxypiperidine	3.0g	1.0g	5.0g	0.25kg	1
1-Phenyl-2-nitropropene	3.0g	1.0g	5.0g	0.25kg	1
4-Phenylpiperidine-4-carboxylic acid ethyl ester (Pethidine intermediate B)	3.0g	1.0g	5.0g	0.25kg	1
1-Phenyl-2-propanol	3.0g	1.0g	5.0g	0.25kg	1
Phenylpropanolamine	15.0g	5.0g	25.0g	1.25kg	5
1-Phenyl-2-propanone	3.0g	1.0g	5.0g	0.25kg	1
1-Phenyl-2-propanone oxime	3.0g	1.0g	5.0g	0.25kg	1
Pholcodine	7.5g	2.5g	12.5g	1.25kg	5
Piminodine	15.0g	5.0g	25.0g	2.5kg	1
Piritramide	1.5g	0.5g	2.5g	0.25kg	1
Prasterone (dehydroepiandrosterone (dhea) or dehydroisoandrosterone (dhia))	500g	50g	750g	5kg	–
Pravadoline (WIN 48098)	30g	10g	50g	1kg	4
Proheptazine	1.5g	0.5g	2.5g	0.25kg	1
Prohibited plant, other than cannabis plant	—	5	50	250	1
Propertidine	37.5g	12.5g	62.5g	6.25kg	2
Propetandrol	500g	50g	750g	5kg	–
Propiram	3.0g	1.0g	5.0g	0.25kg	1
1-propyl-2-methyl-3-(1-naphthoyl)indole (JWH-015)	30g	10g	50g	1kg	4

Pseudoephedrine	15.0g	5.0g	25.0g	1.25kg	5
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	1
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	1
Quinalbarbitone	30.0g	10.0g	50.0g	5.0kg	2
Quinbolone	500g	50g	750g	5kg	-
Racemethorphan	3.0g	1.0g	5.0g	0.5kg	2
Racemoramide	3.0g	1.0g	5.0g	0.5kg	2
Racemorphan	3.0g	1.0g	5.0g	0.5kg	2
Remifentanil	0.3g	0.1g	0.5g	0.05kg	0
Roxibolone	500g	50g	750g	5kg	-
Secbutobarbitone	30.0g	10.0g	50.0g	5.0kg	2
Silandrone	500g	50g	750g	5kg	-
Stanolone	500g	50g	750g	5kg	-
Stanozolol	500g	50g	750g	5kg	-
Stenbolone	500g	50g	750g	5kg	-
Sufentanil	0.0075g	0.0025g	0.0125g	0.00125kg	0
Tapentadol	7.5g	2.5g	12.5g	1.25kg	5
Testolactone	500g	50g	750g	5kg	-
Testosterone, other than in implant preparations for use in animals	500g	50g	750g	5kg	-

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
- (c) in products for purposes other than internal human use containing 50 mg/kg or less of tetrahydrocannabinols, or
- (d) hemp seeds for human consumption containing 5mg/kg or less of tetrahydrocannabinols where the seeds have had their hulls removed and are non-viable, or
- (e) hemp seed oil for human consumption containing 10mg/kg or less of tetrahydrocannabinols, or
- (f) beverages made from hemp seeds if the beverage contains 0.2mg/kg or less of tetrahydrocannabinols

	3.0g	1.0g	5.0g	0.5kg	2
2,3,4,5-Tetramethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
Thebacon	3.0g	1.0g	5.0g	0.5kg	2
Thebaine	3.0g	1.0g	5.0g	0.5kg	2
1-(1-(2-thienyl) cyclohexyl)-piperidine	3.0g	1.0g	5.0g	0.25kg	1
Thiofentanyl	0.0075g	0.0025g	0.0125g	0.00125kg	0
Thiomesterone	500g	50g	750g	5kg	–
Tilidine	3.0g	1.0g	5.0g	0.25kg	1
Trenbolone, other than in implant preparations for use in animals	500g	50g	750g	5kg	–
Trestolone	500g	50g	750g	5kg	–
1-(3-Trifluoromethylphenyl)-piperazine	3.0g	1.0g	5.0g	0.25kg	1
Trimeperidine	15.0g	5.0g	25.0g	2.5kg	1
2,3,4-Trimethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
2,3,5-Trimethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
2,3,6-Trimethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
2,4,5-Trimethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
2,4,6-Trimethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1

3,4,5-Trimethoxyamphetamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1
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
2,4,5-Trimethoxyphenylethylamine	15 DDU or 3.0g	4 DDU or 0.8g	25 DDU or 5.0g	0.25kg	1

Prohibited plant or prohibited drug

Any substance that is an analogue of a drug prescribed in this Schedule 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).

Schedule 2 Industry use defence substances

(Sections 35A and 44A)

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

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

Schedule 3 Savings, transitional and other 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.

3 Validation of amendments to Schedule 1

Any amendment made or purporting to have been made to Schedule 1 by a regulation made before the commencement of this clause is taken to be, and always to have been, validly made.

4 Testing of substances

Section 39CA, as inserted by the *Justice Legislation Amendment Act (No 2) 2018*, extends to a substance to which Part 3A applies that was in the custody of a member of the NSW Police Force on the commencement of that section.