Drug Misuse and Trafficking Regulation 2011

[2011-451]

New South Wales

Status Information

Currency of version

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

Provisions in force

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

Notes—

- **Repeal**
  This Regulation was repealed by sec 10(2) of the *Subordinate Legislation Act 1989* No 146 with effect from 1.9.2021.

Authorisation

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

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Drug Misuse and Trafficking Regulation 2011

New South Wales

Contents

Part 1 Preliminary 5

1 Name of Regulation 5

2 Commencement 5

3 Definitions 5

Part 2 Precursors and drug manufacture or production apparatus 5

4 Precursors and drug manufacture and production apparatus 5

5 Sales and storage of Schedule 1 precursors 6

6 Sales of Schedule 2 precursors 8

7 Sales of Schedule 3 apparatus 10

7A Liability of directors etc for offences by corporation—offences attracting executive liability 11

Part 3 Dealings with and analysis of drug exhibits 11

Division 1 Preliminary 11

8 Interpretation 11

9 Application of Part 11

10 Analysts 11

Division 2 Samples and analysis 12

11 Initial quantity or mass of substances to be recorded and certificate provided 12

12 Prohibited plants 12

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

14 Drugs of more than traffickable quantity and other substances 13

15 Drugs of less than traffickable quantity 13

16 Analysis of B sample 13
16A Carrying out of analysis 14
16B Analyst's certificate 15
16C Significant variations 15
16D Transport of substances for analysis 15

Division 3 Records, storage and security 15

16E Evidence of substances before destruction 15
16F NSW Police Force exhibits management system 16
16G Drug exhibit bags 16
16H Storage of drug exhibit bags 17

Division 4 Destruction of substances 17

16I Destruction of sample material 17
16J Inspection before destruction 17
16K Manner of destruction 18

Division 5 Evidentiary certificates 18

16L Evidentiary provision—NSW Police Force exhibits management system 18
16M Evidentiary provision—continuity evidence 18
16N Proof of signatures, appointments and approval for purposes of evidentiary certificates unnecessary 20

Part 4 Exemptions from provisions of Act 20

17 Exemption for Scene of Crime Officers 20
18 Exemption for LECC officers 20
18A Exemption for persons engaged to transport, store or destroy cannabis 20
19 Exemption for authorised persons participating in approved needle exchange program 21
20 Exemption for giving out information about approved needle exchange program 21
21 Exemption for pharmacists and staff 21

Part 5 Miscellaneous 22

22 Approval by Director-General of Department of Health of needle exchange programs 22
23 Prescribed service activity level for licensed injecting centre 22
24 Certificate evidence from interstate analysts 22
25 Savings 23

25A Transitional provision—Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016 23

Schedule 1 Precursors—section 24A and clause 5 23

Schedule 2 Precursors—section 24A and clause 6 25

Schedule 3 Drug manufacture or production apparatus—section 24A and clause 7

..... 26

Schedule 4 Precursors—section 24B 27

Drug Misuse and Trafficking Regulation 2011

New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Drug Misuse and Trafficking Regulation 2011*.

2 Commencement

This Regulation commences on 1 September 2011 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *Drug Misuse and Trafficking Regulation 2006* which is repealed on 1 September 2011 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation—

approved needle exchange program means a program approved by the Director-General of the Department of Health under clause 22.

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

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

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

Part 2 Precursors and drug manufacture or production apparatus

4 Precursors and drug manufacture and production apparatus

(1) The substances listed in Schedules 1 and 2 are specified as precursors for the purposes of section 24A of the Act.

(2) The types of apparatus listed in Schedule 3 are specified as drug manufacture apparatus for the purposes of section 24A of the Act.

(3) The substances listed in Column 1 of Schedule 4 are specified as precursors for the purposes of section 24B of the Act.

(4) The quantities specified in Column 2 of Schedule 4 in relation to the substances specified in Column 1 of that Schedule are prescribed for the purposes of section 24B of the Act.

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

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

Note—

The term ***substance*** is defined in section 3 (1) of the Act as including preparation and admixture and all salts, isomers, esters or ethers of any substance and all salts of those isomers, esters and ethers.

5 Sales and storage of Schedule 1 precursors

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

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

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

(c) has furnished the supplier with proof of the receiver's identity.

(2) A supplier must not supply any Schedule 1 precursor to a receiver until at least 24 hours after receiving the receiver's end user declaration and proof of the receiver's identity.

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

(a) the supplier, or

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

(4) A supplier who authorises in writing another person to have access to any Schedule 1 precursor must—

(a) make that authorisation available for inspection on request by a police officer during business hours, and

(b) keep a copy of the authorisation for at least 2 years after it ceases to have effect.

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

has recorded—

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

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

(6) Subclauses (1), (2), (4) and (5) do not apply to the supply of Ephedrine, Phenylpropanolamine or Pseudoephedrine or a salt of Ephedrine, Phenylpropanolamine or Pseudoephedrine if—

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

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

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

(7) A supplier must—

(a) make each end user declaration provided to the supplier by the receiver and each record made by the supplier under this clause available for inspection on request by a police officer during business hours, and

(b) keep each such declaration and record for at least 2 years.

(8) The only proof of identity that may be used for the purposes of this clause is—

(a) an Australian driver licence held by the receiver that displays a photograph of the receiver, or

(b) an Australian passport, or

(c) a Photo Card held by the receiver and issued under the *Photo Card Act 2005*.

(9) In this clause—

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

(a) the name and address of the receiver,

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

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

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

(e) the intended use for the Schedule 1 precursor.

relevant therapeutic goods laws means—

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

(b) the regulations under that Act, and

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

Schedule 1 precursor means any of the following substances—

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

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

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

Note—

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

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

Maximum penalty—

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

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

6 Sales of Schedule 2 precursors

(1) A person (***supplier***) must not supply any Schedule 2 precursor to a person (***receiver***) unless the receiver has furnished the supplier with proof of the receiver's identity and—

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

(b) the receiver has provided the supplier with an end user declaration.

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

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

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

(3) A supplier must—

(a) make each end user declaration provided to the supplier by the receiver and each record made by the supplier under this clause available for inspection on request by a police officer during business hours, and

(b) keep each such declaration and record for at least 2 years.

(4) The only proof of identity that may be used for the purposes of this clause is—

(a) an Australian driver licence held by the receiver that displays a photograph of the receiver, or

(b) an Australian passport, or

(c) a Photo Card held by the receiver and issued under the *Photo Card Act 2005*.

(5) In this clause—

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

(a) the name and address of the receiver,

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

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

(d) the intended use for the Schedule 2 precursor.

Schedule 2 precursor means any substance listed in Schedule 2, but does not include a preparation, admixture, salt, isomer, ester or ether of such a substance or a salt of such an isomer, ester or ether.

Maximum penalty—

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

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

7 Sales of Schedule 3 apparatus

(1) A person (***supplier***) must not supply any Schedule 3 apparatus to a person (***receiver***) unless the receiver has furnished the supplier with proof of the receiver's identity and—

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

(b) the receiver has provided the supplier with an end user declaration.

(2) A supplier must not supply any Schedule 3 apparatus to a person unless the supplier has recorded—

(a) the name and quantity of the Schedule 3 apparatus supplied, and

(b) the date of supply of the Schedule 3 apparatus from the supplier's premises.

(3) A supplier must—

(a) make each end user declaration provided to the supplier by the receiver and each record made by the supplier under this clause available for inspection on request by a police officer during business hours, and

(b) keep each such declaration and record for at least 2 years.

(4) The only proof of identity that may be used for the purposes of this clause is—

(a) an Australian driver licence held by the receiver that displays a photograph of the receiver, or

(b) an Australian passport, or

(c) a Photo Card held by the receiver and issued under the *Photo Card Act 2005*.

(5) In this clause—

end user declaration means a document, completed by a proposed receiver of any Schedule 3 apparatus, that specifies the following—

(a) the name and address of the receiver,

(b) details of the receiver's proof of identity furnished to the supplier concerned,

(c) the name and quantity of the Schedule 3 apparatus to be supplied,

(d) the intended use for the Schedule 3 apparatus.

Schedule 3 apparatus means any apparatus listed in Schedule 3.

Maximum penalty—

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

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

7A Liability of directors etc for offences by corporation—offences attracting executive liability

An offence against clause 5, 6 or 7 is prescribed as an offence to which section 43A of the Act applies.

Note—

An offence against clause 5, 6 or 7 committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 43A of the Act.

Part 3 Dealings with and analysis of drug exhibits

Division 1 Preliminary

8 Interpretation

(1) In this Part—

A sample—see clause 14 (2).

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

B sample—see clause 16 (2).

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

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

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

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

9 Application of Part

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

10 Analysts

For the purposes of the definition of ***analyst*** in section 3 (1) of the Act, a person who is an

analyst (however described) under a law of another State or Territory that corresponds to the Act is an analyst.

Division 2 Samples and analysis

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

(1) As soon as practicable after a substance to which this Part applies first comes into the custody of any member of the NSW Police Force, and before any samples are taken for analysis, an approved member of the NSW Police Force must record the quantity or mass of the substance (the ***initial quantity or mass***) or provide the substance to an analyst for that purpose.

(2) The member of the NSW Police Force or analyst must give a certificate as to the initial quantity or mass of a substance and must cause a copy of the certificate to be served on the defendant or accused person in any proceedings under the Act relating to the substance.

(3) In any legal proceedings under the Act, the production of a certificate, purporting to be signed by an approved member of the NSW Police Force or analyst, is prima facie evidence of the quantity or mass of the substance and the matters stated in it.

(4) Subclause (3) does not apply if an order for the determination of the mass of the substance is made under section 39M of the Act.

(5) In any legal proceedings under the Act, the production of a certificate, purporting to be signed by a person who determined the mass of a substance in accordance with a quantity review order under section 39M of the Act, is prima facie evidence of the mass of the substance and the matters stated in it.

12 Prohibited plants

(1) As soon as practicable after plants to which this Part applies first come into the custody of any member of the NSW Police Force, a qualified plant identifier or an analyst must be given access to or provided with an amount of the plants that is sufficient to allow their identification.

(2) The following persons are prescribed for the purposes of section 39H of the Act—

(a) a person who is an analyst,

(b) a person approved by the Secretary of the Department of Industry, Skills and Regional Development for the purposes of identifying whether or not plants are prohibited plants.

Note—

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

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

(1) An amount of a substance to which this Part applies (other than a plant) that is sufficient to allow for 3 times the amount required for 2 samples for analysis must, if practicable, be retained by—

(a) a member of the NSW Police Force, or

(b) an analyst (if the bulk of the substance is provided to the analyst).

(2) An amount of a substance that is required to be provided to an analyst under this Part is to be provided by an approved member of the NSW Police Force.

Note—

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

14 Drugs of more than traffickable quantity and other substances

(1) This clause applies to the following substances—

(a) a Schedule 9 substance,

(b) a psychoactive substance,

(c) a prohibited drug, or suspected prohibited drug, if the quantity of the drug is not less than the traffickable quantity for the drug.

(2) As soon as reasonably practicable after a substance to which this clause applies first comes into the custody of a member of the NSW Police Force, an amount that is sufficient to allow analysis of the substance must be provided to an analyst for analysis (an ***A sample***) from the amount retained under clause 13.

(3) A sample of a substance is not required to be provided under this clause if the substance is to be destroyed under section 39G or 39L of the Act or if an analyst has already retained an amount of the substance under clause 13.

15 Drugs of less than traffickable quantity

(1) This clause applies to a substance that is a prohibited drug, or suspected prohibited drug, if the quantity of the substance is less than the traffickable quantity for the substance.

(2) As soon as reasonably practicable after it is known that the identity of a substance to which this clause applies is to be in dispute in proceedings for an offence, the substance must be provided to an analyst for analysis.

16 Analysis of B sample

(1) This clause applies to the following—

(a) a substance that is a prohibited drug or suspected prohibited drug, if the quantity of the substance is not less than the traffickable quantity for the substance,

(b) a Schedule 9 substance or a psychoactive substance, if a sufficient amount has been retained.

(2) A defendant or an accused person in proceedings for an offence relating to a substance to which this clause applies may request that an analysis be made of a further sample (a ***B sample***) of the substance.

(3) The request is to be made by notice in writing to a qualified police officer not later than 28 days after a certificate of analysis of the A sample of the substance is served on the defendant or accused person.

(4) The defendant or accused person may in the notice request—

(a) that the analysis of the B sample be witnessed by a nominated person, or

(b) that the analysis be carried out by a nominated analyst who is of a class of approved analysts.

(5) The qualified police officer is to arrange for an amount that is sufficient to allow analysis of the B sample to be provided to an analyst for analysis.

(6) The analyst is to provide a copy of the results of the analysis to the qualified police officer who arranged for the analysis and to the defendant or accused person who requested it.

(7) The cost of the analysis is to be borne by the defendant or accused person.

16A Carrying out of analysis

(1) An analyst to whom a substance is given for analysis under this Part may carry out an analysis of the substance to determine whether it is a prohibited drug, Schedule 9 substance or psychoactive substance and, if it is, to determine—

(a) the identity of the substance, and

(b) the quantity or mass of the substance, and

(c) if the substance is a prohibited drug of or more than the commercial quantity, the purity of the substance, if it is capable of being tested and it is reasonably practicable to do so.

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

16B Analyst's certificate

An analyst who analyses a substance under this Part may prepare a certificate under section 43 (1) of the Act of the result of the analysis that includes the following—

(a) the identity of the substance,

(b) the quantity or mass of the substance,

(c) if the substance is a prohibited drug of not less than the commercial quantity, the purity of the substance, if it is capable of being tested and it is reasonably practicable to do so.

16C Significant variations

If a difference occurs between the findings recorded in 2 or more certificates of any analyst concerning the same drug exhibit and the analyst providing the later or latest certificate is of the opinion that the difference is significant, that analyst must immediately forward a copy of all certificates relating to the drug exhibit to the Director of Public Prosecutions.

16D Transport of substances for analysis

(1) A substance that is being provided to a qualified plant identifier or an analyst for identification or analysis may be transported to the qualified plant identifier or analyst by an approved courier, if the plant or substance is contained in a drug exhibit bag.

(2) An approved courier who transports or delivers a substance in accordance with the Act or this Part is exempt from the provisions of the Act relating to the possession or supply of the substance to the extent necessary to enable the courier to carry out those functions.

Division 3 Records, storage and security

16E Evidence of substances before destruction

(1) For the purposes of sections 39G (3), 39I (3) and 39K (1) (c) of the Act, the following particulars must be recorded in relation to a substance (other than a plant)—

(a) a photograph of the substance,

(b) the mass of the substance.

(2) For the purposes of sections 39G (3), 39H (b) and 39K (1) (c) of the Act, the following particulars must be recorded in relation to a substance that is a plant—

(a) a photograph of the plant,

(b) if practicable, the height of the plant,

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

16F NSW Police Force exhibits management system

(1) As soon as practicable after the first occasion on which a substance to which this Part applies comes into the custody of any member of the NSW Police Force, the particulars of the substance must be entered into the NSW Police Force exhibits management system in accordance with the requirements of that system.

(2) The following must also be entered into the NSW Police Force exhibits management system in accordance with the requirements of that system—

(a) particulars of any occasion on which a drug exhibit bag that is in the custody of a member of the NSW Police Force and that contains a substance to which this Part applies is opened after being sealed,

(b) particulars of any change in identification details or location of a drug exhibit bag that is in the custody of a member of the NSW Police Force, or is transported to a qualified plant identifier or an analyst for the purposes of this Part, and that contains a substance to which this Part applies (whether transport of the bag is provided by a member of the NSW Police Force or by an approved courier),

(c) particulars of the receipt of any such bag.

16G Drug exhibit bags

(1) A substance to which this Part applies is to be placed in a drug exhibit bag as soon as practicable after the substance first comes into the custody of any member of the NSW Police Force.

(2) The drug exhibit bag must be sealed and labelled in the approved manner.

(3) The label must—

(a) contain the name of the member of the NSW Police Force in charge of the investigation to which the exhibit relates and the name of the person who sealed the bag, and

(b) contain the date, time, offender’s name (if known) and the registered number of the exhibit, and

(c) be signed by the person who sealed the bag.

(4) Particulars of the issue of each drug exhibit bag, and of drug exhibit bags containing a substance to which this Part applies, are to be recorded in approved registers.

(5) A sealed drug exhibit bag may be opened before analysis only if—

(a) a qualified police officer (or a delegate of a qualified police officer) who is of the

opinion that exceptional circumstances warrant the action being taken approves the action in writing, or

(b) access is required by a member of the NSW Police Force for weighing, presumptive testing or taking a sample.

(6) A sealed drug exhibit bag that is opened before analysis must be opened in the presence of the person who requires access to the substance, the member of the NSW Police Force in charge of the investigation to which the exhibit relates or the case exhibit officer.

16H Storage of drug exhibit bags

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

(a) in a locked vault or cabinet that has a dual locking mechanism that requires at least 2 separate keys to unlock it, or

(b) in an approved facility.

Division 4 Destruction of substances

16I Destruction of sample material

(1) A part of any substance given to an analyst for analysis under this Part that is not required for the analysis, or a sample for which a certificate of analysis has been given under this Part, may be destroyed with the authority of an Executive Director or a nominated Director of the Forensic and Analytical Science Service of the Ministry of Health.

(2) A qualified police officer may order in writing that a part of any substance retained under this Part, for which analysis is not carried out under this Part, be destroyed at any time after the end of any relevant proceedings for an offence relating to the substance.

(3) In this clause, the ***end of any relevant proceedings*** includes the end of any appeal proceedings or, if no appeal is made, the end of the period within which an appeal may be made.

16J Inspection before destruction

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

16K Manner of destruction

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

(a) a police officer of or above the rank of inspector,

(b) an independent witness,

(c) a member of the NSW Police Force who is capable of identifying the exhibit being destroyed as the substance ordered to be destroyed.

Division 5 Evidentiary certificates

16L Evidentiary provision—NSW Police Force exhibits management system

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

16M Evidentiary provision—continuity evidence

(1) In any proceedings for an offence against the Act, the production of all of the following certificates is prima facie evidence that a substance (other than a prohibited drug, or suspected prohibited drug, of less than the traffickable quantity) retained by a member of the NSW Police Force was the same substance that was analysed under this Part, if each certificate identifies the same drug exhibit bag—

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

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

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

(2) In any proceedings for an offence against the Act, the production of all of the following certificates is prima facie evidence that a substance (other than a prohibited drug, or suspected prohibited drug, of less than the traffickable quantity) retained by a member of the NSW Police Force was the same substance that was analysed under

this Part, if each certificate identifies the same drug exhibit bag or another drug exhibit bag into which the substance was placed (as referred to in one of the certificates)—

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

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

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

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

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

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

(3) In any proceedings for an offence against the Act, the production of all of the following certificates is prima facie evidence that a prohibited drug or suspected prohibited drug of less than the traffickable quantity retained by a member of the NSW Police Force was the same substance that was analysed under this Part, if each certificate identifies the same drug exhibit bag—

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

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

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

(ii) was or was not opened by the member, and

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

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

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

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

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

Part 4 Exemptions from provisions of Act

17 Exemption for Scene of Crime Officers

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

18 Exemption for LECC officers

(1) An officer of the LECC is exempt from the provisions of sections 10, 23 (1) and (2) and 25 (1) and (2) of the Act in relation to every prohibited plant or prohibited drug to the extent necessary to enable the officer to carry out his or her duties as such an officer.

(2) In this clause, ***officer of the LECC*** means the Chief Commissioner of the Law Enforcement Conduct Commission or any member of staff of the Commission authorised by the Chief Commissioner for the purposes of this clause.

18A Exemption for persons engaged to transport, store or destroy cannabis

(1) A person engaged under a contract for services by or on behalf of the NSW Police Force to transport, store or destroy cannabis is exempt from sections 10, 23 (1) and

(2) and 25 (1) and (2) of the Act.

(2) The exemption extends to an employee of the person engaged under the contract for services.

(3) The exemption applies only to enable the person or employee to transport, store or destroy cannabis in accordance with the contract for services.

(4) In this clause, ***cannabis*** means cannabis plant and cannabis leaf.

19 Exemption for authorised persons participating in approved needle exchange program

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

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

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

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

(3) In this clause, an ***authorised person*** means a person who is authorised by the Director-General of the Department of Health to participate in an approved needle exchange program.

20 Exemption for giving out information about approved needle exchange program

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

21 Exemption for pharmacists and staff

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

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

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

Part 5 Miscellaneous

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

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

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

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

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

23 Prescribed service activity level for licensed injecting centre

For the purposes of section 36K (2) of the Act, the prescribed service activity level for the licensed injecting centre is an average of at least 208 client visits per day in each month.

24 Certificate evidence from interstate analysts

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

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

(b) an authorised analyst within the meaning of section 137 of the *Medicines, Poisons and Therapeutic Goods Act 2008* of the Australian Capital Territory,

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

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

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

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

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

(h) an analyst within the meaning of the *Misuse of Drugs Act 1981* of Western Australia.

25 Savings

Any act, matter or thing that, immediately before the repeal of the *Drug Misuse and Trafficking Regulation 2006*, had effect under that Regulation continues to have effect under this Regulation.

25A Transitional provision—Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016

(1) This clause applies to any substance in the custody of a member of the NSW Police Force on the commencement of Part 3A of the Act (as substituted by the *Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016*) to which that Part (as so substituted) has been applied by clause 2 (1) of Schedule 3 to the Act.

(2) That Part (as so substituted) applies despite any order for the retention of the substance made under section 39E of the Act before the substitution of that Part.

Schedule 1 Precursors—section 24A and clause 5

(Clauses 4 and 5)

Acetic anhydride

Alpha-phenylacetoacetamide (also known as APAA)

Alpha-phenylacetoacetonitrile (also known as APAAN)

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

Anethole

4-Anilino-N-phenethylpiperidine (also known as ANPP)

Boron tribromide

Bromo safrole

Bromobenzene

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

1-Chloro-1-phenyl-2-aminopropane

1-Chloro-1-phenyl-2-methylaminopropane

Ephedrine

Ephedrone

Ethyl phenyl acetate

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

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

Hydriodic acid

4-Hydroxybutanal (also known as 4-Hydroxybutyraldehyde)

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

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

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

Hypophosphite salts

Hypophosphorous acid

Methyl alpha-phenylacetoacetate (also known as MAPA)

3-(3’,4’-Methylenedioxyphenyl)-2-methyl glycidic acid (including salts)

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

N-Methylephedrine

Methyl 3-(3’,4’-Methylenedioxyphenyl)-2-methyl glycidate (also known as MMDMG)

Methyl phenylacetate

Methyl 3-phenyl-2-methyl glycidate

N-Methylpseudoephedrine

Norpseudoephedrine

N-Phenethyl-4-piperidone (also known as NPP)

Phenylacetamide

Phenylacetic acid

Phenylacetonitrile

Phenylacetyl chloride

Phenylpropanolamine

1-Phenyl-2-chloropropane

3-Phenyl-2-methyl glycidic acid (including salts)

1-Phenyl-2-nitropropene

1-Phenyl-2-propanol

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

1-Phenyl-2-propanone

1-Phenyl-2-propanone bisulphite

1-Phenyl-2-propanone oxime

Phosphorus (red or white)

Phosphorous acid (also known as Phosphonic acid)

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

Pseudoephedrine

Pyridine

2-Pyrrolidone (also known as Gamma butyrolactam)

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

Sassafras oil

Schedule 2 Precursors—section 24A and clause 6

(Clauses 4 and 6)

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

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

Ammonium formate

Anthranilic acid (also known as 2-Aminobenzoic acid)

Benzaldehyde

Benzyl bromide (also known as a-Bromotoluene)

Benzyl chloride (also known as a-Chlorotoluene)

Calcium

Chromic acid (including salts)

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

Ergometrine (also known as Ergonovine)

Ergotamine

Ethanamine (also known as Monoethylamine)

N-Ethylephedrine

N-Ethylpseudoephedrine

Formamide

Hydrobromic acid (also known as Hydrogen bromide solution)

Iodine (including iodine salts)

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

Lithium

Lysergic acid

Magnesium

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

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

Methylammonium salts

N-Methylformamide

Nitroethane

Nitromethane

Palladium (including salts)

Phenylalanine

Piperidine

Potassium

Propionic anhydryde

Raney nickel

Sodium

Sodium borohydride

Thionyl chloride

Thorium (including salts)

Schedule 3 Drug manufacture or production apparatus—section 24A and clause 7

(Clauses 4 and 7)

Hydrogen sulfide gas cylinder

Hydrogen chloride gas cylinder

Hydrogen gas cylinder

Ammonia gas cylinder

Methylamine gas cylinder

Round bottom reaction flask (capacity 500ml or greater)

Condenser (joint size B19 or greater)

Splash head

Distillation head

Heating mantle (capacity 500ml or greater)

Tablet press

Drug encapsulator

Rotary evaporator

Schedule 4 Precursors—section 24B

(Clause 4)

Column 1	**Column 2**
Substance	**Quantity**
Acetic anhydride	1.0L
4-Amino butanoic acid (also known as Piperidinic acid)	1.5kg
Anethole	0.1L
Boron tribromide	0.25L
Bromobenzene	0.5L
Bromo safrole	0.05L
1-Chloro-1-phenyl-2-aminopropane	0.25kg
Ethyl phenyl acetate	0.5kg
Gamma hydroxybutanoic acid (including salts) (also known as Gamma hydroxybutyric acid)	1.5L
Hydriodic acid	1.0L
4-Hydroxybutanal (also known as 4-Hydroxybutyraldehyde)	1.5L
4-Hydroxy-butanoic acid nitrile (also known as 4-Hydroxybutyronitrile)	1.5L
4-Hydroxy-pentanoic acid (also known as Gamma valerolactone)	1.5L
2-Hydroxytetrahydrofuran (also known as Tetrahydro-2-furanol)	1.5L

Hypophosphite salts	0.25kg
Hypophosphorous acid	0.25L
3,4-Methylenedioxyphenylpropan-2-one (also known as 3,4-Methylenedioxy-phenyl-2-propanone)	0.05kg
N-Methylephedrine	0.25kg
Methyl phenylacetate	0.5kg
N-Methylpseudoephedrine	0.25kg
Norpseudoephedrine	0.25kg
Phenylacetamide	0.5kg
Phenylacetic acid	0.5kg
Phenylacetonitrile	0.5L
Phenylacetyl chloride	0.5L
1-Phenyl-1-propanone (also known as Phenylethylketone, Propiophenone)	0.25L
Phosphorus (red or white)	0.1kg
Phosphorous acid (also known as Phosphonic acid)	0.25L
Piperonal (also known as 3,4-Methylenedioxy-benzaldehyde or Heliotopine)	0.1kg
Pyridine	1.0L
2-Pyrrolidone (also known as Gamma butyrolactam)	1.5L
Safrole (also known as 5-(2-Propenyl)-1,3-Benzodioxide)	0.1L
Sassafras oil	0.1L