Drug Misuse and Trafficking Regulation 2000

[2000-519]

New South Wales

Status Information

Currency of version

Repealed version for 1 September 2002 to 31 August 2006 (accessed 26 December 2024 at 15:47)

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**
  The Regulation was repealed by sec 10 (2) of the *Subordinate Legislation Act 1989* No 146 with effect from 1.9.2006.

Authorisation

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

File last modified 1 September 2006

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Drug Misuse and Trafficking Regulation 2000*.

2 Commencement

This Regulation commences on 1 September 2000.

Note—

This Regulation replaces the *Drug Misuse and Trafficking Regulation 1994* which is repealed on 1 September 2000 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

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

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

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

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

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

(3) The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

Part 2 General

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

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

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

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

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

5 Exemption for authorised persons participating in approved program

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

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

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

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

6 Exemption for giving out information about approved program

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

7 General exemption for pharmacists and staff

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

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

prohibited drug capable of being so administered, and

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

7A Precursors

For the purposes of section 24A of the Act, the substances listed in Schedule 2, and any preparation, admixture, extract or other substance containing any proportion of a substance listed in Schedule 2, are specified as precursors.

Note—

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

7B Cash sales of precursors

(1) A person must not supply any of the following substances to a person unless the person being supplied has an account with the supplier and payment for the supply is made through the account:

(a) a substance listed in Schedule 2 (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.

Maximum penalty: 10 penalty units.

(2) Subclause (1) does not apply to the supply of a substance referred to in subclause (1) (b) 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.

(3) In this clause ***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.

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

Part 3 Custody and analysis of drug exhibits

8 Application of this Part

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

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

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

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

9 Delivery of substance for analysis

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

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

10 Order for destruction

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

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

11 Carrying out of analysis

(1) An analyst to whom a substance is given for analysis under clause 9 or 10 must carry out an analysis of it to determine whether it is a prohibited drug and, if it is, to determine:

(a) the identity of the prohibited drug, and

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

(c) the purity of the prohibited drug.

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

12 Procedure after analysis

(1) After removing a sample of a substance that is given to an analyst for analysis under clause 9 or 10, the analyst must place the balance of the substance not required for analysis into one or more packages, securely seal each package and mark each package with an identifying mark.

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

13 Storage of sealed packages

(1) A person to whom a package is delivered under clause 12 (2) must store the package in a secure place determined by the Commissioner of Police.

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

14 Analyst's certificate

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

(a) the identity of the prohibited drug,

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

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

15 Significant variations in analysts' certificates

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

Part 4 Miscellaneous

16 Short descriptions of offences

(1) For the purposes of section 145B of the *Justices Act 1902*, the prescribed expression for an offence created by a provision of the Act specified in Column 1 of Schedule 1 is:

(a) the expression specified in Column 2 of that Schedule, or

(b) if a choice of words is indicated in that expression, the words remaining after the omission of the words irrelevant to the offence.

(2) For the purposes of any proceedings for an offence created by a provision of the Act specified in Column 1 of Schedule 1, the prescribed expression for the offence is taken to relate to the offence created by the provision, as the provision was in force when the offence is alleged to have been committed.

(3) The amendment or repeal of a prescribed expression does not affect the validity of any information, complaint, summons, warrant, notice, order or other document in which the expression is used, and any such document continues to have effect as if that expression had not been amended or repealed.

(4) Subclause (3) applies to any information, complaint, summons, warrant, notice, order or other document (whether issued, given or made before or after the amendment or repeal) that relates to an offence alleged to have been committed before the amendment or repeal.

17 Savings provision

Any act, matter or thing that, immediately before the repeal of the *Drug Misuse and Trafficking Regulation 1994*, had effect under that Regulation is taken to have effect under this Regulation.

Schedule 1 Short descriptions of certain offences

(Clause 16)

Column 1	**Column 2**
Offence	**Prescribed expression**
Section 10 (1)	possess prohibited drug
Section 11 (1)	possess equipment to administer prohibited drug
Section 11A (2) (a)	sell waterpipe
Section 11A (2) (b)	supply waterpipe (commercial transaction)
Section 11A (3) (a)	display waterpipe in shop
Section 11A (3) (b)	display waterpipe in connection with shop

Section 12 (1)	self administer/attempt to self administer prohibited drug
Section 13 (1)	administer/attempt to administer prohibited drug to another
Section 14 (1)	permit another person to administer/attempt to administer to him/her prohibited drug
Section 15	knowingly forge/fraudulently alter/utter a prescription of a medical practitioner/nurse practitioner/veterinary surgeon including a prohibited drug
Section 16 (a)	knowingly obtain from a medical practitioner/nurse practitioner/veterinary surgeon a prohibited drug by false representation/induce pharmacist to dispense forged/fraudulently altered prescription
Section 16 (b)	possess forged/fraudulently altered prescription including a prohibited drug/prescription obtained by false representation
Section 17	obtain/attempt to obtain prohibited drug by false representation
Section 18	obtain/attempt to obtain prohibited drug/prescription that includes prohibited drug without informing medical practitioner/nurse practitioner of details of other prohibited drugs prescribed during previous 2 months where failure/refusal to inform is made with intent to deceive
Section 18A (1) (a)	advertise/hold out that premises are available for use for the administration of prohibited drugs
Section 18A (1) (b)	cause/suffer/permit person to advertise/hold out that premises are available for use for the administration of prohibited drugs

Schedule 2 Precursors

(Clauses 7A and 7B)

Acetic anhydride
Bromobenzene
Bromo safrole
Boron tribromide
1-Chlorophenyl-2-aminopropane
Ephedrine
Ephedrone
Ethyl phenyl acetate
Gamma butyrolactone
(also known as 4-Hydroxy-butanoic acid lactone)
Hydriodic acid
Hypophosphorous acid
3, 4-Methylenedioxyphenylpropan-2-one
(also known as 3, 4-Methylenedioxy-phenyl-2-propanone)
N-Methylephedrine
Norpseudoephedrine
Methyl phenyl acetate

N-Methyl pseudoephedrine
Phenylacetamide
Phenylacetic acid
Phenylacetonitrile
Phenylacetyl chloride
1-Phenyl-2-chloropropane
1-Phenyl-2-nitropropene
Phenylpropanolamine
1-Phenyl-2-propanone
1-Phenyl-2-propanone oxime
1-Phenyl-2-propanol
Phosphorus (red or white)
Pseudoephedrine
Pyridine