

Notes

- ¹ This is a compilation of the *Misuse of Drugs Act 1981* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Misuse of Drugs Act 1981</i>	66 of 1981	23 Oct 1981	1 Sep 1982 (see s. 2 and <i>Gazette</i> 20 Aug 1982 p. 3250)
<i>Misuse of Drugs (Amounts of Prohibited Drugs) Order 1990</i> (see <i>Gazette</i> 30 Nov 1990 p. 5967)			30 Nov 1990
<i>Misuse of Drugs Amendment Act 1990</i>	50 of 1990	4 Dec 1990	4 Dec 1990 (see s. 2)
<i>Conservation and Land Management Amendment Act 1991</i> s. 57	20 of 1991	25 Jun 1991	23 Aug 1991 (see s. 2 and <i>Gazette</i> 23 Aug 1991 p. 4353)
<i>Misuse of Drugs (Amounts of Prohibited Drugs) Order 1991</i> (see <i>Gazette</i> 29 Nov 1991 p. 6040-1)			29 Nov 1991
<i>Misuse of Drugs (Amounts of Prohibited Drugs) Order 1994</i> (see <i>Gazette</i> 22 Mar 1994 p. 1245)			22 Mar 1994
<i>Poisons Amendment Act 1994</i> s. 11	12 of 1994	15 Apr 1994	27 May 1994 (see s. 2 and <i>Gazette</i> 27 May 1994 p. 2205)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 3(2)	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutes (Repeals and Minor Amendments) Act 1994</i> s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994</i> Pt. 15	92 of 1994	23 Dec 1994	1 Jan 1995 (see s. 2 and <i>Gazette</i> 30 Dec 1994 p. 7211)
<i>Misuse of Drugs Amendment Act 1995</i> ²	44 of 1995	18 Oct 1995	16 Aug 1996 (see s. 2 and <i>Gazette</i> 16 Aug 1996 p. 4007)
<i>Poisons Amendment Act 1995</i> s. 43	48 of 1995	6 Nov 1995	20 Mar 1996 (see s. 2 and <i>Gazette</i> 19 Mar 1996 p. 1203)
Reprint of the <i>Misuse of Drugs Act 1981</i> as at 11 Nov 1996 (includes amendments listed above)			
<i>Misuse of Drugs Amendment Act 1998</i>	3 of 1998	26 Mar 1998	26 Mar 1998 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 27	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Criminal Property Confiscation (Consequential Provisions) Act 2000</i> s. 5 ³	69 of 2000	6 Dec 2000	1 Jan 2001 (see s. 2 and Gazette 29 Dec 2000 p. 7903)
Reprint of the <i>Misuse of Drugs Act 1981</i> as at 11 Jan 2002 (includes amendments listed above)			
<i>Nurses Amendment Act 2003</i> Pt. 3 Div. 2	9 of 2003	9 Apr 2003	9 Apr 2003 (see s. 2)
<i>Cannabis Control Act 2003</i> Pt. 5	52 of 2003	1 Oct 2003	22 Mar 2004 (see s. 2 and Gazette 9 Mar 2004 p. 733)

1a On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and Year	Assent	Commencement
<i>Industrial Hemp Act 2004</i> Pt. 7 ⁵	1 of 2004	12 Mar 2004	To be proclaimed
<i>Criminal Code Amendment Act 2004</i> s. 58 ⁶	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)

2 The *Misuse of Drugs Amendment Act 1995* s. 16 reads as follows:

“

16. Transitional

- (1) The principal Act as amended by this Act applies to and in relation to things seized before the commencement of this Act and in particular a direction may be given under section 27 of the principal Act as amended by this Act in respect of any such thing.
- (2) Anything done by an analyst or botanist under the principal Act before the commencement of this Act in relation to any thing seized before the commencement of this Act shall, for the purposes of the principal Act as amended by this Act, be taken to be a thing done by an approved analyst or an approved botanist.
- (3) A certificate given by an analyst or botanist under the principal Act before the commencement of this Act continues to have effect after the commencement of this Act as if the certificate had been given in accordance with the principal Act as amended by this Act.

”.

“

3. Interpretation

In this Act, unless the contrary intention appears —

“**appeal period**”, in relation to a forfeiture order, has the same meaning as in the repealed Act;

“**embargo notice**” has the same meaning as in the repealed Part;

“**forfeiture order**” has the same meaning as in the repealed Act;

“**holding order**” has the same meaning as in the repealed Part;

“**interstate forfeiture order**” has the same meaning as in the repealed Act;

“**interstate restraining order**” has the same meaning as in the repealed Act;

“**repealed Act**” means the *Crimes (Confiscation of Profits) Act 1988* as in force before its repeal by section 4;

“**repealed Part**” means Part IV of the *Misuse of Drugs Act 1981* as in force before its repeal by section 5.

6. Applications to court under repealed law — savings

If an application made to a court under the repealed Act or the repealed Part was not withdrawn, discontinued or otherwise finally determined before the commencement of this Act, the application may be dealt with on and after that commencement as if the repealed Act or the repealed Part had not been repealed.

7. Court orders under repealed law — savings

- (1) If an order made by a court under the repealed Act or the repealed Part was in force immediately before the commencement of this Act, the order has effect on and after that commencement, and may be executed, varied, discharged, set aside or appealed against, as if the repealed Act or repealed Part had not been repealed.
- (2) If an interstate forfeiture order or interstate restraining order was registered under the repealed Act, and its registration was not cancelled before the commencement of this Act, Part 10 of the *Criminal Property Confiscation Act 2000* applies, on and after that commencement, to the order and to any charge created under the repealed Act on the property to which the order relates, as if the order were an interstate confiscation order or interstate freezing order registered under section 118 of the *Criminal Property Confiscation Act 2000* and as if the charge had been created under section 123 of the *Criminal Property Confiscation Act 2000*.

8. Holding orders and embargo notices — savings

- (1) If a holding order or an embargo notice was in force under the repealed Part immediately before the commencement of this Act, the holding order or embargo notice has effect on and after that commencement, and the repealed Part continues to apply to the holding order or embargo notice, as if the repealed Part had not been repealed.

- (2) Without limiting subsection (1), if, immediately before the commencement of this Act, a person was entitled under section 19 of the *Misuse of Drugs Act 1981* to apply for an order in respect of the property to which a holding order or embargo notice relates, the person may apply for the order after that commencement, and the application may be dealt with, as if the repealed Part had not been repealed.
- (3) However, subsection (2) does not entitle the person to apply for the order more than 21 days after the date of the holding order or embargo notice.

9. Warrants issued under repealed law — savings

If, immediately before the commencement of this Act, a warrant issued under the repealed Act or the repealed Part was capable of execution to any extent, then the warrant may be executed on and after that commencement, to that extent, as if the repealed Act or the repealed Part had not been repealed.

10. Property subject to a forfeiture order

- (1) This section applies to property for which a forfeiture order was made under the repealed Act if —
 - (a) the appeal period for the forfeiture order had not ended before the commencement of this Act; or
 - (b) if the appeal period has ended (whether before or after the commencement of this Act), but the forfeiture order has not been discharged, and the property was not disposed of or otherwise dealt with under section 11(5) of the repealed Act before that commencement.
- (2) Sections 11(3), 11(4), 11(6), 12, 13 and 14 of the repealed Act continue to apply in relation to the forfeiture order and the property as if the repealed Act had not been repealed.
- (3) If the appeal period for the forfeiture order has not ended, sections 89, 90, 92 and 94 of the *Criminal Property Confiscation Act 2000* apply to the property as if it were subject to a freezing order under that Act.
- (4) If the appeal period for the forfeiture order has ended, and the order has not been discharged —
 - (a) sections 89, 90, 92 and 94 of the *Criminal Property Confiscation Act 2000* apply to the property as if it had been confiscated under that Act; and
 - (b) if the property has vested in the Crown, whether under clause 11(3)(b) or under the repealed Act, the property is to be disposed of as if it had been confiscated under the *Criminal Property Confiscation Act 2000*.
- (5) The following are to be paid into the Confiscation Proceeds Account established under section 130 of the *Criminal Property Confiscation Act 2000* —
 - (a) subject to section 11(4) of the repealed Act as continued by subsection (2), any money vested in the Crown under section 11 of the repealed Act that has not been disposed of or otherwise dealt with under the repealed Act;

- (b) any proceeds obtained by the Crown after the commencement of this Act from the disposal of property under the repealed Act;
 - (c) any proceeds obtained from the disposal of property under subsection (4)(b).
- (6) Nothing in this section limits the generality of section 7(1) in its application to a forfeiture order.

11. Real property subject to forfeiture order

- (1) If property to which section 10 applies is land registered under the *Transfer of Land Act 1893*, then, without limiting the application of section 10 to the property, this section also applies to the property.
- (2) If the property has not vested in the Crown under section 11 of the repealed Act, the Director of Public Prosecutions may lodge with the Registrar of Titles a memorial of the forfeiture order in a form approved by the Registrar.
- (3) When a memorial is lodged under subsection (2) —
 - (a) the Registrar of Titles is to register the memorial;
 - (b) on the registration of the memorial, the property vests in the State of Western Australia free from all interests, whether registered or not, including trusts, mortgages, charges, obligations and estates (except rights-of-way, easements and restrictive covenants);
 - (c) any caveat in force in relation to the property is taken to have been withdrawn; and
 - (d) the title in the property passes to the State.
- (4) When a memorial is lodged under subsection (2) then, in addition to registering the memorial, the Registrar of Titles is to —
 - (a) register the State of Western Australia as the proprietor of the property; and
 - (b) endorse the certificate of title of the property to the effect that, when the memorial was registered, the property ceased to be subject to or affected by any interests recorded on the certificate of title, including caveats, mortgages, charges, obligations and estates (except rights-of-way, easements and restrictive covenants) to which it was subject immediately before the registration of the memorial, or by which it was affected immediately before the registration of the memorial.
- (5) The Registrar of Titles may dispense with the production of any duplicate certificate of title or any duplicate instrument for the purposes of entering on the duplicate certificate or duplicate instrument any memorandum that would, but for this subsection, be required to be entered under the *Transfer of Land Act 1893* as a result of registering a memorial under subsection (3) or of doing anything else required or permitted by this section.
- (6) If, under subsection (5), the Registrar of Titles dispenses with the production of a duplicate certificate of title or duplicate instrument —
 - (a) the Registrar must endorse the certificate of title to the effect that the memorandum concerned has not been

entered on the duplicate certificate of title or the duplicate instrument; and

- (b) any subsequent dealing in the property has effect as if the memorandum had been entered on the duplicate certificate of title or the duplicate instrument.
- (7) If, under subsection (5), the Registrar of Titles dispenses with the production of a duplicate certificate of title, then, on the application of the registered proprietor, the Registrar may cancel the certificate of title for which the duplicate was issued, and create and register a new certificate of title for the property.
- (8) The Registrar of Titles is not required to obtain the consent or direction of the Commissioner of Titles to perform a function conferred on the Registrar under this section.
- (9) To the extent that a provision of this section relating to any property is inconsistent with the *Transfer of Land Act 1983*, the provision prevails, but this section does not otherwise affect the operation of that Act in relation to the property.

”.

4 Footnote no longer applicable.

5 On the date as at which this compilation was prepared, the *Industrial Hemp Act 2004* Pt. 7 had not come into operation. It reads as follows:

“

Part 7 — Consequential amendments to the *Misuse of Drugs Act 1981*

49. The Act amended

The amendments in this Part are to the *Misuse of Drugs Act 1981*.

50. Section 3 amended

Section 3(1) is amended by inserting the following definitions in the appropriate alphabetical positions —

“

“**industrial hemp**” has the meaning given to that term in section 3(1) of the *Industrial Hemp Act 2004*;

“**industrial hemp seed**” has the meaning given to that term in section 3(1) of the *Industrial Hemp Act 2004*;

“**processed industrial hemp**” means any product made from industrial hemp or industrial hemp seed that —

- (a) does not contain more than 0.35% of tetrahydrocannabinol;
- (b) does not contain viable whole cannabis seed; and
- (c) is not manufactured in a form to be inhaled;

”.

51. Section 4 amended

- (1) Section 4(1) is amended by deleting “The” and inserting instead —

“ Subject to subsection (4), the ”.

(2) After section 4(3) the following subsection is inserted —

“

(4) This Act does not apply to processed industrial hemp.

”

52. Section 6 amended

Section 6(2)(a) is amended by inserting after “*Poisons Act 1964*” —

“ or the *Industrial Hemp Act 2004* ”.

53. Section 7 amended

Section 7(2) is amended by inserting after “*Poisons Act 1964*” —

“ or the *Industrial Hemp Act 2004* ”.

54. Section 8A inserted

After section 8 the following section is inserted in Part II —

“

8A. Defences relating to industrial hemp or industrial hemp seed

(1) In proceedings against —

- (a) a person who may process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or
- (b) an employee, agent or contractor of a person referred to in paragraph (a),

for an offence against section 5(1)(a)(i) involving the manufacture or preparation of a prohibited drug or prohibited plant for use, it is a defence for the person to prove that the prohibited drug or prohibited plant is industrial hemp or industrial hemp seed.

(2) In proceedings against —

- (a) a person who may cultivate, harvest or process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or
- (b) an employee, agent or contractor of a person referred to in paragraph (a),

for an offence against section 5(1)(a)(ii) involving the manufacture, preparation, sale, supply or use of a prohibited drug or prohibited plant, it is a defence for the person to prove that the prohibited drug or prohibited plant is industrial hemp or industrial hemp seed.

(3) In proceedings against —

- (a) a person who may cultivate, harvest or process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or
- (b) an employee, agent or contractor of a person referred to in paragraph (a),

for an offence against section 5(1)(c) involving being knowingly concerned in the management of any premises used for a purpose referred to in section 5(1)(a), it is a defence for the person to prove that the prohibited drug or prohibited plant is industrial hemp or industrial hemp seed.

- (4) In proceedings against —
- (a) a person who may cultivate, harvest or process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or
 - (b) an employee, agent or contractor of a person referred to in paragraph (a),

for an offence against section 6(1)(a), it is a defence for the person to prove that the prohibited drug is industrial hemp or industrial hemp seed.

- (5) In proceedings against —
- (a) a person who may process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or
 - (b) an employee, agent or contractor of a person referred to in paragraph (a),

for an offence against section 6(1)(b) involving manufacturing or preparing a prohibited drug, it is a defence for the person to prove that the prohibited drug is industrial hemp or industrial hemp seed.

- (6) In proceedings against —
- (a) a person who may cultivate, harvest or process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or
 - (b) an employee, agent or contractor of a person referred to in paragraph (a),

for an offence against section 6(1)(c) involving selling or supplying, or offering to sell or supply a prohibited drug to another, it is a defence for the person to prove that the prohibited drug is industrial hemp or industrial hemp seed.

- (7) In proceedings against —
- (a) a person who may cultivate, harvest or process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or
 - (b) an employee, agent or contractor of a person referred to in paragraph (a),

for an offence against section 6(2) involving possession or use of a prohibited drug, it is a defence for the person to prove that the prohibited drug is industrial hemp or industrial hemp seed.

- (8) In proceedings against —
- (a) a person who may cultivate, harvest or process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or
 - (b) an employee, agent or contractor of a person referred to in paragraph (a),

for an offence against —

- (c) section 7(1)(a) involving possessing or cultivating a prohibited plant with intent to sell or supply the prohibited plant or any prohibited drug obtainable therefrom to another; or
- (d) section 7(1)(b) involving selling or supplying, or offering to sell or supply, a prohibited plant to another,

it is a defence for the person to prove that the prohibited plant is industrial hemp or industrial hemp seed.

- (9) In proceedings against —
- (a) a person who may cultivate, harvest or process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or
 - (b) an employee, agent or contractor of a person referred to in paragraph (a),

for an offence against section 7(2) involving having in his or her possession or cultivating a prohibited plant, it is a defence for the person to prove that the prohibited plant is industrial hemp or industrial hemp seed.

”
”

6 On the date as at which this compilation was prepared, the *Criminal Code Amendment Act 2004* s. 58, which gives effect to Sch. 3, had not come into operation. It reads as follows:

“

58. Other Acts consequentially amended

Schedule 3 has effect.

”

Schedule 3 item 18 reads as follows:

“

Schedule 3 — Amendments consequential on Part 7

[s. 58]

18. Misuse of Drugs Act 1981 amended

- (1) The amendments in this clause are to the *Misuse of Drugs Act 1981*.
- (2) Section 3(1) is amended by deleting the definitions of “indictable offence” and “offence”.
- (3) Each of the sections in the Table to this subclause is amended —
 - (a) by deleting “an indictable offence” in each place where it occurs and in each place inserting instead —
“ a crime ”;
 - (b) by deleting “that indictable offence” in each place where it occurs and in each place inserting instead —
“ that crime ”; and
 - (c) by deleting “the indictable offence” in each place where it occurs and in each place inserting instead —
“ the crime ”,

as the case requires.

Table

s. 6	s. 32A(3) in the definition of “external serious drug offence”
s. 7	s. 33

- (4) If this Act comes into operation before the *Cannabis Control Act 2003* comes into operation, section 9 of the *Misuse of Drugs Act 1981* is repealed and the following section is inserted instead —

“

9. Summary trial of some indictable offences

- (1) If a person is charged before a court of summary jurisdiction with —
- (a) an offence under section 6(1) in respect of a quantity of a prohibited drug referred to in Schedule III that is less than the quantity specified in that Schedule in relation to that prohibited drug; or
 - (b) an offence under section 7(1) in respect of a number of prohibited plants of a particular species or genus referred to in Schedule IV that is less than the number specified in that Schedule in relation to that species or genus,

then, except in a case where the person is charged with conspiring to commit the offence, the summary conviction penalty for the offence is that set out in section 34(2)(b).

- (2) A court of summary jurisdiction that tries a person summarily for a charge of an offence referred to in subsection (1) must be constituted by a magistrate sitting alone.
- (3) If a person charged before a court of summary jurisdiction with an offence that may be dealt with summarily under subsection (1) is, under section 5 of *The Criminal Code*, committed for trial or sentence in respect of the offence, the court to which the defendant is committed may deal with the charge despite —
- (a) the quantity of the prohibited drug to which the charge relates being less than the quantity specified in Schedule III in relation to that prohibited drug; or
 - (b) the number of prohibited plants of a particular species or genus to which the charge relates being less than the number specified in Schedule IV in relation to that species or genus.

”

- (5) If this Act comes into operation after the *Cannabis Control Act 2003* comes into operation, section 9 of the *Misuse of Drugs Act 1981* is repealed and the following section is inserted instead —

9. Summary trial of some indictable offences

- (1) If a person is charged before a court of summary jurisdiction with —
- (a) an offence under section 6(1) in respect of a quantity of a prohibited drug referred to in Schedule III that is less than the quantity specified in that Schedule in relation to that prohibited drug;
 - (b) an offence under section 7(1) in respect of a number of prohibited plants of a particular species or genus referred to in Schedule IV that is less than the number specified in that Schedule in relation to that species or genus; or
 - (c) an offence under section 7A(1),
- then, except in a case where the person is charged with conspiring to commit the offence, the summary conviction penalty for the offence is that set out in section 34(2)(b).
- (2) A court of summary jurisdiction that tries a person summarily for a charge of an offence referred to in subsection (1) must be constituted by a magistrate sitting alone.
- (3) If a person charged before a court of summary jurisdiction with an offence that may be dealt with summarily under subsection (1) is, under section 5 of *The Criminal Code*, committed for trial or sentence in respect of the offence, the court to which the defendant is committed may deal with the charge despite —
- (a) the quantity of the prohibited drug to which the charge relates being less than the quantity specified in Schedule III in relation to that prohibited drug; or
 - (b) the number of prohibited plants of a particular species or genus to which the charge relates being less than the number specified in Schedule IV in relation to that species or genus.

- (6) Section 32A(3) is amended in the definition of “serious drug offence” by deleting “indictable offence” and inserting instead —
- “ a crime ”.