

## Notes

<sup>1</sup> 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 <sup>1a</sup>. 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> <sup>2</sup>	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)
<b>Reprint of the <i>Misuse of Drugs Act 1981</i> as at 11 Nov 1996</b> (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 <sup>3</sup>	69 of 2000	6 Dec 2000	1 Jan 2001 (see s. 2 and Gazette 29 Dec 2000 p. 7903)
<b>Reprint of the <i>Misuse of Drugs Act 1981</i> as at 11 Jan 2002</b> (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)
<i>Industrial Hemp Act 2004</i> Pt. 7	1 of 2004	12 Mar 2004	19 May 2004 (see s. 2 and Gazette 18 May 2004 p. 1561)
<i>Criminal Code Amendment Act 2004</i> s. 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)

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>Courts Legislation Amendment and Repeal Act 2004</i> s. 141 <sup>4</sup>	59 of 2004	23 Nov 2004	To be proclaimed (see s. 2)
<i>Misuse of Drugs Amendment Act 2004</i> s. 4-8 <sup>5</sup>	62 of 2004	24 Nov 2004	To be proclaimed (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.

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3 The *Criminal Property Confiscation (Consequential Provisions) Act 2000* s. 3 and 6-11 read as follows:

“

### 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.

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On the date as at which this compilation was prepared, the *Courts Legislation Amendment and Repeal Act 2004* s. 141, which gives effect to Sch. 1 had not come into operation. It reads as follows:

“

**141. Various Acts amended**

Each Act listed in Schedule 1 is amended as set out in that Schedule immediately below the short title of the Act.

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Schedule 1 cl. 102 reads as follows:

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**Schedule 1 — Amendments to various Acts**

**102. Misuse of Drugs Act 1981**

s. 3(1)	In the definition of “summary court” delete “Court of Petty Sessions” and insert instead — “ court of summary jurisdiction ”.
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On the date as at which this compilation was prepared, the *Misuse of Drugs Amendment Act 2004* s. 4-8 had not come into operation. They read as follows:

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**Part 2 — Amendments relating to approved analysts**

**4. Section 3 amended**

Section 3(1) is amended by deleting the definition of “approved analyst” and inserting the following definition instead —

“**“approved analyst”** means —

- (a) a person declared under section 3A to be an approved analyst; or
- (b) a person belonging to a class prescribed for the purposes of this definition;

”

### **Part 3 — Amendments relating to precursor chemicals and apparatus**

#### **5. Part IV inserted**

After Part III the following Part is inserted —

### **Part IV — Controls relating to possession, sale, supply and storage of certain substances and things**

#### **12. Interpretation in Part IV**

In this Part, unless the contrary intention appears —

**“category 1 item”** means a substance or thing designated as a category 1 item by regulations referred to in section 20;

**“category 2 item”** means a substance or thing designated as a category 2 item by regulations referred to in section 20;

**“recipient”** means a person to whom a category 1 item or category 2 item, as the case requires, is sold or supplied;

**“substance”** includes material, compound, preparation and admixture;

**“supplier”** means a person who sells or supplies a category 1 item or category 2 item, as the case requires.

#### **13. Part not applicable to possession, sale or supply of certain substances or things**

- (1) This Part does not apply to or in relation to the possession, sale or supply of a category 1 item or category 2 item if —
  - (a) the item is, or is contained in, a substance that is designed, packaged and labelled for human or animal therapeutic use; and
  - (b) the item is in the possession of, or the sale or supply is to or by, a person belonging to a class prescribed for the purposes of this subsection acting in the ordinary course of the person’s occupation.
- (2) This Part does not apply to or in relation to the possession or supply of a category 1 item or category 2 item if the item is in the possession of, or the supply is by, a person employed or engaged by an education institution or a research institution acting in the ordinary course of the person’s occupation and the possession or supply is solely for educational or research purposes.

#### **14. Possession of certain substances or things**

- (1) A person who, without lawful excuse, has in the person’s possession a substance that contains, or substances that together

contain, a quantity of a category 1 item or a category 2 item that exceeds the quantity prescribed in relation to the item concerned commits a crime.

Penalty: \$20 000 or imprisonment for 5 years or both.

Summary conviction penalty: \$12 000 or imprisonment for 3 years or both.

- (2) A person who, without lawful excuse, has in the person's possession a category 1 item or a category 2 item commits a simple offence.  
Penalty: \$12 000 or imprisonment for 3 years or both.
- (3) A person does not commit an offence under subsection (1) or (2) if the person is authorised by or under this Act or by or under the *Poisons Act 1964* to possess the item or substance concerned and does so in accordance with that authority.
- (4) A person does not commit an offence under subsection (1) or (2) by reason only of the person having in the person's possession a category 1 item, a category 2 item or a particular substance if the person proves that the person had possession of the item or substance only for the purpose of —
  - (a) delivering it to a person authorised (the “**authorised person**”) —
    - (i) to have possession of the item or substance by or under this Act, by or under the *Poisons Act 1964* or on and in accordance with an authorised prescription; or
    - (ii) by or under this Act or by or under the *Poisons Act 1964* to manufacture, prepare, sell or supply the item or substance,  
and had possession of the item or substance (except in the case of intended delivery to a person authorised to have possession of the item or substance on and in accordance with an authorised prescription) in accordance with the authority in writing of the authorised person, and that, after taking possession of the item or substance, the person took all such steps as were reasonably open to the person to deliver the item or substance into the possession of the authorised person; or
  - (b) analysing, examining or otherwise dealing with it for the purposes of this Act in the person's capacity as an analyst, botanist or other expert.

## 15. Sale or supply of category 1 items

- (1) A supplier who sells or supplies a category 1 item commits a simple offence unless —
  - (a) the recipient holds an account with the supplier;
  - (b) the sale or supply is a sale or supply on account that occurs after a written order for the item is given to the supplier by or on behalf of the recipient;
  - (c) the order is accompanied by a declaration in the prescribed form made by or on behalf of the recipient; and



- (d) the person who takes possession of the item produces to the supplier such evidence of the person's identity as is required by the regulations.
- (2) A supplier who sells or supplies a category 1 item commits a simple offence if the supplier gives possession of the item to the recipient, or to a person on behalf of the recipient, within 24 hours after the written order for the item was given to the supplier.
- (3) A supplier who sells or supplies a category 1 item commits a simple offence if the supplier fails to give a copy of the declaration under subsection (1)(c) in respect of the sale or supply to the Commissioner in the prescribed manner within 24 hours after the written order for the item was given to the supplier.

**16. Storage of category 1 items**

- (1) A supplier who sells or supplies category 1 items commits a simple offence if the supplier fails to store those items in a manner that prevents access to them by any person other than a person who is authorised in writing by the supplier to have such access.
- (2) A person who sells or supplies, or has sold or supplied, category 1 items commits a simple offence if the person fails to retain a copy of each authorisation given for the purposes of subsection (1) while it has effect and for at least 5 years after it ceases to have effect.

**17. Sale or supply of category 2 items**

- (1) A supplier who sells or supplies a category 2 item commits a simple offence unless —
  - (a) the recipient holds an account with the supplier and the sale or supply is of the kind described in section 15(1)(b); or
  - (b) at the time of the sale or supply —
    - (i) a declaration in the prescribed form made by or on behalf of the recipient is given to the supplier; and
    - (ii) the person who takes possession of the item produces to the supplier such evidence of the person's identity as is required by the regulations.
- (2) A supplier who —
  - (a) sells or supplies a category 2 item; and
  - (b) is given a declaration referred to in subsection (1)(b) in respect of the sale or supply,

commits a simple offence if the supplier fails to give a copy of the declaration to the Commissioner in the prescribed manner as soon as practicable after the sale or supply.

**18. Offences relating to declarations under section 15(1)(c) or 17(1)(b)**

- (1) A person who sells or supplies, or has sold or supplied, category 1 items or category 2 items commits a simple offence if the person fails to retain each declaration given to the person under section 15(1)(c) or 17(1)(b) for at least 5 years after the day on which the sale or supply to which the declaration relates occurred.

- (2) A person who gives false or misleading information in a declaration under section 15(1)(c) or 17(1)(b) commits a simple offence.

**19. Powers of police officers for purposes of this Part**

A police officer may, for the purposes of this Part, with such assistance as the police officer considers necessary —

- (a) enter the premises of a person who sells or supplies, or has sold or supplied, category 1 items or category 2 items;
  - (b) demand the production of, and inspect —
    - (i) any books, papers or documents relating to the sale or supply of category 1 items or category 2 items, including any declarations under section 15(1)(c) or 17(1)(b); and
    - (ii) any authorisations given for the purposes of section 16(1);
- and
- (c) inspect any stocks of category 1 items or category 2 items.
- (2) Section 25 applies as if the reference in subsection (1) of that section to a police officer exercising the powers conferred by section 22 or 23 included a reference to a police officer exercising the powers in subsection (1).
- (3) Section 26 applies as if the reference in subsection (1) of that section to the exercise of the powers conferred by section 22 or 23 included a reference to the exercise of the powers in subsection (1).
- (4) Section 29 applies as if —
- (a) references in paragraphs (a) and (b) of that section to a police officer acting in the exercise of the powers conferred on the police officer by or under Part V or a person assisting a police officer so acting included a reference to a police officer acting in the exercise of the powers in subsection (1) or a person assisting a police officer so acting; and
  - (b) the reference in paragraph (b) of that section to books, papers, documents or stocks referred to in section 22 included a reference to books, papers, documents, authorisations or stocks referred to in subsection (1).
- (5) The powers in subsection (1) are in addition to, and not in derogation of, the powers conferred on police officers by Part V.

**20. Regulations as to category 1 items and category 2 items**

- (1) The regulations may designate a substance or thing specified, or belonging to a class specified, in the regulations as a category 1 item or a category 2 item.
- (2) The designation of a substance or thing as a category 1 item indicates that there is a significant likelihood of its use in, or in connection with, the manufacture of a prohibited drug.

- (3) The designation of a substance or thing as a category 2 item indicates that there is a reasonable likelihood of its use in, or in connection with, the manufacture of a prohibited drug.

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**6. Section 34 amended**

Section 34(1) is amended as follows:

- (a) in paragraph (d) by deleting “15(2), 20,”;
- (b) after paragraph (d) by deleting “or”;
- (c) after paragraph (e) by deleting the full stop and inserting —

“

; or

- (f) a simple offence under section 15(1), (2) or (3), 16(1) or (2), 17(1) or (2), or 18(1) or (2) is liable to a fine not exceeding \$5 000 for a first offence and to a fine not exceeding \$15 000 for any subsequent offence under the same provision.

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**Part 4 — Amendments relating to attempts to commit offences**

**7. Section 32A amended**

Section 32A(3) is amended as follows:

- (a) in paragraph (a) of the definition of “external serious drug offence” by inserting after “7(1)” —  
“ , 33(1)(a) ”;
- (b) in the definition of “serious drug offence” by inserting after “7(1)” —  
“ , 33(1)(a) ”.

**8. Section 33 amended**

- (1) Section 33(1) is repealed and the following subsection is inserted instead —

“

- (1) A person who attempts to commit an offence (the “**principal offence**”) commits —
- (a) if the principal offence is a crime, the crime; or
  - (b) if the principal offence is a simple offence, the simple offence,

and is liable on conviction to the same penalty to which a person who commits the principal offence is liable.

”

- (2) After section 33(2) the following subsection is inserted —

“

- (3) A person who incites another person to commit, or becomes an accessory after the fact to, an offence (the “**principal offence**”) commits —
- (a) if the principal offence is a crime, the crime; or

(b) if the principal offence is a simple offence, the simple offence,

but is liable on conviction —

(c) to a fine not exceeding half of the fine; and

(d) to imprisonment for a term not exceeding half of the term,

to which a person who commits the principal offence is liable.

”  
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