

POLICE OFFENCES (DRUGS).

19° GEO. V., No. XI.

No. 11 of 1928.

AN ACT to regulate the manufacture, sale, possession, distribution, and supply of opium and certain other dangerous drugs, and for purposes connected therewith.

[Assented to 23rd November, 1928.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title and commencement.

1. This Act may be cited as the *Police Offences (Drugs) Act, 1928*, and shall come into operation on a day to be appointed by the Governor and notified by Proclamation published in the *Gazette*.

Insertion of new Part in Police Act, 1892.

2. A Part is inserted in the Police Act, 1892, with the heading "Part VI. A, Opium and Dangerous Drugs," and containing the following sections:—

Definitions and application of Part VI. A.

N.S.W., No. 7 of 1927, s. 2.

3. (1) In this Part, unless the context or subject-matter otherwise indicates or requires—

"Council" means the Council of the Pharmaceutical Society of Western Australia.

"Dentist" means a dentist registered under the Dentists Act, 1894.

"Drug" means any drug to which this Part of the Act from time to time applies.

"Medical practitioner" means legally qualified medical practitioner registered under the Medical Practitioners Act, 1894.

"Opium" means the spontaneously coagulated juice obtained from the capsules of the opium poppy (*Papaver somniferum*).

“Pharmaceutical chemist” means a pharmaceutical chemist registered under the Pharmacy and Poisons Act, 1910.

“Prepared opium” means any preparation of opium in a form capable of being used for the purpose of smoking, and includes dross and any other residues remaining after opium has been smoked.

“Prescribed” means prescribed by this Part of this Act, or by regulations.

“Regulations” mean regulations made under the authority of this Part of this Act.

“Veterinary surgeon” means a veterinary surgeon registered under the Veterinary Act, 1911.

(2) (a) The drugs to which this Part of this Act applies are morphine, cocaine, ecgonine, and diamorphine (commonly known as heroin) and their respective salts, and opium, and any preparation, admixture, extract, or other substance containing not less than one-fifth per centum of morphine or one-tenth per centum of ecgonine, cocaine, or diamorphine.

Drugs to which this Part applies. cf. 10 and 11 Geo. V., c. 46, s. 8.

N.S.W., No. 7 of 1927, s. 2.

For the purpose of the foregoing provision the percentage in the case of morphine shall be calculated as in respect of anhydrous morphine.

(b) Percentages in the case of liquid preparations shall, unless other provision in that behalf is made by regulations under this Part of this Act, be calculated on the basis that a preparation containing one per centum of any substance means a preparation in which one gramme of the substance, if a solid, or one millilitre of the substance, if a liquid, is contained in every one hundred millilitres of the preparation, and so in proportion for any greater or less percentage.

Calculation percentages in case of liquid preparations.

10 and 11 Geo. V., c. 5, s. 6.

(c) If it appears to the Governor that any new derivative of morphine or cocaine or of any salts of morphine or cocaine or any other alkaloid of opium or any other drug of whatever kind is or is likely to be productive, if improperly used, of ill-effects substantially of the same character or nature as or analagous to those produced by morphine or cocaine, the Governor may by proclamation published in the *Gazette* declare that this Part of this Act shall apply to that new derivative or alkaloid or other drug in the same manner as it applies to the drugs mentioned in paragraph (a) of this subsection.

10 and 11 Geo. V., c. 46, s. 8 (2).

(d) If it appears to the Governor that the use of any preparation, admixture, extract, or other substance containing any of the drugs mentioned in paragraph (a) of this subsection in a percentage less than is therein mentioned, is having ill effects, the Governor may by proclamation published in the *Gazette* declare that this Part of this Act shall apply to such preparation, admixture, extract, or substance.

(3) This Part of this Act shall not apply in respect of the preparations named in the Schedule.

Prepared opium,
10 and 11 Dec. V.,
c. 46, s. 5.

N.S.W., No. 7 of
1927, s. 2.

4. (1) If any person—
- (a) manufactures, sells, or otherwise deals in prepared opium ; or
 - (b) has in his possession any prepared opium ; or
 - (c) being the occupier or any premises permits those premises to be used for the purpose of the preparation of opium for smoking or the sale, distribution, or smoking of prepared opium ; or
 - (d) being the owner or lessee of any premises knowingly permits such premises to be used for the purpose of opium smoking ; or
 - (e) is concerned in the management of any premises used for any such purpose as aforesaid ; or
 - (f) has in his possession any pipes or other utensils for use in connection with the smoking of opium or any utensils used in connection with the preparation of opium for smoking ; or
 - (g) smokes or otherwise uses prepared opium, or frequents any place used for the purpose of opium smoking ;

he shall be guilty of an offence against this Part of this Act.

In this subsection the expression “ owner ” includes the person entitled to receive the rent of premises and the person to whom the rent of premises is paid.

(2) If any person has in his possession or attempts to obtain possession of any other drug to which this Part of this Act applies he shall be guilty of an offence against this Part of this Act unless—

- (a) he is licensed under the regulations to manufacture or supply the drug ; or
- (b) he is otherwise licensed under the regulations to be in possession of the drug ; or

(c) the drug was supplied for his use by a medical practitioner or veterinary surgeon, or on and in accordance with a prescription complying with the conditions of the regulations.

(3) Any prepared opium or other drug in the order or disposition of any person shall be deemed to be in his possession.

5. (1) For the purpose of preventing the improper use of the drugs to which this Part of this Act applies the Governor may by regulations make provision for regulating and controlling the manufacture, sale, possession, distribution, and supply of those drugs, and in particular and without limiting the generality of the foregoing power for—

Regulations.
Sec 10 and 11
(Geo. V., c. 46,
s. 7.

N.S.W., No. 7 of
1927, s. 2

- (a) prohibiting the manufacture of any drug to which this Part of this Act applies except on premises licensed for the purpose and subject to the conditions specified in the license ; and
- (b) prohibiting the manufacture, sale, distribution, or supply of any such drug except by persons licensed or otherwise authorised under the regulations and subject to any conditions specified in the license or authority ; and
- (c) regulating the issue by medical practitioners or veterinary surgeons of prescriptions containing any such drug, the dispensing of such prescriptions, and the supply of any such drugs thereunder ; and
- (d) requiring persons engaged in the manufacture, sale, distribution, or supply of any such drug to keep such books and furnish such information either in writing or otherwise as may be prescribed, and making provision for the inspection of such books and records by the prescribed persons ; and
- (e) fixing the fees to be paid in respect of any license, inspection, permit, or authority issued thereunder. Any such fees may be paid to the council for administrative expenses ; and
- (f) providing for the forfeiture of any such drug unlawfully in the possession of any person ; and
- (g) providing that any specified breach of the regulations shall be regarded as “infamous conduct in a professional respect” within the meaning of any Act, or misconduct sufficient to justify the removal of the name of the offender from a register under any Act.

The regulations shall provide for authorising a registered pharmaceutical chemist—

- (a) to manufacture at his shop in the ordinary course of his retail business any preparation, admixture, or extract of any drug to which this Part of this Act applies; or
- (b) to carry on at his shop the business of retailing, dispensing, or compounding such drug.

They shall also provide for authorising medical practitioners, and pharmaceutical chemists employed in dispensing medicines at any public hospital or other institution, or persons in charge of laboratories for the purpose of research or instruction, dentists, veterinary surgeons, and such other persons as to the board may seem proper to be in possession of any drug to which this Part of this Act applies for the purposes of their professions or employments subject to such conditions and restrictions as may be prescribed.

They shall also provide that licenses or authorities for the purposes of this Part of this Act may be issued or granted by the Minister upon the recommendation of the council and may be issued or granted on such terms and subject to such conditions (including in the case of a license the payment of a fee) as the council thinks proper.

They shall also provide that any license or authority may be withdrawn by the Minister upon the recommendation of the council.

They shall also provide for an appeal to a Judge against any determination of the Minister or the council with respect of a license or authority, and the procedure on any such appeal shall be in accordance with rules of court.

(2) The regulations shall—

- (a) be published in the *Gazette* ;
- (b) take effect from the date of publication or from a later date specified in the regulations ; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution, of which notice has been given at any time within fourteen sitting days after such regulations have been laid before such

House, disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

(3) Any person—

- (a) who acts in contravention of or fails to comply with any regulation made under this Part of this Act ; or
- (b) who acts in contravention of or fails to comply with the conditions of any license issued or authority granted under or in pursuance of this Part of this Act ; or
- (c) who for the purpose of obtaining, whether for himself or for any other person, the issue, grant, or renewal of any such license or authority as aforesaid, makes any declaration or statement which is false in any particular, or knowingly utters, produces, or makes use of any such declaration or statement or any document containing the same.

Offences,
13 and 14 Geo. V.,
c. 5, s. 2.

shall be guilty of an offence against this Part of this Act.

6. (1) Any member of the police force or other person authorised in that behalf by any general or special order of the Minister shall, for the purposes of the execution of this Part of this Act, have power to enter the premises of any person carrying on the business of a producer, manufacturer, seller, or distributor of any drug to which this Part of this Act applies, and to demand the production of and to inspect any books or documents relating to dealings in any such drug, and to inspect any stocks of any such drug.

Power to enter,
10 and 11 Geo. V.,
c. 45, s. 10.
13 and 14 Geo. V.,
c. 5, s. 1 (2).

N.S.W., No. 7 of
1927, s. 2.

(2) If a justice is satisfied by information on oath that there is reasonable ground for suspecting—

13 and 14 Geo.
c. 5, s. 1.

- (a) that any opium or drug to which this Part of this Act applies is, in contravention of the provisions of this Part of this Act or the regulations, in the possession or under the control of any person in any premises ; or
- (b) that any document directly or indirectly relating to or connected with any transaction or dealing which was, or any intended transaction or dealing which would, if carried out, be an offence against this Part of this Act, is in the possession or under the control of any person in any premises,

such justice may grant a search warrant authorising any constable named in the warrant, at any time or times within one month from the date of the warrant, to enter, if need be by force, the premises named in the warrant, and to search the premises and any persons found therein.

And, if there is reasonable ground for suspecting—

- (i) that an offence against this Part of this Act has been committed in relation to any such drug which may be found in the premises or in the possession of any such persons ; or
- (ii) that any document which may be so found is such a document as aforesaid,

to seize and detain the drug or that document, as the case may be.

10 and 11 Geo. V.,
c. 46, s. 10 (2).

(3) If any person wilfully delays or obstructs any person in the exercise of his powers under this section or fails to produce or conceals or attempts to conceal any such books, stocks, opium, drug, or documents as aforesaid, he shall be guilty of an offence against this Part of this Act.

Penalties.
13 and 14 Geo. V.,
c. 6, s. 2 (2).

N.S.W., No. 7 of
1927, s. 2

7. (1) Every person guilty of an offence against this Part of this Act shall in respect of each offence be liable on summary conviction to a fine not exceeding two hundred and fifty pounds or to imprisonment with or without hard labour for a term not exceeding twelve months, or to both such fine and imprisonment.

And shall in every case on conviction for the offence forfeit to His Majesty all articles in respect of which the offence was committed.

The court before which the offender was convicted may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

(2) No person shall, on conviction for any offence of contravening or failing to comply with the conditions of any license granted under the regulations made in pursuance of this Act to supply a drug to which this Part of this Act applies or any regulation relating to the keeping of books or the issuing or dispensing of prescriptions containing a drug to which this Part of this Act applies, be sentenced to imprisonment without the option of a fine or to pay a fine exceeding ten pounds, if the court dealing with the case is satisfied that the offence was committed through inadvertence and was not preparatory to or committed in the

course of or in connection with the commission or intended commission of any other offence against this Part of this Act.

(3) If any person attempts to commit an offence against this Part of this Act, or solicits or incites another person to commit such an offence, he shall, without prejudice to any other liability, be liable on summary conviction to the same punishment and forfeiture as if he had committed an offence under this Part of this Act.

Attempts,
13 and 14 Geo. V.,
c. 5, s. 1.

(4) Where a company is convicted of an offence under this Part of this Act, the chairman, and every director, and every officer concerned in the management of the company shall be deemed guilty of the like offence, unless he proves that the act constituting the offence took place without his knowledge or consent.

Company.
Ibid.

(5) Any term of imprisonment imposed on any person by a court of summary jurisdiction in respect of the non-payment of a fine for an offence against this Part of this Act may be ordered to commence at the expiration of any term of imprisonment imposed on that person for the same offence in addition to the fine.

Imprisonment.

(6) In any proceedings against a person for an offence against this Part of this Act it shall not be necessary to negative by evidence any license, authority or other matter of exception or defence, and the burden of proving any such matter shall lie on the person seeking to avail himself thereof.

Proof,
13 and 14 Geo. V.,
c. 5, s. 1 (3).

(7) Any analyst appointed under the Health Act, 1911-1919, analysing any drug or substance submitted to him in pursuance of the regulations under this Part of this Act, may give a certificate in the form prescribed of the result of the analysis.

Certificate of
analyst to be
evidence.

In any legal proceedings under this Part of this Act or the regulations made thereunder the production of a certificate purporting to be signed by such an analyst shall be *prima facie* evidence of the identity of the drug or substance analysed, and of the result of the analysis, without proof of the signature or appointment of the person appearing to have signed the same.

8. The Opium Smoking Prohibition Act, 1913, is repealed.

Repeal.

N.S.W., No. 7 of
1927, s. 2.

SCHEDULE.

Cereoli Iodoformi et Morphinae, B.P.C.
Emp. Opii, B.P., 1898.
Lin. Opii, B.P.
,, Opii, Ammon., B.P.C.
Pasta Arsenicalis, B.P.C.
Pil. Hydrarg. c. Opio, B.P.C.
,, Ipecac. c. Scilla, B.P.
,, Plumbi c. Opio, B.P.
,, Digitalis et Opii Co., B.P.C.
,, Hydrarg. c. Cret. et Opii, B.P.C.
Pulv. Cretæ Aromat. c. Opio, B.P.
,, Ipecac. Co., B.P. (Dover's Powder).
,, Kino Co., B.P.
Tablettæ Plumbi c. Opio, B.P.C.
Ung. Gallæ c. Opio, B.P. (Gall and Opium Ointment).
,, Gallæ Co., B.P.C.