

Reprinted under the
Reprints Act 1984 as
at 9 April 1996

WESTERN AUSTRALIA

POISONS ACT 1964

ARRANGEMENT

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WESTERN AUSTRALIA

POISONS ACT 1964

AN ACT to regulate and control the Possession, Sale and Use of Poisons and other Substances; to constitute a Poisons Advisory Committee; and for incidental and other purposes.

PART I — INTRODUCTORY PROVISIONS

Short title

1. This Act may be cited as the *Poisons Act 1964*¹.

Commencement

2. This Act shall come into operation on a date to be fixed by proclamation¹.

Arrangement

3. [Section 3 omitted under Reprints Act 1984 s.7 (4) (d).]

[4. Repealed by No. 48 of 1995 s.4.]

Interpretation

5. (1) In this Act unless the context requires otherwise —

“**Advisory Committee**” means the Poisons Advisory Committee constituted under Part II;

“**authorized officer**” means —

- (a) an environmental health officer;
- (b) a police officer; or
- (c) a person declared under section 52A to be an authorized officer;

“**automatic machine**” means any machine or mechanical device used or capable of being used for the purpose of selling or supplying goods without the personal

manipulation or attention of the seller or supplier or his employee or other agent at the time of the sale or supply;

“bloodborne infectious disease” means Human Immunodeficiency Virus (HIV) infection, Hepatitis B, Hepatitis C or any other infectious disease that is carried in the blood;

“Commissioner of Health” means the Commissioner of Health referred to in the *Health Legislation Administration Act 1984*¹;

“container”, in relation to a thing, means any bottle, vessel, tube, sachet, ampoule, syringe, vial, or other receptacle in which the thing is contained;

“dentist” means a dentist registered under the provisions of the *Dental Act 1939*;

“department” means the department of the Public Service of the State principally assisting the Minister in the administration of this Act;

“document” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

“drug of addiction” means any substance included in Schedule 8 or 9;

“environmental health officer” means an environmental health officer referred to in the *Health Act 1911*;

“internal use” means administration —

(a) orally, except for topical effect in the mouth; or

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- (b) for absorption and the production of a systemic effect —
 - (i) by way of a body orifice other than the mouth; or
 - (ii) parenterally, other than by application to unbroken skin;

“label” includes any tag, brand, mark or statement in writing, that is on or attached to or used in connection with any container or package containing any poison; and **“labelled”** has a corresponding meaning;

“licence” means a licence granted under this Act that is valid and unexpired;

“licensee” means a person who holds or is entitled to exercise a licence under this Act;

“medical practitioner” means a medical practitioner registered under the *Medical Act 1894*, or any previous corresponding enactment;

“member” means a person occupying any of the offices of the Advisory Committee, including that of chairman;

“needle and syringe programme” means a programme to do one or more of the following —

- (a) to supply persons with sterile hypodermic syringes or sterile hypodermic needles;
- (b) to facilitate the safe disposal of used hypodermic syringes or used hypodermic needles; or
- (c) to advise, counsel or disseminate information to persons,

principally for the purpose of preventing the spread of bloodborne infectious diseases;

“package”, in relation to a thing, means any box, wrapper, strip pack, blister pack or other thing in which the thing is wrapped or packaged;

“pharmaceutical chemist” means a pharmaceutical chemist registered under the provisions of the *Pharmacy Act 1964*; or any previous corresponding enactment;

“poison” means any substance included in a Schedule;

“prohibited plant” means any plant from which a drug of addiction may be obtained, derived or manufactured, or such other plant as the Governor declares and is hereby authorized to declare from time to time to be a prohibited plant for the purposes of this Act; and includes any part of such a plant, except in the case of the plant *Papaver somniferum*, the non-viable seed of that plant;

“sale” includes exposing or offering for sale or having in possession for sale, whether by wholesale or retail, and also delivery with or without consideration, in any shop or store or premises appurtenant thereto by the keeper thereof or by his servant or agent; and the verb **“to sell”** has a corresponding meaning;

“Schedule” means a Schedule in Appendix A;

“specified”, in relation to a regulation, order, notice or other instrument, means specified in the regulation, order, notice or other instrument (as the case may be);

“specified drug” means any substance that is declared to be a specified drug for the purposes of this Act;

“standard” includes a code or other document;

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

“**veterinary surgeon**” means a registered veterinary surgeon under the provisions of the *Veterinary Surgeons Act 1960*;

“**wholesale dealing**” means sale or supply by a wholesale dealer in the ordinary course of wholesale business to persons licensed or otherwise expressly authorized by or pursuant to the provisions of this or any other Act, to be in possession of or to sell poisons; and includes sale or supply to other persons in wholesale quantities in the ordinary course of wholesale business for use in connection with any prescribed profession, business, trade or industry or any public institution but not for resale;

“**wholesale supplier**”, in relation to a poison, means a person who engages in wholesale dealing in respect of that poison.

(2) If this Act provides for any person or thing to be specified, declared, authorized or approved, the person or thing may be specified, declared, authorized or approved —

(a) individually; or

(b) by referring to a class or classes of persons or things.

[Section 5 amended by No. 23 of 1966 s.2; No. 6 of 1969 s.3; No. 28 of 1984 s.90; No. 12 of 1994 s.4; No. 48 of 1995 s.5.]

Construction

6. (1) Except as otherwise expressly provided, this Act shall be read and construed as being in aid and not in derogation of the provisions of the *Health Act 1911*, and of the *Misuse of Drugs*

Act 1981, but those provisions shall be read and construed subject to the express provisions of this Act and where there is any inconsistency between those provisions and the provisions of this Act, the latter provisions shall prevail.

(2) Any reference in any other Act, or in any regulation, rule or by-law made under any other Act, to any narcotic drug to which the *Misuse of Drugs Act 1981* applies shall be deemed and be taken to be a reference to any drug of addiction or specified drug within the meaning of this Act.

[*Section 6 amended by No. 57 of 1981 s.14.*]

Crown bound

6A. This Act binds the Crown.

[*Section 6A inserted by No. 48 of 1995 s.6.*]

Administration

7. (1) Subject to the Minister and the provisions of this Act, the Commissioner of Health shall be responsible for the administration of this Act.

(2) The cost of the administration of this Act shall be paid out of moneys appropriated by Parliament for the purpose.

[*Section 7 amended by No. 28 of 1984 s.92; No. 12 of 1994 s.10.*]

PART II — POISONS ADVISORY COMMITTEE

Constitution of Poisons Advisory Committee

8. (1) For the purposes of this Act an Advisory Committee consisting of 12 members and having the functions prescribed by this Act is constituted under the name of the "Poisons Advisory Committee".

(2) The 12 members of the Advisory Committee shall be comprised of 2 *ex officio* members and 10 nominee members, and of those members —

- (a) the Commissioner of Health shall be an *ex officio* member and may nominate a medical practitioner employed in the department to act in his or her place;
- (aa) the Director of the Chemistry Centre (WA) shall be an *ex officio* member and may nominate an analyst from the Chemistry Centre (WA) to act in his or her place; and
- (b) the nominee members shall be 10 persons appointed by the Governor for terms of tenure of office in accordance with the provisions of section 10.

(3) Of the 10 nominee members referred to in subsection (2) (b) —

- (a) one shall be a pharmacologist nominated by the Senate of the University of Western Australia;
- (b) one shall be a medical practitioner employed in the Public Service of the State who has specialist qualifications in occupational health and is nominated by the Minister;
- (c) 2 shall be medical practitioners, one of whom is a specialist physician, nominated by the body known as

The Western Australian Branch of the Australian Medical Association (Incorporated);

- (d) one shall be an officer of the Department of Agriculture, nominated by the Minister for Agriculture;
- (e) 2 shall be persons, one of whom shall represent the wholesale dealers within the State engaged in wholesale dealing, nominated by the body known as the Chamber of Commerce and Industry of Western Australia (Inc);
- (f) one shall be a veterinary surgeon nominated by the body known as the Veterinary Surgeons' Board constituted under the *Veterinary Surgeons Act 1960*;
- (g) one shall be a person nominated by the body known as The Council of the Pharmaceutical Society of Western Australia; and
- (h) one shall be a person nominated by the body known as the Pharmacy Guild of Australia (Western Australian Branch).

(4) The Commissioner of Health, or the medical practitioner nominated pursuant to subsection (2) (a) if one be so nominated, shall be the Chairman of the Advisory Committee.

[Section 8 amended by No. 63 of 1981 s.4; No. 28 of 1984 s.91; No. 12 of 1994 s.5; No. 48 of 1995 s.7.]

Procedure on default of nomination

9. The Minister shall, as the occasion requires, by notice in writing to the registrar or secretary of any body referred to in subsection (3) of section 8, require that body to submit the name of its nominee as provided in that subsection within a period of 42 days after receipt by the registrar or secretary of such notice,

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and if upon the expiration of that period, or such extension thereof as the Minister thinks fit and is hereby authorized to grant, he has not received the required name of the nominee, the Minister shall nominate such person to be a nominee member of the Advisory Committee as, having regard to the category in respect of which a person was required to be nominated, he thinks fit.

Term of office of nominee member

10. (1) Subject to subsection (2) the term of tenure of office of a nominee member expires by effluxion of time on the expiration of a period of 3 years commencing on the date of his appointment by the Governor.

(2) The respective terms of tenure of office of the persons first appointed to office of nominee member expire by effluxion of time —

- (a) in the case of the 4 nominee members referred to in paragraphs (a), (b) and (c) of subsection (3) of section 8, at the expiration of one year;
- (b) in the case of the 3 nominee members referred to in paragraphs (d) and (e) of that subsection, at the expiration of 2 years; and
- (c) in the case of the 3 nominee members referred to in paragraphs (f), (g) and (h) of that subsection, at the expiration of 3 years,

commencing on the date of his appointment by the Governor to that office.

(3) The term of tenure of an *ex officio* member continues until the member ceases to occupy the office by virtue of which he is an *ex officio* member or until terminated by the Minister.

(4) A person is not rendered ineligible for appointment to the office of member or deputy member because he has previously occupied office as such, unless his appointment has been terminated under the provisions of section 12.

(5) A nominee member or the deputy of any member may resign his office of member or deputy member if he sends to the Minister written notice under his hand of his resignation and the Minister accepts such resignation.

Vacation of office

11. (1) The office of a member becomes vacant if —
- (a) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, or compounds with his creditors;
 - (b) he is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Advisory Committee;
 - (c) he becomes permanently incapable of performing his duties;
 - (d) he resigns his office in accordance with the provisions of this Act;
 - (e) he dies;
 - (f) the term of his tenure of office expires by effluxion of time;
 - (g) in the case of an *ex officio* member, the term of tenure is terminated pursuant to section 10 (3); or
 - (h) he is convicted of an indictable offence.

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(2) On the occurrence of any vacancy in an office of member, a person eligible to be appointed to that office under the provisions of this Part shall in accordance with those provisions be appointed by the Governor to fill the vacancy, and a person so appointed holds office, subject to those provisions, for the remainder of the term of office of the person in whose place he is appointed.

(3) The performance or exercise of the functions, powers, duties or liabilities of the Advisory Committee is not affected by reasons only of there being a vacancy in the office of a member.

Dismissal of members

12. The Governor may terminate the appointment of a member of the Advisory Committee for inability, inefficiency or misbehaviour.

Leave of absence

13. The Minister may grant leave of absence to a member of the Advisory Committee upon such terms as to remuneration or otherwise as the Governor from time to time determines.

Deputies of members

14. (1) The Governor may in respect of any member of the Advisory Committee, appoint a person to be the deputy of that member to act in his office during his absence, and the provisions of section 8 (3) and of section 9 apply as well to the nomination and appointment of deputies of nominee members as to the nomination and appointment of the nominee members.

(2) Any person so appointed is entitled, in the absence from a meeting of the Advisory Committee of the member for whom he is the deputy, to attend that meeting, and when so attending shall be deemed to be a member and is authorized to carry out any function that the member of whom he is the deputy could, if present, exercise under this Act.

Acceptance of office

15. Acceptance of or acting in the office of member or deputy member of the Advisory Committee by any person shall not of itself render the provisions of Part 3 of the *Public Sector Management Act 1994*, or any other Act applying to persons as officers of the public service of the State, applicable to that member or deputy member, or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of or acting in such office.

[Section 15 amended by No. 32 of 1994 s.3 (2).]

Remuneration of members

16. The members of the Advisory Committee and their deputies, other than those members and deputies who are officers in the public service of the State, are entitled, in respect of their attendances at meetings and carrying out their functions under this Act, to such remuneration and allowances as the Governor determines and is hereby authorized to determine from time to time.

Meetings of Advisory Committee

17. (1) The Chairman shall convene the first meeting of the Advisory Committee to be held at a time and place appointed by him, and the Advisory Committee shall meet accordingly and shall hold such further meetings as it considers necessary for the conduct of its affairs.

(2) At a meeting of the Advisory Committee —

- (a) 7 members form a quorum;
- (b) the Chairman, or in his absence, the person appointed to be his deputy, shall preside;

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- (c) if both the Chairman and his deputy are absent, the members present shall elect one of their number present at the meeting to be Chairman thereof;
- (d) all questions shall be decided by a majority of votes of the members present and voting;
- (e) each member, including the Chairman, shall be entitled to one vote only on the determination of any question;
- (f) in the event of an equality of votes, the question shall be determined in the negative.

(3) The Advisory Committee shall cause to be kept minutes of all its proceedings in such manner as the Minister may direct or approve.

Officers of Advisory Committee

18. (1) The Governor may appoint a secretary to the Advisory Committee and any other officers and servants of the Advisory Committee necessary for carrying out the provisions of this Act.

(2) Any person so appointed may, if required by the terms of his appointment to devote the whole of his time to the service of the Advisory Committee, be appointed under and be subject to the provisions of Part 3 of the *Public Sector Management Act 1994*.

[Section 18 amended by No. 32 of 1994 s.3 (2).]

Functions of Advisory Committee

19. The functions of the Advisory Committee are to advise the Minister and the Commissioner of Health upon and to make recommendations in relation to —

- (a) the necessity to amend any of the Schedules;

- (b) the necessity to make, amend or revoke any regulation under this Act;
- (c) any matter or thing with regard to the manufacture, distribution, sale, supply, possession, use or labelling of poisons, or prohibiting the use of any poison that the Advisory Committee thinks fit or that the Minister or the Commissioner of Health may refer to it; and
- (d) any proposals or questions that may be referred to it with regard to any of the matters mentioned in paragraphs (a), (b) and (c).

[Section 19 amended by No. 28 of 1984 s.92; No. 12 of 1994 s.10; No. 48 of 1995 s.39.]

PART III — POISONS AND OTHER SUBSTANCES

Division 1 — Classification

Declaration of poisons

20. (1) For the purposes of this Act the substances included in the Schedules are poisons.

(2) Substances are to be classified by inclusion in the respective Schedules as follows —

- (a) **Schedule 1** — Poisons of plant origin of such danger to health as to warrant their being available only from medical practitioners, pharmaceutical chemists or veterinary surgeons.
- (b) **Schedule 2** — Poisons for therapeutic use that should be available to the public only from pharmacies, or if there is no pharmacy service available, from persons licensed to sell Schedule 2 poisons.
- (c) **Schedule 3** — Poisons for therapeutic use that are dangerous or are so liable to abuse as to warrant their availability to the public being restricted to supply by medical practitioners, pharmaceutical chemists, dentists or veterinary surgeons.
- (d) **Schedule 4** — Poisons that should, in the public interest, be restricted to medical, dental or veterinary prescription or supply, together with substances or preparations intended for therapeutic use, the safety or efficacy of which requires further evaluation.
- (e) **Schedule 5** — Poisons of a hazardous nature that must be readily available to the public but require caution in handling, storage and use.

- (f) **Schedule 6** — Poisons that must be available to the public but are of a more hazardous or poisonous nature than those included in Schedule 5.
- (g) **Schedule 7** — Poisons that require special precautions in manufacture, handling, storage or use, or special individual regulations regarding labelling or availability.
- (h) **Schedule 8** — Poisons to which the restrictions recommended for drugs of dependence by the 1980 Australian Royal Commission of Inquiry into Drugs should apply.
- (i) **Schedule 9** — Poisons that are drugs of abuse, the manufacture, possession, sale or use of which should be prohibited by law except for amounts which may be necessary for educational, experimental or research purposes conducted with the approval of the Governor.

[Section 20 inserted by No. 48 of 1995 s.8.]

How poisons may be identified in Schedules

20A. (1) A substance may be identified in a Schedule in any way the Minister thinks fit.

(2) Without limiting subsection (1), a substance may be identified in a Schedule by reference to a standard or a part of a standard and in particular by reference to —

- (a) any list of substances contained in the standard or part of the standard;
- (b) the standard or part of the standard as in force at a particular time or as in force from time to time; or
- (c) the standard or part of the standard with or without modifications specified in the Schedule.

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(3) Without limiting subsection (1), a substance may be identified in a Schedule or in a standard or part of a standard referred to in the Schedule by reference to —

- (a) the way in which or the purpose for which, it is used or intended for use;
- (b) the quantity in which it is supplied;
- (c) the nature of the package or container, including the labelling thereof, in which it is supplied;
- (d) the physical or chemical state or form in which it is supplied; or
- (e) any other factor.

[Section 20A inserted by No. 48 of 1995 s.8.]

Amendment of Appendix A

21. (1) The Minister may by order published in the *Gazette* amend Appendix A.

(2) An order is “**subsidiary legislation**” for the purposes of the *Interpretation Act 1984*.

(3) Section 42 of the *Interpretation Act 1984* applies to and in relation to an order as if the order were a regulation.

[Section 21 inserted by No. 48 of 1995 s.8.]

Exemption of substances from Act

21A. (1) The regulations may exempt a specified substance from the operation of this Act, or specified provisions of this Act.

(2) The regulations may exempt a substance under subsection (1) —

- (a) when used for any specified purpose or purposes; or
- (b) subject to other specified conditions.

[*Section 21A inserted by No. 48 of 1995 s.8.*]

Sale of any poison may be prohibited

22. (1) The Governor, on the recommendation of the Advisory Committee, may at any time and from time to time by proclamation prohibit the sale, supply or use of any poison or substance, whether included in a Schedule or not, either absolutely or except upon and subject to such conditions and for such period or periods as the Governor may think fit.

(2) A proclamation made under this section may be cancelled or from time to time varied, or an error in a proclamation may be rectified, by a subsequent proclamation.

[*Section 22 amended by No. 48 of 1995 s.9.*]

Specified drugs

22A. (1) The Governor may, by order, declare any substance to be a specified drug for the purposes of this Act.

(2) Any substance that was, before the coming into operation of the *Poisons Act Amendment Act 1969*¹, declared to be a specified drug for the purposes of this Act continues, subject to subsection (3), to be a specified drug for the purposes of this Act and the *Misuse of Drugs Act 1981*.

(3) The Governor may, by order, vary or revoke any order made under subsection (1) and may in like manner vary or revoke any order made before the coming into operation of the

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*Poisons Act Amendment Act 1969*¹, declaring any substance to be a specified drug for the purposes of this Act.

[Section 22A inserted by No. 6 of 1969 s.4; amended by No. 57 of 1981 s.15; No. 48 of 1995 s.10.]

Division 2 — Sale of Poisons

Persons authorized to sell poisons

23. (1) Except as provided by subsections (2) and (4), a person shall not manufacture, distribute, supply, or sell by wholesale or retail any poison (other than a poison included in Schedule 5) unless he is licensed pursuant to the provisions of section 24 to do so.

(1a) Except as provided by subsection (2), a person shall not write, issue or authorize any prescription or document prescribing the use, sale or supply of a drug of addiction or a specified drug by, to, or in relation to any person.

(2) Subject to this Act —

- (a) a pharmaceutical chemist is authorized to manufacture, have in his possession, and to use, supply or sell at his pharmacy in the ordinary course of his retail business any preparation, admixture or extract containing any poison;
- (b) a medical practitioner or veterinary surgeon is authorized to have in his possession and to use, supply or sell in the lawful practice of his profession any poison;
- (c) any dentist is authorized to have in his possession and to use in the lawful practice of his profession any poison; and

- (d) a medical practitioner, veterinary surgeon or dentist is authorized to write, issue or authorize a prescription or document prescribing the use, sale or supply of a drug of addiction or a specified drug in the lawful practice of his profession,

but subject however to such conditions and restrictions as may be prescribed and subject to any notice given by the Commissioner of Health pursuant to the regulations made under section 64 (2) (ha).

(3) The provisions of subsection (2) do not authorize any medical practitioner, veterinary surgeon or dentist to sell any poison in an open shop unless he is licensed under this Act to do so.

(4) A person who carries on a business at any premises is authorized to sell by retail from those premises any poison included in Schedule 6 subject to —

- (a) any prescribed conditions and restrictions; and
- (b) any notice given by the Commissioner of Health under regulations made under section 64 (2) (hb).

[Section 23 amended by No. 6 of 1969 s.5; No. 43 of 1978 s.3; No. 28 of 1984 s.92; No. 12 of 1994 s.10; No. 48 of 1995 s.11.]

Licences to sell poisons

24. (1) Subject to this Act the Commissioner of Health may grant a licence —

- (a) to manufacture any poison;
- (b) to manufacture and distribute or sell by wholesale any poison;

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(c) to sell by wholesale any poison; or

(d) to sell by retail any poison,

in or at any pharmacy or other premises or place of business specified in the licence, to any person who satisfies the Commissioner of Health that he is a fit and proper person to be the holder of such a licence.

(2) An application for a licence under this section shall be made in the prescribed manner to the Commissioner of Health, who may in his discretion grant or refuse the licence.

(3) The Commissioner of Health shall not grant any licence under this section unless and until he is satisfied that the premises of the applicant are suitable for the purpose in respect of which application is made for the licence, and are properly and hygienically equipped for that purpose.

(4) The Commissioner of Health may grant —

(a) to a pharmaceutical chemist, a licence to sell by retail any poison;

[(b) and (c) deleted]

(d) to such persons and under and subject to such conditions as may be prescribed a licence to sell all or any of the poisons included in Schedule 2, 3, 4 or 7.

(5) The Commissioner of Health may from time to time, by notice, impose such conditions and restrictions on the sale, supply, use and possession of any poison included in Schedule 7 as he considers necessary for safeguarding the public health.

(6) A notice given by the Commissioner of Health under subsection (5) —

(a) has effect according to its tenor, notwithstanding any other provision of this Act or the terms or conditions of any licence or permit in force thereunder;

- (b) may be of general application or apply to a particular person or class of persons, in a particular case or class of cases, or to particular circumstances or localities;
 - (c) has effect, if expressed to apply to any particular person, when served on that person and if not so expressed, when published in the *Government Gazette*; and
 - (d) may be varied or revoked by the Commissioner of Health by subsequent notice.
- (7) Any person who —
- (a) having been served with notice under subsection (5) that is expressed to apply to him, fails to comply with or contravenes any condition or restriction contained in the notice; or
 - (b) fails to comply with or contravenes any condition, limitation or restriction contained in a notice published in the *Government Gazette*,

commits an offence and is liable on conviction to a penalty not exceeding \$10 000 and, if the offence is a continuing offence, to a daily penalty not exceeding \$1 000.

[Section 24 amended by No. 6 of 1969 s.6; No. 28 of 1984 s.92; No. 12 of 1994 s.10; No. 48 of 1995 s.12.]

Permits to purchase poisons for specified purposes

25. (1) The Commissioner of Health may permit fit and proper persons to purchase or otherwise obtain poisons for use for industrial, educational or research purposes or for the purpose of providing health services, but not for re-sale.

(2) An application for a permit under this section shall be made in the prescribed manner to the Commissioner of Health who may in his discretion grant or refuse the application.

[Section 25 amended by No. 23 of 1966 s.3; No. 28 of 1984 s.92; No. 12 of 1994 s.10; No. 48 of 1995 s.13.]

Form of licences and permits

26. (1) A licence or permit under this Act must be in the prescribed form.

(2) A licence must specify the pharmacy or other premises or place of business in or at which the licence may be exercised.

(3) No more than one place may be specified under subsection (2).

[Section 26 inserted by No. 48 of 1995 s.14.]

Conditions

26A. (1) A licence or permit under this Act is subject to —

- (a) any conditions and restrictions that are prescribed;
and
- (b) any conditions or restrictions imposed by the Commissioner of Health under this section.

(2) A licence or permit may be issued or renewed subject to such conditions as the Commissioner of Health thinks fit and specifies in the licence or permit.

(3) The Commissioner of Health may, at any time, by notice in writing given to the holder of a licence or permit —

- (a) delete or vary conditions or restrictions of the licence or permit; or

- (b) add new conditions or restrictions to the licence or permit.

(4) Subsection (3) does not apply to conditions or restrictions that are prescribed.

[Section 26A inserted by No. 48 of 1995 s.14.]

Duration of licences and permits

26B. (1) A licence or permit under this Act remains in force after it is first issued, unless sooner cancelled, suspended or revoked, for a period ending on 30 June following —

- (a) the day of its issue; or
- (b) the expiration of 2 years after the day of its issue,

as elected by the applicant.

(2) The holder of a licence or permit under this Act may, at least one month before it expires, apply to the Commissioner of Health for the renewal of the licence or permit for a period of one year or 3 years.

(3) Subject to this Act, the Commissioner of Health may renew a licence or permit.

(4) The renewal takes effect from 1 July in the year to which it relates and unless sooner cancelled, suspended or revoked, continues in force —

- (a) if the licence or permit is renewed for a period of 1 year, until 30 June following that date; or
- (b) if the licence or permit is renewed for a period of 3 years, until 30 June following the expiration of 2 years from that date.

[Section 26B inserted by No. 48 of 1995 s.14.]

Fees for licences, permits and renewals

27. Every applicant for a licence or permit under this Act or for any renewal thereof shall pay to the Commissioner of Health such fees therefor as are prescribed.

[Section 27 amended by No. 28 of 1984 s.92; No. 12 of 1994 s.10.]

Commissioner of Health may cancel or suspend licence or permit

28. The Commissioner of Health may in his discretion cancel, suspend or revoke at any time any licence or permit issued pursuant to the provisions of this Act, and any licence or permit so cancelled, suspended or revoked shall thereupon cease forthwith to have effect and shall be surrendered to the Commissioner of Health on demand.

[Section 28 amended by No. 29 of 1984 s.92; No. 12 of 1994 s.10.]

Appeal against order of Commissioner of Health

29. (1) Any person aggrieved by the refusal of the Commissioner of Health to grant or renew any licence or permit under this Act, or by an order of the Commissioner of Health cancelling, suspending or revoking any licence or permit, may within 6 months after notice of such refusal or of such order appeal against the same to a stipendiary magistrate sitting as a court of summary jurisdiction.

(2) The stipendiary magistrate hearing the appeal shall enquire into and decide upon the appeal and may make such order in the matter as he may think just, and his decision shall be final and conclusive.

(3) Every appeal brought pursuant to the provisions of this section shall be brought and conducted in accordance with the regulations.

[Section 29 amended by No. 28 of 1984 s.92; No. 12 of 1994 s.10.]

Licence not to be granted to company or friendly society

30. (1) A licence under this Part shall not be granted to a company or friendly society although the company or friendly society is lawfully carrying on business as a pharmaceutical chemist; but such a licence may be granted to any pharmaceutical chemist entitled thereto for his own use, who is *bona fide* employed by or engaged with that company or friendly society in the business of a pharmaceutical chemist and may be used by him for the benefit of that company or friendly society.

(2) Where in accordance with the provisions of subsection (1) a licence is used by a pharmaceutical chemist for the benefit of a company or friendly society, that company or friendly society, and the manager or other officers thereof respectively and such pharmaceutical chemist, are jointly and severally liable in respect of any offence under this Act committed by any servant or other agent of that company or friendly society in relation to the possession, sale or use of poisons.

Division 3 — General Provisions

Sales of poison to be recorded in a book

31. (1) Every person who sells by retail any poison or class of poison prescribed by regulation for the purposes of this section, shall make a true record of each sale in a book to be kept as prescribed.

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(2) A person shall not sell any poison, a record of the sale of which is required to be made in a book pursuant to subsection (1), on an order by letter or by facsimile or other electronic means unless the purchaser is known to the vendor and the letter, facsimile or a copy of the electronic message (as the case may be) is preserved by the vendor and particulars of the date and sender of the order are entered in the book referred to.

[Section 31 amended by No. 48 of 1995 s.15.]

Unauthorized sales of poisons

32. A person shall not —

- (a) sell any poison (other than a poison included in Schedule 5) by wholesale unless he is licensed under this Act to do so;
- (b) sell any poison (other than a poison included in Schedule 5 or 6) by wholesale to any person who is not authorized by or licensed or permitted under this Act to have in his possession or to sell such poison;
- (c) except as provided by section 69 of the *Agriculture and Related Resources Protection Act 1976* or section 8 (2) of the *Agriculture Protection Board Act 1950*, sell or supply any poison (other than a poison included in Schedule 5) unless he is authorized by or licensed under this Act to do so; or
- (d) sell or supply any poison (other than a poison included in Schedule 5) except in accordance with the authority of his licence or permit and the terms and conditions thereof.

[Section 32 amended by No. 48 of 1995 s.16.]

Wholesaler not to sell by retail

33. A wholesale supplier shall not sell any poison (other than a poison included in Schedule 5) by retail unless he is authorized by or licensed under this Act to do so.

[Section 33 amended by No. 48 of 1995 s.17.]

Sales to certain persons prohibited

34. (1) A person shall not sell any poison or class of poison prescribed by regulation for the purposes of this section to any person —

- (a) who is apparently under the age of 18 years; or
- (b) who is unknown to the vendor, unless the sale is made in the presence of an adult witness who is known to the vendor and who knows the purchaser.

(2) The witness in whose presence the sale is made pursuant to subsection (1) (b) shall, before the delivery of the poison to the purchaser, sign the entry (including the entry of his own name and place of residence) in the book required to be kept under section 31.

[Section 34 amended by No. 23 of 1966 s.4.]

Making false declarations

35. A person who for the purpose of obtaining for himself or for any other person the grant, issue or renewal of a licence or permit under this Act —

- (a) makes any declaration or statement that is false in any material particular; or

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- (b) knowingly produces or makes use of any such declaration or statement,

commits an offence against this Part.

Drugs not to be used for self administration

36. Subject to section 36A, a person shall not use or attempt to use, or prescribe, any drug of addiction or specified drug for the purpose of self administration; but a person for whom a medical practitioner has prescribed a drug of addiction or a specified drug in the course of treatment of that person as a patient may take or use that drug to the extent and for the purpose for which it was so prescribed.

[Section 36 amended by No. 12 of 1994 s.6.]

Defence for persons participating in the conduct of needle and syringe programmes

36A. It is a defence in proceedings for an offence against section 36 of this Act or section 6 (2) of the *Misuse of Drugs Act 1981* for the person charged to prove that the offence occurred by reason only of the person —

- (a) supplying any other person with a sterile hypodermic syringe or a sterile hypodermic needle;
- (b) doing any act or thing to facilitate the safe disposal of a used hypodermic syringe or a used hypodermic needle; or
- (c) advising, counselling or disseminating information to any other person,

in the course of the conduct of a needle and syringe programme approved by the Commissioner of Health.

[Section 36A inserted by No. 12 of 1994 s.7.]

[37 — 39. *Repealed by No. 48 of 1995 s.18.*]

Offences against this Part

40. Except where by this Act it is expressly enacted otherwise, every person who —

- (a) contravenes or fails to comply with any of the provisions of this Part;
- (b) contravenes or fails to comply with any conditions, limitation or restriction to which any authority, licence or permit issues under this Part is subject;
- (ba) contravenes or fails to comply with any conditions, limitation or restriction of any notice given by the Commissioner of Health pursuant to the regulations made under section 64 (2) (ha) or (hb);
- (c) purchases any poison and gives false information in answer to inquiries that by or under this Act are required to be made by the vendor; or
- (d) signs his name as a witness to the sale of any poison to a person unknown to him,

commits an offence against this Part.

Penalty: For a first offence, \$5 000; for a second or subsequent offence, \$15 000.

[Section 40 amended by No. 23 of 1966 s.6; No. 43 of 1978 s.4; No. 28 of 1984 s.92; No. 12 of 1994 s.10; No. 48 of 1995 s.19.]

PART IV — DRUGS OF ADDICTION

Use of Schedule 9 poisons for research etc.

41. (1) The Governor may by order authorize a specified person to manufacture, prepare, possess or use a specified substance included in Schedule 9 for educational, experimental or research purposes or for any other prescribed purpose.

(2) The order —

- (a) must specify the place or places at which the substance may be manufactured, prepared, possessed or used; and
- (b) may specify other conditions relating to the manufacture, preparation, possession or use of the substance.

(3) The Governor may by further order amend or revoke an order under this section.

(4) Notwithstanding anything in the *Misuse of Drugs Act 1981*, it is not unlawful for a person to manufacture, prepare, possess or use a substance in accordance with an order under this section.

[*Section 41 inserted by No. 48 of 1995 s.20.*]

Licence to cultivate prohibited plants

41A. (1) Subject to this Act the Commissioner of Health may grant to any person a licence to cultivate, sell, purchase or have in his possession any prohibited plant.

(2) A licence granted pursuant to this section shall be subject to such conditions as may be prescribed and as the Commissioner of Health may in his discretion impose.

[*Section 41A inserted by No. 23 of 1966 s.8; amended by No. 57 of 1981 s.17; No. 28 of 1984 s.92; No. 12 of 1994 s.10.*]

[42. *Repealed by No. 57 of 1981 s.18.*]

[43. *Repealed by No. 57 of 1981 s.19.*]

[43A. *Repealed by No. 43 of 1978 s.5.*]

Offences generally against this Part

44. (1) A person who —

- (a) contravenes or fails to comply with any provision of this Part; or
- (b) within the State aids and abets, counsels or procures the commission in any place outside the State of any offence punishable under the provisions of any corresponding law in force in that place or does any act preparatory to or in furtherance of any act which if committed within the State would constitute an offence against this Part,

commits an offence against this Part.

(2) A person who commits an offence against this Part, not being an offence for which a penalty is otherwise in this Part expressly provided, is liable upon conviction to a fine of \$15 000, or imprisonment for a term of 3 years, or to both the fine and imprisonment.

(3) A person convicted of an offence against this Part shall forfeit to Her Majesty all articles in respect of which the offence was committed, and the court before which the offender is convicted may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

(4) A person who —

- (a) attempts to commit an offence under this Part; or

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- (b) solicits or incites another person to commit such an offence,

is, without prejudice to any other liability, liable on summary conviction to the same punishment and forfeiture and to be dealt with as if he had been convicted of the offence which he attempted to commit, or the offence which he solicited or incited another to commit.

[Section 44 amended by No. 23 of 1966 s.9; No. 51 of 1967 s.2; No. 87 of 1970 s.4; No. 43 of 1978 s.6; No. 48 of 1995 s.21.]

Interpretation of “corresponding law”

45. (1) In this Part the expression, “**corresponding law**” means any law stated in a certificate that purports to have been issued by or on behalf of the Government of —

- (a) any British possession (including any territory under Her Majesty’s protection, or governed under a trusteeship agreement by the Government or any part of Her Majesty’s dominions) outside the State; or
- (b) any foreign country (including any protectorate thereof or any territory governed under a trusteeship agreement by the Government thereof),

to be a law providing for the regulation and control in that possession or country of the manufacture, sale, use, export or import of drugs in accordance with the provisions of any of the Conventions referred to in Appendix B.

(2) Any statement in a certificate referred to in subsection (1) as to the effect of the law mentioned in that certificate, or any statement in any such certificate that any facts constitute an offence against that law, shall be conclusive.

[Section 45 amended by No. 48 of 1995 s.22.]

PART V — MISCELLANEOUS PROVISIONS

Containers of poisons to be marked or labelled

46. A person shall not sell any poison unless the package or container immediately containing it is marked or labelled in such manner and with such particulars as are prescribed.

[Section 46 amended by No. 48 of 1995 ss.23 and 39.]

Medicines for internal use not to be sold in certain packages or containers

47. (1) A person shall not sell any drug or medicine that is for internal use or any food, drink or condiment in a package or container —

- (a) of like description to that prescribed by the regulations for a package or container in which any poison intended for external use may be sold; or
- (b) of such a description as not to be readily distinguishable by sight and touch, or by either sight or touch, from a package or container in which a poison intended for external use may be sold.

(2) Nothing in this section affects any other requirement of this Act relating to the packages or containers in which drugs or medicines that are or contain poisons within the meaning of this Act may be sold.

[Section 47 amended by No. 48 of 1995 s.24.]

Prohibition against hawking, etc.

48. A person shall not —

- (a) sell or attempt to sell; or

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- (b) hawk or peddle, or distribute or cause to be distributed as a sample,

any poison in any street or public place or from house to house.

Penalty: \$5 000 and, if the offence is a continuing offence, a daily penalty not exceeding \$500.

[Section 48 amended by No. 23 of 1966 s.10; No. 28 of 1984 s.92; No. 12 of 1994 s.10; No. 48 of 1995 s.25.]

Prohibition against selling by automatic machines

49. (1) A person shall not —

- (a) install or permit to be installed on or about his premises or elsewhere any automatic machine for the sale or supply of any poison;
- (b) sell or supply any poison by means of any automatic machine;
- (c) place or permit to be placed, any poison in any automatic machine that is on or about his premises or under his control; or
- (d) permit or suffer any person to purchase or be supplied with or otherwise obtain any poison by means of any automatic machine.

(2) A person who contravenes or fails to comply with any provision of subsection (1) commits an offence against this Act and is liable on conviction to a fine of \$5 000 or to imprisonment for a term not exceeding 6 months, and in addition to a daily penalty of \$500 during the time that the offence is continued after conviction.

(3) Any automatic machine in respect of which any person is convicted of an offence under this section may in the discretion of

the court before which proceedings for the offence are taken be forfeited to Her Majesty.

[Section 49 amended by No. 23 of 1966 s.11; No. 48 of 1995 s.26.]

Leaving poisons unlabelled an offence

50. (1) A person who being in charge or possession of any poison leaves it in any place (whether that place is or is not ordinarily accessible to other persons), unless the package or container in which the poison is contained is marked clearly and legibly with the word, "Poison" or with other prescribed words, and otherwise duly labelled in the manner provided by section 46, commits an offence against this Act.

Penalty: \$5 000 and, if the offence is a continuing offence, a daily penalty not exceeding \$500.

(2) This section does not apply to pharmaceutical chemists in the conduct of their business or to persons granted exemption pursuant to subsection (3).

(3) The Commissioner of Health may exempt any person from the provisions of this section where he is of opinion, having regard to the circumstances of the case, that such exemption is warranted.

[Section 50 amended by No. 23 of 1966 s.12; No. 28 of 1984 s.92; No. 12 of 1994 s.10; No. 48 of 1995 s.27.]

[51. Repealed by No. 48 of 1995 s.28.]

PART VI — SUPPLEMENTARY PROVISIONS

Orders in Council may be cancelled or amended

52. An Order in Council made under the provisions of this Act may be cancelled or from time to time varied or amended, or an error in any such Order may be rectified, by a subsequent Order in Council.

Minister may declare a person to be an authorized officer

52A. (1) The Minister may, by notice published in the *Gazette*, declare a person to be an authorized officer for the purposes of this Act.

(2) The Minister may, by further notice published in the *Gazette*, amend or revoke a declaration under this section.

[Section 52A inserted by No. 48 of 1995 s.29.]

Apprehension of offenders

53. (1) Any police officer and all persons whom he shall call to his assistance, may take into custody with or without a warrant any person found committing any offence —

- (a) against section 48; or
- (b) against any provision of Part IV or any regulation made thereunder prohibiting the sale of any drug of addiction or specified drug, or the cultivation, sale, purchase or possession of any prohibited plant,

whose name and residence are unknown to and cannot readily be ascertained by that police officer, or who on demand neglects or refuses to give his name and address or either of them, or gives a false name or address.

(2) The powers conferred by this section upon police officers are in addition to and not in diminution of the powers conferred on police officers by the provisions of the *Police Act 1892*, or of any other Act.

[Section 53 amended by No. 23 of 1966 s.13; No. 48 of 1995 s.30.]

Routine inspection

54. (1) An authorized officer may, for the purpose of ascertaining whether this Act is being complied with, at any reasonable time —

- (a) enter upon —
 - (i) any premises occupied by any person licensed or otherwise authorized under this Act to have possession of any poison or prohibited plant; or
 - (ii) any place on or from which poisons are sold;
 - (b) inspect or examine any room or part of the premises or place entered upon, and any goods or records in or on the premises or place;
 - (c) take an account of any poisons and any prohibited plants in or on the premises or place;
 - (d) on payment or tender of a reasonable price, demand, take and obtain a sample of any poison or prohibited plant in or on the premises or place.
- (2) Any person who —
- (a) refuses or fails to allow an authorized officer to enter any premises or place in accordance with this section;

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- (b) refuses to permit an authorized officer to take or obtain any sample in accordance with this section; or
- (c) delays or obstructs, or causes or permits to be delayed or obstructed, any authorized officer who is exercising any power under this section,

commits an offence.

[Section 54 inserted by No. 48 of 1995 s.31.]

Powers in respect of premises, vehicles or vessels if offence suspected of being committed

55. (1) If an authorized officer has reasonable grounds to suspect that —

- (a) an offence against this Act has been, is being, or is about to be committed; and
- (b) there is in or on any premises, vehicle or vessel anything relevant to the investigation of that offence,

the authorized officer may exercise the powers set out in subsection (2) in respect of the premises, vehicle or vessel.

(2) The authorized officer may —

- (a) signal or direct the person in control of the vehicle or vessel —
 - (i) to stop the vehicle or vessel;
 - (ii) to move the vehicle or vessel to a place specified by the officer;
 - (iii) not to move the vehicle or vessel;

- (b) enter and search the premises, vehicle or vessel using such force as is necessary to gain entry;
- (c) break open and search any package, container or other thing in or on the premises, vehicle or vessel;
- (d) search all persons found in or on the premises, vehicle or vessel;
- (e) take and remove a sample of anything in or on the premises, vehicle or vessel;
- (f) seize anything reasonably suspected of being relevant to the investigation of an offence against this Act.

(3) An authorized officer must not exercise the powers referred to in subsection (2) in respect of any premises, or any part of any premises, used as a residence except —

- (a) with the consent of the occupier of the premises; or
- (b) under a warrant issued under section 55A.

(4) A person must not be searched under this section except by a person of the same sex as the first-mentioned person.

[Section 55 inserted by No. 48 of 1995 s.31.]

Warrants

55A. (1) If a justice is satisfied by a complaint made on oath that there are reasonable grounds for suspecting that —

- (a) an offence against this Act has been, is being, or is about to be committed; and
- (b) there is in or on any premises or part of any premises used as a residence anything relevant to the investigation of that offence,

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the justice may issue a warrant in the prescribed form authorizing an authorized officer to exercise the powers referred to in section 55 (2) in respect of the premises or part of the premises.

(2) A warrant must specify —

- (a) the premises or part of the premises in respect of which the warrant is granted; and
- (b) the time and date at which the warrant ceases to have effect.

[Section 55A inserted by No. 48 of 1995 s.31.]

Person not to hinder or obstruct authorized officer

55B. A person must not without reasonable excuse —

- (a) refuse or fail to comply with a signal or direction given under section 55 (2) (a);
- (b) prevent or attempt to prevent an authorized officer from exercising a power conferred by section 55 or by a warrant under section 55A; or
- (c) hinder or obstruct an authorized officer in the exercise of any power conferred by section 55 or by a warrant under section 55A.

Penalty: \$5 000.

[Section 55B inserted by No. 48 of 1995 s.31.]

Sections 54 to 55A do not derogate from the *Misuse of Drugs Act 1981*

55C. Sections 54, 55 and 55A are in addition to, and do not derogate from, the provisions of the *Misuse of Drugs Act 1981*.

[*Section 55C inserted by No. 48 of 1995 s.31.*]

Order for forfeiture

55D. (1) If a court convicts a person of an offence against this Act, the court may order that anything seized under this Act and related to the commission of the offence be forfeited to the Crown.

(2) Anything forfeited to the Crown under subsection (1) is to be disposed of in such manner as the Minister thinks fit.

[*Section 55D inserted by No. 48 of 1995 s.31.*]

Powers to quarantine or destroy poisons in certain circumstances

55E. (1) If, in the Commissioner of Health's opinion, the keeping, possession or use of any poison by any person constitutes or may constitute a serious danger to public health, the Commissioner may, with the approval of the Minister, give a direction under subsection (2).

(2) The Commissioner may, by notice in writing given to the person who keeps, has possession of, or uses the poison, direct the person —

- (a) to secure the poison in a specified place and by specified means and not to remove the poison until further directed by the Commissioner;

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- (b) to destroy, or otherwise dispose of, the poison in a specified way;
- (c) not to use the poison (either generally or in a specified way); or
- (d) to deliver the poison to a specified person at a specified time and place.

(3) The Commissioner may, by further notice in writing given to the person referred to in subsection (2), amend or revoke a direction given under that subsection.

(4) A person shall not refuse or fail to comply with a direction given under subsection (2).

Penalty: \$10 000.

[Section 55E inserted by No. 48 of 1995 s.31.]

Sales by employees, etc.

56. For the purposes of this Act any person on whose behalf a sale is made is deemed to be the person who sells, and every employee, assistant or apprentice of such person is liable to the like penalties as the person on whose behalf he makes any sale.

Persons deemed to have sold poisons

57. (1) Where any poison is sold in an unopened package or container to an authorized officer and in respect of the sale thereof there is a contravention of or failure to comply with any provision of this Act, each of the persons referred to in paragraphs (a) and (b) shall, in addition to the person who actually sold the package or container to the authorized officer, be liable in respect of such contravention or failure, namely —

- (a) if the package or container has a label on or attached to it, any person who appears from that label to have

manufactured or prepared such poison, or to have imported it into the State, or to have enclosed or caused to be enclosed in that package or container such poison, or to have been the wholesale supplier thereof; or

- (b) if the package or container has a label on or attached to it but such label does not disclose any of the particulars referred to in paragraph (a), or if the package or container has no label on or attached to it, any person who has previously sold the unopened package or container.

(2) A person to whom the provisions of subsection (1) apply is deemed to have sold the unopened package or container to the authorized officer as on the day when and at the place where the authorized officer purchased it, and that person is liable to the same penalty as if he had actually sold such package or container to the authorized officer on that day and at that place.

(3) It shall be a defence to a charge under this section if the person charged shows —

- (a) that the contravention or non-compliance is due to the act or default of some subsequent seller;
- (b) that the contravention or non-compliance is due to deterioration or other causes beyond his control; or
- (c) where the package or container has a label on or attached to it, that he did not in fact affix or attach the label or cause it to be affixed or attached or enclose or cause to be enclosed the poison in the package or container.

(4) Nothing in this section shall affect the liability of any person selling any such unopened package or container to an authorized officer with respect to any contravention or non-compliance due to his default or to other causes within his control; and the conviction of any person under the provisions of

this section shall not exonerate the person selling such unopened package or container or any other person from liability with respect to any such contravention or non-compliance.

(5) Without affecting the generality of the application of this or any other provisions of this Act to firms or the members of them, where a firm appears from any such label to have imported, manufactured or prepared any poison, or to have been the wholesale supplier thereof or to have enclosed the same in a package or container —

- (a) proceedings under this section may be taken (whether in a court of petty sessions or otherwise) and penalties recovered accordingly against any member or members of the firm; and
- (b) this section shall be read and construed and have effect as though the name or names of the member or members of the firm had appeared on such label.

[Section 57 amended by No. 48 of 1995 ss.32 and 39.]

Evidence on prosecutions

58. Whenever in any prosecution for a contravention of or failure to comply with any provision of this Act or any regulations made under this Act it is necessary or proper to prove in respect of any particular article or substance that it is a poison, then in every such case —

- (a) evidence that any substance commonly sold under the same name or description as that particular article or substance is a poison shall be *prima facie* proof that such particular article or substance also conforms to the same description accordingly; and
- (b) evidence that any particular article or substance or the package or container containing the article or substance is labelled, “Poison” or with other prescribed words,

shall be *prima facie* proof that such particular article or substance is a poison.

[Section 58 amended by No. 48 of 1995 ss.33 and 39.]

Publication of list of licensed persons

59. The Commissioner of Health shall in the month of August in each year cause to be published in the *Government Gazette* a list of the names and places of business of all persons who hold licences or permits under this Act, and the production of a copy of the *Government Gazette* containing any such list as last published shall be *prima facie* proof in all courts and in all legal proceedings that the persons specified in such list hold such licences or permits.

[Section 59 amended by No. 28 of 1984 s.92; No. 12 of 1994 s.10.]

Proof of certificate of analysts

60. (1) In any legal proceedings for offences against this Act —

- (a) the production of a certificate purporting to be signed by an analyst with respect to any analysis made by him shall, without proof of the signature of the person appearing to have signed the certificate or that he is an analyst, be sufficient evidence —
 - (i) of the identity of the thing analysed;
 - (ii) of the result of the analysis; and
 - (iii) of the matters relevant to such proceedings stated in the certificate,

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unless the defendant by not less than 3 days' notice in writing delivered to the complainant and by a like 3 days' notice delivered to the analyst (opportunity to deliver which notices shall be afforded the defendant) requires the analyst to attend as a witness; and

- (b) the court may, in addition to any other order as to costs, make such order as it thinks just as to the conduct money of the analyst and the expenses and remuneration to be paid for any analysis.

(2) For the purposes of this section, “analyst” means an analyst appointed under the provisions of the *Health Act 1911*.

Evidence of qualifications

61. In any legal proceedings under this Act —

- (a) the production of a copy of the *Government Gazette* containing the several registers or lists as last published in relation to the time in question of medical practitioners, pharmaceutical chemists, dentists or veterinary surgeons and of persons holding licences or permits under this Act shall, if the name of the defendant does not appear in any of such registers or lists, be *prima facie* proof that he is not a medical practitioner or a registered pharmaceutical chemist, dentist, veterinary surgeon or a person who holds a licence or permit under this Act;
- (b) a certificate that any person is or is not, or was or was not, on a certain date or for a certain period a medical practitioner or a registered pharmaceutical chemist, dentist, veterinary surgeon or a person who holds a licence, permit or authority under this Act shall be *prima facie* proof of the fact therein stated if the certificate purports to be signed —
 - (i) in the case of a medical practitioner by the registrar of the Medical Board constituted under the *Medical Act 1894*;

- (ii) in the case of a registered pharmaceutical chemist, by the registrar of the Pharmaceutical Council of Western Australia, constituted under the *Pharmacy Act 1964*;
- (iii) in the case of a registered dentist, by the registrar of The Dental Board of Western Australia, constituted under the *Dental Act 1939*;
- (iv) in the case of a registered veterinary surgeon, by the registrar of the Veterinary Surgeons' Board, constituted under the *Veterinary Surgeons Act 1960*; and
- (v) in the case of a person who holds a licence, permit or authority under this Act, by the Commissioner of Health.

[Section 61 amended by No. 28 of 1984 s.92; No. 12 of 1994 s.10.]

Evidence of approval

61A. In any legal proceedings under this Act or the *Misuse of Drugs Act 1981*, production of a certificate purporting to be signed by the Commissioner of Health and stating that on any date or during any period a specified needle and syringe programme was approved by the Commissioner of Health is, without proof of the signature of the Commissioner of Health, evidence of the facts stated in the certificate.

[Section 61A inserted by No. 12 of 1994 s.8.]

Evidence of contents of standard

61B. In any proceedings under this Act, production of a copy of a standard referred to in this Act purporting to be certified by the Commissioner of Health to be a true copy of the standard as

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at any date or during any period is, without proof of the signature of the Commissioner of Health, sufficient evidence of the contents of the standard as at that date or during that period.

[Section 61B inserted by No. 48 of 1995 s.34.]

General penalty

62. Every person who contravenes or fails to comply with any provision of this Act or any regulation made under this Act commits an offence against this Act and if no penalty is expressly provided with respect to that offence is liable on conviction to a penalty not exceeding \$5 000 and, if the offence is a continuing offence, to a daily penalty not exceeding \$500.

[Section 62 amended by No. 23 of 1966 s.16; No. 48 of 1995 s.35.]

Protection from liability

63. (1) No act, matter or thing done or omitted to be done in good faith by the Minister or by the Commissioner of Health, or by the Advisory Committee or by any member thereof or by the secretary or any other officer thereof, or by any authorized officer, in the administration or intended administration of this Act, or in the exercise or performance or intended exercise or performance of any of his or its powers, functions or duties under this Act, shall subject the Minister or the Commissioner of Health, or the Advisory Committee or any member or the secretary or other officer thereof, or any authorized officer, to any liability in respect thereof.

[(2) repealed]

[Section 63 amended by No. 28 of 1984 s.92; No. 12 of 1994 s.10; No. 48 of 1995 s.36.]

Regulations

64. (1) The Governor may make regulations prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

(2) Without limiting the generality of the powers conferred by subsection (1), the Governor may make regulations for or with respect to —

- (a) the possession, sale and safe custody of poisons including the specifications of cupboards and other receptacles and the manner of storage of any poison;
- (b) the packages or containers in which any poison may be sold, and the design, shape, size and materials of such packages or containers, and prohibiting the use of such packages or containers to contain other substances;
- (c) the marking and labelling of, and particulars (including antidotes) to be included in labels on or attached to, packages or containers that contain poisons;
- (ca) regulating the advertising or display of poisons;
- (d) prohibiting or regulating the possession, manufacture, distribution, supply, sale, handling or use of any poisons either absolutely or except under such circumstances or conditions as may be prescribed;
- (da) prohibiting or regulating the cultivation possession, sale or purchase of any prohibited plant either absolutely or subject to such conditions as may be prescribed, and prescribing those conditions;
- (e) prescribing precautions to be taken in the manufacture, storage, handling or use of any poisons;

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- (f) the application for and the granting, issue, renewal, cancellation and suspension of licences, permits and authorities under this Act;
- (g) prescribing the persons to whom and the circumstances and conditions in and under which licences to sell by retail poisons included in Schedule 2, 3, 4 or 7 may be granted under section 24;
- [(h) *deleted*]
- (ha) authorizing the Commissioner of Health by notice given to a person to revoke the authority conferred on that person by section 23 (2) in relation to drugs of addiction or specified drugs or both;
- (hb) authorizing the Commissioner of Health by notice given to a person to revoke the authority conferred on that person by section 23 (4) in relation to poisons included in Schedule 6;
- (hc) allowing a notice referred to in paragraph (ha) or (hb) —
 - (i) to revoke the authority either totally or subject to specified conditions or restrictions;
 - (ii) to be made in respect of all or any specified drugs or poisons to which the authority relates; and
 - (iii) to be amended or revoked by a further notice;
- (i) prescribing conditions and restrictions to which licences and permits under this Act shall be subject;
- (j) prescribing the form of, and the particulars to be recorded in, the book required to be kept pursuant to section 31, and the procedure to be followed in relation to the sale and recording of poisons;

- (ja) requiring persons engaged in the cultivation, sale, distribution or supply of any prohibited plant, or the manufacture, sale, distribution or supply of any poison, to keep such books, records or documents, and furnish such information, relating to such prohibited plant or poison as the Commissioner of Health may require from time to time, and providing for production of those books, records or documents and the furnishing in writing or otherwise of that information to the Commissioner of Health at such times and in such manner as he may direct;
- (k) prescribing the manner in which appeals against decisions of the Commissioner of Health under this Act shall be brought and the procedure to be followed in the conduct of such appeals;
- (l) prescribing the precautions to be observed in respect to the sale of poisons ordered by letter or by facsimile or other electronic means;
- (m) the inspection of premises, stocks, books, and documents relating to poisons and prohibited plants;
- (n) prohibiting or regulating the sale of any poison by methods of self-service other than any such methods prescribed;
- (o) providing for the forfeiture of any poison or prohibited plant unlawfully in the possession of any person and for the disposal of any poison or prohibited plant so forfeited;
- (p) specifying the persons or classes of persons authorized or entitled to purchase, use or be in possession of any poison;
- (q) exempting from all or any of the provisions of this Act and the regulations, substances containing any poison that by their nature are not capable of being used in

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evasion of this Act and the regulations, or that are supplied or sold by a pharmaceutical chemist or in accordance with the prescription of a medical practitioner, dentist or veterinary surgeon for an individual and specific case;

- (r) authorizing medical practitioners, and pharmaceutical chemists dispensing medicines and drugs at any public hospital or institution, or persons in charge of laboratories for the purpose of research or instruction, dentists, veterinary surgeons, and such other persons as to the Commissioner of Health may seem proper, to be in possession of any poison for the purposes of their respective professions or employments, and prescribing the conditions and restrictions upon and subject to which such authority may be given;
- (s) regulating the issue by medical practitioners, dentists or veterinary surgeons of prescriptions containing any poison, the dispensing of such prescriptions, and the supply of any such poisons thereunder;
- (sa) prohibiting and regulating the issue by medical practitioners, dentists or veterinary surgeons of prescriptions containing any drug of addiction or any specified drug, or any class of drug of addiction or any class of specified drug, the dispensing of such prescriptions and the supply of drugs of addiction or specified drugs thereunder;
- (sb) needle and syringe programmes including conditions and requirements relating to the approval and conduct of such programmes;
- (t) prescribing the colouring of any poison;
- (u) providing for the disposal of automatic machines forfeited pursuant to the provisions of this Act;

- (v) prescribing fees to be paid for the issue and renewal of licences and permits under this Act;
- (w) prescribing forms to be used for the purposes of this Act;
- (x) prescribing a penalty of not more than \$5 000 for any contravention of or failure to comply with the regulations and a daily penalty not exceeding \$500 if the offence is a continuing offence;
- (y) any other matter or thing in any manner relating to poisons or prohibited plants;
- (z) any other purpose that the Governor deems necessary for safeguarding the public and the public health in relation to poisons and prohibited plants.

(2a) Regulations may be made under this section requiring any person who is licensed or otherwise authorized under this Act to have in his possession, manufacture, supply or sell any poison, drug of addiction or specified drug to —

- (a) retain any document, writing, prescription or authorization or record thereof relating to the sale or supply of any drug of addiction or specified drug;
- (b) maintain such records relating to the sale or supply of drugs of addiction or specified drugs as may be prescribed;
- (c) deliver up any document, prescription, authorization or record thereof relating to the sale or supply of a drug of addiction or specified drug upon request made by any authorized officer.

(2b) Regulations made under subsection (2a) may be made so as to apply —

- (a) generally, or to a particular drug of addiction or particular specified drug or to particular classes thereof;
- (b) generally, or to particular classes of persons,

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and may make differing provisions as regards classes of persons and classes of drugs of addiction or specified drugs.

(3) Regulations made under the provisions of this section are in addition to and not in derogation of any regulations made under the *Health Act 1911*, and under the *Misuse of Drugs Act 1981*, but where and to the extent that inconsistency exists between the regulations made under this section and any regulations made under the *Health Act 1911* or the *Misuse of Drugs Act 1981*, as referred to in this subsection, the regulations made under this section shall prevail.

[Section 64 amended by No. 23 of 1966 s.17; No. 6 of 1969 s.8; No. 43 of 1978 s.7; No. 57 of 1981 s.21; No. 28 of 1984 s.92; No. 12 of 1994 ss.9 and 10; No. 48 of 1995 ss.37 and 39.]

Regulations may adopt standards

64A. (1) The regulations may make provision for or in relation to any matter by applying, adopting or incorporating a standard or a part of a standard.

(2) Without limiting subsection (1), a standard or a part of a standard may be applied, adopted or incorporated —

- (a) as in force at a particular time or as in force from time to time; and
- (b) with or without modification.

[Section 64A inserted by No. 48 of 1995 s.38.]

Copies of standards to be kept and made available to public

64B. The Commissioner of Health is to cause a copy of every standard referred to in this Act to be kept at the prescribed office

of the department and to be available for inspection free of charge by members of the public at that office during normal office hours.

[Section 64B inserted by No. 48 of 1995 s.38.]

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APPENDIX A

Interpretation

1. (1) In this Appendix, "SUSDP" means the "Standard for the Uniform Scheduling of Drugs and Poisons No. 10" issued by the Australian Health Ministers Advisory Council and published by the Australian Government Publishing Service Canberra, and includes that standard as it may be amended from time to time by the Council.

(2) If for the purposes of this Appendix it is necessary to interpret a Schedule to the SUSDP, the definitions and interpretation provisions in the SUSDP apply to the interpretation of that Schedule.

SCHEDULE 1

All substances listed in Schedule 1 to the SUSDP.

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SCHEDULE 2

All substances listed in Schedule 2 to the SUSDP.

SCHEDULE 3

All substances listed in Schedule 3 to the SUSDP.

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SCHEDULE 4

All substances listed in Schedule 4 to the SUSDP, subject to the following modification —

The following substance is added to Schedule 4 to the SUSDP —

* SCAEVOLA SPINESCENS.

SCHEDULE 5

All substances listed in Schedule 5 to the SUSDP.

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SCHEDULE 6

All substances listed in Schedule 6 to the SUSDP, subject to the following modification —

The following substance is deleted from Schedule 6 to the SUSDP —

- * ACETIC ANHYDRIDE excluding its derivatives.

SCHEDULE 7

All substances listed in Schedule 7 to the SUSDP, subject to the following modifications —

The description of the following substance in Schedule 7 to the SUSDP is modified in the following manner —

- * In the entry for “NICOTINE”, after the word “smoking” in paragraph (b) of that entry, insert “or as nasal snuff”.

The following substances are added to Schedule 7 to the SUSDP —

- * ACETIC ANHYDRIDE excluding its derivatives.
- * 2-ACETYL AMINOFLUORENE.
- * ALPHANAPHTHYLAMINE.
- * 4-AMINOBIHENYL.
- * BENZIDINE.
- * BENZO(A)PYRENE.
- * BETANAPHTHYLAMINE.
- * BETA PROPRIOLACTONE.
- * BIS-CHLOROMETHYL ETHER.
- * 3,3'-DICHLOROBENZIDINE.
- * METHYL CHLOROMETHYL ETHER.
- * 4-NITROBIHENYL.
- * N-NITROSODIMETHYLAMINE.
- * TOXAPHENE (CAMPHECHLOR).

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SCHEDULE 8

All substances listed in Schedule 8 to the SUSDP.

SCHEDULE 9

All substances listed in Schedule 9 to the SUSDP, subject to the following modification —

The following substances are added to Schedule 9 to the SUSDP —

- * ALKOXYAMPHETAMINES AND BROMO-SUBSTITUTED ALKOXYAMPHETAMINES except where separately specified in Schedule 9.
- * ALKOXYPHENETHYLAMINES AND ALKYL-SUBSTITUTED ALKOXYPHENETHYLAMINES except where separately specified in Schedule 9.
- * 4-BROMO-3,5-DIMETHOXYAMPHETAMINE.
- * 3-BROMO-4-METHOXYAMPHETAMINE.
- * 4-BROMO-3-METHOXYAMPHETAMINE.
- * CANNABIS OIL.
- * CANNABIS RESIN.
- * 3,4-DIMETHOXYAMPHETAMINE.
- * 2,5-DIMETHOXY-4-ETHOXYAMPHETAMINE.
- * 3,4-DIMETHOXY-5-ETHOXYAMPHETAMINE.
- * 4,5-DIMETHOXY-2-ETHOXYAMPHETAMINE.
- * 2,3-DIMETHOXY-4,5-METHYLENEDIOXYAMPHETAMINE.
- * 2,5-DIMETHOXY-3,4-METHYLENEDIOXYAMPHETAMINE.
- * 3,4-DIMETHOXYPHENYLETHYLAMINE.
- * 4,5-ETHYLENEDIOXY-3-METHOXYAMPHETAMINE.
- * 2-METHOXY-3,4-METHYLENEDIOXYAMPHETAMINE.
- * 2-METHOXY-4,5-METHYLENEDIOXYAMPHETAMINE.
- * 4-METHOXY-2,3-METHYLENEDIOXYAMPHETAMINE.
- * 2-METHOXY-3,4-METHYLENEDIOXYPHENYLETHYLAMINE.

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- * 3-METHOXY-4,5-METHYLENEDIOXYPHENYLETHYLAMINE.
- * 4-METHOXYPHENYLETHYLAMINE.
- * 3,4-METHYLENEDIOXY-N-ETHYLAMPHETAMINE
*(MDE)
- * 2,3,4,5-TETRAMETHOXYAMPHETAMINE.
- * 2,3,4-TRIMETHOXYAMPHETAMINE.
- * 2,3,6-TRIMETHOXYAMPHETAMINE.
- * 2,4,5-TRIMETHOXYAMPHETAMINE.
- * 2,4,6-TRIMETHOXYAMPHETAMINE.
- * 2,4,5-TRIMETHOXYPHENYLETHYLAMINE.

[Appendix A inserted by No. 48 of 1995 s.40; amended in Gazette 19 March 1996 pp.1207-10.]

APPENDIX B

[Section 45]

CONVENTIONS

The Single Convention on Narcotic Drugs, signed at New York on 30 March 1961.

The 1972 protocol amending the Single Convention on Narcotic Drugs, signed at Geneva on 25 March 1972.

The Convention on Psychotropic Substances, signed at Vienna on 21 February 1971.

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.

[Appendix B inserted by No. 48 of 1995 s.41.]

[Appendix C Repealed by No. 48 of 1995 s.42.]

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NOTES

^{1.} This reprint is a compilation as at 9 April 1996 of the *Poisons Act 1964* and includes the amendments effected by the other Acts referred to Part I of the following Table and by the Orders in Council referred to in Part II of the following Table.

Table of Acts and Orders in Council

PART I — ACTS

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Poisons Act 1964</i>	70 of 1964	11 December 1964	1 July 1965 (see <i>Gazette</i> 25 June 1965 p.1836)	
<i>Poisons Act Amendment Act 1966</i>	23 of 1966	27 October 1966	27 October 1966	
<i>Poisons Act Amendment Act 1967</i>	28 of 1967	17 November 1967	17 November 1967	
<i>Poisons Act Amendment Act (No. 2) 1967</i>	51 of 1967	5 December 1967	5 December 1967	
<i>Poisons Act Amendment Act 1969</i>	6 of 1969	21 April 1969	13 June 1969 (see <i>Gazette</i> 13 June 1969 p.1765)	
<i>Poisons Act Amendment Act 1970</i>	87 of 1970	30 November 1970	2 February 1971 (see <i>Gazette</i> 29 January 1971 p.277)	
<i>Poisons Act Amendment Act 1978</i>	43 of 1978	29 August 1978	1 October 1980 (see <i>Gazette</i> 29 August 1980 p.3015)	
<i>Acts Amendment (Misuse of Drugs) Act 1981, Part IV</i>	57 of 1981	13 October 1981	1 September 1982 (see section 2 and <i>Gazette</i> 20 August 1982 p.3250)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Statutory Designations) and Validation Act 1981, section 4</i>	63 of 1981	13 October 1981	13 October 1981	
<i>Health Legislation Administration Act 1984, Part XX</i>	28 of 1984	31 May 1984	1 July 1984 (see section 2 and <i>Gazette</i> 15 June 1984 p.1629)	
<i>Poisons Amendment Act 1994</i>	12 of 1994	15 April 1994	27 May 1994 (see <i>Gazette</i> 27 May 1994 p.2205)	
<i>Acts Amendment (Public Sector Management) Act 1994, section 3 (2)</i>	32 of 1994	29 June 1994	1 October 1994 (see <i>Gazette</i> 30 September 1994 p.4948)	
<i>Poisons Amendment Act 1995</i>	48 of 1995	6 November 1995	20 March 1996 (see <i>Gazette</i> 19 March 1996 p.1203)	

PART II — ORDERS IN COUNCIL

Order	Gazetted	Commencement	Miscellaneous
Act No. 48 of 1995 repealed and substituted Appendix A			
<i>Poisons (Appendix A Amendment) Order 1996</i>	19 March 1996 pp.1207-10	20 March 1996 (see clause 2 and <i>Gazette</i> 19 March 1996 p.1203)	

NB *The Poisons Act 1964* is affected by the *Health Act 1911* and the *Police Act 1892*.

² See the *Interpretation Act 1984*.

³ Under the *Reprints Act 1984* section 7 (3) (h) this title was substituted for "Commissioner of Public Health".

