

Western Australia

Medicines and Poisons Act 2014

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No. 13 of 2014

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Medicines and Poisons Act 2014

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Western Australia

Medicines and Poisons Act 2014

No. 13 of 2014

An Act —

- **to regulate and control the manufacture and supply of medicines and poisons; and**
 - **to repeal the *Poisons Act 1964*, the *White Phosphorus Matches Prohibition Act 1912* and various regulations; and**
 - **to amend the *Health Act 1911*, *Misuse of Drugs Act 1981* and various other written laws and,**
- for incidental and related purposes.**

[Assented to 2 July 2014]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Medicines and Poisons Act 2014*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation and different days may be fixed for different provisions.

3. Terms used

In this Act —

adopted code has the meaning given in section 132(1);

Agvet Code of Western Australia has the meaning given in the *Agricultural and Veterinary Chemicals (Western Australia) Act 1995* section 3;

authorised health professional means a health professional who has a professional authority;

CEO means the chief executive officer of the Department;

compliance notice means a notice given under section 71;

corporate officer, in relation to a body corporate, means an individual who is an officer, as defined in the *Corporations Act 2001* (Commonwealth) section 9, of the body corporate;

Department means the department of the Public Service principally assisting in the administration of this Act;

drugs of addiction record means the record kept under section 88;

health professional means a person who is —

- (a) a registered health practitioner; or
- (b) a veterinary surgeon; or

- (c) in a class of persons prescribed by the regulations for the purposes of this definition;

investigator means a person designated under section 95(1) to be an investigator;

licence means a licence granted under Part 4 Division 2;

licensee means the holder of a licence;

manufacture has the meaning given in section 6;

medicine means a substance that is a Schedule 2, 3, 4 or 8 poison;

needle and syringe programme means a programme to do one or more of the following principally for the purpose of preventing the spread of infectious diseases that are carried in the blood —

- (a) to supply people with any of the following —
- (i) sterile hypodermic syringes;
 - (ii) sterile hypodermic needles;
 - (iii) things that may be used in connection with the administration, by injection, of prohibited drugs (as defined in the *Misuse of Drugs Act 1981* section 3(1)), for example, swabs and spoons;
- (b) to facilitate the safe disposal, after use, of any of the things mentioned in paragraph (a);
- (c) to advise, counsel or disseminate information to people;

permit means a permit granted under Part 4 Division 2;

permit holder means the holder of a permit;

pharmacist means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the pharmacy profession;

pharmacy means premises registered as a pharmacy under the *Pharmacy Act 2010* section 39;

poison means a substance that is a Schedule 2, 3, 4, 5, 6, 7, 8 or 9 poison;

prescribe, in relation to a poison, has the meaning given in section 7(1);

prescriber has the meaning given in section 7(1);

prescription has the meaning given in section 7(1);

professional authority means —

- (a) an authorisation under section 25 to administer, possess, prescribe, supply or use a medicine; or
- (b) an authorisation under section 26 to manufacture a medicine or use or possess a Schedule 7 poison;

register means the register kept under section 75;

registered health practitioner means a health practitioner who is registered under the *Health Practitioner Regulation National Law (Western Australia)* to practice a health profession;

Schedule 2 poison means a substance that is classified by regulations made under section 4(1) as a poison included in Schedule 2;

Schedule 3 poison means a substance that is classified by regulations made under section 4(1) as a poison included in Schedule 3;

Schedule 4 poison means a substance that is classified by regulations made under section 4(1) as a poison included in Schedule 4;

Schedule 5 poison means a substance that is classified by regulations made under section 4(1) as a poison included in Schedule 5;

Schedule 6 poison means a substance that is classified by regulations made under section 4(1) as a poison included in Schedule 6;

Schedule 7 notice means a notice given under section 72;

Schedule 7 poison means a substance that is classified by regulations made under section 4(1) as a poison included in Schedule 7;

Schedule 8 poison means a substance that is classified by regulations made under section 4(1) as a poison included in Schedule 8;

Schedule 9 poison means a substance that is classified by regulations made under section 4(1) as a poison included in Schedule 9;

strictly controlled substance means a substance that is classified by regulations made under section 5(1) as a strictly controlled substance;

substance includes a compound, preparation, mixture or plant;

supply has the meaning given in section 8;

veterinary surgeon means an individual registered as a veterinary surgeon under the *Veterinary Surgeons Act 1960*.

4. Poisons

- (1) The Governor may, on the recommendation of the Minister, make regulations classifying a substance as a poison included in a Schedule referred to in the Table.

Table

Schedule 1 — [Blank]
Schedule 2 — Pharmacy medicines Substances, the safe use of which may require advice from a pharmacist and which should be available from a pharmacy or, where a pharmacy service is not available, from a licensed person.
Schedule 3 — Pharmacist only medicines Substances, the safe use of which requires professional advice but which should be available to the public from a pharmacist without a prescription.

**Schedule 4 — Prescription only medicines, or
Prescription Animal Remedy**

Substances, the use or supply of which should be by or on the order of persons permitted under the Act to prescribe and should be available from a pharmacist on prescription.

Schedule 5 — Caution

Substances with a low potential for causing harm, the extent of which can be reduced through the use of appropriate packaging with simple warnings and safety directions on the label.

Schedule 6 — Poison

Substances with a moderate potential for causing harm, the extent of which can be reduced through the use of distinctive packaging with strong warnings and safety directions on the label.

Schedule 7 — Dangerous Poison

Substances with a high potential for causing harm at low exposure and which require special precautions during manufacture, handling or use. These poisons should be available only to specialised or authorised users who have the skills necessary to handle them safely. Special regulations restricting their availability, possession, storage or use may apply.

Schedule 8 — Controlled Drug

Substances which should be available for use but require restriction of manufacture, supply, distribution, possession and use to reduce abuse, misuse and physical or psychological dependence.

Schedule 9 — Prohibited Substance

Substances which may be abused or misused, the manufacture, possession, sale or use of which should be prohibited by law except when required for medical or scientific research, or for analytical, teaching or training purposes with approval of the CEO.

- (2) The Minister may recommend that a substance be identified in the regulations in any way the Minister thinks fit.
- (3) Without limiting subsection (2), a substance may be classified by reference to any of the following —
 - (a) an adopted code;
 - (b) the way in which it is, or is intended to be, used;
 - (c) the purpose for which it is, or is intended to be, used;
 - (d) the quantity in which it is supplied;
 - (e) its packaging or labelling;
 - (f) its physical or chemical state or form;
 - (g) any other factor.
- (4) The following substances cannot be classified as poisons —
 - (a) industrial hemp or industrial hemp seed as defined in the *Industrial Hemp Act 2004* section 3(1);
 - (b) processed industrial hemp as defined in the *Misuse of Drugs Act 1981* section 3(1).

5. Strictly controlled substances

- (1) The Governor may, on the recommendation of the Minister, make regulations classifying a substance as a strictly controlled substance.
- (2) The following substances cannot be classified as strictly controlled substances —
 - (a) industrial hemp or industrial hemp seed as defined in the *Industrial Hemp Act 2004* section 3(1);
 - (b) processed industrial hemp as defined in the *Misuse of Drugs Act 1981* section 3(1).
- (3) The Minister must not recommend that a substance be classified as a strictly controlled substance unless the Minister is satisfied that the strict control of the supply and use of the substance is necessary to protect the health, safety and welfare of the public.
- (4) If the Minister is satisfied that strict control of the supply and use of a strictly controlled substance is no longer necessary to protect the health, safety and welfare of the public the Minister must recommend the making of regulations terminating the classification of the substance as a strictly controlled substance.
- (5) On and from the control day for a strictly controlled substance that was a poison immediately before that day —
 - (a) that substance ceases to be a poison; and
 - (b) an authorisation given by a licence, permit or professional authority to supply or use that substance ceases to have effect.
- (6) For the purposes of subsection (5) —
control day, in relation to a strictly controlled substance, means the day that the substance becomes a strictly controlled substance.
- (7) The CEO must take all reasonable steps to inform each licensee, permit holder or authorised health professional who is

authorised to supply or use a poison that becomes a strictly controlled substance about the effect of subsection (5).

6. Term used: manufacture

(1) In this Act —

manufacture, in relation to a poison, means —

- (a) to produce the poison; or
- (b) if the poison is a plant, to cultivate the plant; or
- (c) to produce a substance that contains the poison; or
- (d) to do anything, including testing, packaging, labelling or storing the poison, that is part of the process of —
 - (i) doing a thing described in paragraph (a), (b) or (c); or
 - (ii) bringing the poison to its final state.

(2) For the purposes of this Act, a person is taken to manufacture a poison if the person does any of the following —

- (a) agrees to manufacture the poison;
- (b) advertises or otherwise offers to manufacture the poison;
- (c) has possession of all the necessary equipment or materials to manufacture the poison for the purpose of manufacturing the poison.

(3) For the purpose of determining if a person has manufactured a poison the following are immaterial —

- (a) the quantity of the poison;
- (b) the purpose for which the poison is manufactured;
- (c) whether or not the person was acting as an employee or agent of another person.

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7. Terms used: prescription and related terms

(1) In this Act —

prescribe, in relation to a poison, means to issue a prescription for the poison;

prescriber, in relation to a Schedule 4 or 8 poison, means an authorised health professional who has authority to prescribe the poison;

prescription, in relation to a Schedule 4 or 8 poison, means a document (whether written or electronic) that —

(a) sets out particulars of the poison, or a substance that contains the poison, that is, for therapeutic purposes, to be —

(i) used by, or administered to, a person named in the document; or

(ii) administered to an animal described in the document;

and

(b) is issued for the purpose of enabling the poison to be supplied for that purpose; and

(c) complies with any requirements prescribed by the regulations.

(2) A person is not to be taken to have issued a prescription if the person —

(a) supplies a Schedule 4 or 8 poison in accordance with a prescription that authorises —

(i) the supply of 2 or more Schedule 4 or 8 poisons; or

(ii) the supply of a Schedule 4 or 8 poison on 2 or more occasions;

and

- (b) also issues a form authorising the supply of one or more of the poisons in accordance with the prescription on another occasion.
- (3) For the purposes of this Act a person (a *supplier*) supplies a Schedule 4 or 8 poison *in accordance with a prescription* if —
- (a) the supplier has been given a prescription relating to the poison; and
- (b) the supplier reasonably believes that the person to whom the poison is supplied —
- (i) is —
- (I) if the poison is prescribed for the therapeutic use of a person — that person; or
- (II) if the poison is prescribed for the therapeutic use of an animal — the owner of the animal;
- or
- (ii) has lawful authority to obtain the poison on behalf of a person referred to in subparagraph (i);
- and
- (c) the quantity of the poison supplied does not exceed the quantity specified in the prescription.
- (4) If a prescription describes a poison without reference to a brand name, then for the purposes of subsection (3)(a), the prescription relates to any brand of the poison.
- (5) If a prescription describes a poison by reference to a brand name, then for the purposes of subsection (3)(a), the prescription relates to —
- (a) if the poison is prescribed for the therapeutic use of a person who is a patient in a public hospital — any brand of the poison (even if the prescription indicates that brand substitution is not permitted); or

- (b) if paragraph (a) does not apply —
 - (i) if the prescription indicates that brand substitution is not permitted — the brand of poison specified in the prescription; or
 - (ii) if the prescription does not indicate that brand substitution is not permitted — any brand of the poison.

8. Term used: supply

- (1) In this Act —

supply, in relation to a poison, means to supply the poison, or a substance that contains the poison, to another person, but does not include administering a poison or substance directly to another person or to an animal.
- (2) For the purposes of this Act a person is taken to supply a poison if the person does any of the following —
 - (a) agrees to supply the poison;
 - (b) makes available, advertises, displays with a view to supplying, or otherwise offers to supply, the poison;
 - (c) has possession of the poison for the purpose of supplying it.
- (3) For the purpose of determining if a person has supplied a poison the following are immaterial —
 - (a) the quantity of the poison;
 - (b) the purpose for which the poison is supplied;
 - (c) whether or not the recipient pays for the poison;
 - (d) whether or not the supplier and recipient are in the same place at the same time;
 - (e) whether or not the poison is supplied by indirect means such as the internet, electronic mail, telephone, facsimile, mail order or a vending machine;

- (f) whether or not the person was acting as an employee or agent of another person.

9. Supply and possession of poisons by pharmacy business

- (1) In this section —

pharmacy business has the meaning given in the *Pharmacy Act 2010* section 3(1).

- (2) For the purposes of this Act, supply or possession of a poison by a pharmacy business carried on at a pharmacy is to be taken to be supply or possession of the medicine or poison by the pharmacist who has overall responsibility for the pharmacy business in accordance with the *Pharmacy Act 2010* section 56.

10. Relationship with *Misuse of Drugs Act 1981*

If a provision in this Act is inconsistent with a provision in the *Misuse of Drugs Act 1981*, the provision in this Act prevails.

11. Act applies to the State

This Act binds the State.

Part 2 — Offences

12. Terms used

In this Part —

appropriate licence means each of the following —

- (a) a licence granted under Part 4 Division 2;
- (b) a licence granted under the *Agricultural and Veterinary Chemicals Code Act 1994* (Commonwealth);
- (c) a licence granted under the Agvet Code of Western Australia;
- (d) a licence or exemption granted under the *Radiation Safety Act 1975*;
- (e) a licence granted under the *Therapeutic Goods Act 1989* (Commonwealth);

appropriate permit means each of the following —

- (a) a permit granted under Part 4 Division 2;
- (b) a permit granted under the *Agricultural and Veterinary Chemicals Code Act 1994* (Commonwealth);
- (c) a permit granted under the Agvet Code of Western Australia.

13. Offences relating to manufacture and supply of Schedule 2 and Schedule 3 poisons

- (1) A person who manufactures or supplies a Schedule 2 or 3 poison commits an offence unless —
 - (a) the person does so —
 - (i) under and in accordance with an appropriate licence or a professional authority; and
 - (ii) in accordance with the regulations;
- or

- (b) the person does so in accordance with subsection (2) or (3).

Penalty: see section 115.

- (2) A person may supply a Schedule 2 or 3 poison to another person (the *patient*) if —
 - (a) the person reasonably believes that the use by the patient of the poison would be appropriate for therapeutic purposes; and
 - (b) the amount of the poison supplied is reasonable in the circumstances; and
 - (c) the person reasonably believes that the patient will use the poison for therapeutic purposes.
- (3) A person may supply a Schedule 2 or 3 poison to another person (an *agent*) if —
 - (a) the person supplies the poison to the agent for the purpose of it being supplied or administered to another person or to an animal (the *patient*); and
 - (b) the person reasonably believes that the use by the patient, or the administration to the patient, of the poison would be appropriate for therapeutic purposes; and
 - (c) the amount of the poison supplied is reasonable in the circumstances; and
 - (d) the person reasonably believes that —
 - (i) the agent will —
 - (I) supply or administer the poison to the patient; or
 - (II) supply the poison to another person for the purpose of it being supplied or administered to the patient;
 - and
 - (ii) the poison will be used by, or administered to, the patient for therapeutic purposes.

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- (4) A person authorised under an appropriate licence or a professional authority to supply a Schedule 2 or 3 poison who supplies the poison in circumstances where the person reasonably suspects or ought reasonably to suspect that the recipient intends to use it in a way that might reasonably be expected to pose a serious threat to the health, safety and welfare of a person or of the public commits an offence.

Penalty: see section 115.

14. Offences relating to manufacture, supply, prescribing and possession of Schedule 4 and Schedule 8 poisons

- (1) A person who manufactures or supplies a Schedule 4 or 8 poison commits an offence unless the person does so —
- (a) under and in accordance with an appropriate licence or a professional authority; and
 - (b) in accordance with the regulations.

Penalty: see section 115.

- (2) A person authorised under an appropriate licence or a professional authority to supply a Schedule 4 or 8 poison (an **authorised supplier**) who supplies a Schedule 4 or 8 poison commits an offence unless —
- (a) the supply is to a person (the **patient**) and —
 - (i) the poison had been prescribed for the patient by a prescriber; and
 - (ii) the authorised supplier reasonably believes that the patient will use the poison in accordance with the instructions of the prescriber;
- or
- (b) the supply is to a person (the **agent**) and —
 - (i) the authorised supplier supplies the poison to the agent for the purpose of it being supplied or administered to another person or to an animal (the **patient**); and

- (ii) the poison had been prescribed for the patient by a prescriber; and
- (iii) the authorised supplier reasonably believes that the poison will be supplied or administered to the patient in accordance with the instructions of the prescriber.

Penalty: see section 115.

- (3) A person who prescribes a Schedule 4 or 8 poison commits an offence unless —
- (a) the person is a health professional who is authorised under section 25 to prescribe the poison; and
 - (b) the prescription is in accordance with the regulations.

Penalty: see section 115.

- (4) A person who is in possession of a Schedule 4 or 8 poison commits an offence unless —
- (a) the person is authorised by a professional authority or an appropriate licence to manufacture the poison and has possession of the poison for the purpose of, or as a result of, that manufacture; or
 - (b) the person is authorised by a professional authority or an appropriate licence to supply the poison and has possession of the poison for the purpose of that supply; or
 - (c) the person is the holder of an appropriate permit and has possession of the poison for the purpose specified in the permit; or
 - (d) the poison was prescribed for the person by a prescriber who is authorised to prescribe the poison and the person has possession of the poison for the purpose of using it in accordance with the instructions of the prescriber; or
 - (e) the person is a carer of a person referred to in paragraph (d) (the *patient*) and has possession for the purposes of supplying or administering the poison to the

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patient in accordance with the instructions of the prescriber; or

- (f) the poison was prescribed for an animal by a prescriber who is authorised to prescribe the poison and the person has possession of the poison for the purposes of supplying or administering the poison to the animal in accordance with the instructions of the prescriber; or
- (g) the person has possession of the poison only for the purpose of delivering it to a person referred to in paragraphs (a) to (f); or
- (h) the poison is in or on a used hypodermic syringe, a used hypodermic needle or another used thing and the person has possession of the syringe, needle or other thing for the purposes of disposing of it in accordance with a needle and syringe programme of a type prescribed by the regulations; or
- (i) the person is authorised under the *Misuse of Drugs Act 1981* to have possession of the poison.

Penalty: see section 115.

- (5) For the purposes of subsection (4)(e) a person is a carer of a patient if the person assists in the health care of the patient on a full-time or part-time basis, whether or not the person is paid for providing that assistance.

15. Offences relating to manufacture and supply of Schedule 5 and Schedule 6 poisons

- (1) A person who manufactures or supplies a Schedule 5 or 6 poison commits an offence unless the person does so —
 - (a) in accordance with any compliance notice that applies to the supply of the poison by the person; and
 - (b) in accordance with the regulations.

Penalty: see section 115.

- (2) A person who supplies a Schedule 5 or 6 poison in circumstances where the person reasonably suspects or ought reasonably to suspect that the recipient intends to use the poison in a way that might reasonably be expected to pose a serious threat to the health, safety and welfare of a person or of the public commits an offence.

Penalty: see section 115.

16. Offences relating to manufacture, supply, use and possession of Schedule 7 poisons

- (1) A person who manufactures or supplies a Schedule 7 poison commits an offence unless the person does so —
- (a) under and in accordance with an appropriate licence; and
 - (b) in accordance with any Schedule 7 notice that applies to the manufacture or supply of the poison by the person; and
 - (c) in accordance with the regulations.

Penalty: see section 115.

- (2) A person who uses or is in possession of a Schedule 7 poison commits an offence unless —
- (a) the use or possession is in accordance with any Schedule 7 notice that applies to the use or possession of the poison by the person; or
 - (b) the Schedule 7 poison is a pesticide as defined in the *Health Act 1911* section 3(1), the person is licensed or registered under the *Health Act 1911* to use or possess the poison and the use or possession by the person is in accordance with the licence or registration; or
 - (c) the person is an officer of the department principally assisting in the administration of the *Biosecurity and Agriculture Management Act 2007* and the use or possession is in connection with the employment of the officer in that department; or

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- (d) the person is authorised by a professional authority to use or possess the poison.

Penalty: see section 115.

- (3) A person authorised under an appropriate licence to supply a Schedule 7 poison who supplies the poison in circumstances where the person reasonably suspects or ought reasonably to suspect that the recipient intends to use it in a way that might reasonably be expected to pose a serious threat to the health, safety and welfare of a person or of the public commits an offence.

Penalty: see section 115.

17. Offences relating to manufacture, supply, use and possession of Schedule 9 poisons

A person who manufactures, supplies, uses or is in possession of a Schedule 9 poison commits an offence unless —

- (a) the person does so under and in accordance with a licence or a permit; or
- (b) the poison is in or on a used hypodermic syringe, a used hypodermic needle or another used thing and the person has possession of the syringe, needle or other thing for the purposes of disposing of it in accordance with a needle and syringe programme of a type prescribed by the regulations.

Penalty: see section 115.

18. Offences relating to supply and use of strictly controlled substances

- (1) A person who supplies a strictly controlled substance commits an offence unless —
 - (a) either —
 - (i) the person is a member of a class of persons who are authorised under the regulations to supply the substance; or

- (ii) the person supplies the substance under and in accordance with an authorisation granted by the CEO in accordance with the regulations;

and

- (b) the supply is in accordance with the regulations.

Penalty: see section 115.

- (2) A person who uses a strictly controlled substance commits an offence unless —

- (a) either —

- (i) the person is a member of a class of persons who are authorised under the regulations to use the substance; or

- (ii) the person uses the substance under and in accordance with an authorisation granted by the CEO in accordance with the regulations;

and

- (b) the use is in accordance with the regulations.

Penalty: see section 115.

- (3) It is a defence to a charge under subsection (1) to prove that —

- (a) before the substance became a strictly controlled substance it was a poison; and
- (b) the accused was a licensee or authorised health professional who was authorised to supply the poison; and
- (c) the accused did not know, and could not reasonably have known, that the substance had become a strictly controlled substance.

- (4) It is a defence to a charge under subsection (2) to prove that —

- (a) before the substance became a strictly controlled substance it was a poison; and

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- (b) the accused was a permit holder or authorised health professional who was authorised to use the poison; and
 - (c) the accused did not know, and could not reasonably have known, that the substance had become a strictly controlled substance.
- (5) It is a defence to a charge under subsection (2) to prove that —
- (a) before the substance became a strictly controlled substance —
 - (i) it was a Schedule 4 or 8 poison; and
 - (ii) it was prescribed for the use of a person or for administration to an animal;
 - and
 - (b) the accused used the substance in accordance with the instructions of the prescriber.
- (6) It is a defence to a charge under subsection (2) to prove that —
- (a) before the substance became a strictly controlled substance it was a Schedule 5, 6 or 7 poison; and
 - (b) the substance was supplied to the accused before it became a strictly controlled substance; and
 - (c) the accused did not know, and could not reasonably have known, that the substance had become a strictly controlled substance.

19. Use of poison obtained under permit

A permit holder who uses, or causes or allows to be used, a poison obtained by the person under the permit commits an offence unless the poison is used —

- (a) for the purpose and in the manner specified in the permit; and
- (b) in accordance with any conditions attached to the permit; and

(c) in accordance with the regulations.

Penalty: see section 115.

20. Unlawfully obtaining poison by wholesale

(1) A person who obtains, or attempts to obtain, a poison by wholesale supply commits an offence unless —

(a) the person —

(i) is a licensee or authorised health professional who is authorised to supply the poison; and

(ii) obtains, or attempts to obtain, the poison for the purpose of such supply;

or

(b) the person —

(i) is a permit holder; and

(ii) obtains, or attempts to obtain, the poison for the purpose specified in the permit;

or

(c) the poison is a Schedule 5 or 6 poison.

Penalty: see section 115.

(2) Subsection (1) applies whether or not the supplier from whom the person obtains, or attempts to obtain, the poison is in this State.

21. Fraudulent behaviour to obtain supply of poison

(1) A person commits an offence if the person —

(a) fraudulently alters a prescription; or

(b) is in possession of a prescription that the person suspects, or ought reasonably to suspect, has been fraudulently altered.

Penalty: see section 115.

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- (2) A pharmacist does not commit an offence under subsection (1)(b) if the pharmacist —
- (a) takes possession of a prescription that the pharmacist suspects has been fraudulently altered; and
 - (b) as soon as is reasonably practicable, gives the prescription to the CEO.
- (3) A person who uses fraudulent means to cause another person to prescribe or supply a poison commits an offence.
Penalty: see section 115.
- (4) In subsection (3) —
fraudulent means includes —
- (a) making a statement that the person knows, or ought reasonably to know, is false or misleading in a material particular;
 - (b) failing to disclose all information that the person knows, or ought reasonably to know, is materially relevant;
 - (c) using a prescription that the person knows, or ought reasonably to know —
 - (i) was issued in contravention of section 14(3); or
 - (ii) has been fraudulently altered;
 - (d) using a forged document;
 - (e) using a false pretence.

22. Storage, handling, transport and disposal of poisons

- (1) A person who stores, handles, transports or disposes of a poison other than in accordance with regulations made under subsection (2) commits an offence.
Penalty: see section 115.
- (2) The regulations may make provision in relation to the manner in which poisons are to be stored, handled, transported or disposed of.

23. Record keeping and reporting

- (1) A person who is a licensee, permit holder or authorised health professional commits an offence unless the person —
- (a) keeps the records that are prescribed by the regulations; and
 - (b) gives copies of, or information from, those records to the CEO as required by the regulations.

Penalty: see section 115.

- (2) A person commits an offence if the person —
- (a) makes an entry in a record that the person knows is false or misleading in a material particular; or
 - (b) gives information from a record that the person knows is false or misleading in a material particular.

Penalty: see section 115.

24. Vending machines

- (1) In this section —
- responsible person***, in relation to premises, means a person having the management or control, or otherwise being in charge of, the premises;
- vending machine*** means a machine or device used or capable of being used for the purpose of supplying goods without the personal manipulation or attention at the time of supply of the supplier or an employee or agent of the supplier.
- (2) A responsible person for premises commits an offence if a person is supplied with a poison from a vending machine at the premises unless the supply of the poison from the vending machine is in accordance with regulations made under subsection (5).

Penalty: see section 115.

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- (3) Subsection (2) applies to a responsible person notwithstanding that the person may be authorised under a professional authority or licence to supply the poison.
- (4) A person who places, or authorises or allows to be placed, in any premises a vending machine commits an offence unless the placement is in accordance with regulations made under subsection (5).
Penalty: see section 115.
- (5) The regulations may make provision in relation to —
 - (a) circumstances in which poisons prescribed by the regulations may be supplied from a vending machine; and
 - (b) premises at which a vending machine may be located.

Part 3 — Authorisation of health professionals

Division 1 — Authorisation of health professionals

25. Authorisation of health professionals to administer, possess, prescribe, supply or use medicines

- (1) A health professional acting in the lawful practice of his or her profession is authorised to administer, possess, prescribe, supply or use a medicine if —
- (a) the health professional is a member of a class of health professional prescribed by the regulations; and
 - (b) the medicine is prescribed by the regulations as one that may be administered, possessed, prescribed, supplied or used by a member of that class of health professional; and
 - (c) the administration, possession, prescription, supply or use of the medicine is in accordance with the regulations.
- (2) Regulations referred to in subsection (1) may make provision in relation to the circumstances and manner in which, and the conditions on which, a member of a prescribed class of health professional may administer, possess, prescribe, supply or use a medicine.

26. Authorisation of pharmacists to manufacture medicines or use or possess Schedule 7 poisons

A pharmacist acting in the lawful practice of his or her profession is authorised —

- (a) to manufacture any medicine to the extent that it is necessary for the purpose of extemporaneously preparing a medicine that is to be supplied by the pharmacist; and
- (b) to use or possess a Schedule 7 poison that is an ingredient in a therapeutic good within the meaning

given in the *Therapeutic Goods Act 1989*
(Commonwealth) section 3(1) for the purpose of
extemporaneously preparing the therapeutic good.

27. Authorisation of employees and agents

- (1) An employee or agent of a health professional acting within the scope of the employee's or agent's actual or apparent authority, may do anything that is authorised by the professional authority of the health professional, other than to prescribe a medicine.
- (2) For the purposes of this Act, if an agent or employee of a health professional does something that is authorised under subsection (1) the health professional is to be taken to have also done the thing.

Division 2 — Conditions, suspension and cancellation

28. Grounds for taking action

- (1) There are ***grounds for taking action*** against an authorised health professional under this Division if the health professional or an employee or agent of the health professional —
 - (a) has, in connection with the person's administration, manufacture, possession, prescription, supply or use of a poison, contravened any of the following —
 - (i) this Act;
 - (ii) the *Misuse of Drugs Act 1981*;
 - (iii) the *Agricultural and Veterinary Chemicals Code Act 1994* (Commonwealth);
 - (iv) the Agvet Code of Western Australia;
 - (v) the *Therapeutic Goods Act 1989* (Commonwealth);

or

- (b) has, in connection with the person's administration, manufacture, possession, prescription, supply or use of a poison —
 - (i) acted carelessly, incompetently or improperly; or
 - (ii) done or omitted to do something, or engaged in conduct, that poses a threat to the health, safety or welfare of a person or of the public;or
 - (c) has done or omitted to do something, or engaged in conduct, that renders the person unfit to administer, manufacture, possess, prescribe, supply or use a poison.
- (2) However, if grounds for taking action against an authorised health professional arise because of the conduct of an employee or agent, the CEO cannot take action against the health professional under this Division unless the CEO is satisfied that —
- (a) the employee or agent engaged in the conduct with the knowledge, authority or consent of the health professional; or
 - (b) the health professional failed to take all reasonable measures to prevent the employee or agent engaging in the conduct.
- (3) There are also ***grounds for taking action*** against an authorised health professional under this Division if the health professional requests that the action be taken.

29. CEO may impose conditions, suspend or cancel authority

- (1) If the CEO considers that there are grounds for taking action against an authorised health professional under this Division the CEO may, by giving written notice to the health professional —
 - (a) impose on the person's professional authority any conditions the CEO thinks fit; or

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Division 2 Conditions, suspension and cancellation

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- (b) suspend the person's professional authority for a specified period; or
 - (c) cancel the person's professional authority.
- (2) A notice given for the purposes of subsection (1) —
 - (a) must set out the grounds on which the action is taken; and
 - (b) takes effect on the day specified in it.
- (3) Conditions imposed under subsection (1)(a) may include a condition that the health professional must not exercise the authority in relation to a particular poison or class of poisons.
- (4) Before taking action under subsection (1) the CEO must —
 - (a) give to the authorised health professional written notice of the action that the CEO proposes to take and the grounds on which it is proposed to take that action; and
 - (b) give the health professional a reasonable opportunity to be heard on the matter.
- (5) However the CEO may take action under subsection (1) without complying with subsection (4) if the CEO considers that the taking of immediate action is essential in order to protect the health, safety and welfare of a person or of the public.
- (6) If the CEO takes immediate action the CEO must —
 - (a) as soon as practicable after taking the action give the health professional a reasonable opportunity to be heard on the matter; and
 - (b) if the health professional makes any representations to the CEO on the matter, review the decision to take that action after considering those representations.
- (7) The CEO may, by giving written notice to an authorised health professional —
 - (a) amend or revoke a condition imposed under subsection (1) on the person's professional authority; or

(b) revoke the suspension or cancellation under subsection (1) of the person's professional authority.

(8) The CEO may exercise a power under subsection (7) on his or her own initiative or on the request of the authorised health professional.

30. Effect of conditions, suspension or cancellation

(1) If a condition is imposed on a person's professional authority, the authority conferred on that health professional by section 25 or 26 (as the case requires) is subject to that condition.

(2) If a person's professional authority is suspended, section 25 or 26 (as the case requires) ceases to apply in relation to the person during the period of suspension.

(3) If a person's professional authority is cancelled, section 25 or 26 (as the case requires) ceases to apply in relation to the health professional.

31. CEO may notify regulatory authority if action taken under this Division

(1) In this section —

relevant regulatory authority means —

(a) in the case of a registered health practitioner, the National Agency, as defined in the *Health Practitioner Regulation National Law (Western Australia)* section 5; or

(b) in the case of a veterinary surgeon, the Veterinary Surgeons' Board established under the *Veterinary Surgeons Act 1960* section 4.

(2) If the CEO takes action against an authorised health professional under this Division, the CEO may notify a relevant regulatory authority of the action taken and the grounds on which the action was taken.

32. Publishing notice of action taken under this Division

If the CEO takes action against an authorised health professional under this Division, the CEO may cause notice of the action to be published as follows —

- (a) in the *Gazette*;
- (b) on a website maintained by the CEO.

33. Review of decisions by State Administrative Tribunal

(1) In this section —

reviewable decision means a decision of the CEO —

- (a) under section 29(1) to impose a condition on, suspend or cancel a professional authority; or
- (b) under section 29(7) to amend a condition on a professional authority; or
- (c) to refuse a request under section 29(8) for the CEO to —
 - (i) amend or revoke a condition imposed on a professional authority; or
 - (ii) revoke the suspension or cancellation of a professional authority,if the request was made more than 2 years after the condition, suspension or cancellation was imposed.

(2) A health professional whose professional authority is affected by a reviewable decision may apply to the State Administrative Tribunal for a review of the decision.

Part 4 — Licences, permits and notices

Division 1 — Licences and permits

34. Licences

- (1) A licence authorises the licensee to manufacture or supply a poison in accordance with the licence.
- (2) The regulations may make provision in relation to the types of licences that may be granted under this Act.
- (3) A licence —
 - (a) must specify the poison or poisons to which the licence applies; and
 - (b) must specify the activities that are authorised by the licence.
- (4) An agent or employee of a licensee acting within the scope of the agent's or employee's actual or apparent authority, may do anything that is authorised by the licence.
- (5) For the purposes of this Act, if an agent or employee of a licensee does something that is authorised under subsection (4) the licensee is to be taken to have also done the thing.

35. Licences for Schedule 9 poisons

A licence granted in relation to a Schedule 9 poison —

- (a) may authorise the manufacture or supply of a Schedule 9 poison only for educational, experimental or research purposes or for a purpose prescribed by the regulations; and
- (b) may not authorise the retail supply of a Schedule 9 poison.

36. Permits

- (1) A permit authorises the permit holder to use a poison in accordance with the permit.
- (2) The regulations may make provision in relation to the types of permits that may be granted under this Act.
- (3) A permit —
 - (a) must specify the poison or poisons to which the permit applies; and
 - (b) must specify the purpose for which the poison may be used by the permit holder; and
 - (c) may specify the manner in which the poison may be used by the permit holder.
- (4) An agent or employee of a permit holder, acting within the scope of the agent's or employee's actual or apparent authority, may do anything that is authorised by the permit.
- (5) For the purposes of this Act, if an agent or employee of a permit holder does something that is authorised under subsection (4) the permit holder is to be taken to have also done the thing.

37. Permits for Schedule 9 poisons

A permit granted in relation to a Schedule 9 poison may authorise the use of a Schedule 9 poison only for educational, experimental or research purposes or for a purpose prescribed by the regulations.

Division 2 — Licensing and permit procedure

38. Application for licence or permit or renewal of licence or permit

- (1) A person may apply to the CEO for a licence or permit or for the renewal of a licence or permit.

- (2) An application must be —
 - (a) in the manner and form approved by the CEO; and
 - (b) accompanied by —
 - (i) the application fee prescribed by the regulations (if any); and
 - (ii) the licence or permit fee prescribed by the regulations.
- (3) If a licence or permit is not granted or renewed, the CEO must refund the licence or permit fee.

39. Further information

- (1) The CEO may, in writing, require an applicant under section 38 to do any or all of the following —
 - (a) provide the CEO with such further information that is relevant to the application as the CEO requires;
 - (b) verify any further information provided by statutory declaration;
 - (c) provide the CEO with the applicant's written consent to seek from another person specified in the requirement information about the applicant relevant to the application.
- (2) The CEO may specify in the requirement a reasonable time within which the applicant must comply with the requirement.
- (3) The CEO may refuse an application if the applicant does not comply with a requirement under subsection (1) within the time specified in the requirement or, if no time is so specified, within a reasonable time.

40. Timing of application for renewal of licence or permit

- (1) In this section —
expiry day, in relation to a licence or permit, is the day on which the licence or permit is due to expire.

- (2) An application for the renewal of a licence or permit must be made not later than 28 days before the expiry day of a licence or permit.
- (3) The CEO may, at the request of the licensee or permit holder, accept an application made less than 28 days before the expiry day if the CEO is satisfied that there is sufficient time to determine the application before the expiry day.
- (4) If an application has been made for the renewal of a licence or permit in accordance with this section then the licence or permit continues to have effect until the application is determined, unless it is sooner suspended or cancelled under section 61.

41. Grant or renewal of licence or permit to individual

- (1) In this section —

relevant activity means —

- (a) in relation to a licence, an activity to be authorised by the licence; or
- (b) in relation to a permit, the use of a poison for a purpose to be specified in the permit;

sufficient, in relation to knowledge or resources, means sufficient to enable each relevant activity to be carried out —

- (a) in accordance with the Act; and
- (b) without posing a threat to the health, safety and welfare of a person or of the public.

- (2) The CEO must grant a licence or permit, or renew a licence or permit, to an applicant who is an individual if the CEO is satisfied that the applicant —
 - (a) has complied with sections 38 and 39; and
 - (b) is at least 21 years of age; and
 - (c) is a fit and proper person to be involved in each relevant activity; and

- (d) has sufficient knowledge of —
 - (i) each poison to which the licence or permit is to apply; and
 - (ii) the duties and obligations of a licensee or permit holder;and
 - (e) has sufficient material, human and financial resources to carry on the relevant activity; and
 - (f) proposes to carry on each relevant activity at premises which comply with any requirements prescribed by the regulations for the purposes of this paragraph; and
 - (g) proposes to carry on each relevant activity in a manner which complies with any requirements prescribed by the regulations for the purposes of this paragraph; and
 - (h) meets any other requirements prescribed by the regulations.
- (3) The CEO must not grant a licence or permit, or renew a licence or permit, to an applicant who is an individual unless the CEO is satisfied that the applicant has met the requirements set out in subsection (2).

42. Grant or renewal of licence or permit to partnership

- (1) The CEO must, on an application made under section 38 by a member of a partnership, grant a licence or permit, or renew a licence or permit, jointly to 2 or more persons who together constitute the partnership, if the CEO is satisfied that —
- (a) the applicant has complied with sections 38 and 39; and
 - (b) each person who is a member of the partnership complies with section 41(2)(b) to (d) and (h); and
 - (c) the members of the partnership together —
 - (i) meet the requirements set out in section 41(2)(e) to (g); and

- (ii) meet any other requirements prescribed by the regulations.

- (2) The CEO must not grant a licence or permit, or renew a licence or permit, jointly to 2 or more persons who together constitute a partnership unless the CEO is satisfied that the requirements set out in subsection (1) have been met.

43. Grant or renewal of licence or permit to body corporate

- (1) The CEO must grant a licence or permit, or renew a licence or permit, to an applicant that is a body corporate if the CEO is satisfied that —
 - (a) the applicant has complied with sections 38 and 39; and
 - (b) each corporate officer of the body corporate complies with section 41(2)(b) to (d) and (h); and
 - (c) the body corporate —
 - (i) meets the requirements set out in section 41(2)(e) to (g); and
 - (ii) meets any other requirements prescribed by the regulations.
- (2) The CEO must not grant a licence or permit, or renew a licence or permit, to an applicant that is a body corporate unless the CEO is satisfied that the requirements set out in subsection (1) have been met.

44. Notice of decision

The CEO must, as soon as is practicable after making a decision under section 41, 42 or 43, give to the person to whom the decision relates, written notice of —

- (a) the decision; and
- (b) if the grant or renewal of a licence or permit has been refused — the person's right of review under section 63.

45. Form of licence or permit

A licence or permit must be in a form approved by the CEO.

46. Duration of licence or permit

- (1) A licence or permit that is granted or renewed has effect for the period specified in the licence or permit unless it is sooner suspended or cancelled under section 61.
- (2) The period specified in a licence or permit must not exceed 12 months from the day on which the licence or permit is granted or renewed.

47. Licence or permit not transferable

A licence or permit is not transferable.

48. Application to vary licence or permit

- (1) A licensee may apply to the CEO to vary —
 - (a) the poison or poisons to which the licence applies; or
 - (b) the activities that are authorised by the licence.
- (2) A permit holder may apply to the CEO to vary —
 - (a) the poison or poisons to which the permit applies; or
 - (b) the purpose for which a poison to which the permit applies may be used by the permit holder; or
 - (c) the manner in which a poison to which the permit applies may be used by the permit holder.
- (3) An application must be —
 - (a) made in the manner and form approved by the CEO; and
 - (b) accompanied by the fee prescribed by the regulations (if any).
- (4) Section 39 applies in relation to an application as if a reference in that section to an applicant under section 38 was a reference to an applicant under this section.

49. Variation of licence or permit

- (1) The CEO must, on an application made under section 48, vary a licence or permit if the CEO is satisfied that —
 - (a) if the applicant is an individual — the requirements set out in section 41(2) are satisfied in relation to the variation; or
 - (b) if the applicant is a member of a partnership — the requirements set out in section 42(1) are satisfied in relation to the variation; or
 - (c) if the applicant is a body corporate — the requirements set out in section 43(1) are satisfied in relation to the variation.
- (2) The CEO must not vary a licence or permit unless the CEO is satisfied that the requirements set out in subsection (1) are satisfied in relation to the variation.

Division 3 — Conditions on licences or permits

50. Regulations may prescribe conditions

- (1) The regulations may make provision in relation to conditions to be imposed on licences or permits.
- (2) A licence or permit may specify that a prescribed condition does not apply to that licence or permit.

51. CEO may impose conditions

- (1) The CEO may, when granting or renewing a licence or permit, impose any condition the CEO thinks fit.
- (2) The CEO may at any time, by giving written notice to a licensee or permit holder —
 - (a) impose a condition on the person's licence or permit; or
 - (b) amend or revoke a condition imposed on the person's licence or permit.

- (3) The CEO may exercise a power under subsection (2) on the CEO's own initiative or on the application of the licensee or permit holder.
- (4) The CEO cannot amend or revoke a condition imposed by the State Administrative Tribunal.
- (5) A notice under subsection (2) takes effect on the day specified in it.
- (6) The day specified in a notice under subsection (2) cannot be before the licensee or permit holder has had a reasonable opportunity to —
 - (a) make submissions to the CEO in relation to the condition or the amended condition; and
 - (b) take any actions necessary to comply with the condition or amended condition.

52. Application to vary conditions

- (1) In this section —

application to vary conditions means an application by a licensee or permit holder under section 51(3).
- (2) An application to vary conditions must be —
 - (a) made in the manner and form approved by the CEO; and
 - (b) accompanied by the fee prescribed by the regulations (if any).
- (3) Section 39 applies in relation to an application to vary conditions as if a reference in that section to an applicant under section 38 was a reference to an applicant under section 51(3).

Division 4 — Change of management or death of licensee or permit holder

53. Term used: change of management

For the purposes of this Division there is a *change of management* in a licensee or permit holder that is a body corporate if —

- (a) a person becomes a corporate officer of the body corporate; or
- (b) a person ceases to be a corporate officer of the body corporate.

54. Unauthorised change of management

- (1) A licensee or permit holder that is a body corporate commits an offence if there is a change of management in the body corporate unless the change of management is approved by the CEO under section 56.

Penalty: see section 115.

- (2) It is a defence to a charge under subsection (1) to prove that —
 - (a) the licensee or permit holder —
 - (i) did not know, and could not reasonably be expected to have known, of the change of management in time to make an application under section 55; and
 - (ii) applied under section 57 for approval of the change as soon as practicable after the licensee or permit holder became aware that the change would occur or had occurred;
 - and
 - (b) the application referred to in paragraph (a)(ii) —
 - (i) has been approved under section 58; or
 - (ii) has not been refused.

55. Application for approval of proposed change of management

- (1) A licensee or permit holder may apply to the CEO for approval of a proposed change of management.
- (2) An application must —
 - (a) be made in the manner and form approved by the CEO; and
 - (b) be accompanied by the fee prescribed by the regulations (if any); and
 - (c) specify the day on which it is proposed that the change will occur; and
 - (d) be made at least 28 days before that day.
- (3) The CEO may, at the request of a licensee or permit holder, accept an application made less than 28 days before the day on which it is proposed that a change of management will occur if the CEO is satisfied that there is sufficient time to determine the application before that day.
- (4) Section 39 applies in relation to an application for approval of a change of management as if a reference in that section to an applicant under section 38 was a reference to an applicant under subsection (1).

56. Grant or refusal of approval of proposed change of management

- (1) The CEO must, on an application made under section 55, approve a proposed change of management if the CEO is satisfied that the applicant would meet the requirements set out in section 43(1) if the proposed change of management had already occurred.
- (2) The CEO must not approve a proposed change of management unless the CEO is satisfied that the requirement set out in subsection (1) has been met.

- (3) The CEO is to be taken to have approved a change of management if —
 - (a) an application has been made under section 55 for an approval of the proposed change of management; and
 - (b) the CEO has not, before the day specified in the application as the day on which it is proposed that the change will occur, either —
 - (i) approved the change; or
 - (ii) required the applicant to provide further information relevant to the application; or
 - (iii) refused to approve the change.
- (4) If the CEO requires the applicant to provide further information under subsection (3)(b)(ii), then subsection (3) applies as if the reference in subsection (3)(b) to the day specified in the application was a reference to the day that is 28 days after the further information is provided by the applicant.

57. Application for approval after change of management occurs

- (1) If there is a change of management in a licensee or permit holder that is a body corporate in relation to which an application was not made under section 55, the licensee or permit holder may apply to the CEO under this section for approval of the change.
- (2) An application must —
 - (a) be made in the manner and form approved by the CEO; and
 - (b) be accompanied by the fee prescribed by the regulations (if any); and
 - (c) specify the day on which the change occurred.
- (3) Section 39 applies in relation to an application for approval after a change of management has occurred as if a reference in that

section to an applicant under section 38 was a reference to an applicant under subsection (1).

58. Grant or refusal of approval of change of management

- (1) The CEO must, on an application made under section 57, approve a change of management if the CEO is satisfied that —
 - (a) the licensee or permit holder did not know, and could not reasonably be expected to have known, of the change of management in sufficient time to make an application under section 55 before the change occurred; and
 - (b) the application under section 57 was made as soon as practicable after the licensee or permit holder became aware that the change would occur or had occurred; and
 - (c) the applicant meets the requirements set out in section 43(1).
- (2) The CEO must not approve a change of management unless the CEO is satisfied that the requirements set out in subsection (1) have been met.

59. Death of individual licensee or permit holder

- (1) In this section —

executor means a person who is, or is named in the will of the licensee or permit holder as, or intends to apply to become, the executor or administrator of the licensee or permit holder's estate;

permission means permission granted under subsection (4)(a).
- (2) If a licensee or permit holder who is an individual dies, the person's executor may apply to the CEO for permission to act as the licensee or permit holder for the purposes of winding up the estate.
- (3) An application must be made not more than 14 days after the death of the licensee or permit holder, or such longer period as the CEO allows.

- (4) On an application the CEO may —
- (a) grant permission for the executor to act as the licensee or permit holder for a period specified by the CEO; or
 - (b) refuse to grant permission.
- (5) If the CEO grants permission the CEO may impose any conditions the CEO thinks fit on the licence or permit.
- (6) The CEO may, at any time —
- (a) extend the period for which the permission is in force; or
 - (b) revoke the permission; or
 - (c) vary the conditions that are imposed on the licence or permit.
- (7) If an application is made under this section, the applicant is to be taken, for all purposes, to be the licensee or permit holder for the period commencing on the death of the licensee or permit holder and ending —
- (a) if the application is refused, on the day the application is refused; or
 - (b) if permission is granted, at the end of the period for which the permission is in force.

Division 5 — Amendment, suspension or cancellation

60. Grounds for taking action

- (1) There are *grounds for taking action* against a licensee or permit holder under this Division if the licensee or permit holder or an employee or agent of the licensee or permit holder —
- (a) has, in connection with the person's manufacture, supply or use of a poison, contravened any of the following —
 - (i) this Act;
 - (ii) the *Misuse of Drugs Act 1981*;

- (iii) the *Agricultural and Veterinary Chemicals Code Act 1994* (Commonwealth);
 - (iv) the Agvet Code of Western Australia;
 - (v) the *Therapeutic Goods Act 1989* (Commonwealth);
- or
- (b) has, in connection with the person's manufacture, supply or use of a poison —
 - (i) acted carelessly, incompetently or improperly; or
 - (ii) done or omitted to do something, or engaged in conduct, that poses a threat to the health, safety or welfare of a person or of the public;
- or
- (c) has done or omitted to do something, or engaged in conduct, that renders the person unfit to exercise the authority conferred by the licence or permit.
- (2) However, if grounds for taking action against a licensee or permit holder arise under subsection (1) because of the conduct of an employee or agent, the CEO cannot take action against the licensee or permit holder under this Division unless the CEO is satisfied that —
- (a) the employee or agent engaged in the conduct with the knowledge, authority or consent of the licensee or permit holder; or
 - (b) the licensee or permit holder failed to take all reasonable measures to prevent the employee or agent engaging in the conduct.
- (3) There are also ***grounds for taking action*** against a licensee or permit holder under this Division if —
- (a) the licensee or permit holder has obtained the licence or permit because of incorrect or misleading information;
- or

- (b) the CEO is no longer satisfied that the licensee or permit holder meets the requirements set out in section 41(2), 42(1) or 43(1) that are relevant to the grant or renewal of the licence or permit; or
- (c) a poison to which the licence applies ceases to be included in a particular Schedule and becomes included in a different Schedule; or
- (d) the licensee or permit holder requests that the action be taken.

61. CEO may amend, suspend or cancel licence or permit

- (1) If the CEO considers that there are grounds for taking action against a licensee or permit holder under this Division the CEO may, by giving written notice to the person —
 - (a) amend the licence or permit to change the poison or poisons to which it applies; or
 - (b) suspend the licence or permit for a specified period; or
 - (c) cancel the licence or permit.
- (2) A notice given for the purposes of subsection (1) —
 - (a) must set out the grounds on which the action is taken; and
 - (b) takes effect on the day specified in it.
- (3) Before taking action under subsection (1) the CEO must —
 - (a) give to the licensee or permit holder written notice of the action that the CEO proposes to take and the grounds on which it is proposed to take that action; and
 - (b) give the person a reasonable opportunity to be heard on the matter.
- (4) However, the CEO may take action under subsection (1) without complying with subsection (3) if the CEO considers that the taking of immediate action is essential in order to protect the health, safety and welfare of a person or of the public.

- (5) If the CEO takes immediate action the CEO must —
- (a) as soon as practicable after taking the action give the licensee or permit holder a reasonable opportunity to be heard on the matter; and
 - (b) if the person makes any representations to the CEO on the matter, review the decision to take that action after considering those representations.
- (6) If a licence or permit is suspended it is of no effect during the period of suspension.

62. Publishing notice of action taken under this Division

If the CEO takes action against a licensee or permit holder under this Division, the CEO may cause notice of the action to be published in the *Gazette*.

Division 6 — Review of licensing and permit decisions

63. Review of decisions

- (1) In this section —
- person affected*** means —
- (a) in relation to a reviewable decision about an application, the applicant; or
 - (b) in relation to any other reviewable decision, the licensee or permit holder whose licence or permit is affected by the decision;
- reviewable decision*** means a decision of the CEO —
- (a) to refuse a request under section 40(3) to accept an application;
 - (b) under section 41, 42 or 43 to refuse to grant or renew a licence or permit;
 - (c) under section 49 to refuse to vary a licence or permit;
 - (d) under section 51 to —
 - (i) impose a condition on a licence or permit; or

- (ii) amend or revoke, or refuse to amend or revoke, a condition imposed on a licence or permit;
 - (e) under section 55(3) to refuse a request to accept an application;
 - (f) under section 56 or 58 to refuse to approve a change of management;
 - (g) under section 61 to amend, suspend or cancel a licence or permit.
- (2) A person affected by a reviewable decision may apply to the State Administrative Tribunal for a review of the decision.

Division 7 — General provisions

64. False or misleading information

A person commits an offence if the person provides information, in relation to an application under this Part, that the person knows to be —

- (a) false or misleading in a material particular; or
- (b) likely to deceive in a material way.

Penalty: see section 115.

65. Amendment to correct error

- (1) The CEO may amend a licence or permit to correct —
 - (a) a clerical mistake, error or unintentional omission; or
 - (b) a misdescription of a person, activity or thing.
- (2) The CEO must give to the licensee or permit holder written notice of the amendment.

66. Licence or permit to be produced if amended

- (1) For the purposes of this section a licence or permit is amended if —
 - (a) the licence or permit is varied under section 49; or

- (b) the licence or permit is amended under section 65; or
- (c) a new condition is imposed on the licence or permit; or
- (d) a condition imposed on the licence or permit is amended or revoked.

(2) If a licence or permit is amended —

- (a) the licensee or permit holder must return the licence or permit document to the CEO; and
- (b) the CEO must issue a replacement licence or document showing the amendment.

67. Replacement licence or permit

If the CEO is satisfied that a licence or permit has been lost or destroyed, the CEO may, on payment of the fee prescribed by the regulations, issue a replacement licence or permit.

68. Certified copy of licence or permit

- (1) The CEO may, on payment of the fee prescribed by the regulations, provide to a person a certified copy of a licence or permit.
- (2) A certified copy of a licence or permit must include all of the conditions imposed on the licence or permit at the time the certified copy is given.

69. Production of licence or permit for inspection

A licensee or permit holder who, on the request of an investigator, fails to produce the licence or permit for inspection by the investigator as soon as is practicable commits an offence.
Penalty: see section 115.

70. Return of licence or permit

- (1) A person who is or was a licensee or permit holder commits an offence if the person fails to return the licence or permit to the

CEO within 7 days of the cancellation or suspension of the licence or permit.

Penalty: see section 115.

- (2) The CEO must return a licence or permit to the licensee or permit holder as soon as is practicable after the suspension of the licence or permit ceases.

Division 8 — Notices

71. Compliance notices

- (1) The CEO may, by notice in writing given to a person, impose restrictions on the supply of a Schedule 5 or 6 poison by the person if the CEO considers that the restriction is necessary to protect the health, safety and welfare of a person or of the public.
- (2) A notice given under subsection (1) —
 - (a) has effect according to its terms; and
 - (b) has effect when the notice is given to the person; and
 - (c) may be varied or revoked by subsequent notice in writing given to the person by the CEO.

72. Schedule 7 notices

- (1) The CEO may, if the CEO considers that it is necessary to protect the health, safety and welfare of a person or of the public —
 - (a) by notice in writing given to a person, impose restrictions on the supply, use or possession of a Schedule 7 poison by the person; or
 - (b) by notice published in the *Gazette*, impose restrictions on the supply, use or possession of a Schedule 7 poison by a class of persons specified in the notice or in circumstances or locations specified in the notice.

- (2) A notice given by the CEO under subsection (1) —
- (a) has effect according to its terms; and
 - (b) has effect —
 - (i) if the notice applies to a particular person, when the notice is given to the person; or
 - (ii) otherwise, on the day after the day on which the notice is published in the *Gazette* or as specified in the notice;
- and
- (c) may be varied or revoked by the CEO by subsequent notice given in the form referred to in subsection (1) as appropriate.

73. Review of decisions

- (1) In this section —
- reviewable decision*** means a decision of the CEO —
- (a) under section 71 to impose restrictions on the supply of a poison by a person;
 - (b) under section 72 to impose restrictions on the supply, use or possession of a poison by a person.
- (2) A person on whom restrictions are imposed by a reviewable decision may apply to the State Administrative Tribunal for a review of the decision.

Part 5 — Register of licences, permits, notices and restricted professional authorities

74. Terms used

In this Part —

appropriate licence has the meaning given in section 12;

appropriate permit has the meaning given in section 12;

notice means a notice given under Part 4 Division 8;

restricted health professional means a health professional whose professional authority —

- (a) is subject to any conditions imposed under section 29(1)(a); or
- (b) is suspended under section 29(1)(b); or
- (c) has been cancelled under section 29(1)(c).

75. CEO to maintain register

- (1) The CEO must keep an accurate and up-to-date register of the following —
 - (a) licences;
 - (b) permits;
 - (c) notices;
 - (d) restricted health professionals.
- (2) The register may be kept in the manner and form determined by the CEO.
- (3) The CEO must record in the register, for each licence, permit, notice or restricted health professional, such information as is prescribed by the regulations.

76. Inspection of register

- (1) The register must be available during normal office hours for inspection by the following persons —
 - (a) the holder of an appropriate licence;
 - (b) the holder of an appropriate permit;
 - (c) an authorised health professional.
- (2) For the purposes of subsection (1), the register may be made available for inspection on a website maintained by the CEO.
- (3) The CEO must, on payment of the fee prescribed by the regulations, provide to a person referred to in subsection (1) a copy, or a certified copy, of all or any part of the register.

Part 6 — Drugs of addiction

Division 1 — Preliminary

77. Terms used

(1) In this Part —

client means —

- (a) in relation to a pharmacist — a person to whom the pharmacist supplies a drug of addiction; or
- (b) in relation to a veterinary surgeon — a person for whose animal the veterinary surgeon prescribes a drug of addiction; or
- (c) in relation to any other authorised health professional — a patient for whom the practitioner prescribes a drug of addiction;

drug dependent person means a person who has acquired, as a result of repeated administration of drugs of addiction or Schedule 9 poisons, an overpowering desire for the continued administration of a drug of addiction or a Schedule 9 poison;

drug of addiction means —

- (a) a Schedule 8 poison; or
- (b) a Schedule 4 reportable poison;

oversupplied person means a person who has over a period of time obtained, or obtained prescriptions for, quantities of drugs of addiction that are greater than is reasonably necessary for therapeutic use;

Schedule 4 reportable poison means a Schedule 4 poison prescribed by regulations referred to in subsection (2) to be a drug of addiction.

(2) The regulations may prescribe a Schedule 4 poison that has a high propensity for misuse, abuse or illicit use to be a drug of addiction.

Division 2 — Self-prescription

78. Self-prescription

A person who prescribes a drug of addiction for himself or herself commits an offence.

Penalty: see section 115.

79. Defence: emergency

It is a defence to a charge under section 78 to prove that the person reasonably believed that —

- (a) the immediate administration of the poison was necessary for therapeutic purposes; and
- (b) it was not reasonably practicable to arrange for another person to prescribe the poison without there being a delay that would pose an unreasonable threat to the health, safety and welfare of the person.

Division 3 — Drug dependent persons

80. Practitioner to inform CEO of drug dependent status of patient

- (1) An authorised health professional who reasonably believes that a patient of the practitioner is a drug dependent person commits an offence if the practitioner does not make a report in accordance with subsection (2).

Penalty: see section 115.

- (2) A report must —
- (a) be made to the CEO within 48 hours of an authorised health practitioner forming a belief that a person is a drug dependent person; and
 - (b) set out the grounds on which the belief is based.

81. CEO may include drug dependent person on drugs of addiction record

- (1) The CEO may decide to include the name of a person on the drugs of addiction record as a drug dependent person if the CEO reasonably believes that the person is a drug dependent person.
- (2) Before making a decision under subsection (1) to include the name of a person on the drugs of addiction record the CEO must —
 - (a) inform the person of —
 - (i) the CEO's belief and the grounds on which it is based; and
 - (ii) the CEO's power under subsection (1); and
 - (iii) the consequences of having his or her name included on the drugs of addiction record;and
 - (b) give the person a reasonable opportunity to show why his or her name should not be included on the drugs of addiction record.

82. Recording and notification of drug dependent status

- (1) If the CEO decides under section 81(1) to include the name of a person on the drugs of addiction record, the CEO must —
 - (a) record that decision, and the grounds on which it was made, on the drugs of addiction record; and
 - (b) give a notice that complies with subsection (2) to —
 - (i) the drug dependent person; and
 - (ii) the authorised health professional (if any) who notified the CEO of the practitioner's belief that the person was a drug dependent person; and
 - (iii) the person (if any) whom the CEO considers to be the drug dependent person's primary health care provider; and

- (iv) if the CEO considers it to be in the best interests of the drug dependent person's health to do so — any other person whom the CEO considers may be requested to supply a drug of addiction to, or prescribe a drug of addiction for, the drug dependent person.
- (2) A notice under subsection (1)(b) must set out the following —
- (a) that the name of the person has been included on the drugs of addiction record as a drug dependent person;
 - (b) the grounds on which it was decided that the person is a drug dependent person;
 - (c) the consequences of the name of the person being included on the drugs of addiction record as a drug dependent person;
 - (d) the effect of section 83;
 - (e) any other information that the CEO considers is in the best interests of the drug dependent person's health, safety and welfare to provide.

83. Supply or prescription of drugs of addiction to or for drug dependent persons

- (1) The regulations may make provision relating to the supply of a drug of addiction to, or the prescription of a drug of addiction for, a person whose name is included on the drugs of addiction record as a drug dependent person.
- (2) A person who supplies a drug of addiction to, or prescribes a drug of addiction for, a person whose name is included on the drugs of addiction record as a drug dependent person commits an offence unless the supply or prescription is in accordance with the regulations.

Penalty: see section 115.

Division 4 — Oversupplied persons

84. Practitioner to inform CEO of oversupplied status of client

- (1) An authorised health professional who reasonably believes that a client of the professional is an oversupplied person commits an offence if the practitioner does not make a report in accordance with subsection (2).

Penalty: see section 115.

- (2) A report must —
- (a) be made to the CEO within 48 hours of an authorised health practitioner forming a belief that a person is an oversupplied person; and
 - (b) set out the grounds on which the belief is based.

85. CEO may include oversupplied person on drugs of addiction record

- (1) The CEO may decide to include the name of a person on the drugs of addiction record as an oversupplied person if the CEO reasonably believes that the person is an oversupplied person.
- (2) The CEO is not required to include the name of a person in the drugs of addiction record if the CEO is satisfied that there is a reasonable explanation for the quantity of drugs of addiction that have been obtained by, or prescribed for, the person.
- (3) Before making a decision under subsection (1) to include the name of a person on the drugs of addiction record the CEO must —
- (a) inform the person of —
 - (i) the CEO's belief and the grounds on which it is based; and
 - (ii) the CEO's power under subsection (1); and
 - (iii) the consequences of having his or her name included on the drugs of addiction record;

and

- (b) give the person a reasonable opportunity to show why his or her name should not be included on the drugs of addiction record.

86. Recording and notification of oversupplied status

- (1) If the CEO decides under section 85(1) to include the name of a person on the drugs of addiction record, the CEO must —
 - (a) record that decision, and the grounds on which it was made, on the drugs of addiction record; and
 - (b) give a notice that complies with subsection (2) to —
 - (i) the oversupplied person; and
 - (ii) the authorised health professional (if any) who notified the CEO of the professional’s belief that the person was an oversupplied person; and
 - (iii) the person (if any) whom the CEO considers to be the oversupplied person’s primary health care provider; and
 - (iv) if the CEO considers it to be in the best interests of the oversupplied person’s health to do so — any other person whom the CEO considers may be requested to supply a drug of addiction to, or prescribe a drug of addiction for, the oversupplied person.
- (2) A notice under subsection (1)(b) must set out the following —
 - (a) that the name of the person has been included on the drugs of addiction record as an oversupplied person;
 - (b) the grounds on which it was decided that the person is an oversupplied person;
 - (c) the consequences of the name of the person being included on the drugs of addiction record as an oversupplied person;
 - (d) the effect of section 87;

- (e) any other information that the CEO considers it is in the best interests of the oversupplied person's health, safety and welfare to provide.

87. Supply or prescription of drugs of addiction to or for oversupplied persons

- (1) The regulations may make provision relating to the supply of a drug of addiction to, or the prescription of a drug of addiction for, a person whose name is included on the drugs of addiction record as an oversupplied person.
- (2) A person who supplies a drug of addiction to, or prescribes a drug of addiction for, a person whose name is included on the drugs of addiction record as an oversupplied person commits an offence unless the supply or prescription is in accordance with the regulations.

Penalty: see section 115.

Division 5 — Drugs of addiction record

88. Drugs of addiction record

- (1) The CEO is to keep a record of —
 - (a) information relating to the supply and prescription of drugs of addiction; and
 - (b) drug dependent persons and oversupplied persons.
- (2) The record must include —
 - (a) information recorded under section 82 or 86; and
 - (b) other information of a kind prescribed by the regulations as information that must be included on the drugs of addiction record.
- (3) The record may include —
 - (a) information prescribed for the purposes of section 23(1) relating to drugs of addiction that has been provided to the CEO; and

- (b) other information of a kind prescribed by the regulations as information that may be included on the drugs of addiction record; and
 - (c) information that is reasonably necessary to administer the drugs of addiction record.
- (4) The CEO must not include on the drugs of addiction record information of a kind prescribed by the regulations as information that must not be included on the record.
- (5) Subject to the regulations, the drugs of addiction record must be kept in the manner and form determined by the CEO.

89. Purposes for which drugs of addiction record is kept

The drugs of addiction record is to be kept for the following purposes —

- (a) to plan, monitor and evaluate services for the control of the supply or prescription of drugs of addiction in Western Australia;
- (b) to compile and publish general or statistical information relating to drugs of addiction;
- (c) to conduct health research relating to the use of drugs of addiction;
- (d) to monitor and enforce compliance with this Act;
- (e) to carry out any of the CEO's functions under this Act or any other written law.

90. Amending information in drugs of addiction record

- (1) A person whose name is included on the drugs of addiction record may at any time apply to the CEO for —
- (a) the amendment of information on the record relating to the person; or
 - (b) for the removal from the record of identifying information about the person.

- (2) The CEO may, on an application made under subsection (1) or at any time, amend information included on the drugs of addiction record, including the removal of identifying information about a person —
 - (a) to correct an error or omission; or
 - (b) if the CEO considers that it is not accurate or up-to-date or is misleading.

91. CEO may authorise disclosure of information

- (1) The CEO may authorise disclosure of information on the drugs of addiction record to an authorised health professional if the person to whom the information relates is a client of the health professional.
- (2) The CEO may authorise the disclosure of information on the drugs of addiction record, other than identifying information, for a purpose mentioned in section 89.
- (3) The CEO must, on payment of the fee prescribed by the regulations (if any), provide a copy, or a certified copy, of the information included on the drugs of addiction record in relation to a person (the *patient*) as at a specified date to —
 - (a) a person who supplied a drug of addiction to, or prescribed a drug of addiction for, the patient on that date; or
 - (b) an authorised health professional who proposes to supply a drug of addiction to, or prescribe a drug of addiction for, the patient.

**Division 6 — Review of decisions by State
Administrative Tribunal**

**92. Review of decision to include person in drugs of addiction
record**

(1) In this section —

reviewable decision means a decision by the CEO —

- (a) under section 81(1) to include the name of a person on the drugs of addiction record as a drug dependent person; or
- (b) under section 85(1) to include the name of a person on the drugs of addiction record as an oversupplied person.

(2) A person in relation to whom a reviewable decision has been made may apply to the State Administrative Tribunal for a review of the decision.

Part 7 — Investigation and enforcement

Division 1 — Preliminary

93. Terms used

In this Part —

entry warrant means a warrant issued under section 110(1);

place means any land, building, structure, tent or vehicle;

vehicle means any thing capable of transporting people or things by air, road, rail or water, irrespective of whether the thing is permanently or semi-permanently stationary.

94. This Part's relationship with other laws

The powers conferred by this Part on a person are in addition to, and do not derogate from any powers conferred on the person by the *Health Practitioner Regulation National Law (Western Australia)* or the *Misuse of Drugs Act 1981*.

Division 2 — Investigators

95. Designation of investigators

- (1) The CEO may, by instrument in writing, designate any of the following persons as an investigator for the purposes of this Act —
 - (a) a public service officer;
 - (b) a person employed or engaged under the *Public Sector Management Act 1994* section 100 by the employing authority of the Department;
 - (c) a person employed by a local government under the *Local Government Act 1995* section 5.36.
- (2) A person may be designated to be an investigator for a fixed or indefinite period.

- (3) The CEO may, by instrument in writing, revoke a designation at any time.
- (4) The functions of an investigator are subject to any limitations or conditions specified in the instrument of designation.

96. CEO has functions of investigator

The CEO —

- (a) has and may perform all of the functions of an investigator; and
- (b) when performing those functions, has all the powers and immunities of an investigator.

97. Police have functions of investigator

- (1) For the purposes of this Act, a police officer —
 - (a) has and may perform all the functions of an investigator; and
 - (b) when performing those functions, has all the powers and immunities of an investigator.
- (2) The powers that a police officer may exercise in performing a function under this section are in addition to the powers that the police officer has under any other law.

98. Identity cards

- (1) The CEO must give each investigator an identity card.
- (2) An identity card must —
 - (a) identify the person as an investigator; and
 - (b) contain a recent photograph of the person.
- (3) A person who, without a reasonable excuse, fails to return the person's identity card to the CEO within 14 days of ceasing to be an investigator commits an offence.

Penalty: see section 115.

- (4) An investigator must carry his or her identity card at all times when exercising powers or performing functions as an investigator.

99. Production and display of identity card

- (1) An investigator may exercise a power in relation to someone only if —
- (a) the investigator first produces the investigator's identity card for the person's inspection; or
 - (b) the investigator has the identity card displayed so it is clearly visible to the person.
- (2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the investigator may exercise the power and then produce the identity card for inspection by the person at the first reasonable opportunity.

100. Limitation on powers of investigators

- (1) The powers of an investigator may be limited in one or more of the following ways —
- (a) under a regulation;
 - (b) under a limitation or condition specified in the person's instrument of designation as an investigator;
 - (c) by written notice given by the CEO to the investigator.
- (2) The CEO may revoke or vary a limitation or condition referred to in subsection (1)(b) or a notice referred to in subsection (1)(c).

Division 3 — Investigations

101. Investigations: purpose and procedure

- (1) An investigation may be carried out for either or both of the following purposes —
- (a) monitoring whether this Act is being complied with;

- (b) investigating a suspected contravention of this Act.
- (2) The regulations may make provision relating to the procedures to be followed by investigators when carrying out functions under this Act.

102. Entry powers

- (1) For the purposes of carrying out an investigation an investigator may at any reasonable time enter and remain in or on any of the following places —
 - (a) a place in or on which the investigator has reasonable cause to believe that there are records that are relevant to an investigation;
 - (b) a place on which an authorised health professional, a licensee or a permit holder carries on business;
 - (c) a place in or on which the investigator has reasonable cause to believe that a contravention of this Act has occurred, is occurring or is likely to occur.
- (2) An investigator is not entitled under this section to enter a restricted place unless —
 - (a) the occupier of the premises consents; or
 - (b) the investigator has the authority of an entry warrant.
- (3) For the purposes of subsection (2) —
restricted place means —
 - (a) any part of a place that is used for residential purposes;
or
 - (b) any part of a hospital, health care facility or place at which a health professional carries on business in which a patient is being treated.

103. Powers after entry for investigation

- (1) An investigator who enters a place under section 102(1) or under the authority of an entry warrant may, for the purposes of the investigation, do any of the following —
- (a) inspect the place and any thing at the place;
 - (b) search the place and any thing at the place;
 - (c) examine, measure, test, photograph or film the place and any thing at the place;
 - (d) operate a computer or other thing at the place;
 - (e) take any thing, or sample of or from a thing, at the place for analysis or testing;
 - (f) make a copy of, take an extract from, or download or print out, any record that the investigator suspects on reasonable grounds is relevant to the investigation;
 - (g) seize any thing that is or may afford evidence of a contravention of this Act;
 - (h) secure against interference a thing found in or on the place that cannot be conveniently removed;
 - (i) seize a record that the investigator suspects on reasonable grounds is relevant to the investigation and retain it for as long as is necessary for the purposes of this Act;
 - (j) direct a person who is at the place to do any of the following —
 - (i) state the person's full name, date of birth, the address of where the person is living and the address of where the person usually lives;
 - (ii) answer (orally or in writing) questions asked by the investigator;
 - (iii) produce records that are relevant to the investigation and are in the person's custody or under the person's control;

- (iv) operate a computer or other thing at the place;
 - (v) provide access (free of charge) to photocopying equipment at the place to enable the copying of documents;
 - (vi) give the investigator a translation, code, password or other information necessary to gain access to or interpret and understand a record;
 - (vii) give other assistance the investigator reasonably requires.
- (2) An investigator who enters a place under section 102(1) is not entitled under this section to seize any patient records or data relating to a patient unless the occupier of the premises consents.
- (3) For the purposes of subsection (2) —
patient records does not include a prescription or a record of the supply or administration of a medicine to a patient.
- (4) If an investigator takes any thing away from the place, the investigator must give the occupier of the place a receipt for the thing.

104. Obtaining information and documents

- (1) An investigator, for the purpose of an investigation, may do any of the following —
- (a) direct a person to give such information as the investigator requires in relation to any matter the subject of the investigation;
 - (b) to answer a question put to the person in relation to any matter the subject of the investigation;
 - (c) direct a person to produce a record that is relevant to an investigation and is in the person's custody or under the person's control;
 - (d) examine and make a copy of a record produced in response to a direction under paragraph (c).

- (2) A direction under subsection (1)(a) or (b) —
- (a) must specify the time at or within which the information or answer is to be given; and
 - (b) may require the information or answer —
 - (i) to be given orally or in writing; or
 - (ii) to be given at or delivered to a place specified in the direction; or
 - (iii) in the case of written information or a written answer, to be delivered by means specified in the direction; or
 - (iv) to be verified by statutory declaration.
- (3) A direction under subsection (1)(c) —
- (a) must be in writing given to the person required to produce the record; and
 - (b) must specify the time at or within which the record is to be produced; and
 - (c) may require that the record be produced —
 - (i) at a place specified in the direction; and
 - (ii) by any means specified in the direction.

105. Use of force and assistance

- (1) An investigator may use assistance and force that is reasonably necessary in the circumstances when exercising a power under this Act.
- (2) However, if the use of reasonable force is likely to cause significant damage to property, the investigator is not entitled to use force without the authority of the CEO in the particular case.
- (3) An investigator may request a police officer or other person to assist the investigator in exercising powers under this Act.

- (4) A person, while assisting an investigator at the request of the investigator and in accordance with this Act —
 - (a) has the same powers as conferred on an investigator; and
 - (b) is subject to the same responsibilities as an investigator; and
 - (c) has the same protection from liability as an investigator.
- (5) Nothing in this section derogates from the powers of a police officer.

106. Obstruction

- (1) A person who hinders or obstructs the CEO, an investigator, a person assisting an investigator or a police officer who is exercising a power conferred by this Act commits an offence.
Penalty: see section 115.
- (2) It is a defence to a charge under this section in relation to an investigator to prove —
 - (a) that the investigator did not show his or her identity card to the person or did not otherwise identify himself or herself to the person as an investigator; and
 - (b) that the person did not otherwise know that the investigator was an investigator.

107. Directions generally

- (1) Except as otherwise stated in this Division, a direction under this Division may be given orally or in writing.
- (2) A person given a direction under this Division who, without reasonable excuse, fails to comply with the direction commits an offence.
Penalty: see section 115.

108. Investigator may supply, obtain and possess poison

An investigator who, in the course of conducting an investigation, supplies, obtains or has possession of, a poison or a strictly controlled substance does not commit an offence under this Act.

Division 4 — Entry warrants

109. Warrant to enter place

- (1) An investigator may apply to a justice of the peace for an entry warrant authorising the person to enter a place for the purposes of an investigation.
- (2) An investigator may apply for an entry warrant for a place even if, under this Act, the investigator may enter the place without an entry warrant.
- (3) The application must be made in accordance with the *Criminal Investigation Act 2006* section 13 and section 13(8) of that Act applies in relation to the entry warrant.
- (4) An application for an entry warrant must —
 - (a) describe with reasonable particularity the place to be entered; and
 - (b) state that the investigator has reasonable grounds for believing that entry to the place is necessary for the purposes of an investigation; and
 - (c) state the purposes for which entry to the place is required; and
 - (d) include any other information that is prescribed by the regulations.

110. Issue of entry warrant

- (1) A justice of the peace to whom an application is made under section 109 may issue an entry warrant if satisfied that there are

reasonable grounds for believing that entry and inspection of the place are necessary for the purposes of an investigation.

- (2) An entry warrant must contain the following information —
- (a) a reasonably particular description of the place to which it relates;
 - (b) a reasonably particular description of the purposes for which entry to the place is required;
 - (c) the period, not exceeding 7 days, in which it may be executed;
 - (d) the name of the justice of the peace who issued it;
 - (e) the date and time when it was issued.

111. Effect of entry warrant

- (1) An entry warrant has effect according to its content and this section.
- (2) An entry warrant comes into force when it is issued by a justice of the peace.
- (3) An entry warrant authorises the investigator executing the warrant to, during the period of the warrant —
 - (a) enter the place described in the warrant; and
 - (b) exercise the powers referred to in section 103.

112. Execution of entry warrant

- (1) An entry warrant may be executed by the investigator to whom it is issued or by any other investigator.
- (2) An investigator executing an entry warrant must, at the reasonable request of a person apparently in charge of the place, produce the warrant.

Division 5 — Seized things and forfeiture

113. Forfeiture on conviction

- (1) On the conviction of a person for an offence under this Act, the court may order the forfeiture to the State of any thing that was the subject of, used in or otherwise involved in, the commission of the offence.
- (2) The court may make the order —
 - (a) whether or not the thing was seized in the course of the investigation of the offence; and
 - (b) if the thing was seized, whether or not it has been returned to its owner.
- (3) The court may make any order it considers appropriate to enforce the forfeiture.

114. Disposal of seized and forfeited property

The Department, when assisting the Minister in the administration of this Act, is a prescribed agency for the purposes of the *Criminal and Found Property Disposal Act 2006*.

Division 6 — Penalties and other orders

115. General penalties

- (1) The penalty for an offence under a provision listed in the Table is —
 - (a) if the offence relates to —
 - (i) a drug of addiction within the meaning given in section 77; or
 - (ii) a Schedule 9 poison; or
 - (iii) a strictly controlled substance,a fine of \$45 000 and imprisonment for 3 years; or

(b) otherwise — a fine of \$45 000.

Table

s. 14(1), (2), (3) and (4)	s. 16(1), (2) and (3)
s. 17	s. 18(1) and (2)
s. 21(1) and (3)	s. 22(1)
s. 24(2) and (4)	

(2) The penalty for an offence under a provision listed in the Table is \$30 000.

Table

s. 13(1) and (4)	s. 15(1) and (2)
s. 19	s. 20(1)
s. 23(1) and (2)	s. 64
s. 78	s. 83(2)
s. 87(2)	

(3) The penalty for an offence under a provision listed in the Table is \$15 000.

Table

s. 54(1)	s. 69
s. 70(1)	s. 98(3)
s. 106(1)	s. 107(2)
s. 134(2)	

- (4) The penalty for an offence under a provision listed in the Table is \$5 000.

Table

s. 80(1)	s. 84(1)
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116. Order as to costs of analysis

- (1) In any proceedings under this Act, if evidence is given of an analysis made for the purposes of this Act, the court may, in addition to any other order as to costs, make an order as to the costs of, and incidental to, the obtaining of the analysis and the giving of evidence as to the analysis.
- (2) An order may be made under subsection (1) regardless of the outcome of the proceedings.

117. Court to notify CEO of conviction of licensee, permit holder or authorised health professional

If a court convicts a licensee, a permit holder or an authorised health professional of an offence under this Act, the registrar of the court is to send to the CEO notice of the findings and the penalty imposed.

Division 7 — Liability of certain persons

118. Liability of corporate officers for acts of body corporate

- (1) If a body corporate is alleged to have committed an offence under this Act, every person who was a corporate officer of the body corporate at the time of the alleged offence may be charged with the offence whether or not the body corporate is charged with the offence.
- (2) Subject to subsection (3), a corporate officer is to be taken to have committed an offence if —
- (a) the corporate officer is charged with the offence as permitted under subsection (1); and

- (b) it is proved that the body corporate committed the offence.
- (3) If a corporate officer is charged as permitted under subsection (1) it is a defence to prove that —
 - (a) the offence was committed without the officer's knowledge, authority or consent; and
 - (b) the officer took all the measures to prevent the commission of the offence that the officer could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.

119. Liability of members of partnership for acts of other members of partnership

- (1) If a member of a partnership is alleged to have committed an offence under this Act, every person who was a member of the partnership at the time of the alleged offence may be charged with the offence whether or not the person who is alleged to have committed the offence is charged with the offence.
- (2) Subject to subsection (3), a member of a partnership is to be taken to have committed an offence if —
 - (a) the member of a partnership is charged with the offence as permitted under subsection (1); and
 - (b) it is proved that another member of the partnership committed the offence.
- (3) If a member of a partnership is charged as permitted under subsection (1) it is a defence to prove that —
 - (a) the offence was committed without the member's knowledge, authority or consent; and
 - (b) the member took all the measures to prevent the commission of the offence that the member could reasonably be expected to have taken having regard to all the circumstances.

120. Liability of principal for acts of agent

- (1) If a person (the *agent*) acting, otherwise than as an employee, for or on behalf of another person (the *principal*) is charged with an offence under this Act, the principal may also be charged with the offence.
- (2) If an agent is convicted of an offence and the principal is also charged with the offence as permitted under subsection (1) then, subject to subsection (5), the principal is to be taken to have also committed the offence.
- (3) If a person (the *agent*) acting, otherwise than as an employee, for or on behalf of another person (the *principal*) is alleged to have committed an offence under this Act, the principal may be charged with the offence whether or not the agent is charged with the offence.
- (4) Subject to subsection (5), a principal is to be taken to have committed an offence if —
 - (a) the principal is charged with an offence as permitted under subsection (3); and
 - (b) it is proved that the agent committed the offence.
- (5) If under this section a principal is charged with an offence it is a defence to prove that —
 - (a) the offence was committed without the principal's knowledge, authority or consent; and
 - (b) the principal took all the measures to prevent the commission of the offence that the principal could reasonably be expected to have taken having regard to all the circumstances.

121. Liability of employer for acts of employee

- (1) If an employee of another person (the *employer*) is charged as an employee with an offence under this Act, the employer may also be charged with the offence.

- (2) Subject to subsection (5), an employer is to be taken to have committed an offence if —
- (a) the employer is charged with the offence as permitted under subsection (1); and
 - (b) it is proved that the employee committed the offence.
- (3) If an employee of another person (the *employer*) is alleged to have committed an offence under this Act as an employee, the employer may be charged with the offence —
- (a) whether or not the employee is charged with the offence; and
 - (b) whether or not the employee acted without the employer's authority or contrary to the employer's orders or instructions.
- (4) Subject to subsection (5), an employer is to be taken to have committed an offence if —
- (a) the employer is charged as permitted under subsection (3); and
 - (b) it is proved that the employee committed the offence.
- (5) If under this section an employer is charged with an offence it is a defence to prove that —
- (a) the offence was committed without the employer's knowledge, authority or consent; and
 - (b) the employer took all the measures to prevent the commission of the offence that the employer could reasonably be expected to have taken having regard to all the circumstances.

Division 8 — Legal proceedings

122. Who may commence proceedings

A prosecution for an offence under this Act may only be commenced by the CEO or by a person authorised by the CEO to do so.

123. Time limit for prosecutions

- (1) A prosecution for an offence under this Act must be commenced within 2 years after the day on which the offence is alleged to have been committed.
- (2) However, if a prosecution notice alleging an offence specifies the day on which evidence of the alleged offence first came to the attention of a person authorised under section 122 to institute the prosecution —
 - (a) the prosecution may be commenced within 2 years after that day; and
 - (b) the prosecution notice need not contain particulars of the day on which the offence is alleged to have been committed.
- (3) The day on which evidence first came to the attention of a person authorised under section 122 to institute a prosecution, in the absence of evidence to the contrary, is the day specified in the prosecution notice.

Division 9 — Evidentiary matters

124. Terms used

In this Division —

approved analyst means a person, or a person in a class of person, approved by the CEO to carry out analysis for the purposes of this Act or specified provisions of this Act;

specified, in relation to a prosecution notice, certificate or other document, means specified in that prosecution notice, certificate or document;

specified time includes a specified period.

125. Application of Division

- (1) This Division applies for the purpose of proceedings for an offence under this Act.

- (2) A provision of this Division that provides for a matter to be taken to be proved applies only in the absence of evidence to the contrary.
- (3) This Division is in addition to and does not affect the operation of the *Evidence Act 1906*.

126. Evidence of various matters

An allegation in a prosecution notice of any of the following matters is to be taken to be proved —

- (a) that the prosecutor is authorised to commence the prosecution;
- (b) that something is a specified substance;
- (c) that at a specified time a specified substance was a poison included in a specified Schedule;
- (d) that an act done in relation to a poison was done as part of the process of producing the poison or bringing it to its final state;
- (e) that a document is or is not a prescription;
- (f) that at a specified time a specified person was or was not any of the following —
 - (i) a registered health practitioner;
 - (ii) a veterinary surgeon;
 - (iii) a member of a class of person prescribed for the purposes of the definition of **health professional** in section 3;
 - (iv) a member of a class of person prescribed for the purposes of section 25;
 - (v) the holder of a licence of a specified kind;
 - (vi) the holder of a permit of a specified kind;
 - (vii) a corporate officer of a body corporate;
 - (viii) an employee or agent of another specified person;

- (ix) a patient of another specified person;
- (x) an investigator;
- (xi) the holder of a specified office;
- (g) that at a specified time a licence, permit or professional authority —
 - (i) did or did not authorise a specified person to manufacture, supply, use or prescribe a specified poison; or
 - (ii) was subject to a specified condition; or
 - (iii) was cancelled, suspended or for any other reason of no effect;
- (h) that at a specified time —
 - (i) a poison was or was not packaged in a specified manner; or
 - (ii) a container containing a poison was or was not labelled in a particular manner;
- (i) that at a specified time the name of a specified person was or was not included on the drugs of addiction record as —
 - (i) a drug dependent person; or
 - (ii) an oversupplied person.

127. Evidence of purpose or intent

- (1) In this section —
act includes having possession of a thing.
- (2) An allegation in a prosecution notice that an act was done by a person for a specified purpose or with a specified intent or knowledge is, on proof of the act being done by the person, to be taken to be proved.

128. Evidence in relation to documents

- (1) A document certified by the CEO to be a true copy of a document of a kind described in subsection (2) as at a specified date —
 - (a) is to be taken to be proved to be a copy of the original document as at that date; and
 - (b) is admissible in the same way, and has the same evidentiary value, as the original.
- (2) Subsection (1) applies to each of the following —
 - (a) a licence;
 - (b) a permit;
 - (c) a notice given by the CEO under Part 4 Division 8;
 - (d) a designation under section 95;
 - (e) a code adopted by the regulations.
- (3) A document certified by the CEO to be a true copy of the register, or any part of the register, as at a specified date is proof of the contents of the register, or that part of the register, as at that date.
- (4) A document certified by the CEO to be a true copy of information recorded in the drugs of addiction record in relation to a particular person or matter as at a specified date is proof of the information recorded in the drugs of addiction record in relation to that person or matter as at that date.
- (5) A document purporting to have been signed or certified by the CEO, an investigator or an approved analyst is to be taken to have been signed or certified by someone who was, at the time, such a person.
- (6) A document purporting to have been signed by a delegate of the CEO is to be taken to have been signed by a person who at the time was such a delegate and was authorised to sign it.

- (7) If it is necessary to prove that a document was given to a person (the *recipient*), a copy of the document certified by a person authorised to give it to be a true copy of the document as given to the recipient on a specified date is proof that the document was given to the recipient on that date.
- (8) A copy of a document or record obtained by an investigator exercising a power under Part 7 Division 3 is admissible in evidence if it is certified by the investigator as having been obtained in the exercise of that power.

129. Evidence of analysis of substance

- (1) In this section —
prescribed manner means the manner, if any, prescribed by the regulations;
report means a report by an approved analyst of the results of an analysis of a sample of a substance.
- (2) A report in respect of a sample of a substance is proof of the matters stated in it if the sample was —
 - (a) taken in the prescribed manner; and
 - (b) analysed in the prescribed manner.
- (3) A statement in a report certifying that a sample was taken and analysed in the prescribed manner, is proof that the sample was taken and analysed in that manner.
- (4) If it is proved that a sample of a substance was taken in the prescribed manner, it is to be taken to be proved that the sample is representative of all of the substance from which the sample was taken.

130. Presumptions arising from labels

- (1) In this section —
label, in relation to a container, means any label, marking or other information on the container.

- (2) If a label on a container states or indicates that the container contains a poison, it is to be taken to be proved that the container contains a poison of the description and in the quantity, if any, stated on the label.
- (3) If there is a label on a container that contains a poison, it is to be taken to be proved —
 - (a) if a person is named or identified on the label as a manufacturer or supplier of the poison — that the person manufactured or supplied the poison; and
 - (b) if the label identifies the poison as part of a batch, lot or consignment — that the poison is part of that batch, lot or consignment; and
 - (c) that all other information on the label about the poison is true.
- (4) If it is proved that poison is part of a batch, lot or consignment, it is to be taken to be proved that the poison is representative of all of the poison in that batch, lot or consignment.

Part 8 — Regulations

131. General power to make regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) The regulations may —
 - (a) provide that a contravention of a regulation is an offence; and
 - (b) prescribe for such an offence a penalty not exceeding a fine of \$15 000.

132. Regulations may adopt codes

- (1) In this section —

adopted code means a code that is adopted by regulations made under this section;

code means a code, standard, rule, specification or other document;

code documents, in relation to an adopted code means —

 - (a) the adopted code; and
 - (b) if the code is adopted as amended from time to time, either —
 - (i) the amendments to the code; or
 - (ii) the code as amended.
- (2) The regulations may adopt a code —
 - (a) either wholly or in part; and
 - (b) with or without modifications.
- (3) If the regulations adopt a code, it is adopted as in force from time to time unless the regulations provide otherwise.

- (4) If the regulations adopt a code, the CEO must ensure that the code documents relating to the adopted code —
- (a) are available for inspection by members of the public during normal office hours; and
 - (b) can be acquired by members of the public.

Part 9 — Miscellaneous

133. Protection from liability for wrongdoing

- (1) No action or claim for damages lies against a person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) Despite subsection (1), the State is not relieved of any liability that it might otherwise have had for another person having done anything described in that subsection.
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

134. Information officially obtained to be confidential

- (1) In this section —
repealed Act means the *Poisons Act 1964*.
- (2) A person who misuses information obtained by the person in the exercise of any function that the person has, or at any time had, in the administration of this Act or the repealed Act commits an offence.
Penalty: see section 115.
- (3) A person misuses information if the person, directly or indirectly, records, uses or discloses the information, other than —
 - (a) for the purpose of, or in connection with, performing a function under this Act; or
 - (b) as required or allowed by this Act or under another written law; or

- (c) with the express consent of each person to whom the information relates.
- (4) This section does not apply to the disclosure of information in a form that could not reasonably be expected to result in the identification of any person to whom the information relates.

135. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after —
 - (a) the fifth anniversary of its commencement; and
 - (b) the expiry of each 5 yearly interval after that anniversary.
- (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

Part 10 — Repeals and transitional provisions

Division 1 — General

136. *Interpretation Act 1984* not affected

Except where the contrary intention appears, this Part does not prejudice or affect the application of the *Interpretation Act 1984* to or in relation to the repeals effected by sections 137 and 138.

Division 2 — Repeals

137. *Poisons Act 1964* repealed

The *Poisons Act 1964* is repealed.

138. *White Phosphorus Matches Prohibition Act 1912* repealed

The *White Phosphorus Matches Prohibition Act 1912* is repealed.

139. Regulations repealed

These regulations are repealed:

- (a) *Drugs of Addiction Notification Regulations 1980*;
- (b) *Health (Drugs and Allied Substances) Regulations 1961*.

Division 3 — Saving and transitional matters

Subdivision 1 — *Poisons Act 1964*

140. Terms used

In this Part —

commencement day means the day on which section 137 comes into operation;

repealed Act means the *Poisons Act 1964*.

141. Continuation of licences and permits

- (1) A licence of a type prescribed by the regulations that was granted and in force under the repealed Act immediately before commencement day is to be taken on and from commencement day to be a licence of a type prescribed by the regulations granted under this Act, for the same term and subject to the same conditions as applied to the licence under the repealed Act.
- (2) A permit of a type prescribed by the regulations that was granted and in force under the repealed Act immediately before commencement day is to be taken on and from commencement day to be a permit of a type prescribed by the regulations granted under this Act, for the same term and subject to the same conditions as applied to the permit under the repealed Act.

142. Existing applications for licences or permits

- (1) An application for a licence of a type prescribed by the regulations that was made under the repealed Act before commencement day and that was not finally determined before commencement day is to be taken to be an application for a licence of a type prescribed by the regulations made under this Act on commencement day.
- (2) An application for a permit of a type prescribed by the regulations that was made under the repealed Act before commencement day and that was not finally determined before commencement day is to be taken to be an application for a permit of a type prescribed by the regulations made under this Act on commencement day.

143. Continuation of notices given to health professionals

- (1) In this section —
notice under the repealed Act means a notice given by the CEO pursuant to regulations made under section 64(2)(ha) of the repealed Act.

- (2) If, immediately before commencement day, the authority conferred on a person by section 23 of the repealed Act was subject to a notice under the repealed Act, then on and from commencement day —
- (a) for the purposes of this Act —
 - (i) the notice is to be taken to have been notice given in accordance with section 29; and
 - (ii) any condition or restriction imposed on the authority conferred on a person by section 23 of the repealed Act by the notice is to be taken to be a condition imposed by the CEO on the person's professional authority under this Act; and
 - (iii) if the notice totally revoked the authority conferred on a person by section 23 of the repealed Act, the CEO is to be taken to have cancelled the person's professional authority under this Act;
- and
- (b) the notice that is taken to have been given under this Act has effect for the same term as the notice under the repealed Act.

144. Continuation of notices in relation to Schedule 6 poisons

If the CEO gave a person a notice under regulations made under section 64(2)(hb) of the repealed Act in relation to a Schedule 6 poison and that notice was in effect immediately before commencement day the CEO is to be taken to have given the person a compliance notice under this Act on the same terms as the notice given under the repealed Act.

145. Continuation of notices in relation to Schedule 7 poisons

A notice given by the CEO under section 24(5) of the repealed Act in relation to a Schedule 7 poison that was in effect immediately before commencement day continues to have effect

as if it was a Schedule 7 notice on the same terms as the notice given under the repealed Act.

146. Transitional regulations

- (1) If there is no sufficient provision in this Part for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required or necessary or convenient to be prescribed in relation to that matter.
- (2) In subsection (1) —
transitional matter means a matter that needs to be dealt with for the transition required because of this Act.
- (3) Regulations made under subsection (1) may provide that specific provisions of any written law —
 - (a) do not apply in relation to any matter; or
 - (b) apply with specific modifications in relation to any matter.
- (4) If regulations made under subsection (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than commencement day, the regulations have effect according to their terms.
- (5) In subsection (4) —
specified means specified or described in the regulations.
- (6) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the regulations were published in the *Gazette*; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in relation to anything done

or omitted to be done before the regulations were published in the *Gazette*.

Subdivision 2 — *Drugs of Addiction Notification Regulations 1980*

147. Transfer of information from former register to drugs of addiction record

(1) In this section —

commencement day means the day on which section 139 comes into operation;

former register means the register kept under the *Drugs of Addiction Notification Regulations 1980* regulation 5.

(2) The CEO must, within 12 months after the commencement day, destroy the former register and any information in it that has not been transferred under subsection (3).

(3) The CEO may transfer information from the former register to the drugs of addiction record if the CEO is satisfied that the information is —

(a) of a kind that could, had it been received by the CEO after the commencement day, be recorded in the drugs of addiction record; and

(b) is accurate and up-to-date.

(4) For the purposes of any provision in Part 6 or regulations made for the purposes of that Part that requires information to be removed from the drugs of addiction record after a specified period has elapsed, information recorded under subsection (3) is taken to have been recorded in the drugs of addiction record at the time it was recorded in the former register.

Part 11 — Consequential amendments

Division 1 — *Health Act 1911* amended

148. Act amended

This Division amends the *Health Act 1911*.

149. Section 3 amended

- (1) In section 3(1) delete the definitions of:

drug

false trade description

the Drug Advisory Committee

therapeutic substance

trade description

- (2) In section 3(1) in the definition of *meat* delete “except in Division 3A of Part VIIA,”.

150. Section 5 amended

In section 5(6):

- (a) delete “food or drug,” and insert:

food,

- (b) delete “or drug” (each occurrence).

151. Part VIIA heading replaced

Delete the heading to Part VIIA and insert:

Part VIIA — Pesticides

152. Part VIIA Division 1 heading replaced

Delete the heading to Part VIIA Division 1 and insert:

Division 1 — Registration of analysts

153. Section 202 deleted

Delete section 202.

154. Part VIIA Divisions 5, 6 and 7 deleted

Delete Part VIIA Divisions 5, 6 and 7.

155. Section 246A amended

In section 246A(3) delete “*Poisons Act 1964.*” and insert:

Medicines and Poisons Act 2014.

Note: The heading to amended section 246A is to read:

Crown bound, but *Health Practitioner Regulation National Law (Western Australia)* and *Medicines and Poisons Act 2014* not affected by Division 8

156. Part VIIA Division 9 deleted

Delete Part VIIA Division 9.

157. Section 360 amended

In section 360(4)(b) delete “246C or 246D(1).” and insert:

246C.

158. Section 377 amended

Delete section 377(10).

159. Schedule 5 amended

In Schedule 5:

- (a) in Part I delete “225(1), 238(3) and (5),”;
- (b) in Part II delete “224(2), 227(13),”;
- (c) in Part IV delete “223(1), 225(2), 227(2), 231(2), 234(1), 240(1),”;
- (d) in Part VI delete “221(1), 222, 236(1), 241(1),”;
- (e) in Part VII delete “131(2), 228(2), 237(2), 238(1)” and insert:

131(2)

Division 2 — *Health Professionals (Special Events Exemption) Act 2000* amended

160. Act amended

This Division amends the *Health Professionals (Special Events Exemption) Act 2000*.

161. Section 3 amended

- (1) In section 3(1) delete the definitions of:
drug of addiction
restricted substance
substance

Medicines and Poisons Act 2014

Part 11 Consequential amendments

Division 2 Health Professionals (Special Events Exemption) Act 2000
amended

s. 162

(2) In section 3(1) insert in alphabetical order:

medicine has the meaning given in the *Medicines and Poisons Act 2014* section 3;

162. Section 8 amended

In section 8(2):

(a) delete “possess, use or supply a substance” and insert:

administer, possess, prescribe or supply a medicine

(b) delete “substance that may be lawfully possessed, used” and insert:

medicine that may lawfully be administered, possessed, prescribed

163. Section 9 replaced

Delete section 9 and insert:

9. Supply of medicines

(1) The Minister may, by an order under section 6, authorise a person, or a class of persons, to supply a medicine —

(a) in accordance with a prescription issued by a visiting health professional; or

(b) to a visiting health professional as if the visiting health professional were a registered health professional of the like profession.

- (2) The Minister is not to make an order containing an authorisation referred to in subsection (1) unless —
- (a) the person or the class of persons authorised to supply the medicine is authorised under the *Medicines and Poisons Act 2014* to supply the medicine to, or in accordance with a prescription issued by, a registered health professional of the like profession; and
 - (b) the Minister is satisfied that adequate arrangements are in place to ensure that the medicines concerned will only be used in connection with the provision of health services that are authorised under this Act.
- (3) An order under section 6 may impose conditions on any authorisation referred to in this section that is conferred by the order.

164. Section 11 amended

- (1) In section 11(1):
- (a) delete “*Poisons Act 1964*,” and insert:

Medicines and Poisons Act 2014,
 - (b) delete paragraphs (b) and (c) and insert:
 - (b) administering, possessing, prescribing or supplying a medicine in the course of providing those authorised health care services where the medicine is —
 - (i) lawfully imported or lawfully obtained in Australia by the visiting health professional; and

Medicines and Poisons Act 2014

Part 11 Consequential amendments

Division 2 Health Professionals (Special Events Exemption) Act 2000
amended

s. 164

(ii) a medicine that may lawfully be administered, possessed, prescribed or supplied by a registered health professional of the like profession;

or

(c) after each of paragraphs (a) and (d) insert:

or

(2) In section 11(2):

(a) delete “*Poisons Act 1964*” and insert:

Medicines and Poisons Act 2014

(b) delete “substance” and insert:

medicine

(3) Delete section 11(3) and insert:

(3) A person does not commit an offence under the *Medicines and Poisons Act 2014* or the *Misuse of Drugs Act 1981* for supplying a medicine in accordance with a prescription issued by a visiting health professional if —

(a) the visiting health professional is authorised under this Act to issue the prescription; and

(b) the person is authorised under this Act to supply the medicine in accordance with such a prescription; and

- (c) the supply would be lawful under the *Medicines and Poisons Act 2014* if the prescription had been issued by a registered health professional of the like profession.
- (4A) A person does not commit an offence under the *Medicines and Poisons Act 2014* or the *Misuse of Drugs Act 1981* for supplying a medicine to a visiting health professional if —
 - (a) the person is authorised under this Act to supply the medicine; and
 - (b) the supply would be lawful under the *Medicines and Poisons Act 2014* if the visiting health professional were a registered health professional of the like profession.
- (4) In section 11(4) delete “(2) or (3)” and insert:

(2), (3) or (4A)

Division 3 — *Misuse of Drugs Act 1981* amended

165. Act amended

This Division amends the *Misuse of Drugs Act 1981*.

166. Section 3 amended

- (1) In section 3(1) delete the definitions of:
 - authorised prescription*
 - dentist*
 - drug of addiction*
 - nurse practitioner*
 - Poisons Act 1964*

regulations

specified drug

veterinary surgeon

- (2) In section 3(1) insert in alphabetical order:

authorised prescription means a prescription issued by a prescriber as those terms are defined in the *Medicines and Poisons Act 2014* section 7(1);

drug of addiction means —

- (a) a Schedule 8 poison as defined in the *Medicines and Poisons Act 2014* section 3; or
- (b) a Schedule 9 poison as defined in the *Medicines and Poisons Act 2014* section 3;

specified drug means a substance that is prescribed to be a specified drug by regulations made under section 3B;

- (3) In section 3(1) in the definition of *undercover operation* delete “section 5;” and insert:

section 5.

167. Section 3B inserted

After section 3A insert:

3B. Specified drugs

- (1) The Governor may, on the recommendation of the Minister and the Minister responsible for administering the *Medicines and Poisons Act 2014*, make regulations prescribing a substance to be a specified drug for the purposes of this Act.

- (2) A recommendation that a substance be prescribed to be a specified drug may only be made if the relevant Minister is satisfied that there is high propensity for the substance to be misused, abused, used illicitly or diverted for the manufacture of a substance with a high propensity for misuse, abuse or illicit use.

168. Section 4 amended

Delete section 4(2)(a) and (b) and insert:

- (a) plants from which a drug of addiction may be obtained, derived or manufactured; and
- (b) whether or not they are also plants referred to in paragraph (a), the plants specified in Schedule II.

169. Section 5B inserted

At the end of Part I insert:

5B. Authorisation under *Medicines and Poisons Act 2014*

- (1) In this section —
- appropriate licence* has the meaning given in the *Medicines and Poisons Act 2014* section 12;
- appropriate permit* has the meaning given in the *Medicines and Poisons Act 2014* section 12;
- professional authority* has the meaning given in the *Medicines and Poisons Act 2014* section 3.
- (2) For the purposes of this Act the manufacture or preparation of a prohibited drug is authorised under the

Medicines and Poisons Act 2014 if the prohibited drug is manufactured —

- (a) under an appropriate licence or a professional authority; and
 - (b) in accordance with regulations made under that Act.
- (3) For the purposes of this Act, the sale or supply of a prohibited drug is authorised under the *Medicines and Poisons Act 2014* if the prohibited drug is supplied —
- (a) under an appropriate licence, an appropriate permit or a professional authority; and
 - (b) in accordance with regulations made under that Act.
- (4) For the purposes of this Act, a person is authorised under the *Medicines and Poisons Act 2014* to manufacture, prepare, sell or supply a prohibited drug if —
- (a) the person —
 - (i) holds an appropriate licence or an appropriate permit that authorises the manufacture or supply of the drug; or
 - (ii) is authorised by a professional authority to manufacture or supply the drug; or
 - (iii) is an employee or agent of a person referred to in subparagraph (i) or (ii);and
 - (b) the manufacture, preparation, sale or supply is in accordance with the licence, permit or authority.

- (5) For the purposes of this Act, a person is authorised under the *Medicines and Poisons Act 2014* to possess a prohibited drug if —
- (a) the drug is a Schedule 4 or 8 poison as defined in the *Medicines and Poisons Act 2014* section 3 and possession of the drug by the person would not be an offence under the *Medicines and Poisons Act 2014* section 14(4); or
 - (b) the drug is a Schedule 9 poison as defined in the *Medicines and Poisons Act 2014* section 3 and possession of the drug by the person would not be an offence under *Medicines and Poisons Act 2014* section 17.
- (6) For the purposes of this Act a person is authorised under the *Medicines and Poisons Act 2014* to use a prohibited drug if the drug is prescribed for the person by the holder of a professional authority who is authorised under the *Medicines and Poisons Act 2014* to prescribe the drug to the person and the use is in accordance with the instructions of the prescriber.
- (7) For the purposes of this Act, an investigator as defined in the *Medicines and Poisons Act 2014* section 3 is authorised to supply, obtain or possess a prohibited drug if the drug is supplied, obtained or possessed in the course of conducting an investigation under that Act.

170. Section 5 amended

- (1) In section 5(1) delete “except when he is authorised by or under this Act or by or under the *Poisons Act 1964* to do so,”.

- (2) After section 5(2) insert:
- (3) A person does not commit a simple offence under subsection (1)(a), (b) or (c) by reason only that premises are being used for the purpose of the manufacture, preparation, sale, supply or use of a prohibited drug or prohibited plant if the person proves —
- (a) that the manufacture, preparation, sale or supply of the drug or plant was authorised under this Act or the *Medicines and Poisons Act 2014*; or
 - (b) that the use of the drug or plant was by a person authorised under this Act or the *Medicines and Poisons Act 2014* to use the drug or plant.

171. Sections 6 and 7 replaced

Delete sections 6 and 7 and insert:

6. Offences concerned with prohibited drugs generally

- (1) A person commits a crime if the person —
- (a) with intent to sell or supply it to another, has in his or her possession a prohibited drug; or
 - (b) manufactures or prepares a prohibited drug; or
 - (c) sells or supplies, or offers to sell or supply, a prohibited drug to another person.
- (2) A person who has in his or her possession or uses a prohibited drug commits a simple offence.
- (3) A person does not commit a crime under subsection (1) or a simple offence under subsection (2) by reason only

of the person having in his or her possession a prohibited drug if the person proves that —

- (a) he or she was authorised by or under this Act or the *Medicines and Poisons Act 2014* to have possession of the drug; or
 - (b) he or she had possession of the drug only for the purpose of delivering it to a person authorised to possess the drug under this Act or the *Medicines and Poisons Act 2014* and he or she took all reasonable steps to deliver the drug to the person; or
 - (c) he or she had possession of the drug for the purpose of analysing, examining or otherwise dealing with it for the purposes of this Act in his or her capacity as an analyst, botanist or other expert.
- (4) A person does not commit a crime under subsection (1) by reason only that the person manufactures, prepares, sells or supplies a prohibited drug if the person proves that he or she was authorised to manufacture, prepare, sell or supply the drug under this Act or the *Medicines and Poisons Act 2014*.
- (5) A person does not commit a simple offence under subsection (2) by reason only of using a prohibited drug if the person proves that he or she was a person authorised under this Act or the *Medicines and Poisons Act 2014*.

7. Offences concerned with prohibited plants generally

- (1) A person commits a crime if the person —
- (a) with intent to sell or supply a prohibited plant, or any prohibited drug obtainable from a prohibited plant, to another person, has in his or

- her possession or cultivates the prohibited plant; or
- (b) sells or supplies, or offers to sell or supply, a prohibited plant to another person.
- (2) A person who has in his or her possession or cultivates a prohibited plant commits a simple offence.
- (3) A person does not commit a crime under subsection (1) or a simple offence under subsection (2) by reason only of the person having in his or her possession a prohibited plant if the person proves that —
- (a) he or she was authorised by or under this Act or the *Medicines and Poisons Act 2014* to have possession of a prohibited drug obtainable from the plant; or
- (b) he or she had possession of the plant only for the purpose of delivering it to a person authorised to have possession of a drug obtainable from the plant under this Act or the *Medicines and Poisons Act 2014* and he or she took all reasonable steps to deliver the drug to the person; or
- (c) he or she had possession of the plant for the purpose of analysing, examining or otherwise dealing with it for the purposes of this Act in his or her capacity as an analyst, botanist or other expert.

172. Section 7B amended

In section 7B(7) delete “*Poisons Act 1964*” (each occurrence) and insert:

Medicines and Poisons Act 2014

173. Section 8 deleted

Delete section 8.

174. Section 14 amended

- (1) In section 14(3) delete “*Poisons Act 1964*” and insert:

Medicines and Poisons Act 2014

- (2) Delete section 14(4) and insert:

- (4) A person does not commit an offence under subsection (1) or (2) by reason only of the person having in the person’s possession a category 1 item, a category 2 item or a particular substance if the person proves that —
- (a) he or she was authorised by or under this Act or the *Medicines and Poisons Act 2014* to have possession of the item or substance; or
 - (b) he or she had possession of the item or substance only for the purpose of delivering it to a person authorised to have possession of the item or substance under this Act or the *Medicines and Poisons Act 2014* and he or she took all reasonable steps to deliver the item or substance to the person; or
 - (c) he or she had possession of the item or substance for the purpose of analysing, examining or otherwise dealing with it for the purposes of this Act in his or her capacity as an analyst, botanist or other expert.

175. Section 27 amended

In section 27(1):

(a) delete paragraph (a)(ii) and insert:

(ii) if a person who is authorised by or under this Act or under the *Medicines and Poisons Act 2014* to have possession thereof is entitled to have possession of that relevant thing, release that relevant thing to that person;

(b) in paragraph (b) delete the passage that begins with “Act,” and ends with “prescription” and insert:

Act or by or under the *Medicines and Poisons Act 2014*

176. Section 38D amended

Delete section 38D(2) and insert:

(2) In any proceedings under this Act, production of a copy of any code adopted under the *Medicines and Poisons Act 2014* section 132 purporting to be certified by the CEO (Health) to be a true copy of the code as at any date or during any period is, without proof of the signature of the CEO (Health), sufficient evidence of the contents of the code as at that date or during that period.

177. Section 41 amended

In section 41(2):

- (a) delete “*Poisons Act 1964*,” and insert:

Medicines and Poisons Act 2014,

- (b) delete “*Poisons Act 1964*” and insert:

Medicines and Poisons Act 2014

178. Schedule I heading amended

In the heading to Schedule I delete “*Poisons Act 1964*” and insert:

Medicines and Poisons Act 2014

179. Schedule II heading replaced

Delete the heading to Schedule II and insert:

Schedule II — Plants to which this Act applies

180. Schedule III amended

- (1) In Schedule III delete item 2 and insert:

2. ACETYLDIHYDROCODEINE (except when a Schedule 2 or 4 poison as defined in the *Medicines and Poisons Act 2014*)

6.0

Medicines and Poisons Act 2014

Part 11 Consequential amendments

Division 3 Misuse of Drugs Act 1981 amended

s. 180

(2) In Schedule III delete item 30 and insert:

30. CODEINE (except when a Schedule 2, 3 or 4 poison as defined in the *Medicines and Poisons Act 2014*) 30.0

(3) In Schedule III delete item 40 and insert:

40. DIHYDROCODEINE (except when a Schedule 2 or 4 poison as defined in the *Medicines and Poisons Act 2014*) 30.0

(4) In Schedule III delete item 90 and insert:

90. MORPHINE DERIVATIVES (not specifically included elsewhere in this Schedule or not a Schedule 2, 3, 4, 5, 6, 7, 8 or 9 poison as defined in the *Medicines and Poisons Act 2014*) 6.0

(5) In Schedule III delete items 96 and 97 and insert:

96. NICOCODINE (except when a Schedule 2 or 4 poison as defined in the *Medicines and Poisons Act 2014*) 6.0

97. NICODICODINE (except when a Schedule 2 or 4 poison as defined in the *Medicines and Poisons Act 2014*) 6.0

(6) In Schedule III delete item 100 and insert:

100. NORCODEINE (except when a Schedule 2 or 4 poison as defined in the *Medicines and Poisons Act 2014*) 6.0

(7) In Schedule III delete item 123 and insert:

123. PHOLCODINE (except when a Schedule 2 or 4
poison as defined in the *Medicines and Poisons
Act 2014*) 15.0

181. Schedule V amended

(1) In Schedule V delete item 2 and insert:

2. ACETYLDIHYDROCODEINE (except when a
Schedule 2 or 4 poison as defined in the *Medicines and
Poisons Act 2014*) 2.0

(2) In Schedule V delete item 30 and insert:

30. CODEINE (except when a Schedule 2 or 4 poison as
defined in the *Medicines and Poisons Act 2014*) 10.0

(3) In Schedule V delete item 41 and insert:

41. DIHYDROCODEINE (except when a Schedule 2 or 4
poison as defined in the *Medicines and Poisons
Act 2014*) 10.0

(4) In Schedule V delete item 92 and insert:

92. MORPHINE DERIVATIVES (not specifically
included elsewhere in this Schedule or not a
Schedule 2, 3, 4, 5, 6, 7, 8 or 9 poison as defined in the
Medicines and Poisons Act 2014) 2.0

Medicines and Poisons Act 2014

Part 11 Consequential amendments

Division 4 Other Acts amended

s. 182

(5) In Schedule V delete items 98 and 99 and insert:

- | | | |
|-----|--|-----|
| 98. | NICOCODINE (except when a Schedule 2 or 4 poison as defined in the <i>Medicines and Poisons Act 2014</i>) | 2.0 |
| 99. | NICODICODINE (except when a Schedule 2 or 4 poison as defined in the <i>Medicines and Poisons Act 2014</i>) | 2.0 |

(6) In Schedule V delete item 102 and insert:

- | | | |
|------|--|-----|
| 102. | NORCODEINE (except when a Schedule 2 or 4 poison as defined in the <i>Medicines and Poisons Act 2014</i>) | 2.0 |
|------|--|-----|

(7) In Schedule V delete item 125 and insert:

- | | | |
|------|--|-----|
| 125. | PHOLCODINE (except when a Schedule 2 or 4 poison as defined in the <i>Medicines and Poisons Act 2014</i>) | 5.0 |
|------|--|-----|

Division 4 — Other Acts amended

182. *Biosecurity and Agriculture Management Act 2007* amended

- (1) This section amends the *Biosecurity and Agriculture Management Act 2007*.
- (2) In section 4(2) delete paragraph (g) and insert:

(g) the *Medicines and Poisons Act 2014*;

- (3) In section 40(3) delete “*Poisons Act 1964.*” and insert:

Medicines and Poisons Act 2014.

183. Constitution Acts Amendment Act 1899 amended

- (1) This section amends the *Constitution Acts Amendment Act 1899*.
- (2) In Schedule V Part 3 delete the item relating to The Poisons Advisory Committee.

184. Emergency Management Act 2005 amended

- (1) This section amends the *Emergency Management Act 2005*.
- (2) At the end of Part 6 Division 2 insert:

76A. Manufacture, supply and prescription of poisons

- (1) In this section each of the following terms has the meaning given in the *Medicines and Poisons Act 2014* section 3 —

CEO

manufacture

poison

prescribe

supply

- (2) For the purposes of emergency management —
- (a) the CEO may authorise a person to administer, manufacture, supply or prescribe a poison; and
- (b) during a state of emergency a person authorised under paragraph (a) may administer, manufacture, supply or prescribe a poison.

- (3) An authorisation under subsection (2)(a) is to specify —
 - (a) whether it applies to any state of emergency or is limited to a particular state of emergency; and
 - (b) the person, or class of persons, to whom it applies; and
 - (c) the poison, or a class of poisons, to which it applies; and
 - (d) the terms and conditions to which it is subject.
- (4) An authorisation under subsection (2)(a) may be given orally or in writing but if given orally is to be put in writing as soon as is practicable.
- (5) A failure to put an authorisation in writing does not invalidate the authorisation or anything done under the authorisation.
- (6) When exercising a power under subsection (2)(b) a person is to comply with —
 - (a) the terms and conditions of the authorisation; and
 - (b) any directions of the CEO or State Emergency Coordinator.
- (7) This section applies despite any provision of the *Medicines and Poisons Act 2014* or the *Misuse of Drugs Act 1981*.

185. Fair Trading Act 2010 amended

- (1) This section amends the *Fair Trading Act 2010*.
- (2) In Schedule 1:
 - (a) delete “*Poisons Act 1964*”;

- (b) insert in alphabetical order:

Medicines and Poisons Act 2014

186. Pharmacy Act 2010 amended

- (1) This section amends the *Pharmacy Act 2010*.
- (2) In section 3(1) delete the definition of *the practice of pharmacy* and insert:

the practice of pharmacy includes to —

- (a) compound, dispense or otherwise supply medicines or drugs; and
- (b) advise or counsel on the effective and safe use of medicines or drugs.
- (3) In section 3(1) in the definition of *dispense* delete “*Poisons Act 1964* section 5(1),” and insert:

Medicines and Poisons Act 2014 section 3,

- (4) In section 3(1) in the definition of *pharmacy business* paragraph (d) delete “*Poisons Act 1964*” and insert:

Medicines and Poisons Act 2014

(5) After section 50 insert:

51A. Requirement to notify recording of information on register

- (1) In this section —
CEO has the meaning given in the *Medicines and Poisons Act 2014* section 3.
- (2) The Board is required to notify the CEO of information recorded in the register as soon as is practicable after the information is recorded.

187. Police (Medical and Other Expenses for Former Officers) Act 2008 amended

- (1) This section amends the *Police (Medical and Other Expenses for Former Officers) Act 2008*.
- (2) In section 4(3)(a) delete “*Poisons Act 1964* section 5(1),” and insert:

Medicines and Poisons Act 2014 section 77(1),

188. Road Traffic Act 1974 amended

- (1) This section amends the *Road Traffic Act 1974*.
- (2) In section 65 in the definition of **drug** delete paragraph (b) and insert:
 - (b) a Schedule 4 poison as defined in the *Medicines and Poisons Act 2014* section 3; or

189. *Tobacco Products Control Act 2006* amended

- (1) This section amends the *Tobacco Products Control Act 2006*.
- (2) In the Glossary in the definition of ***tobacco product*** delete paragraph (d) and insert:
 - (d) nicotine, or a product that contains nicotine, in a form that is a poison within the meaning of the *Medicines and Poisons Act 2014* section 3; or

190. *Veterinary Chemical Control and Animal Feeding Stuff Act 1976* amended

- (1) This section amends the *Veterinary Chemical Control and Animal Feeding Stuff Act 1976*.
- (2) In section 9 delete “*Poisons Act 1964*,” (each occurrence) and insert:

Medicines and Poisons Act 2014,

191. *Workers’ Compensation and Injury Management Act 1981* amended

- (1) This section amends the *Workers’ Compensation and Injury Management Act 1981*.
- (2) In section 5(1) delete the definition of ***drug of addiction*** and insert:

drug of addiction has the meaning given in the *Misuse of Drugs Act 1981* section 3(1);

=====

Defined terms

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
act.....	127(1)
adopted code	3, 132(1)
agent.....	13(3), 14(2), 120(1), 120(3)
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