

Western Australia

Misuse of Drugs Act 1981

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Misuse of Drugs Act 1981

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Defined Terms

Western Australia

Misuse of Drugs Act 1981

An Act to prevent the misuse of certain drugs and plants and to provide for matters incidental thereto or connected therewith.

Part I — Preliminary

1. Short title

This Act may be cited as the *Misuse of Drugs Act 1981*¹.

2. Commencement

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

3. Terms used in this Act

(1) In this Act, unless the contrary intention appears —

analyst means analyst registered under section 203 of the *Health Act 1911*;

approved analyst means —

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

approved botanist means a botanist declared under section 3A to be an approved botanist;

authorised prescription means document or prescription —

- (a) referred to in section 23(2)(d) of; and
- (b) complying with, the *Poisons Act 1964*;

botanist means a person who —

- (a) holds a science degree in, or to a major extent in, botany awarded by —
 - (i) a university in Australia; or
 - (ii) a prescribed university;and
- (b) has had not less than 2 years practical experience in plant taxonomy;

cannabis means plant of the genus *Cannabis* (by whatever name designated) or part of that plant;

cannabis resin means separated resin, whether crude or purified, obtained from cannabis;

Commissioner means the Commissioner of Police appointed under the *Police Act 1892*;

dangerous substance means a substance (other than a prohibited drug or prohibited plant) that is noxious or volatile;

dentist means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the dental profession whose name is entered on the Dentists Division of the Register of Dental Practitioners kept under that Law;

drug of addiction means drug of addiction as defined by section 5 of the *Poisons Act 1964*;

heroin means the drug commonly known as heroin and includes any substance containing diacetylmorphine or its salts and any preparation, admixture or extract containing diacetylmorphine or any such salt;

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

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

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

nurse practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* whose name is entered on the Register of Nurses kept under that Law as a being qualified to practise as a nurse practitioner;

opium means spontaneously coagulated juice obtained from the capsules of the opium poppy *Papaver somniferum*;

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

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

prohibited drug means drug to which this Act applies by virtue of section 4;

prohibited plant means plant to which this Act applies by virtue of section 4, or part of that plant;

sample, in relation to any thing, means a sample of the thing taken by an approved analyst or an approved botanist under section 26A(a);

simple offence means simple offence under this Act;

specified drug means specified drug as defined by section 5 of the *Poisons Act 1964*;

summary court means court of summary jurisdiction constituted by a magistrate sitting alone;

the Poisons Act 1964 includes any regulations made and in force under that Act;

the regulations means the regulations made and in force under this Act;

to cultivate, in relation to a prohibited plant, includes to grow, sow or scatter the seed produced by, or to plant, nurture, tend or harvest, the prohibited plant;

to possess includes to control or have dominion over, and to have the order or disposition of, and inflections and derivatives of the verb “to possess” have correlative meanings;

to supply includes to deliver, dispense, distribute, forward, furnish, make available, provide, return or send, and it does not matter that something is supplied on behalf of another or on whose behalf it is supplied;

veterinary surgeon means registered veterinary surgeon as defined by section 2 of the *Veterinary Surgeons Act 1960*.

- (2) In the case of liquid preparations, percentages shall, unless other provision in that behalf is made by the regulations, be calculated on the basis that a preparation containing 1% of a substance means a preparation in which one gram of the substance, if a solid, or one millilitre of the substance, if a liquid, is contained in every 100 millilitres of the preparation, and so in proportion for any greater or lesser percentage.

[Section 3 amended by No. 50 of 1990 s. 7; No. 20 of 1991 s. 57; No. 32 of 1994 s. 3(2); No. 44 of 1995 s. 4; No. 3 of 1998 s. 3; No. 9 of 2003 s. 28; No. 1 of 2004 s. 50; No. 4 of 2004 s. 58; No. 59 of 2004 s. 141; No. 62 of 2004 s. 4; No. 50 of 2006 s. 114; No. 22 of 2008 s. 162; No. 42 of 2009 s. 21; No. 35 of 2010 s. 118.]

3A. Approved analysts and botanists

- (1) The Commissioner may by notice published in the *Gazette* declare —
- (a) an analyst to be an approved analyst for the purposes of this Act; or
 - (b) a botanist to be an approved botanist for the purposes of this Act.
- (2) The Commissioner may by further notice published in the *Gazette* amend or revoke a notice under this section.

[Section 3A inserted by No. 44 of 1995 s. 5.]

4. Drugs and plants to which Act applies

- (1) Subject to subsection (4), the drugs to which this Act applies are —
- (a) drugs of addiction;
 - (b) specified drugs; and
 - (c) whether or not they are also drugs of addiction or specified drugs, the drugs specified in Schedule I.

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- (2) Subject to subsection (3), the plants to which this Act applies are —
- (a) prohibited plants as defined by section 5 of the *Poisons Act 1964*; and
 - (b) whether or not they are also prohibited plants as defined by section 5 of the *Poisons Act 1964*, the plants specified in Schedule II.
- (3) This Act does not apply to the non-viable seeds of the opium poppy *Papaver somniferum*.
- (4) This Act does not apply to processed industrial hemp.
[Section 4 amended by No. 1 of 2004 s. 51.]

Part II — Offences relating to prohibited drugs and prohibited plants

5. Offences concerned with prohibited drugs and prohibited plants in relation to premises and utensils

- (1) A person who —
- (a) being the occupier of any premises, knowingly permits those premises to be used for the purpose of —
 - (i) the manufacture or preparation of a prohibited drug or prohibited plant for use; or
 - (ii) the manufacture, preparation, sale, supply or use of a prohibited drug or prohibited plant;
 - (b) being the owner or lessee of any premises, knowingly permits those premises to be used for the purpose of using a prohibited drug or prohibited plant;
 - (c) is knowingly concerned in the management of any premises used for any of the purposes referred to in paragraphs (a) and (b);
 - (d) has in his possession —
 - (i) any pipes or other utensils for use in connection with the smoking of a prohibited drug or prohibited plant; or
 - (ii) any utensils used in connection with the manufacture or preparation of a prohibited drug or prohibited plant for smoking,
in or on which pipes or utensils there are detectable traces of a prohibited drug or prohibited plant; or
 - (e) is found in any place which is then being used for the purpose of smoking a prohibited drug or prohibited plant other than cannabis,

except when he is authorised by or under this Act or by or under the *Poisons Act 1964* to do so, commits a simple offence.

- (2) In subsection (1) —

owner, in relation to any premises, includes the person entitled to receive the rent of those premises and the person to whom the rent of those premises is paid.

[Section 5 amended by No. 52 of 2003 s. 28.]

6. Offences concerned with prohibited drugs generally

- (1) Subject to subsection (3), a person who —

- (a) with intent to sell or supply it to another, has in his possession;
- (b) manufactures or prepares; or
- (c) sells or supplies, or offers to sell or supply, to another,

a prohibited drug commits a crime, except when he is authorised by or under this Act or by or under the *Poisons Act 1964* to do so and does so in accordance with that authority.

- (2) Subject to subsection (3) and to section 36A of the *Poisons Act 1964*, a person who has in his possession or uses a prohibited drug commits a simple offence, except when, in the case of a person who has the prohibited drug in his possession —

- (a) he is authorised by or under this Act or by or under the *Poisons Act 1964* or the *Industrial Hemp Act 2004* to do so and does so in accordance with that authority; or
- (b) the prohibited drug was sold or supplied, or requested to be sold or supplied, to him —
 - (i) by a medical practitioner, nurse practitioner or veterinary surgeon in the lawful practice of his profession; or
 - (ii) on and in accordance with an authorised prescription.

- (3) A person does not commit a crime under subsection (1) or a simple offence under subsection (2) by reason only of his

having in his possession or manufacturing or preparing a prohibited drug if he proves that he had possession of or manufactured or prepared the prohibited drug only for the purpose of —

- (a) delivering it to a person authorised —
 - (i) to have possession of the prohibited drug by or under this Act, by or under the *Poisons Act 1964* or on and in accordance with an authorised prescription; or
 - (ii) by or under this Act or by or under the *Poisons Act 1964* to manufacture, prepare, sell or supply the prohibited drug,

and had possession thereof (except in the case of intended delivery to a person authorised to have possession of the prohibited drug on and in accordance with an authorised prescription) in accordance with the authority in writing of the person so authorised, and that, after taking possession of the prohibited drug, he took all such steps as were reasonably open to him to deliver the prohibited drug into the possession of that person; or

- (b) analysing, examining or otherwise dealing with it for the purposes of this Act in his capacity as an analyst, botanist or other expert.

[Section 6 amended by No. 12 of 1994 s. 11; No. 9 of 2003 s. 29; No. 1 of 2004 s. 52; No. 4 of 2004 s. 58.]

7. Offences concerned with prohibited plants generally

- (1) Subject to subsection (3), a person who —
 - (a) with intent to sell or supply a prohibited plant or any prohibited drug obtainable therefrom to another, has in his possession or cultivates the prohibited plant; or
 - (b) sells or supplies, or offers to sell or supply, a prohibited plant to another,

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commits a crime, except when he is authorised by or under this Act or by or under the *Poisons Act 1964* to do so and does so in accordance with that authority.

- (2) Subject to subsection (3), a person who has in his possession or cultivates a prohibited plant commits a simple offence, except when he is authorised by or under this Act or by or under the *Poisons Act 1964* or the *Industrial Hemp Act 2004* to do so and does so in accordance with that authority.
- (3) A person does not commit a crime under subsection (1) or a simple offence under subsection (2) by reason only of his having in his possession a prohibited plant if he proves that he had possession of the prohibited plant only for the purpose of —
- (a) delivering it or any prohibited drug obtainable therefrom to a person authorised —
 - (i) to have possession of the prohibited plant or that prohibited drug, as the case requires, by or under this Act or by or under the *Poisons Act 1964*; or
 - (ii) by or under this Act or by or under the *Poisons Act 1964* to sell or supply the prohibited plant or to manufacture, prepare, sell or supply that prohibited drug, as the case requires,and had possession of the prohibited plant in accordance with the authority in writing of the person so authorised, and that, after taking possession of the prohibited plant, he took all such steps as were reasonably open to him to deliver the prohibited plant or that prohibited drug into the possession of that person; or
 - (b) analysing, examining or otherwise dealing with the prohibited plant or that prohibited drug for the purposes of this Act in his capacity as an analyst, botanist or other expert.

[Section 7 amended by No. 1 of 2004 s. 52; No. 4 of 2004 s. 58.]

7A. Selling or supplying a thing knowing it will be used in the hydroponic cultivation of a prohibited plant

- (1) A person who sells or supplies, or offers to sell or supply, to another, any thing that the person knows will be used to cultivate a prohibited plant contrary to section 7(1)(a) or (2) by hydroponic means commits an indictable offence.
- (2) A court convicting a person of the offence under subsection (1) may, on the application of the Director of Public Prosecutions or a police prosecutor, in addition order that the person be prohibited for a period set by the court (but not exceeding 2 years) from selling or supplying, or offering for sale or supply, to another, any thing that may be used to cultivate plants by hydroponic means.
- (3) A person who contravenes an order under subsection (2) is guilty of a simple offence.

[Section 7A inserted by No. 52 of 2003 s. 29.]

8. Fraudulent behaviour in relation to prohibited drugs

- (1) A person who forges or fraudulently alters, or utters knowing it to be forged or fraudulently altered, a prescription or order for a prohibited drug commits a simple offence.
- (2) A person who by any false representation, whether oral or in writing or otherwise, causes or induces —
 - (a) a person licensed under the *Poisons Act 1964* to manufacture, sell or supply any prohibited drug; or
 - (b) a medical practitioner, nurse practitioner or dentist,to administer or supply to him by injection or otherwise a prohibited drug commits a simple offence.

[Section 8 amended by No. 9 of 2003 s. 30.]

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

- (1) In proceedings against —

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

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

- (2) In proceedings against —

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

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

- (3) In proceedings against —

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

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

(4) In proceedings against —

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

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

(5) In proceedings against —

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

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

(6) In proceedings against —

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

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

(7) In proceedings against —

- (a) a person who may cultivate, harvest or process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or

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- (b) an employee, agent or contractor of a person referred to in paragraph (a),

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

- (8) In proceedings against —

- (a) a person who may cultivate, harvest or process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or

- (b) an employee, agent or contractor of a person referred to in paragraph (a),

for an offence against —

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

- (d) section 7(1)(b) involving selling or supplying, or offering to sell or supply, a prohibited plant to another,

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

- (9) In proceedings against —

- (a) a person who may cultivate, harvest or process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or

- (b) an employee, agent or contractor of a person referred to in paragraph (a),

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

[Section 8A inserted by No. 1 of 2004 s. 54.]

Part III — Procedure

9. Summary trial of some indictable offences

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

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

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

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- (b) the number of prohibited plants of a particular species or genus to which the charge relates being less than the number specified in Schedule IV in relation to that species or genus.

[Section 9 inserted by No. 4 of 2004 s. 58; amended by No. 84 of 2004 s. 82.]

10. Alternative verdicts

A court trying a person charged with having committed a crime under —

- (a) section 6(1) may, if the evidence does not establish that that person is guilty of that crime but does establish that he is guilty of a simple offence under section 6(2); or
- (b) section 7(1) may, if the evidence does not establish that that person is guilty of that crime but does establish that he is guilty of a simple offence under section 7(2),

convict him of having committed that simple offence and, whether that court is a summary court, the District Court or the Supreme Court, impose on him the penalty referred to in section 34(1)(e).

[Section 10 amended by No. 4 of 2004 s. 58.]

11. Presumption of intent to sell or supply

For the purposes of —

- (a) section 6(1)(a), a person shall, unless the contrary is proved, be deemed to have in his possession a prohibited drug with intent to sell or supply it to another if he has in his possession a quantity of the prohibited drug which is not less than the quantity specified in Schedule V in relation to the prohibited drug; or
- (b) section 7(1)(a), a person shall, unless the contrary is proved, be deemed to have in his possession, or to cultivate, prohibited plants of a particular species or genus with intent to sell or supply those prohibited

plants or any prohibited drug obtainable therefrom to another if he has in his possession, or cultivates, a number of those prohibited plants which is not less than the number specified in Schedule VI in relation to that species or genus.

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

[Heading inserted by No. 62 of 2004 s. 5.]

12. Terms used in this Part

In this Part, unless the contrary intention appears —

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

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

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

substance includes material, compound, preparation and admixture;

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

[Section 12 inserted by No. 62 of 2004 s. 5.]

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

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

engaged by an education institution or a research institution acting in the ordinary course of the person's occupation and the possession or supply is solely for educational or research purposes.

[Section 13 inserted by No. 62 of 2004 s. 5.]

14. Possession of certain substances or things

- (1) A person who, without lawful excuse, has in the person's possession a substance that contains, or substances that together contain, a quantity of a category 1 item or a category 2 item that exceeds the quantity prescribed in relation to the item concerned commits a crime.

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

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

- (2) A person who, without lawful excuse, has in the person's possession a category 1 item or a category 2 item commits a simple offence.

Penalty: \$12 000 or imprisonment for 3 years or both.

- (3) A person does not commit an offence under subsection (1) or (2) if the person is authorised by or under this Act or by or under the *Poisons Act 1964* to possess the item or substance concerned and does so in accordance with that authority.

- (4) A person does not commit an offence under subsection (1) or (2) by reason only of the person having in the person's possession a category 1 item, a category 2 item or a particular substance if the person proves that the person had possession of the item or substance only for the purpose of —

(a) delivering it to a person authorised (the ***authorised person***) —

- (i) to have possession of the item or substance by or under this Act, by or under the *Poisons Act 1964*

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or on and in accordance with an authorised prescription; or

- (ii) by or under this Act or by or under the *Poisons Act 1964* to manufacture, prepare, sell or supply the item or substance,

and had possession of the item or substance (except in the case of intended delivery to a person authorised to have possession of the item or substance on and in accordance with an authorised prescription) in accordance with the authority in writing of the authorised person, and that, after taking possession of the item or substance, the person took all such steps as were reasonably open to the person to deliver the item or substance into the possession of the authorised person; or

- (b) analysing, examining or otherwise dealing with it for the purposes of this Act in the person's capacity as an analyst, botanist or other expert.

[Section 14 inserted by No. 62 of 2004 s. 5.]

15. Sale or supply of category 1 items

- (1) A supplier who sells or supplies a category 1 item commits a simple offence unless —
- (a) the recipient holds an account with the supplier;
 - (b) the sale or supply is a sale or supply on account that occurs after a written order for the item is given to the supplier by or on behalf of the recipient;
 - (c) the order is accompanied by a declaration in the prescribed form made by or on behalf of the recipient; and
 - (d) the person who takes possession of the item produces to the supplier such evidence of the person's identity as is required by the regulations.

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

[Section 15 inserted by No. 62 of 2004 s. 5.]

16. Storage of category 1 items

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

[Section 16 inserted by No. 62 of 2004 s. 5.]

17. Sale or supply of category 2 items

- (1) A supplier who sells or supplies a category 2 item commits a simple offence unless —
 - (a) the recipient holds an account with the supplier and the sale or supply is of the kind described in section 15(1)(b); or

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- (b) at the time of the sale or supply —
 - (i) a declaration in the prescribed form made by or on behalf of the recipient is given to the supplier; and
 - (ii) the person who takes possession of the item produces to the supplier such evidence of the person's identity as is required by the regulations.

- (2) A supplier who —
 - (a) sells or supplies a category 2 item; and
 - (b) is given a declaration referred to in subsection (1)(b) in respect of the sale or supply,

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

[Section 17 inserted by No. 62 of 2004 s. 5.]

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

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

[Section 18 inserted by No. 62 of 2004 s. 5.]

19B. Selling ice pipes

- (1) In this section —

child means a person who is under 18 years of age;

ice pipe means —

- (a) a device capable of being used for the administration of a prohibited drug by means of the inhaling of the smoke or fumes resulting from the heating or burning of the drug in a crystal, powder, oil or base form; or
- (b) a device that is apparently intended to be such a device but is not capable of being so used because it needs an adjustment, modification or addition,

but does not include a device prescribed, or belonging to a class prescribed, for the purposes of this definition.

- (2) A person who sells, or offers to sell, an ice pipe to a child commits a simple offence.

Penalty: a fine of \$24 000 or imprisonment for 2 years or both.

- (3) A person —

- (a) who sells, or offers to sell, an ice pipe to a person other than a child; or
- (b) who displays an ice pipe, or authorises or allows an ice pipe to be displayed, for sale in a shop or other retail outlet,

commits a simple offence.

Penalty: a fine of \$10 000.

[Section 19B inserted by No. 50 of 2010 s. 4.]

19. Powers of police officers for purposes of this Part

- (1) A police officer may, for the purposes of this Part, with such assistance as the police officer considers necessary —
 - (a) enter the premises of a person who sells or supplies, or has sold or supplied, category 1 items or category 2 items;

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

[Section 19 inserted by No. 62 of 2004 s. 5.]

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

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

[Section 20 inserted by No. 62 of 2004 s. 5.]

Part V — Location, seizure, detention and disposal of things used in commission of offences

21. Terms used in this Part

In this Part, unless the contrary intention appears —

approved person means person who is approved, or belongs to a class of persons which is approved, by the Minister under section 30 for the purposes of this Part, which approval has not been revoked under that section;

holding order means holding order granted under section 28(1);

search warrant means search warrant granted under section 24;

vehicle includes aircraft, hovercraft, vessel and any other means of transportation.

22. Powers of police officers and approved persons in relation to manufacturers, sellers and suppliers of prohibited drugs and cultivators, sellers and suppliers of prohibited plants

A police officer or approved person may, for the purposes of this Act —

- (a) enter the premises of a person carrying on the business of —
 - (i) a manufacturer, seller or supplier of prohibited drugs; or
 - (ii) a cultivator, seller, or supplier of prohibited plants;
- (b) demand the production of, and inspect, any books, papers or documents relating to transactions or dealings in a prohibited drug or prohibited plant; and
- (c) inspect any stocks of a prohibited drug or prohibited plant.

23. Powers of police officers when things suspected of being used in commission of offences

- (1) Subject to this section, if there are reasonable grounds to suspect that any thing whatsoever —
- (a) with respect to which an offence has been, or is suspected to have been, or may be committed;
 - (b) which has been, or is suspected to have been, or may be used for the purpose of committing an offence; or
 - (c) which may provide evidence in respect of an offence,
- is in the possession of a person, a police officer may, using such force as is reasonably necessary and with such assistance as he considers necessary, stop and detain the person and search him together with any baggage, package, vehicle or other thing of any kind whatsoever found in his possession, and for that purpose may stop and detain any vehicle.
- (2) A person shall not be searched under subsection (1) except by —
- (a) a person of the same sex as the firstmentioned person; or
 - (b) a medical practitioner.
- (3) A police officer who wishes to search a person under subsection (1) may, if it is not then and there practicable to comply with subsection (2) in relation to the person —
- (a) detain the person until; or
 - (b) detain the person and convey him to a place where,
- it is practicable for subsection (2) to be complied with in relation to the person.
- (4) A person shall not be detained, or detained and conveyed, under subsection (3) for longer than is reasonably necessary under the circumstances for the purpose of complying with subsection (2) in relation to the person.

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24. Granting of search warrants in connection with prevention or detection of offences

- (1) A justice of the peace who is satisfied by information on oath that there are reasonable grounds to suspect that any thing referred to in section 23(1)(a), (b) or (c) may be in or on any vehicle, or in or on any premises or other place, may grant to a police officer a search warrant authorising a police officer at any time or times within 30 days from the date of that search warrant to enter any vehicle, or any premises or other place, named in that search warrant and, subject to this section, to search that vehicle or those premises or that other place and any person and any baggage, package or other thing of any kind whatsoever found therein or thereon, using such force as is reasonably necessary and with such assistance as the police officer considers necessary.
- (2) A person shall not be searched under a search warrant except by —
 - (a) a person of the same sex as the firstmentioned person; or
 - (b) a medical practitioner.
- (3) A police officer who wishes to search a person under a search warrant may, if it is not then and there practicable to comply with subsection (2) in relation to the person —
 - (a) detain the person until; or
 - (b) detain the person and convey him to a place where,

it is practicable for that subsection to be complied with in relation to the person.
- (4) A person shall not be detained, or detained and conveyed, under subsection (3) for longer than is reasonably necessary under the circumstances for the purpose of complying with subsection (2) in relation to the person.

[Section 24 amended by No. 50 of 1990 s. 7.]

25. Powers ancillary to power of search

- (1) A police officer or approved person exercising the powers conferred by section 22 or 23 or by a search warrant may for the purposes of this Part —
 - (a) seize and detain, or make extracts from or copies of, books, papers and documents found during the course of that exercise;
 - (b) require a person to give, or cause to be given, to the police officer or approved person such information as it is in the power of the person to give or cause to be given, as the case requires.
- (2) Subject to subsection (3), a person who —
 - (a) without reasonable excuse, does not comply with a requirement made to him under subsection (1); or
 - (b) in purporting to comply with a requirement made to him under subsection (1), gives or causes to be given to the police officer or approved person concerned information that to his knowledge is false or misleading in a material particular,commits a simple offence.
- (3) Notwithstanding anything in subsection (2), a person shall not refuse or fail to comply with a requirement made to him under subsection (1) by reason only that compliance with that requirement would tend to incriminate him or render him liable to any penalty, but the information given or caused to be given by him in compliance with that requirement is not admissible in evidence in any proceedings against him for an offence other than a simple offence under subsection (2)(b).

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26. Powers of police officers and others when things suspected of being used in commission of offences found, received or acquired

- (1) If there are reasonable grounds to suspect that any thing found or received during the exercise of the powers conferred by section 22 or 23 or by a search warrant or under any other circumstances is a thing referred to in section 23(1)(a), (b) or (c) a police officer or approved person, as the case requires, may seize that thing and —
- (a) in the case of a thing which is a prohibited drug, prohibited plant or dangerous substance, may detain it until it is dealt with under section 27; or
 - (b) in the case of a thing which is not a prohibited drug, prohibited plant or dangerous substance, may detain it for a period not exceeding 72 hours from that seizure and shall, if he wishes to detain it for a longer period, apply within 72 hours from that seizure to a justice of the peace for a holding order in respect of that thing.
- (2) A police officer who —
- (a) whilst he is an authorised person and is acting as an undercover officer, acquires a prohibited drug or prohibited plant for the purpose of detecting the commission of an offence; or
 - (b) acquires a prohibited drug or prohibited plant as a result of its delivery to him by an authorised person who is not a police officer,

shall detain the prohibited drug or prohibited plant until it is dealt with under section 27.

- (3) In subsection (2) —
authorised person and **undercover officer** have the respective meanings given by section 31.

[Section 26 amended by No. 50 of 1990 s. 7; No. 44 of 1995 s. 6.]

26A. Powers of approved analyst or approved botanist

An approved analyst or approved botanist may for the purposes of this Act —

- (a) take a sample or samples of any thing seized under this Act;
- (b) analyse or examine any thing seized under this Act or any sample or samples of the thing.

[Section 26A inserted by No. 44 of 1995 s. 7.]

27. Disposal of prohibited drugs and prohibited plants

(1) If, in the case of a prohibited drug, prohibited plant or dangerous substance which is seized or acquired and detained under section 26 —

- (a) a police officer is satisfied that no person will be tried with the commission of an offence in relation thereto, and it has not been destroyed under subsection (4), the police officer shall —
 - (i) cause that prohibited drug, prohibited plant or dangerous substance to be destroyed in accordance with the regulations; or
 - (ii) if a person who is authorised by or under this Act, by or under the *Poisons Act 1964* or, in the case of a prohibited drug, on and in accordance with an authorised prescription to have possession thereof is entitled to have possession of that prohibited drug, prohibited plant or dangerous substance, release that prohibited drug, prohibited plant or dangerous substance to that person;

or

- (b) a person is tried with the commission of an offence in relation thereto and it has not been destroyed under subsection (4), the court which so tries the person shall, whether or not the person is convicted of that offence

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and after having given any other person (in this paragraph called *the claimant*) claiming to be authorised by or under this Act, by or under the *Poisons Act 1964* or, in the case of a prohibited drug, on and in accordance with an authorised prescription to have possession thereof and to be entitled to have possession of that prohibited drug, prohibited plant or dangerous substance, an opportunity to show cause why that prohibited drug, prohibited plant or dangerous substance should be released to him, order that that prohibited drug, prohibited plant or dangerous substance —

- (i) be released to the claimant;
- (ii) be destroyed; or
- (iii) be forfeited to the Crown.

(2) If, in relation to any prohibited drug, prohibited plant or dangerous substance seized under section 26, the Commissioner is satisfied that —

- (a) it is not reasonably practicable (for whatever reason) to detain the thing until it is dealt with under subsection (1); and
- (b) sufficient samples of the thing have been taken,

the Commissioner may direct that the thing (apart from the samples) be destroyed before it is dealt with under that subsection.

(3) A direction shall be in writing in the prescribed form.

(4) If the Commissioner directs under subsection (2) that any thing be destroyed, a police officer shall as soon as practicable cause the thing to be destroyed in accordance with the regulations.

(5) The Commissioner may in writing amend or revoke a direction before effect is given to it.

- (6) In subsection (2)(b) —
- sufficient samples** means —
- (a) in the case of a thing that has already been analysed or examined by an approved analyst or an approved botanist, sufficient samples to enable any further analysis or examination that might be required under section 27A; or
 - (b) in any other case, sufficient samples to enable —
 - (i) analysis or examination by an approved analyst or an approved botanist; and
 - (ii) any further analysis or examination that might be required under section 27A.

[Section 27 amended by No. 44 of 1995 s. 8.]

27A. Analysis at request of accused

- (1) If a direction is given under section 27(2) for the destruction of any thing, any person charged with an offence in relation to the thing may apply to have a sample of the thing analysed or examined by an analyst or botanist chosen by the person.
- (2) An application shall be made to the Commissioner or a prescribed person within the prescribed period.
- (3) The application shall be in writing in the prescribed form and shall specify the analyst or botanist who is to carry out the examination or analysis.
- (4) The analyst or botanist specified shall not be an approved analyst or an approved botanist.
- (5) The specified analyst or botanist may, within 21 days after the application is made, analyse or examine a sample of the thing.
- (6) This section applies whether or not the thing the subject of the direction has been destroyed.

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- (7) In this section —
specified means specified in the application.
[Section 27A inserted by No. 44 of 1995 s. 9.]

27B. Confidentiality

- (1) In this section —
confidential information means information about —
- (a) the place, date or time at which, an analysis or examination referred to in section 27A is to be carried out;
 - (b) the place at which a sample is or was stored; or
 - (c) the security or storage arrangements relating to the keeping of a sample.
- (2) Except as provided in subsection (3), a person shall not divulge any confidential information obtained for the purposes of, or as a result of, the person carrying out an analysis or examination referred to in section 27A.
Penalty: \$20 000 and imprisonment for 7 years.
- (3) Subsection (2) does not apply to the divulging of information —
- (a) in the course of the performance of any function under this Act;
 - (b) for the purposes of the investigation of any suspected offence; or
 - (c) in the course of the conduct of proceedings against any person for an offence.

[Section 27B inserted by No. 44 of 1995 s. 9.]

28. Disposal of things other than prohibited drugs and prohibited plants

- (1) If, in the case of a thing (other than a prohibited drug, prohibited plant or dangerous substance) which is seized or acquired and detained under section 26 a justice of the peace is satisfied, on

the application of a police officer or approved person, that there are reasonable grounds to suspect that that thing is a thing referred to in section 23(1)(a), (b) or (c), the justice of the peace may grant to the police officer or approved person a holding order authorising the continued detention of that thing until, the investigation of the case concerned having been completed, that thing is dealt with under subsection (3).

- (2) A police officer or approved person to whom a holding order has been granted shall, if it is practicable to do so, forthwith serve or cause to be served a copy of the holding order, together with a notice setting out the substance of subsection (3), on any person claiming to have a financial or other interest in the thing to which the holding order relates (in this section called *the claimant*).
- (3) If, in the case of a thing to which a holding order relates —
- (a) no person is tried with the commission of an offence in relation thereto, a police officer shall apply to a justice of the peace for an order in respect of that thing and the justice of the peace; or
 - (b) a person is tried with the commission of an offence in relation thereto, the court which so tries the person,

may, after having given the claimant an opportunity to show cause why that thing should be released to him, order that that thing —

- (c) be released to the claimant;
- (d) be destroyed; or
- (e) be forfeited to the Crown,

or make such other order as the justice of the case requires.

[Section 28 amended by No. 50 of 1990 s. 7; No. 44 of 1995 s. 10; No. 24 of 2000 s. 27.]

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29. Hindering police officers and approved persons in exercise of powers conferred by or under this Part

A person who wilfully —

- (a) delays or obstructs a police officer or approved person acting in the exercise of the powers conferred on him by or under this Part or a person assisting a police officer or approved person so acting; or
- (b) does not produce to, or conceals or attempts to conceal from, a police officer or approved person acting in the exercise of the powers conferred on him by or under this Part or a person assisting a police officer or approved person so acting any books, papers, documents or stocks referred to in section 22 or any thing referred to in section 23(1)(a), (b) or (c),

commits a simple offence.

[Section 29 amended by No. 50 of 1990 s. 7.]

30. Approved persons

The Minister may for the purposes of this Part approve a person, or class of persons, by notice published in the *Gazette* and may by notice published in the *Gazette* revoke that approval.

Part VI — General

31. Undercover officers

- (1) The Commissioner may authorise in writing a person to act as an undercover officer and may in writing revoke that authority.
- (2) An authorised person may, whilst acting as an undercover officer and subject to section 26(2) or to subsection (4), as the case requires, acquire and have in his possession a prohibited drug or prohibited plant for the purpose of detecting the commission of an offence.
- (3) An authorised person who exercises the power conferred on him by subsection (2) is not an accomplice in respect of, and does not commit, any offence detected by that exercise and his evidence in any proceedings against another person for that offence is not the evidence of an accomplice.
- (4) An authorised person who —
 - (a) is not a police officer; and
 - (b) after having been warned under subsection (5), acquires a prohibited drug or prohibited plant whilst acting as an undercover officer for the purpose of detecting the commission of an offence and does not deliver the prohibited drug or prohibited plant to a police officer as soon as is reasonably practicable after that acquisition, commits a simple offence.
- (5) The Commissioner shall warn in writing an authorised person who is not a police officer that if, having acquired a prohibited drug or prohibited plant whilst acting as an undercover officer for the purpose of detecting the commission of an offence, that authorised person does not deliver the prohibited drug or prohibited plant to a police officer as soon as is reasonably practicable after that acquisition, that authorised person commits a simple offence under subsection (4).

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- (6) A certificate signed by the Commissioner and stating that the person named in that certificate was, at the time or during the period specified in that certificate, an authorised person acting as an undercover officer shall, for the purposes of this section, be sufficient evidence of that fact unless the contrary is proved.
- (7) The Commissioner shall, whenever requested to do so by the Minister, furnish the Minister with a report in writing containing such particulars of the activities of authorised persons as the Minister requires.
- (8) In this section —
- authorised person* means person authorised under subsection (1) to act as an undercover officer, which authority has not been revoked under that subsection;
- undercover officer* means person whose identity or purpose is for the time being concealed for the purpose of detecting the commission of an offence.

[Section 31 amended by No. 44 of 1995 s. 11.]

32. No limitation

A prosecution for an offence may be brought at any time.

32A. Drug trafficking

- (1) If a person is convicted of —
- (a) a serious drug offence and has, during the period of 10 years ending on the day, or the first of the days, as the case requires, on which the serious drug offence was committed, been convicted of 2 or more —
- (i) serious drug offences;
- (ii) external serious drug offences; or
- (iii) offences, one or more of which are serious drug offences and one or more of which are external serious drug offences;
- or

- (b) a serious drug offence in respect of —
 - (i) a prohibited drug in a quantity which is not less than the quantity specified in Schedule VII in relation to the prohibited drug; or
 - (ii) prohibited plants in a number which is not less than the number specified in Schedule VIII in relation to the particular species or genus to which those prohibited plants belong,

the court convicting the person of the serious drug offence first referred to in paragraph (a), or the serious drug offence referred to in paragraph (b), as the case requires, shall on the application of the Director of Public Prosecutions or a police prosecutor declare the person to be a drug trafficker.

- (2) An application for a declaration under subsection (1) may be made at the time of the conviction giving rise to that application or at any time within 6 months from the day of that conviction, and more than one such application may be made in respect of that conviction.
- (3) In this section —
 - external serious drug offence*** means —
 - (a) offence against a law of the Commonwealth, of another State, or of a Territory, which offence is prescribed to correspond to a crime under section 6(1), 7(1), 33(1)(a) or 33(2)(a); or
 - (b) offence against —
 - (i) the repealed section 233B of the *Customs Act 1901* of the Commonwealth; or
 - (ii) a law of the Commonwealth, which offence is prescribed to correspond to an offence against that repealed section;

serious drug offence means a crime under section 6(1), 7(1), 33(1)(a) or 33(2)(a).

[Section 32A inserted by No. 50 of 1990 s. 4; amended by No. 69 of 2000 s. 5(2) and (3); No. 4 of 2004 s. 58; No. 62 of 2004 s. 7; No. 40 of 2006 s. 4.]

33. Attempts, conspiracies, incitements and accessories after the fact

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

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

- (2) A person who conspires with another to commit an offence (in this subsection called **the principal offence**) commits —
- (a) if the principal offence is a crime under section 6(1) or 7(1) the crime, but is liable on conviction to the penalty referred to in section 34(1)(b); or
 - (b) if the principal offence is a simple offence or a crime, other than a crime referred to in paragraph (a), the simple offence or that crime, as the case requires, and is liable on conviction to the same penalty to which a person who commits the principal offence is liable.
- (3) A person who incites another person to commit, or becomes an accessory after the fact to, an offence (the **principal offence**) commits —
- (a) if the principal offence is a crime, the crime; or
 - (b) if the principal offence is a simple offence, the simple offence,

but is liable on conviction —

- (c) to a fine not exceeding half of the fine; and
- (d) to imprisonment for a term not exceeding half of the term,

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

[Section 33 amended by No. 4 of 2004 s. 58; No. 62 of 2004 s. 8.]

34. Penalties

- (1) Subject to subsection (2), a person who is convicted of —
 - (a) a crime under section 6(1) or 7(1) is liable to a fine not exceeding \$100 000 or to imprisonment for a term not exceeding 25 years or both;
 - (b) conspiring with another to commit a crime under section 6(1) or 7(1) is liable to a fine not exceeding \$75 000 or to imprisonment for a term not exceeding 20 years or both;
 - (c) an offence under section 7A(1) is liable —
 - (i) if convicted on indictment, to a fine not exceeding \$20 000 or to imprisonment for a term not exceeding 5 years or both;
 - (ii) if convicted by a summary court, to a fine not exceeding \$2 000 or to imprisonment for a term not exceeding 2 years or both;
 - (d) a simple offence under section 5(1) (other than a simple offence under section 5(1)(e)), 8, 25(2) or 29 is liable to a fine not exceeding \$3 000 or to imprisonment for a term not exceeding 3 years or both;
 - (e) a simple offence under section 5(1)(e), 6(2), 7(2), 7A(3) or 31(4) is liable to a fine not exceeding \$2 000 or to imprisonment for a term not exceeding 2 years or both; or
 - (f) a simple offence under section 15(1), (2) or (3), 16(1) or (2), 17(1) or (2), or 18(1) or (2) is liable to a fine not

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exceeding \$5 000 for a first offence and to a fine not exceeding \$15 000 for any subsequent offence under the same provision.

(2) A person who is convicted of a crime referred to in subsection (1)(a) —

(a) being a crime —

(i) relating only to cannabis; and

(ii) not relating to cannabis resin or any other cannabis derivative or to any prohibited drug or a prohibited plant other than cannabis,

is liable, if sentenced by the District Court or the Supreme Court, to a fine not exceeding \$20 000 or to imprisonment for a term not exceeding 10 years or both; or

(b) is liable, if sentenced by a summary court, to a fine not exceeding \$5 000 or to imprisonment for a term not exceeding 4 years or both.

[Section 34 amended by No. 44 of 1995 s. 12; No. 52 of 2003 s. 31; No. 4 of 2004 s. 58; No. 62 of 2004 s. 6.]

35. Criminal liability of company officers

When a person convicted of an offence is a corporation, every director of the corporation and every officer concerned in the management thereof is guilty of the like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

[36. Deleted by No. 92 of 1994 s. 26.]

37. Proof of exceptions

In any proceedings against a person for an offence, it is not necessary to negative by evidence any authority, licence or other matter of condition, exception, excuse, exemption, proviso

or qualification and the burden of proving any such matter lies on the person seeking to avail himself thereof.

38. Certificate of approved analyst or approved botanist

- (1) An approved analyst or an approved botanist may give a certificate in the prescribed form relating to any analysis or examination carried out by the approved analyst or approved botanist.
- (2) In any proceedings against a person for an offence, production of a certificate purporting to be signed by an approved analyst or an approved botanist stating in relation to any thing —
 - (a) that the thing was obtained or received by the analyst or botanist for analysis or examination;
 - (b) how the thing was obtained, or when and from whom the thing was received;
 - (c) a description, and the quantity or mass, of the thing obtained or received;
 - (d) that the thing was analysed or examined by the analyst or botanist;
 - (e) the method of analysis or examination;
 - (f) the results of the analysis or examination; and
 - (g) any other matters relating to the analysis or examination,is sufficient evidence of the facts stated in the certificate.
- (3) For the purposes of subsection (2), proof is not required —
 - (a) of the signature of the person purporting to have signed the certificate; or
 - (b) that the person is an approved analyst or an approved botanist.

[Section 38 amended by No. 44 of 1995 s. 13.]

38A. Accused may obtain a copy of certificate

- (1) If —

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- (a) a certificate has been given under section 38(1) in relation to an analysis or examination; and
- (b) an accused applies to the Commissioner for a copy of the certificate,

the Commissioner shall as soon as practicable cause a copy of the certificate to be provided to the accused.

- (2) An application shall be in writing in the prescribed form and shall specify the address at which a copy of the certificate can be provided to the accused.

[Section 38A inserted by No. 44 of 1995 s. 13; amended by No. 84 of 2004 s. 82.]

38B. Accused may object to use of certificate

- (1) Section 38(2) does not apply if, not less than 21 days before the proceedings, the accused delivers notice in writing to the Commissioner requiring the approved analyst or approved botanist to attend as a witness in those proceedings.
- (2) An accused shall be afforded a reasonable opportunity to deliver a notice referred to in subsection (1).
- (3) An accused shall not in any proceedings adduce evidence in rebuttal of any facts stated in a certificate unless the accused has delivered notice in accordance with subsection (1) requiring the approved analyst or approved botanist to attend as a witness in the proceedings.

[Section 38B inserted by No. 44 of 1995 s. 13; amended by No. 84 of 2004 s. 82.]

38C. Order for costs of approved analyst or approved botanist

A court before which proceedings against a person for an offence are held may, in addition to making any other order as to costs, make such order as it thinks just as to —

- (a) the conduct money of an approved analyst or an approved botanist required to attend as a witness in the proceedings; and
- (b) the expenses and remuneration to be paid for any analysis or examination carried out by an approved analyst or an approved botanist.

[Section 38C inserted by No. 44 of 1995 s. 13.]

38D. Evidence of contents of standard

- (1) In this section —
CEO (Health) has the meaning given to “CEO” by section 3 of the *Health Legislation Administration Act 1984*.
- (2) In any proceedings under this Act, production of a copy of any standard referred to in the *Poisons Act 1964* purporting to be certified by the CEO (Health) to be a true copy of the standard 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 standard as at that date or during that period.

[Section 38D inserted by No. 48 of 1995 s. 43; amended by No. 28 of 2006 s. 394.]

39. Delegation by Commissioner

- (1) The Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him delegate to a police officer of or above the rank of inspector any of his powers under this Act, other than this power of delegation.
- (2) For the purposes of this Act, the exercise of a power by a delegate under this section shall be deemed to be the exercise of the power by the Commissioner.
- (3) A delegation under this section may be —
 - (a) made subject to such conditions, qualifications and exceptions as are set out in the instrument of delegation;

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- (b) revoked or varied by instrument in writing signed by the Commissioner.
- (4) The Commissioner may exercise a power notwithstanding that he has delegated its exercise under this section.
- (5) If, under this Act, the exercise of a power by the Commissioner is dependent on his opinion, belief or state of mind in relation to a matter and the power has been delegated under this section, the power may be exercised by the delegate on the opinion, belief or state of mind of the delegate in relation to the matter.

[Section 39 amended by No. 44 of 1995 s. 14.]

40. Civil liability of persons acting under this Act

A person on whom a power is conferred or duty imposed by or under this Act is not personally liable in civil proceedings, and the Crown is not liable, for any act done or default made by him in good faith for the purpose of carrying this Act into effect.

41. 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 and, in particular —
 - (a) prescribing and providing for the recovery of fees to be paid in respect of matters or things to be done under or for the purposes of this Act;
 - (b) providing for the manner in which any thing, which is ordered or required under this Act —
 - (i) to be destroyed, is to be destroyed;
 - (ii) to be released to a person, is to be released; and
 - (iii) to be forfeited to the Crown, is to be dealt with;
 - (ba) providing for the procedure to be followed in and in relation to the taking, packaging and labelling of samples;

- (c) providing for the procedure to be followed in and in relation to —
 - (i) any analysis or examination under this Act; and
 - (ii) the admissibility and receipt of evidence relating to any thing obtained or received for an analysis or examination referred to in subparagraph (i);
 - (d) providing for the manner in which any thing is to be conveyed to and analysed or examined by an analyst, botanist or other expert.
- (2) Regulations made under this Act are in addition to and not in derogation of any regulations made under the *Poisons Act 1964*, but if and to the extent that inconsistency exists between regulations made under this Act and regulations made under the *Poisons Act 1964* the latter regulations shall prevail.
- (3) The regulations may create offences and may provide for a penalty not exceeding \$1 000.

[Section 41 amended by No. 44 of 1995 s. 15.]

42. Amendment of certain schedules

- (1) The Governor may from time to time by Order in Council published in the *Gazette* amend Schedule III, IV, V, VI, VII or VIII by —
- (a) adding thereto or deleting therefrom —
 - (i) any prohibited drug or any quantity specified in relation thereto; or
 - (ii) any prohibited plant of a particular species or genus or any number specified in relation thereto,as the case requires;
 - (b) deleting and substituting all or any of the items therein; or
 - (c) altering any item therein.

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- (2) Subject to this section, on the publication in the *Gazette* of an Order in Council made under subsection (1), the Schedule to which that Order in Council relates is amended accordingly and, as so amended, has the same force and effect as if the amendment effected by that Order in Council had been effected by an Act amending this Act.
- (3) The Minister shall cause a copy of every Order in Council made under subsection (1) to be laid on the Table of each House of Parliament within the first 14 sitting days of that House after the publication of that Order in Council in the *Gazette*.
- (4) If a copy of an Order in Council made under subsection (1) is not laid on the Table of a House of Parliament in accordance with subsection (3), that Order in Council ceases to have effect when that copy is not so laid but without affecting the validity or curing the invalidity of anything done or omitted to be done in good faith before that Order in Council so ceases to have effect.
- (5) If either House of Parliament passes a resolution, of which notice has been given within the first 14 sitting days of that House after a copy of the relevant Order in Council made under subsection (1) has been laid on the Table of that House under subsection (3), that that Order in Council be disallowed, that Order in Council thereupon ceases to have effect, but the disallowance of that Order in Council does not affect the validity or cure the invalidity of anything done or omitted to be done in good faith before the passing of that resolution.

[Section 42 amended by No. 50 of 1990 s. 5.]

**Schedule I — Drugs to which Act applies, notwithstanding
anything in *Poisons Act 1964***

[s. 4(1)(c)]

[Heading amended by No. 19 of 2010 s. 4.]

| <i>Item</i> | <i>Prohibited drugs</i> |
|-------------|--|
| 1. | Cocaine, ecgonine, heroin, morphine and their respective salts. |
| 2. | Opium. |
| 3. | Any preparation, admixture, extract, or other substance containing not less than — (a) 0.2% of morphine, the percentage of morphine being for the purpose of this item calculated as in respect of anhydrous morphine; or (b) 0.1% of cocaine or ecgonine. |
| 4. | Any derivative of cocaine. |
| 5. | Cannabis or cannabis resin or any other cannabis derivative. |

Misuse of Drugs Act 1981

Schedule II Plants to which Act applies, notwithstanding anything in
Poisons Act 1964

**Schedule II — Plants to which Act applies, notwithstanding
anything in *Poisons Act 1964***

[s. 4(2)(b)]

[Heading amended by No. 19 of 2010 s. 4.]

| <i>Item</i> | <i>Prohibited plant</i> |
|-------------|-------------------------|
| 1. | Papaver somniferum |
| 2. | Papaver bracteatum |
| 3. | Cannabis |

Schedule III — Amounts of prohibited drugs determining court of trial

[s. 9]

[Heading amended by No. 19 of 2010 s. 4.]

| <i>Item</i> | <i>Prohibited drug</i> | <i>Amount (in grams unless otherwise stated)</i> |
|-------------|--|--|
| 1. | ACETORPHINE | 6.0 |
| 2. | ACETYLDIHYDROCODEINE (except when included in Schedule 2 or 4 in Appendix A to the <i>Poisons Act 1964</i>) | 6.0 |
| 3. | ACETYLMETHADOL | 6.0 |
| 4. | ALLOBARBITONE | 30.0 |
| 5. | ALLYLBARBITURIC ACID | 30.0 |
| 6. | ALLYLPRODINE | 6.0 |
| 7. | ALPHACETYLMETHADOL | 30.0 |
| 8. | ALPHAMEPRODINE | 0.6 |
| 9. | ALPHAMETHADOL | 0.6 |
| 10. | ALPHAPRODINE | 75.0 |
| 11. | AMPHETAMINE | 4.0 |
| 12. | AMYLOBARBITONE | 30.0 |
| 13. | ANILERIDINE | 75.0 |
| 14. | APROBARBITONE | 30.0 |
| 15. | BARBITONE | 30.0 |
| 16. | BENZETHIDINE | 30.0 |
| 17. | BENZYL MORPHINE | 15.0 |
| 18. | BETACETYLMETHADOL | 15.0 |
| 19. | BETAMEPRODINE | 15.0 |
| 20. | BETAMETHADOL | 15.0 |
| 21. | BETAPRODINE | 15.0 |

Misuse of Drugs Act 1981**Schedule III** Amounts of prohibited drugs determining court of trial

| <i>Item</i> | <i>Prohibited drug</i> | <i>Amount (in grams unless otherwise stated)</i> |
|-------------|---|--|
| 22. | BEZITRAMIDE | 15.0 |
| 23. | BUFOTENINE | 6.0 |
| 24. | BUTOBARBITONE | 30.0 |
| 25. | CANNABIS | 500.0 |
| 26. | CANNABIS RESIN | 40.0 |
| 27. | CANNABIS (in cigarette form) | 400 cigarettes each containing any portion of cannabis |
| 28. | CLONITAZENE | 15.0 |
| 29. | COCAINE | 4.0 |
| 30. | CODEINE (except when included in Schedule 2, 3 or 4 in Appendix A to the <i>Poisons Act 1964</i>) | 30.0 |
| 31. | CODEINE-N-OXIDE | 30.0 |
| 32. | CODOXIME | 30.0 |
| 33. | CYCLOBARBITONE | 30.0 |
| 34. | DESOMORPHINE | 6.0 |
| 35. | DEXAMPHETAMINE | 6.0 |
| 36. | DEXTROMORAMIDE | 3.0 |
| 37. | DIAMPROMIDE | 15.0 |
| 38. | DIETHYLTHIAMBUTENE | 15.0 |
| 39. | DIFENOXIN (excluding preparations containing, per dosage unit, not more than 0.5 mg of difenoxin and a quantity of atropine sulphate equivalent to at least 5% of the dose of difenoxin) | 30.0 |
| 40. | DIHYDROCODEINE (except when included in | 30.0 |

| <i>Item</i> | <i>Prohibited drug</i> | <i>Amount (in grams unless otherwise stated)</i> |
|-------------|--|--|
| | Schedule 2 or 4 in Appendix A to the <i>Poisons Act 1964</i>) | |
| 41. | DIHYDROMORPHINE | 30.0 |
| 42. | DIMENOXADOL | 30.0 |
| 43. | DIMEPHEPTANOL | 30.0 |
| 44. | 2,5-DIMETHOXY-4-BROMOAMPHETAMINE | 0.25 |
| 45. | 2,5-DIMETHOXY-4-METHYLAMPHETAMINE | 0.25 |
| 46. | DIMETHYLTHIAMBUTENE | 60.0 |
| 47. | DIMETHYLTRYPTAMINE | 6.0 |
| 48. | DIOXAPHETYL BUTYRATE | 6.0 |
| 49. | DIPHENOXYLATE (excluding preparations containing, per dosage unit, not more than 2.5 mg of diphenoxylate calculated as base, and a quantity of atropine sulphate equivalent to at least 1% of the dose of diphenoxylate) | 6.0 |
| 50. | DIPIPANONE | 30.0 |
| 51. | DROTEBANOL | 0.3 |
| 52. | ECGONINE, ITS ESTERS AND DERIVATIVES which are convertible to ECGONINE AND COCAINE | 30.0 |
| 52A. | EPHEDRINE | 4.0 |
| 53. | ETHYLMETHYLTHIAMBUTENE | 30.0 |
| 54. | ETHYLMORPHINE (and substances containing more than 2.5% of ethylmorphine) | 6.0 |
| 55. | ETONITAZENE | 15.0 |
| 56. | ETORPHINE | 15.0 |
| 57. | ETOXERIDINE | 15.0 |
| 58. | FENTANYL | 0.015 |
| 59. | FURETHIDINE | 3.0 |

Misuse of Drugs Act 1981**Schedule III** Amounts of prohibited drugs determining court of trial

| <i>Item</i> | <i>Prohibited drug</i> | <i>Amount (in grams unless otherwise stated)</i> |
|-------------|---|--|
| 60. | HALLUCINOGENIC SUBSTANCES (structurally derived from methoxyphenethylamine) | 0.25 |
| 61. | HEPTABARBITONE | 30.0 |
| 62. | HEXOBARBITONE | 30.0 |
| 63. | HYDROCODONE | 6.0 |
| 64. | HYDROMORPHINOL | 6.0 |
| 65. | HYDROMORPHONE | 6.0 |
| 66. | HYDROXPETHIDINE | 15.0 |
| 67. | ISOMETHADONE | 0.6 |
| 68. | KETOBEMIDONE | 0.6 |
| 69. | LEVOMETHORPHAN | 3.0 |
| 70. | LEVOMORAMIDE | 6.0 |
| 71. | LEVOPHENACYLMORPHAN | 6.0 |
| 72. | LEVORPHANOL | 3.0 |
| 73. | LYSERGIC ACID DIETHYLAMIDE (LSD) | 0.004 |
| 74. | MESCALINE | 22.5 |
| 75. | METAZOCINE | 21.0 |
| 76. | METHADONE | 0.6 |
| 77. | METHADONE-INTERMEDIATE | 0.6 |
| 78. | METHAQUALONE | 150.0 |
| 79. | METHARBITONE | 30.0 |
| 80. | METHYLAMPHETAMINE | 4.0 |
| 81. | METHYLDESORPHINE | 6.0 |
| 82. | METHYLDIHYDROMORPHINE | 6.0 |
| 82A. | 3, 4-METHYLENEDIOXYAMPHETAMINE (MDA) | 4.0 |
| 82B. | 3, 4-METHYLENEDIOXY-N, ALPHA-DIMETHYLPHENYLETHYLAMINE | 4.0 |

| <i>Item</i> | <i>Prohibited drug</i> | <i>Amount (in grams unless otherwise stated)</i> |
|-------------|--|--|
| | (MDMA) | |
| 83. | METHYLPHENIDATE | 6.0 |
| 84. | METHYLPHENOBARBITONE | 30.0 |
| 85. | 1-METHYL-4-PHENYLPYPERIDINE- 4-CARBOXY LIC ACID ESTERS | 6.0 |
| 86. | METOPON | 6.0 |
| 87. | MORAMIDE-INTERMEDIATE | 3.0 |
| 88. | MORPHERIDINE | 6.0 |
| 89. | MORPHINE | 6.0 |
| 90. | MORPHINE DERIVATIVES (not specifically included elsewhere in this Schedule or in any Schedule in Appendix A to the <i>Poisons Act 1964</i>) | 6.0 |
| 91. | MORPHINE METHOBROMIDE AND OTHER PENTAVALENT NITROGEN MORPHINE DERIVATIVES | 6.0 |
| 92. | MORPHINE-N-OXIDE | 6.0 |
| 93. | MORPHINE SUBSTITUTES (not specifically included elsewhere in this Schedule) | 6.0 |
| 94. | MYROPHINE | 60.0 |
| 95. | NEALBARBITONE | 30.0 |
| 96. | NICOCODINE (except when included in Schedule 2 or 4 in Appendix A to the <i>Poisons Act 1964</i>) | 6.0 |
| 97. | NICODICODINE (except when included in Schedule 2 or 4 in Appendix A to the <i>Poisons Act 1964</i>) | 6.0 |
| 98. | NICOMORPHINE | 6.0 |
| 99. | NORACYMETHADOL | 6.0 |
| 100. | NORCODEINE (except when included in Schedule 2 or 4 in Appendix A to the <i>Poisons Act 1964</i>) | 6.0 |

Misuse of Drugs Act 1981**Schedule III** Amounts of prohibited drugs determining court of trial

| <i>Item</i> | <i>Prohibited drug</i> | <i>Amount (in grams unless otherwise stated)</i> |
|-------------|---|--|
| 101. | NORLEVORPHANOL | 6.0 |
| 102. | NORMETHADONE | 1.5 |
| 103. | NORMORPHINE | 60.0 |
| 104. | NORPIPANONE | 30.0 |
| 105. | OPIUM | 40.0 |
| 106. | OXYCODONE | 15.0 |
| 107. | OXYMORPHONE | 6.0 |
| 108. | PENTAZOCINE | 30.0 |
| 109. | PENTOBARBITONE | 30.0 |
| 110. | PETHIDINE | 15.0 |
| 111. | PETHIDINE-INTERMEDIATE A | 15.0 |
| 112. | PETHIDINE-INTERMEDIATE B | 15.0 |
| 113. | PETHIDINE-INTERMEDIATE C | 15.0 |
| 114. | PHENADOXONE | 30.0 |
| 115. | PHENAMPROMIDE | 30.0 |
| 116. | PHENAZOCINE | 3.0 |
| 117. | PHENCYCLIDINE | 0.004 |
| 118. | PHENMETRAZINE | 6.0 |
| 119. | PHENOBARBITONE | 30.0 |
| 120. | PHENOMORPHAN | 15.0 |
| 121. | PHENOPERIDINE | 3.0 |
| 122. | PHENYLMETHYLBARBITURIC ACID | 30.0 |
| 123. | PHOLCODINE (except when included in Schedule 2 or 4 in Appendix A to the <i>Poisons Act 1964</i>) | 15.0 |
| 124. | PIMINODINE | 30.0 |
| 125. | PIRITRAMIDE | 3.0 |
| 126. | PROHEPTAZINE | 3.0 |

| <i>Item</i> | <i>Prohibited drug</i> | <i>Amount (in grams unless otherwise stated)</i> |
|-------------|---|--|
| 127. | PROPERIDINE | 75.0 |
| 128. | PROPIRAM | 12.0 |
| 129. | PSILOCIN | 0.3 |
| 130. | PSILOCYBIN | 0.3 |
| 131. | PSYCHOTOMIMETIC SUBSTANCES (structurally derived from methoxyphenethylamine) | 0.25 |
| 132. | QUINALBARBITONE | 30.0 |
| 133. | RACEMETHORPHAN | 6.0 |
| 134. | RACEMORAMIDE | 3.0 |
| 135. | RACEMORPHAN | 6.0 |
| 136. | SECBUTOBARBITONE | 30.0 |
| 137. | TALBUTAL | 30.0 |
| 138. | TETRAHYDROCANNABINOLS | 4.0 |
| 139. | THEBACON | 6.0 |
| 140. | THEBAINE | 6.0 |
| 141. | TRIMEPERIDINE | 30.0 |
| 142. | VINBARBITONE | 30.0 |

*[Schedule III amended by No. 48 of 1995 s. 43; amended in Gazette
30 Nov 1990 p. 5937; 29 Nov 1991 p. 6041; 7 Dec 2007 p. 5985.]*

**Schedule IV — Numbers of prohibited plants determining
court of trial**

[s. 9]

[Heading amended by No. 19 of 2010 s. 4.]

| <i>Item</i> | <i>Prohibited plant</i> | <i>Number</i> |
|-------------|-------------------------|---------------|
| 1. | Papaver somniferum | 100 |
| 2. | Papaver bracteatum | 100 |
| 3. | Cannabis | 100 |

Schedule V — Amounts of prohibited drugs giving rise to presumption of intention to sell or supply same

[s. 11(a)]

[Heading amended by No. 19 of 2010 s. 4.]

| <i>Item</i> | <i>Prohibited drug</i> | <i>Amount (in grams unless otherwise stated)</i> |
|-------------|--|--|
| 1. | ACETORPHINE | 2.0 |
| 2. | ACETYLDIHYDROCODEINE (except when included in Schedule 2 or 4 in Appendix A to the <i>Poisons Act 1964</i>) | 2.0 |
| 3. | ACETYLMETHADOL | 2.0 |
| 4. | ALLOBARBITONE | 10.0 |
| 5. | ALLYLBARBITURIC ACID | 10.0 |
| 6. | ALLYLPRODINE | 2.0 |
| 7. | ALPHACETYLMETHADOL | 10.0 |
| 8. | ALPHAMEPRODINE | 0.2 |
| 9. | ALPHAMETHADOL | 0.2 |
| 10. | ALPHAPRODINE | 25.0 |
| 11. | AMPHETAMINE | 2.0 |
| 12. | AMYLOBARBITONE | 10.0 |
| 13. | ANILERIDINE | 25.0 |
| 14. | APROBARBITONE | 10.0 |
| 15. | BARBITONE | 10.0 |
| 16. | BENZETHIDINE | 10.0 |
| 17. | BENZYL MORPHINE | 5.0 |
| 18. | BETACETYLMETHADOL | 5.0 |
| 19. | BETAMEPRODINE | 5.0 |
| 20. | BETAMETHADOL | 5.0 |
| 21. | BETAPRODINE | 5.0 |

Misuse of Drugs Act 1981**Schedule V** Amounts of prohibited drugs giving rise to presumption of intention to sell or supply same

| <i>Item</i> | <i>Prohibited drug</i> | <i>Amount</i> (in grams unless otherwise stated) |
|-------------|--|---|
| 22. | BEZITRAMIDE | 5.0 |
| 23. | BUFOTENINE | 2.0 |
| 24. | BUTOBARBITONE | 10.0 |
| 25. | CANNABIS | 100.0 |
| 26. | CANNABIS RESIN | 20.0 |
| 27. | CANNABIS (in cigarette form) | 80 cigarettes each containing any portion of cannabis |
| 28. | CLONITAZENE | 5.0 |
| 29. | COCAINE | 2.0 |
| 30. | CODEINE (except when included in Schedule 2, 3 or 4 in Appendix A to the <i>Poisons Act 1964</i>) | 10.0 |
| 31. | CODEINE-N-OXIDE | 10.0 |
| 32. | CODOXINE | 10.0 |
| 33. | CYCLOBARBITONE | 10.0 |
| 34. | DESOMORPHINE | 2.0 |
| 35. | DEXAMPHETAMINE | 2.0 |
| 36. | DEXTROMORAMIDE | 1.0 |
| 37. | DIACETYLMORPHINE | 2.0 |
| 38. | DIAMPROMIDE | 5.0 |
| 39. | DIETHYLTHIAMBUTENE | 5.0 |
| 40. | DIFENOXIN (excluding preparations containing, per dosage unit, not more than 0.5 mg of difenoxin and a quantity of atropine sulphate equivalent to at least 5% of the dose of difenoxin) | 10.0 |

| <i>Item</i> | <i>Prohibited drug</i> | <i>Amount (in grams unless otherwise stated)</i> |
|-------------|---|--|
| 41. | DIHYDROCODEINE (except when included in Schedule 2 or 4 in Appendix A to the <i>Poisons Act 1964</i>) | 10.0 |
| 42. | DIHYDROMORPHINE | 10.0 |
| 43. | DIMENOXADOL | 10.0 |
| 44. | DIMEPHEPTANOL | 10.0 |
| 45. | 2, 5-DIMETHOXY-4-BROMOAMPHETAMINE | 0.05 |
| 46. | 2, 5-DIMETHOXY-4-METHYLAMPHETAMINE | 0.05 |
| 47. | DIMETHYLTHIAMBUTENE | 20.0 |
| 48. | DIMETHYLTRYPTAMINE | 2.0 |
| 49. | DIOXAPHETYL BUTYRATE | 2.0 |
| 50. | DIPHENOXYLATE (excluding preparations containing per dosage unit, not more than 2.5 mg of diphenoxylate calculated as base, and a quantity of atropine sulphate equivalent to at least 1% of the dose of diphenoxylate) | 2.0 |
| 51. | DIPIANONE | 10.0 |
| 52. | DROTEBANOL | 0.1 |
| 53. | ECGONINE, ITS ESTERS AND DERIVATIVES which are convertible to ECGONINE AND COCAINE | 10.0 |
| 53A. | EPHEDRINE | 2.0 |
| 54. | ETHYLMETHYLTHIAMBUTENE | 10.0 |
| 55. | ETHYLMORPHINE (and substances containing more than 2.5% of ethylmorphine) | 2.0 |
| 56. | ETONITAZENE | 5.0 |
| 57. | ETORPHINE | 5.0 |
| 58. | ETOXERIDINE | 5.0 |
| 59. | FENTANYL | 0.005 |

Misuse of Drugs Act 1981**Schedule V** Amounts of prohibited drugs giving rise to presumption of intention to sell or supply same

| <i>Item</i> | <i>Prohibited drug</i> | <i>Amount (in grams unless otherwise stated)</i> |
|-------------|--|--|
| 60. | FURETHIDINE | 1.0 |
| 61. | HALLUCINOGENIC SUBSTANCES (structurally derived from methoxyphenethylamine) | 0.05 |
| 62. | HEPTABARBITONE | 10.0 |
| 63. | HEROIN | 2.0 |
| 64. | HEXOBARBITONE | 10.0 |
| 65. | HYDROCODONE | 2.0 |
| 66. | HYDROMORPHINOL | 2.0 |
| 67. | HYDROMORPHONE | 2.0 |
| 68. | HYDROXPETHIDINE | 5.0 |
| 69. | ISOMETHADONE | 0.2 |
| 70. | KETOBEMIDONE | 0.2 |
| 71. | LEVOMETHORPHAN | 1.0 |
| 72. | LEVOMORAMIDE | 2.0 |
| 73. | LEVOPHENACYLMORPHAN | 2.0 |
| 74. | LEVORPHANOL | 1.0 |
| 75. | LYSERGIC ACID DIETHYLAMIDE (LSD) | 0.002 |
| 76. | MESCALINE | 7.5 |
| 77. | METAZOCINE | 7.0 |
| 78. | METHADONE | 0.2 |
| 79. | METHADONE-INTERMEDIATE | 0.2 |
| 80. | METHAQUALONE | 50.0 |
| 81. | METHARBITONE | 10.0 |
| 82. | METHYLAMPHETAMINE | 2.0 |
| 83. | METHYLDESORPHINE | 2.0 |
| 84. | METHYLDIHYDROMORPHINE | 2.0 |
| 84A. | 3, 4-METHYLENEDIOXYAMPHETAMINE (MDA) | 2.0 |

| <i>Item</i> | <i>Prohibited drug</i> | <i>Amount (in grams unless otherwise stated)</i> |
|-------------|--|--|
| 84B. | 3, 4-METHYLENEDIOXY-N, ALPHA-DIMETHYLPHENYLETHYLAMINE (MDMA) | 2.0 |
| 85. | METHYLPHENIDATE | 2.0 |
| 86. | METHYLPHENOBARBITONE | 10.0 |
| 87. | 1-METHYL-4-PHENYLPIPERIDINE-4- CARBOXYLIC ACID ESTERS | 2.0 |
| 88. | METOPON | 2.0 |
| 89. | MORAMIDE-INTERMEDIATE | 1.0 |
| 90. | MORPHERIDINE | 2.0 |
| 91. | MORPHINE | 2.0 |
| 92. | MORPHINE DERIVATIVES (not specifically included elsewhere in this Schedule or in any Schedule in Appendix A to the <i>Poisons Act 1964</i>) | 2.0 |
| 93. | MORPHINE METHOBROMIDE AND OTHER PENTAVALENT NITROGEN MORPHINE DERIVATIVES | 2.0 |
| 94. | MORPHINE-N-OXIDE | 2.0 |
| 95. | MORPHINE SUBSTITUTES (not specifically included elsewhere in this Schedule) | 2.0 |
| 96. | MYROPHINE | 20.0 |
| 97. | NEALBARBITONE | 10.0 |
| 98. | NICOCODINE (except when included in Schedule 2 or 4 in Appendix A to the <i>Poisons Act 1964</i>) | 2.0 |
| 99. | NICODICODINE (except when included in Schedule 2 or 4 in Appendix A to the <i>Poisons Act 1964</i>) | 2.0 |
| 100. | NICOMORPHINE | 2.0 |
| 101. | NORACYMETHADOL | 2.0 |

Misuse of Drugs Act 1981**Schedule V** Amounts of prohibited drugs giving rise to presumption of intention to sell or supply same

| <i>Item</i> | <i>Prohibited drug</i> | <i>Amount (in grams unless otherwise stated)</i> |
|-------------|--|--|
| 102. | NORCODEINE (except when included in Schedule 2 or 4 in Appendix A to the <i>Poisons Act 1964</i>) | 2.0 |
| 103. | NORLEVORPHANOL | 2.0 |
| 104. | NORMETHADONE | 0.5 |
| 105. | NORMORPHINE | 20.0 |
| 106. | NORPIPANONE | 10.0 |
| 107. | OPIUM | 20.0 |
| 108. | OXYCODONE | 5.0 |
| 109. | OXYMORPHONE | 2.0 |
| 110. | PENTAZOCINE | 10.0 |
| 111. | PENTOBARBITONE | 10.0 |
| 112. | PETHIDINE | 5.0 |
| 113. | PETHIDINE-INTERMEDIATE A | 5.0 |
| 114. | PETHIDINE-INTERMEDIATE B | 5.0 |
| 115. | PETHIDINE-INTERMEDIATE C | 5.0 |
| 116. | PHENADOXONE | 10.0 |
| 117. | PHENAMPROMIDE | 10.0 |
| 118. | PHENAZOCINE | 1.0 |
| 119. | PHENCYCLIDINE | 0.002 |
| 120. | PHENMETRAZINE | 2.0 |
| 121. | PHENOBARBITONE | 10.0 |
| 122. | PHENOMORPHAN | 5.0 |
| 123. | PHENOPERIDINE | 1.0 |
| 124. | PHENYLMETHYLBARBITURIC ACID | 10.0 |
| 125. | PHOLCODINE (except when included in Schedule 2 or 4 in Appendix A to the <i>Poisons Act 1964</i>) | 5.0 |
| 126. | PIMINODINE | 10.0 |

| <i>Item</i> | <i>Prohibited drug</i> | <i>Amount</i> (in grams unless otherwise stated) |
|-------------|---|--|
| 127. | PIRITRAMIDE | 1.0 |
| 128. | PROHEPTAZINE | 1.0 |
| 129. | PROPERIDINE | 25.0 |
| 130. | PROPIRAM | 4.0 |
| 131. | PSILOCIN | 0.1 |
| 132. | PSILOCYBIN | 0.1 |
| 133. | PSYCHOTOMIMETIC SUBSTANCES (structurally derived from methoxyphenethylamine) | 0.05 |
| 134. | QUINALBARBITONE | 10.0 |
| 135. | RACEMETHORPHAN | 2.0 |
| 136. | RACEMORAMIDE | 1.0 |
| 137. | RACEMORPHAN | 2.0 |
| 138. | SECBUTOBARBITONE | 10.0 |
| 139. | TALBUTAL | 10.0 |
| 140. | TETRAHYDROCANNABINOLS | 2.0 |
| 141. | THEBACON | 2.0 |
| 142. | THEBAINE | 10.0 |
| 143. | TRIMEPERIDINE | 10.0 |
| 144. | VINBARBITONE | 10.0 |

*[Schedule V amended by No. 48 of 1995 s. 43; amended in Gazette
30 Nov 1990 p. 5937; 29 Nov 1991 p. 6041.]*

Misuse of Drugs Act 1981

Schedule VI Numbers of prohibited plants giving rise to presumption of intention to sell or supply same or prohibited drugs obtainable from same

Schedule VI — Numbers of prohibited plants giving rise to presumption of intention to sell or supply same or prohibited drugs obtainable from same

[s. 11(b)]

[Heading amended by No. 19 of 2010 s. 4.]

| <i>Item</i> | <i>Prohibited plant</i> | <i>Number</i> |
|-------------|-------------------------|---------------|
| 1. | Papaver somniferum | 25 |
| 2. | Papaver bracteatum | 25 |
| 3. | Cannabis | 10 |

[Schedule VI amended by No. 52 of 2003 s. 32.]

**Schedule VII — Amounts of prohibited drugs for purposes
of drug trafficking**

[s. 32A(1)(b)(i)]

[Heading amended by No. 19 of 2010 s. 4.]

| <i>Item</i> | <i>Prohibited drug</i> | <i>Amount (in grams unless otherwise stated)</i> |
|-------------|--|--|
| 1 | AMPHETAMINE | 28.0 |
| 2 | CANNABIS | 3.0 kg |
| 3 | CANNABIS RESIN | 100.0 |
| 4 | COCAINE | 28.0 |
| 5 | DIACETYLMORPHINE | 28.0 |
| 5A | EPHEDRINE | 28.0 |
| 6 | LYSERGIC ACID DIETHYLAMIDE (LSD) | 0.01 |
| 7 | METHADONE | 5.0 |
| 8 | METHYLAMPHETAMINE | 28.0 |
| 9 | 3, 4-METHYLENEDIOXYAMPHETAMINE (MDA) | 28.0 |
| 10 | 3, 4-METHYLENEDIOXY-N, ALPHA-DIMETHYLPHENYLETHYLAMINE (MDMA) | 28.0 |
| 11 | MORPHINE | 28.0 |
| 12 | OPIUM | 100.0 |

*[Schedule VII inserted by No. 50 of 1990 s. 6; amended in Gazette
29 Nov 1991 p. 6041; 22 Mar 1994 p. 1245.]*

**Schedule VIII — Numbers of prohibited plants for
purposes of drug trafficking**

[s. 32A(1)(b)(ii)]

[Heading amended by No. 19 of 2010 s. 4.]

| <i>Item</i> | <i>Prohibited Plants</i> | <i>Number</i> |
|-------------|--------------------------|---------------|
| 1 | Cannabis | 250.0 |

[Schedule VIII inserted by No. 50 of 1990 s. 6.]

Notes

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

Compilation table

| Short title | Number and year | Assent | Commencement |
|---|-----------------|-------------|---|
| <i>Misuse of Drugs Act 1981</i> | 66 of 1981 | 23 Oct 1981 | 1 Sep 1982 (see s. 2 and <i>Gazette</i> 20 Aug 1982 p. 3250) |
| <i>Misuse of Drugs (Amounts of Prohibited Drugs) Order 1990</i> published in <i>Gazette</i> 30 Nov 1990 p. 5937 | | | 30 Nov 1990 |
| <i>Misuse of Drugs Amendment Act 1990</i> | 50 of 1990 | 4 Dec 1990 | 4 Dec 1990 (see s. 2) |
| <i>Conservation and Land Management Amendment Act 1991</i> s. 57 | 20 of 1991 | 25 Jun 1991 | 23 Aug 1991 (see s. 2 and <i>Gazette</i> 23 Aug 1991 p. 4353) |
| <i>Misuse of Drugs (Amounts of Prohibited Drugs) Order 1991</i> published in <i>Gazette</i> 29 Nov 1991 p. 6040-1 | | | 29 Nov 1991 |
| <i>Misuse of Drugs (Amounts of Prohibited Drugs) Order 1994</i> published in <i>Gazette</i> 22 Mar 1994 p. 1245 | | | 22 Mar 1994 |
| <i>Poisons Amendment Act 1994</i> s. 11 | 12 of 1994 | 15 Apr 1994 | 27 May 1994 (see s. 2 and <i>Gazette</i> 27 May 1994 p. 2205) |
| <i>Acts Amendment (Public Sector Management) Act 1994</i> s. 3(2) | 32 of 1994 | 29 Jun 1994 | 1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948) |
| <i>Statutes (Repeals and Minor Amendments) Act 1994</i> s. 4 | 73 of 1994 | 9 Dec 1994 | 9 Dec 1994 (see s. 2) |
| <i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994</i> Pt. 15 | 92 of 1994 | 23 Dec 1994 | 1 Jan 1995 (see s. 2(1) and <i>Gazette</i> 30 Dec 1994 p. 7211) |
| <i>Misuse of Drugs Amendment Act 1995</i> ² | 44 of 1995 | 18 Oct 1995 | s. 1 and 2: 18 Oct 1995; Act other than s. 1 and 2: 16 Aug 1996 (see s. 2 and <i>Gazette</i> 16 Aug 1996 p. 4007) |
| <i>Poisons Amendment Act 1995</i> s. 43 | 48 of 1995 | 6 Nov 1995 | 20 Mar 1996 (see s. 2 and <i>Gazette</i> 19 Mar 1996 p. 1203) |

Misuse of Drugs Act 1981

| Short title | Number and year | Assent | Commencement |
|--|-----------------|-------------|--|
| Reprint of the <i>Misuse of Drugs Act 1981</i> as at 11 Nov 1996 (includes amendments listed above) | | | |
| <i>Misuse of Drugs Amendment Act 1998</i> | 3 of 1998 | 26 Mar 1998 | 26 Mar 1998 (see s. 2) |
| <i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 27 | 24 of 2000 | 4 Jul 2000 | 4 Jul 2000 (see s. 2) |
| <i>Criminal Property Confiscation (Consequential Provisions) Act 2000</i> s. 5 ³ | 69 of 2000 | 6 Dec 2000 | 1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7903) |
| Reprint of the <i>Misuse of Drugs Act 1981</i> as at 11 Jan 2002 (includes amendments listed above) | | | |
| <i>Nurses Amendment Act 2003</i> Pt. 3 Div. 2 | 9 of 2003 | 9 Apr 2003 | 9 Apr 2003 (see s. 2) |
| <i>Cannabis Control Act 2003</i> Pt. 5 | 52 of 2003 | 1 Oct 2003 | 22 Mar 2004 (see s. 2 and <i>Gazette</i> 9 Mar 2004 p. 733) |
| <i>Industrial Hemp Act 2004</i> Pt. 7 | 1 of 2004 | 12 Mar 2004 | 19 May 2004 (see s. 2 and <i>Gazette</i> 18 May 2004 p. 1561) |
| <i>Criminal Code Amendment Act 2004</i> s. 58 | 4 of 2004 | 23 Apr 2004 | 21 May 2004 (see s. 2) |
| <i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141 | 59 of 2004 | 23 Nov 2004 | 1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128) |
| <i>Misuse of Drugs Amendment Act 2004</i> | 62 of 2004 | 24 Nov 2004 | s. 1 and 2: 24 Nov 2004; Act other than s. 1 and 2: 1 Jan 2005 (see s. 2 and <i>Gazette</i> 10 Dec 2004 p. 5965) |
| <i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 82 | 84 of 2004 | 16 Dec 2004 | 2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53)) |
| Reprint 3: The <i>Misuse of Drugs Act 1981</i> as at 1 Jul 2005 (includes amendments listed above) | | | |
| <i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 14 Div. 2 | 28 of 2006 | 26 Jun 2006 | 1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347) |

| Short title | Number and year | Assent | Commencement |
|--|-----------------|-------------|--|
| <i>Misuse of Drugs Amendment Act 2006</i> | 40 of 2006 | 22 Sep 2006 | s. 1 and 2: 22 Sep 2006; Act other than s. 1 and 2: 28 Apr 2007 (see s. 2 and <i>Gazette</i> 27 Apr 2007 p. 1775) |
| <i>Nurses and Midwives Act 2006</i> s. 114 | 50 of 2006 | 6 Oct 2006 | 19 Sep 2007 (see s. 2 and <i>Gazette</i> 18 Sep 2007 p. 4711) |
| <i>Misuse of Drugs (Amounts of Prohibited Drugs) Order 2007</i> published in <i>Gazette</i> 7 Dec 2007 p. 5985 | | | cl. 1 and 2: 7 Dec 2007 (see cl. 2(a)); Order other than cl. 1 and 2: 8 Dec 2007 (see cl. 2(b)) |
| Reprint 4: The Misuse of Drugs Act 1981 as at 29 Feb 2008 (includes amendments listed above) | | | |
| <i>Medical Practitioners Act 2008</i> s. 162 | 22 of 2008 | 27 May 2008 | 1 Dec 2008 (see s. 2 and <i>Gazette</i> 25 Nov 2008 p. 4989) |
| <i>Police Amendment Act 2009</i> s. 21 | 42 of 2009 | 3 Dec 2009 | 13 Mar 2010 (see s. 2(b) and <i>Gazette</i> 12 Mar 2010 p. 941) |
| <i>Standardisation of Formatting Act 2010</i> s. 4 | 19 of 2010 | 28 Jun 2010 | 11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341) |
| <i>Health Practitioner Regulation National Law (WA) Act 2010</i> Pt. 5 Div. 37 | 35 of 2010 | 30 Aug 2010 | 18 Oct 2010 (see s. 2(b) and <i>Gazette</i> 1 Oct 2010 p. 5075-6) |
| <i>Misuse of Drugs Amendment Act (No. 2) 2010</i> Pt. 2 | 50 of 2010 | 24 Nov 2010 | 25 Nov 2010 (see s. 2(b)) |

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

Provisions that have not come into operation

| Short title | Number and year | Assent | Commencement |
|--|-----------------|-------------|--------------------------------|
| <i>Misuse of Drugs Amendment Act 2010</i> s. 3-10 ⁵ | 44 of 2010 | 28 Oct 2010 | To be proclaimed (see s. 2(b)) |
| <i>Cannabis Law Reform Act 2010</i> Pt. 3 ⁶ | 45 of 2010 | 28 Oct 2010 | To be proclaimed (see s. 2(b)) |

² The *Misuse of Drugs Amendment Act 1995* s. 16 is a transitional provision that is of no further effect.

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

“

3. Interpretation

In this Act, unless the contrary intention appears —

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

embargo notice has the same meaning as in the repealed Part;

forfeiture order has the same meaning as in the repealed Act;

holding order has the same meaning as in the repealed Part;

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

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

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

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

6. Applications to court under repealed law — savings

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

7. Court orders under repealed law — savings

(1) If an order made by a court under the repealed Act or the repealed Part was in force immediately before the commencement of this Act, the order has effect on and after that commencement, and may be executed, varied, discharged, set aside or appealed against, as if the repealed Act or repealed Part had not been repealed.

(2) If an interstate forfeiture order or interstate restraining order was registered under the repealed Act, and its registration was not cancelled before the commencement of this Act, Part 10 of the *Criminal Property Confiscation Act 2000* applies, on and after that commencement, to the order and to any charge created under the repealed Act on the property to which the order relates, as if the order were an interstate confiscation order or interstate freezing

order registered under section 118 of the *Criminal Property Confiscation Act 2000* and as if the charge had been created under section 123 of the *Criminal Property Confiscation Act 2000*.

8. Holding orders and embargo notices — savings

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

9. Warrants issued under repealed law — savings

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

10. Property subject to a forfeiture order

- (1) This section applies to property for which a forfeiture order was made under the repealed Act if —
 - (a) the appeal period for the forfeiture order had not ended before the commencement of this Act; or
 - (b) if the appeal period has ended (whether before or after the commencement of this Act), but the forfeiture order has not been discharged, and the property was not disposed of or otherwise dealt with under section 11(5) of the repealed Act before that commencement.
- (2) Sections 11(3), 11(4), 11(6), 12, 13 and 14 of the repealed Act continue to apply in relation to the forfeiture order and the property as if the repealed Act had not been repealed.
- (3) If the appeal period for the forfeiture order has not ended, sections 89, 90, 92 and 94 of the *Criminal Property Confiscation*

Act 2000 apply to the property as if it were subject to a freezing order under that Act.

- (4) If the appeal period for the forfeiture order has ended, and the order has not been discharged —
 - (a) sections 89, 90, 92 and 94 of the *Criminal Property Confiscation Act 2000* apply to the property as if it had been confiscated under that Act; and
 - (b) if the property has vested in the Crown, whether under clause 11(3)(b) or under the repealed Act, the property is to be disposed of as if it had been confiscated under the *Criminal Property Confiscation Act 2000*.
- (5) The following are to be paid into the Confiscation Proceeds Account established under section 130 of the *Criminal Property Confiscation Act 2000* —
 - (a) subject to section 11(4) of the repealed Act as continued by subsection (2), any money vested in the Crown under section 11 of the repealed Act that has not been disposed of or otherwise dealt with under the repealed Act;
 - (b) any proceeds obtained by the Crown after the commencement of this Act from the disposal of property under the repealed Act;
 - (c) any proceeds obtained from the disposal of property under subsection (4)(b).
- (6) Nothing in this section limits the generality of section 7(1) in its application to a forfeiture order.

11. Real property subject to forfeiture order

- (1) If property to which section 10 applies is land registered under the *Transfer of Land Act 1893*, then, without limiting the application of section 10 to the property, this section also applies to the property.
- (2) If the property has not vested in the Crown under section 11 of the repealed Act, the Director of Public Prosecutions may lodge with the Registrar of Titles a memorial of the forfeiture order in a form approved by the Registrar.
- (3) When a memorial is lodged under subsection (2) —
 - (a) the Registrar of Titles is to register the memorial;
 - (b) on the registration of the memorial, the property vests in the State of Western Australia free from all interests, whether registered or not, including trusts, mortgages, charges, obligations and estates (except rights-of-way, easements and restrictive covenants);

- (c) any caveat in force in relation to the property is taken to have been withdrawn; and
 - (d) the title in the property passes to the State.
- (4) When a memorial is lodged under subsection (2) then, in addition to registering the memorial, the Registrar of Titles is to —
 - (a) register the State of Western Australia as the proprietor of the property; and
 - (b) endorse the certificate of title of the property to the effect that, when the memorial was registered, the property ceased to be subject to or affected by any interests recorded on the certificate of title, including caveats, mortgages, charges, obligations and estates (except rights-of-way, easements and restrictive covenants) to which it was subject immediately before the registration of the memorial, or by which it was affected immediately before the registration of the memorial.
- (5) The Registrar of Titles may dispense with the production of any duplicate certificate of title or any duplicate instrument for the purposes of entering on the duplicate certificate or duplicate instrument any memorandum that would, but for this subsection, be required to be entered under the *Transfer of Land Act 1893* as a result of registering a memorial under subsection (3) or of doing anything else required or permitted by this section.
- (6) If, under subsection (5), the Registrar of Titles dispenses with the production of a duplicate certificate of title or duplicate instrument —
 - (a) the Registrar must endorse the certificate of title to the effect that the memorandum concerned has not been entered on the duplicate certificate of title or the duplicate instrument; and
 - (b) any subsequent dealing in the property has effect as if the memorandum had been entered on the duplicate certificate of title or the duplicate instrument.
- (7) If, under subsection (5), the Registrar of Titles dispenses with the production of a duplicate certificate of title, then, on the application of the registered proprietor, the Registrar may cancel the certificate of title for which the duplicate was issued, and create and register a new certificate of title for the property.
- (8) The Registrar of Titles is not required to obtain the consent or direction of the Commissioner of Titles to perform a function conferred on the Registrar under this section.

- (9) To the extent that a provision of this section relating to any property is inconsistent with the *Transfer of Land Act 1983*⁴, the provision prevails, but this section does not otherwise affect the operation of that Act in relation to the property.

”.

⁴ This should read “1893”.

⁵ On the date as at which this compilation was prepared, the *Misuse of Drugs Amendment Act 2010* s. 3-10 had not come into operation. They read as follows:

3. Act amended

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

4. Section 5 amended

After section 5(2) insert:

- (3) A person does not commit a simple offence under subsection (1)(d) by reason only of his having in his possession a pipe or utensil if he proves —

- (a) that he had possession of the pipe or utensil —
- (i) only for the purpose of delivering it to a person authorised under this Act or the *Poisons Act 1964* to have possession of any prohibited drug or prohibited plant in or on it; and
- (ii) in accordance with the authority in writing of the person so authorised,

and that, after taking possession of the pipe or utensil, he took all such steps as were reasonably open to him to deliver it into the possession of that person; or

- (b) that he had possession of the pipe or utensil only for the purpose of analysing material in or on it, examining it or otherwise dealing with it for the purposes of this Act in his capacity as an analyst, botanist or other expert.

5. Section 21 amended

In section 21 delete the definition of *holding order*.

6. Section 26 amended

- (1) In section 26(1):
- (a) delete “requires, may seize that thing and —” and insert:

requires —

- (b) delete paragraphs (a) and (b) and insert:
 - (a) in the case of —
 - (i) a thing that is a prohibited drug, prohibited plant or dangerous substance; or
 - (ii) a thing that is contaminated by a dangerous substance,
may seize and detain the thing until it is dealt with under section 27; or
 - (b) in the case of any other thing, may seize it.

(2) After section 26(1) insert:

- (2A) If under subsection (1)(b) a thing may be seized, the *Criminal Investigation Act 2006* Part 13, with any necessary changes, applies to and in relation to the exercise of the power to seize the thing.
- (2B) If under subsection (1)(b) a thing is seized, the *Criminal Investigation Act 2006* Part 13 and the *Criminal and Found Property Disposal Act 2006*, with any necessary changes, apply to and in relation to it.

7. Section 27 amended

- (1) In section 27(1) delete “prohibited drug, prohibited plant or dangerous substance” (each occurrence) and insert:

relevant thing

- (2) In section 27(2):
 - (a) delete “prohibited drug, prohibited plant or dangerous substance” and insert:

relevant thing

- (b) delete paragraph (b) and insert:

- (b) sufficient samples have been taken of or from the thing,
- (3) After section 27(5) insert:
 - (6A) If—
 - (a) a court convicts a person of an offence under this Act that involved the possession or use of a relevant thing; and
 - (b) the relevant thing was destroyed under this section, the court may order the person to pay the costs reasonably incurred by the State in destroying the thing, other than costs relating to the employment of police officers or the use of equipment or facilities under the control or management of the Commissioner.
- (4) In section 27(6):
 - (a) delete “subsection (2)(b) —” and insert:

this section —
 - (b) insert in alphabetical order:

relevant thing means a prohibited drug, prohibited plant or dangerous substance or a thing contaminated with a dangerous substance;

8. Section 28 replaced

Delete section 28 and insert:

28. Compensation for destroyed seized property

- (1) In this section —

seized property means a dangerous substance, or a thing contaminated with a dangerous substance, seized under section 26.
- (2) This section does not apply to or in respect of any seized property that has been forfeited to the Crown.
- (3) If any seized property is destroyed —
 - (a) under section 27(1)(a)(i); or

(b) under an order made under section 27(1)(b),
a person who was entitled to possession of it when it was seized is entitled to recover from the State (if necessary, by action in a court of competent jurisdiction) compensation equal to its market value at the time it was seized.

- (4) If under section 27(4) any seized property is destroyed and —
- (a) in the 12 months after the date on which the property was seized no person is charged with an offence that involved the possession, use, sale or supply of it; or
 - (b) a person is charged with such an offence but is acquitted, whether at trial or on appeal, and any appeal against the acquittal is concluded,

any person who was entitled to possession of the property when it was seized is entitled to recover from the State (if necessary, by action in a court of competent jurisdiction) compensation equal to its market value at the time it was seized.

9. Section 43 inserted

After section 42 insert:

43. Transitional provisions (Sch. IX)

Schedule IX sets out transitional provisions.

10. Schedule IX inserted

After Schedule VIII insert:

Schedule IX — Transitional provisions

[s. 43]

1. Property subject to holding orders under repealed s. 28

- (1) In this clause —
repeal day means the day on which section 28 is repealed by the *Misuse of Drugs Amendment Act 2010* section 8.
- (2) If immediately before repeal day any property is subject to a holding order granted under section 28, then on repeal day —
- (a) the repealed section 28 ceases to apply to and in respect of the property and the holding order; and

- (b) the property is to be taken to be seized property for the purposes of the *Criminal and Found Property Disposal Act 2006* and that Act applies to and in respect of it accordingly.

⁶ On the date as at which this compilation was prepared, the *Cannabis Law Reform Act 2010* Pt. 3 had not come into operation. It reads as follows:

Part 3 — Misuse of Drugs Act 1981 amended

4. Act amended

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

5. Section 3 amended

In section 3(1) insert in alphabetical order:

child means a person who is under 18 years of age;

6. Part IIIA inserted

After section 8A insert:

Part IIIA — Cannabis intervention

Division 1 — Preliminary

8B. Terms and abbreviations used in this Part

(1) In this Part —

adult means a person who is not a young person;

authorised person, in section 8I or 8J, means a person appointed under section 8D to be an authorised person for the purposes of the section in which the term is used;

cannabis intervention requirement means a notice referred to in section 8F;

cannabis intervention session means a cannabis intervention session —

(a) provided by a treatment provider approved under section 8J(2)(b); and

(b) the content of which is approved under section 8J(2)(a);

CEO (Health) has the meaning given in section 38D(1);

minor cannabis related offence means —

- (a) an offence under section 5(1)(d)(i) that involves cannabis; and
- (b) an offence under section 6(2) that involves cannabis —
 - (i) if the amount is not more than 10 grams, or such other amount as is prescribed by the regulations; and
 - (ii) if the offence does not involve a cannabis plant under cultivation, cannabis resin or any other cannabis derivative;

police officer does not include a person appointed by the Commissioner as an authorised person under section 8D;

responsible adult has the meaning given in the *Young Offenders Act 1994* section 3;

young person means a person who —

- (a) is under 18 years of age; or
- (b) in relation to the commission, or alleged commission, of a minor cannabis related offence, was under 18 years of age when the offence was committed, or allegedly committed.

- (2) In this Part the following abbreviations are used —

CIR for cannabis intervention requirement;

CIS for cannabis intervention session.

8C. Operation of *Young Offenders Act 1994* unaffected

Nothing in this Part prevents a young person from being dealt with under the *Young Offenders Act 1994* Part 5 in respect of a minor cannabis related offence.

8D. Appointment of authorised persons

The Commissioner may, in writing, appoint persons or classes of persons to be authorised persons for the purposes of section 8I or 8L, or for the purposes of both of those sections.

Division 2 — Cannabis intervention requirements

8E. CIR may be given for minor cannabis related offence

- (1) A police officer who has reason to believe that a person has committed a minor cannabis related offence may give a cannabis intervention requirement to the alleged offender, unless subsection (4) or section 8G(1) applies.
- (2) A police officer who believes —

- (a) that an alleged offender has committed more than one minor cannabis related offence; and
- (b) that the alleged offences have arisen out of the same incident,

may give a single CIR in respect of all or some of the offences.

- (3) A CIR is to be given as soon as practicable, and in any event within 60 days, after an alleged offence is believed to have been committed.
- (4) A CIR cannot be given in respect of an alleged offence (the *new offence*) if the alleged offender —
 - (a) is an adult who, before the new offence was allegedly committed, had been convicted of a minor cannabis related offence or given a CIR; and
 - (b) was an adult when so convicted or given the CIR.

8F. Cannabis intervention requirement

- (1) A CIR is a notice in a form prescribed by the regulations —
 - (a) containing a description of the alleged offence, or offences; and
 - (b) informing the alleged offender that —
 - (i) he or she may, in writing, elect to be prosecuted for the alleged offence, or offences, in a court, and informing the alleged offender how to make that election; and
 - (ii) if he or she does not wish to be prosecuted for the alleged offence, or offences, in a court, the alleged offender may, within a period of 28 days after the giving of the CIR, complete a CIS;and
 - (c) informing the alleged offender as to how the alleged offender may arrange to complete a CIS.

- (2) A person need only complete a single CIS for each CIR given to the person, even if the CIR is given in respect of more than one alleged offence.

8G. Young persons — special requirements about CIRs

- (1) A CIR cannot be given in respect of an alleged offence (the *new offence*) if the alleged offender —
 - (a) is a young person who, before the new offence was allegedly committed, had been convicted of, or given a CIR in respect of, 2 or more minor cannabis related offences; and

- (b) at least 2 of those offences arose out of separate incidents, or are alleged to have done so.
- (2) A police officer who gives a young person a CIR is to ensure that a responsible adult is given a copy of the CIR as soon as is reasonably practicable after the CIR is given to the young person, unless —
 - (a) after reasonable enquiry, neither the whereabouts nor the address of a responsible adult can be ascertained; or
 - (b) in the circumstances it would be inappropriate to give a responsible adult a copy of the CIR.
- (3) A young person who has been given 2 CIRs need only complete a single CIS in respect of the CIRs if both CIRs were given before the completion of the CIS.

8H. Referral of young persons at risk to juvenile justice teams

- (1) A police officer is to refer a young person at risk to a juvenile justice team where appropriate under the *Young Offenders Act 1994* in preference to charging the young person under this Act.
- (2) In subsection (1) —
young person at risk means an alleged offender who is a young person —
 - (a) to whom the police officer would have given a CIR, but for section 8G(1); or
 - (b) who has been given a CIR and has not completed a CIS within 28 days or any further time allowed under section 8L, unless —
 - (i) the CIR has been withdrawn under section 8I; or
 - (ii) the young person has elected to be prosecuted for the alleged offence in a court.

8I. Withdrawal of CIR

- (1) An authorised person may withdraw a CIR by sending to the alleged offender a notice in a form prescribed by the regulations stating that the CIR has been withdrawn.
- (2) A CIR cannot be withdrawn if the alleged offender has completed a CIS in relation to the CIR.
- (3) A CIR that is withdrawn is taken not to have been given to an alleged offender for the purposes of sections 8E(4) and 8G(1).

Division 3 — Cannabis intervention sessions

8J. Cannabis intervention session

- (1) The purpose of a cannabis intervention session is to inform those who complete it about —
 - (a) the adverse health and social consequences of cannabis use; and
 - (b) the laws relating to the use, possession and cultivation of cannabis; and
 - (c) effective strategies to address cannabis using behaviour.
- (2) The CEO (Health) may, in writing, do any of the following —
 - (a) having regard to subsection (1), approve the content of a cannabis intervention session;
 - (b) approve treatment providers to provide cannabis intervention sessions;
 - (c) give an approval under paragraph (b) subject to conditions to be obeyed by the treatment provider approved;
 - (d) cancel or amend an approval given under paragraph (a) or (b).
- (3) For the purposes of this section, this Act is to be taken to be a relevant Act as referred to in the *Health Legislation Administration Act 1984* section 9.

8K. Benefit of completing CIS

- (1) If the alleged offender has completed a CIS in respect of a CIR within 28 days or such further time as is allowed under section 8L, the bringing of proceedings and the imposition of penalties are prevented to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (2) Completion of a CIS is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

8L. Extension of time to complete CIS

- (1) An authorised person may, in a particular case, extend the period of 28 days within which the alleged offender may complete a CIS.
- (2) The extension may be allowed whether or not the period of 28 days has elapsed.

8M. Certificate of completion of CIS

- (1) A treatment provider approved to provide a CIS under section 8J(2)(b) is to —

- (a) give to a person who has completed a CIS a certificate of completion; and
 - (b) send a copy of the certificate to the Commissioner.
- (2) A certificate of completion is to be in a form prescribed by the regulations and is to set out —
- (a) the name and address of the person who has completed the CIS; and
 - (b) the date of completion; and
 - (c) the details of the CIR in respect of which the CIS was completed.

7. Section 19A inserted

After section 18 insert:

19A. Selling cannabis smoking paraphernalia

- (1) In this section —
- cannabis smoking paraphernalia* means —
- (a) anything made or modified to be used in smoking cannabis;
 - (b) any other thing that is prescribed to be cannabis smoking paraphernalia,
- but does not include anything prescribed, or belonging to a class prescribed, as excluded from this definition.
- (2) A person who sells, or offers to sell, cannabis smoking paraphernalia to a child commits a simple offence.
Penalty: a fine of \$24 000 or imprisonment for 2 years or both.
- (3) A person —
- (a) who sells, or offers to sell, cannabis smoking paraphernalia to an adult; or
 - (b) who displays cannabis smoking paraphernalia, or authorises or allows cannabis smoking paraphernalia to be displayed, for sale in a shop or other retail outlet,
- commits a simple offence.
Penalty: a fine of \$10 000.

8. Part VII inserted

After section 42 insert:

Part VII — Transitional provisions

Division 1 — Preliminary

43. Interpretation Act 1984 not limited

This Part does not limit the operation of the *Interpretation Act 1984* Part V.

44. Transitional regulations

- (1) Regulations may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with any issue or matter of a savings or transitional nature —
 - (a) that arises as a result of the amendment of this Act by another Act (*an amending Act*); and
 - (b) for which there is no sufficient provision in this Act or the amending Act.
- (2) Regulations made under this section may provide that specified provisions of this Act do not apply, or apply with modifications specified in the regulations, to or in relation to any matter.
- (3) Regulations made under this section may provide that a state of affairs specified in the regulations 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 come into operation but not earlier than the day on which the relevant amending Act, or the relevant provision or provisions of that Act, came into operation.
- (4) If the regulations contain a provision referred to in subsection (3), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to any person (other than the State), the rights of that person existing before the regulations commenced; or
 - (b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the regulations commenced.

Division 2 — Provisions for *Cannabis Law Reform Act 2010*

45. Terms used

In this Division —

CIN means a cannabis infringement notice given under the *Cannabis Control Act 2003* and in force immediately before the repeal of that Act;

commencement day means the day on which the *Cannabis Law Reform Act 2010* Part 2 comes into operation.

46. CINs continue in force

Despite the repeal of the *Cannabis Control Act 2003*, that Act and the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, continue to apply in respect of a CIN, except in so far as the contrary intention is provided under this Division.

47. Amounts outstanding in 12 months time under a CIN are to be taken to be paid

(1) Subsection (2) applies in respect of a CIN if a licence suspension order was made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 19 in respect of the CIN.

(2) If, immediately before —

- (a) the day that is 12 months after the day on which the licence suspension order is made in respect of the CIN; or
- (b) the commencement day,

whichever is the later in time —

- (c) the modified penalty, and enforcement fees, payable under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* in respect of the CIN have not been paid; and
- (d) an election has not been made under section 21 of that Act,

then, for the purposes of that Act, the amounts referred to in paragraph (c) are to be taken to be paid on that day.

(3) If, due to the operation of subsection (2), a licence suspension order is to be taken as having been cancelled under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 20(1)(a), then subsections (3) and (4) of that section apply as if the licence suspension order was cancelled under subsection (2) of that section.

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) |
|-------------------------------------|------------------------|
| analyst..... | 3(1) |
| approved analyst | 3(1) |
| approved botanist..... | 3(1) |
| approved person..... | 21 |
| authorised person | 14(4)(a), 26(3), 31(8) |
| authorised prescription..... | 3(1) |
| botanist..... | 3(1) |
| cannabis | 3(1) |
| cannabis resin..... | 3(1) |
| category 1 item..... | 12 |
| category 2 item..... | 12 |
| CEO (Health)..... | 38D(1) |
| Commissioner | 3(1) |
| confidential information..... | 27B(1) |
| dangerous substance | 3(1) |
| dentist..... | 3(1) |
| drug of addiction..... | 3(1) |
| external serious drug offence | 32A(3) |
| heroin | 3(1) |
| holding order..... | 21 |
| industrial hemp | 3(1) |
| industrial hemp seed | 3(1) |
| medical practitioner | 3(1) |
| nurse practitioner | 3(1) |
| opium | 3(1) |
| owner | 5(2) |
| principal offence | 33(1), 33(3) |
| processed industrial hemp..... | 3(1) |
| prohibited drug..... | 3(1) |
| prohibited plant..... | 3(1) |
| recipient | 12 |
| sample..... | 3(1) |
| search warrant..... | 21 |
| serious drug offence..... | 32A(3) |
| simple offence..... | 3(1) |
| specified..... | 27A(7) |
| specified drug..... | 3(1) |
| substance..... | 12 |
| sufficient samples | 27(6) |

Defined Terms

| | |
|-----------------------------------|-----------------|
| summary court | 3(1) |
| supplier | 12 |
| the claimant..... | 27(1)(b), 28(2) |
| the <i>Poisons Act 1964</i> | 3(1) |
| the principal offence | 33(2) |
| the regulations..... | 3(1) |
| to cultivate | 3(1) |
| to possess | 3(1) |
| to supply..... | 3(1) |
| undercover officer..... | 26(3), 31(8) |
| vehicle..... | 21 |
| veterinary surgeon..... | 3(1) |