

Western Australia

Misuse of Drugs Amendment Act 2004

As at 24 Nov 2004

No. 62 of 2004

Extract from www.slp.wa.gov.au, see that website for further information

Misuse of Drugs Amendment Act 2004

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	The Act amended	2

Part 2 — Amendments relating to approved analysts

4.	Section 3 amended	3
----	-------------------	---

Part 3 — Amendments relating to precursor chemicals and apparatus

5.	Part IV inserted	4
----	------------------	---

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

12.	Interpretation in Part IV	4
13.	Part not applicable to possession, sale or supply of certain substances or things	5
14.	Possession of certain substances or things	5
15.	Sale or supply of category 1 items	7
16.	Storage of category 1 items	8
17.	Sale or supply of category 2 items	8
18.	Offences relating to declarations under section 15(1)(c) or 17(1)(b)	9
19.	Powers of police officers for purposes of this Part	9

Contents

	20. Regulations as to category 1 items and category 2 items	10	
6.	Section 34 amended		11
	Part 4 — Amendments relating to attempts to commit offences		
7.	Section 32A amended		12
8.	Section 33 amended		12
9.	Consequential amendments to other Acts		13

Western Australia

Misuse of Drugs Amendment Act 2004

No. 62 of 2004

**An Act to amend the *Misuse of Drugs Act 1981* and to
consequentially amend certain other Acts.**

[Assented to 24 November 2004]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Misuse of Drugs Amendment Act 2004*.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. The Act amended

The amendments in this Act are to the *Misuse of Drugs Act 1981** unless otherwise indicated.

[* *Reprinted as at 11 January 2002.*

For subsequent amendments see Act No. 9 of 2003.]

Part 2 — Amendments relating to approved analysts

4. Section 3 amended

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

“

“approved analyst” means —

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

”.

Part 3 — Amendments relating to precursor chemicals and apparatus

5. Part IV inserted

After Part III the following Part is inserted —

“

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

12. Interpretation in Part IV

In this Part, unless the contrary intention appears —

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

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

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

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

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

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

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

14. Possession of certain substances or things

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

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

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

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

were reasonably open to the person to deliver the item or substance into the possession of the authorised person; or

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

15. Sale or supply of category 1 items

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

16. Storage of category 1 items

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

17. Sale or supply of category 2 items

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

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

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

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

19. Powers of police officers for purposes of this Part

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

- (a) enter the premises of a person who sells or supplies, or has sold or supplied, category 1 items or category 2 items;
- (b) demand the production of, and inspect —
 - (i) any books, papers or documents relating to the sale or supply of category 1 items or category 2 items, including any declarations under section 15(1)(c) or 17(1)(b); and
 - (ii) any authorisations given for the purposes of section 16(1);

and

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

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

- (1) The regulations may designate a substance or thing specified, or belonging to a class specified, in the regulations as a category 1 item or a category 2 item.

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

”.

6. Section 34 amended

Section 34(1) is amended as follows:

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

“

; or

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

”.

Part 4 — Amendments relating to attempts to commit offences

7. Section 32A amended

Section 32A(3) is amended as follows:

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

8. Section 33 amended

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

“

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

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

”.

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

“

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

but is liable on conviction —

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

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

”.

9. Consequential amendments to other Acts

- (1) Schedule 2 to the *Bail Act 1982** is amended in item 2a by inserting after the entry relating to section 7(1) —

“

s. 33(1)(a)	Attempting to commit an offence under section 6(1) or 7(1)
-------------	---

”.

[* *Reprinted as at 27 August 1999.*

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 27 and Acts Nos. 6 and 27 of 2002.]

- (2) The Second Schedule to the *Evidence Act 1906** is amended in Part 5 as follows:

- (a) in the item relating to section 33(1) by deleting “, or inciting another, to commit, or becoming an accessory after the fact to,” and inserting instead —
“ to commit ”;
- (b) by deleting the full stop at the end of the item relating to section 33(2);

- (c) after the item relating to section 33(2) by inserting the following item —

“

s. 33(3)	Inciting another to commit, or becoming an accessory after the fact to, a crime under section 6(1) or 7(1)
----------	--

”.

[* Reprinted as at 4 January 2001.

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 121 and Acts Nos. 3 and 27 of 2002 and 6 of 2003.]

- (3) Section 3(1) of the *Surveillance Devices Act 1998** is amended in the definition of “indictable drug offence” by deleting “or 33(2)(a)” and inserting instead —

“ , 33(2)(a) or 33(3)(a) ”.

[* Act No. 56 of 1998.

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 371 and Act No. 10 of 2002.]

- (4) Schedule 1 to the *Young Offenders Act 1994** is amended under the heading “2. *Misuse of Drugs Act 1981*” as follows:

- (a) in the item relating to section 33(1) by deleting “, or inciting another, to commit, or becoming an accessory after the fact to,” and inserting instead —

“ to commit ”;

- (b) after the item relating to section 33(2) by inserting the following item —

“

s. 33(3)	Inciting another to commit, or becoming an accessory after the fact to, an offence under section 6 or 7 referred to above
----------	---

”.

[Reprinted as at 8 December 2000.
For subsequent amendments see 2001 Index to Legislation of
Western Australia, Table 1, p. 423.]*
