

WESTERN AUSTRALIA

MISUSE OF DRUGS AMENDMENT ACT 1995

No. 44 of 1995

**AN ACT to amend the *Misuse of Drugs Act 1981* and for
related purposes.**

[Assented to 18 October 1995.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Misuse of Drugs Amendment Act 1995*.

Commencement

2. This Act comes into operation on such day as is fixed by proclamation.

Principal Act

3. In this Act the *Misuse of Drugs Act 1981** is referred to as the principal Act.

[* *Act No. 66 of 1981* .
*For subsequent amendments, see 1994 Index to
Legislation of Western Australia, Table 1, pp. 142-3.*]

Section 3 amended

4. Section 3 (1) of the principal Act is amended —

(a) by deleting the definition of “botanist” and substituting the following definition —

“

“**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;

”;

and

- (b) by inserting in the appropriate alphabetical positions the following definitions —

- “**“approved analyst”** means an analyst declared under section 3A to be an approved analyst;
”;
- “**“approved botanist”** means a botanist declared under section 3A to be an approved botanist;
”;
- “**“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;
”;
- “**“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);
”.

Section 3A inserted

5. After section 3 of the principal Act the following section is inserted —

“**Approved analysts and botanists**

3A. (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

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- (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 26 amended

6. Section 26 (1) of the principal Act is amended by deleting “or prohibited plant” in both places where it occurs and substituting in each case the following —

“ , prohibited plant or dangerous substance ”.

Section 26A inserted

7. After section 26 of the principal Act the following section is inserted —

“

Powers of approved analyst or approved botanist

26A. 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 27 amended

8. Section 27 of the principal Act is amended —

(a) by inserting after the section designation “27.” the subsection designation “(1)”;

(b) by deleting “or prohibited plant” wherever it occurs and substituting in each case the following —

“ , prohibited plant or dangerous substance ”;

(c) in paragraph (a) by deleting “no person is tried with the commission of an offence in relation thereto, a” and substituting the following —

“
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
”;

(d) in paragraph (b) by inserting after “thereto” the following —

“
and it has not been destroyed under
subsection (4)
”;

and

(e) by inserting after subsection (1) the following subsections —

“
(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) a n a l y s i s o r
examination by an
approved analyst or
an approved botanist;
and

(ii) any further analysis
or examination that
might be required
under section 27A.

”.

Sections 27A and 27B inserted

9. After section 27 of the principal Act the following sections
are inserted —

“

Analysis at request of defendant

27A. (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.

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(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.

(7) In this section —

“specified” means specified in the application.

Confidentiality

27B. (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 28 amended

10. Section 28 (1) of the principal Act is amended by deleting “or prohibited plant” and substituting the following —

“ , prohibited plant or dangerous substance ”.

Section 31 amended

11. Section 31 of the principal Act is amended in subsections (1), (5), (6) and (7) by deleting “of Police” in each place where it occurs.

Section 34 amended

12. Section 34 (1) (b) of the principal Act is amended by deleting “imprisonment for a term not exceeding 20 years without the option of a fine” and substituting the following —

“

a fine not exceeding \$75 000 or to imprisonment for a term not exceeding 20 years or both

”.

Section 38 repealed and sections substituted

13. Section 38 of the principal Act is repealed and the following sections are substituted —

“

Certificate of approved analyst or approved botanist

38. (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.

Defendant may obtain a copy of certificate

38A. (1) If —

- (a) a certificate has been given under section 38 (1) in relation to an analysis or examination; and
- (b) a defendant 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 defendant.

(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 defendant.

Defendant may object to use of certificate

38B. (1) Section 38 (2) does not apply if, not less than 21 days before the proceedings, the defendant delivers notice in writing to the Commissioner requiring the approved analyst or approved botanist to attend as a witness in those proceedings.

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(2) A defendant shall be afforded a reasonable opportunity to deliver a notice referred to in subsection (1).

(3) A defendant shall not in any proceedings adduce evidence in rebuttal of any facts stated in a certificate unless the defendant has delivered notice in accordance with subsection (1) requiring the approved analyst or approved botanist to attend as a witness in the proceedings.

Order for costs of approved analyst or approved botanist

38C. 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 39 amended

14. Section 39 of the principal Act is amended in subsections (1), (2), (3), (4) and (5) by deleting “of Police” in each place where it occurs.

Section 41 amended

15. (1) Section 41 (1) of the principal Act is amended —

(a) by inserting after paragraph (b) the following paragraph —

“
(ba) providing for the procedure to be followed in and in relation to the taking, packaging and labelling of samples;
”;

and

(b) in paragraph (c) (i) by deleting “for the purpose of proceedings for an offence” and substituting the following —

“ under this Act ”.

(2) After section 41 (2) of the principal Act the following subsection is inserted —

“
(3) The regulations may create offences and may provide for a penalty not exceeding \$1 000.
”.

Transitional

16. (1) The principal Act as amended by this Act applies to and in relation to things seized before the commencement of this Act and in particular a direction may be given under section 27 of the principal Act as amended by this Act in respect of any such thing.

(2) Anything done by an analyst or botanist under the principal Act before the commencement of this Act in relation to any thing seized before the commencement of this Act shall, for the purposes of the principal Act as amended by this Act, be taken to be a thing done by an approved analyst or an approved botanist.

(3) A certificate given by an analyst or botanist under the principal Act before the commencement of this Act continues to have effect after the commencement of this Act as if the certificate had been given in accordance with the principal Act as amended by this Act.