Authorised Version

Drugs, Poisons and Controlled Substances Amendment (Real-time Prescription Monitoring) Act 2017

No. 50 of 2017

TABLE OF PROVISIONS

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Victoria

Drugs, Poisons and Controlled Substances Amendment (Real-time Prescription Monitoring) Act 2017†

No. 50 of 2017

[Assented to 24 October 2017]

The Parliament of Victoria enacts:

1 Purpose

The main purpose of this Act is to amend the **Drugs, Poisons and Controlled Substances Act 1981** to provide for—

(a) a database relating to the monitoring of the supply of certain poisons and controlled substances; and

(b) information to be included on the database; and

(c) access to the database.

2 Commencement

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

(2) If a provision of this Act does not come into operation before 1 August 2018, it comes into operation on that day.

3 Principal Act

In this Act, the **Drugs, Poisons and Controlled Substances Act 1981** is called the Principal Act.

4 Definitions

In section 4(1) of the Principal Act **insert** the following definitions—

"***authorised supplier*** means a person who—

(a) is authorised by the Secretary under section 30C(5) to access the monitored poisons database for a purpose specified in section 30C(5)(a); or

(b) is authorised by regulations referred to in section 30C(4) to access the monitored poisons database; or

(c) belongs to a class of person that is authorised as described in paragraph (a) or (b);

authorised user means a person who—

(a) is authorised by the Secretary under section 30C(5) to access the monitored poisons database for a purpose specified in section 30C(5)(b) or (c); or

(b) is authorised by regulations referred to in section 30C(4) to access the monitored poisons database; or

(c) belongs to a class of person that is authorised as described in paragraph (a) or (b);

data source entity means an entity, or a class of entity, prescribed to be a data source entity for the purposes of the monitored poisons database;

monitored poison means—

(a) a Schedule 8 poison; or

(b) a monitored supply poison; or

(c) a poison that is prescribed to be a monitored poison; or

(d) a poison that belongs to a class of poisons that are prescribed to be monitored poisons;

monitored poisons database means the database established under Division 9 of Part II;

monitored supply poison means a poison that—

(a) is prescribed to be a monitored supply poison; or

(b) belongs to a class of poisons that are prescribed to be monitored supply poisons;

registered health practitioner means a person registered under the Health Practitioner Regulation National Law to practise in a health profession within the meaning of that Law (other than as a student);".

5 New Division 9 of Part II inserted

After Division 8 of Part II of the Principal Act **insert**—

"Division 9—Monitored poisons database

30A Secretary may establish monitored poisons database

(1) The Secretary may establish and maintain a database for the purposes of monitoring and recording data relating to the supply of monitored poisons.

(2) The monitored poisons database may include the following—

(a) a record for each supply of a monitored poison in accordance with the regulations;

(b) a record of applications for permits made to the Secretary, notifications provided to the Secretary and permits issued by the Secretary under Division 10, this Division or the regulations in relation to the supply to, or treatment of, persons with poisons or controlled substances;

(c) a record of applications for warrants made to the Secretary, and warrants issued by the Secretary, under Division 4 of Part II in relation to the supply to, or treatment of, persons with poisons or controlled substances;

(d) any other prescribed information.

30B Powers of Secretary in relation to monitored poisons database

(1) The purposes of the monitored poisons database are—

(a) to promote safe supply, prescription and dispensing practices; and

(b) to reduce harm from monitored poisons and other high risk medication; and

(c) to facilitate evaluation and research into monitored poisons and the operation of the monitored poisons database.

(2) For the purposes of establishing and maintaining the monitored poisons database and furthering the purposes of the database, the Secretary may—

(a) collect and store information (including records) required for the database or permitted to be collected and stored by or under this Act or the regulations; and

(b) require a prescribed person or prescribed class of person or a data source entity to provide information (including records) to the database in accordance with the regulations; and

(c) require prescribed records or prescribed information in relation to the supply of a monitored poison to be provided to the monitored poisons database in the prescribed manner or in the prescribed form; and

(d) use and disclose any information on the database reasonably necessary to implement and oversee the database, including but not limited to—

(i) disclosing information on the database to the Commonwealth, other States or Territories; and

(ii) receiving or collecting information for the database from the Commonwealth, other States or Territories or prescribed entities in other Australian jurisdictions; and

(iii) authorising in writing other prescribed entities to use and disclose information on the database; and

(iv) use and disclosure of information on the database in accordance with this Act or the regulations; and

(e) do any other thing or exercise any other power reasonably necessary—

(i) to implement, maintain and oversee the database; or

(ii) further the purposes of the database.

(3) Without limiting subsection (2) or any other power of the Secretary, the Secretary may enter into an agreement or a memorandum of understanding with the Commonwealth, other States or Territories and any entity in another Australian jurisdiction in relation to the provision of information to or from the monitored poisons database by or to that other jurisdiction.

30C Access, use and disclosure of information on monitored poisons database

(1) A pharmacist may access, use and disclose information on the monitored poisons database for the following specified purposes—

(a) providing records and information to the database in accordance with this Act or the regulations;

(b) accessing records and information in relation to a person for whom a monitored poison may be supplied;

(c) accessing records and information in relation to a person in relation to the medical treatment or care of that person;

(d) disclosing information in the database to any registered health practitioner involved in the care of a person whose information is maintained in the database;

(e) any other prescribed purpose.

(2) A registered medical practitioner or a nurse practitioner may access, use and disclose information on the monitored poisons database for the following specified purposes—

(a) providing records and information to the database in accordance with this Act or the regulations;

(b) accessing records and information in relation to a person for whom a monitored poison may be supplied, prescribed or administered;

(c) accessing records and information in relation to a person in relation to the medical treatment or care of that person;

(d) disclosing information in the database to any registered health practitioner involved in the care of a person whose information is maintained in the database;

(e) any other prescribed purpose.

(3) Any person who is authorised by the Secretary under subsection (5), or who belongs to a class of person that is authorised by the Secretary under subsection (5), may access, use and disclose information on the monitored poisons database for the purposes specified in that authorisation.

(4) Any entity that is prescribed, or that belongs to a prescribed class, may access, use and disclose information on the monitored poisons database for the purposes specified in relation to the entity in the regulations.

(5) The Secretary may authorise a person or class of person to access, use and disclose information in the monitored poisons database for the purposes specified in relation to the person or class in the authorisation if satisfied that the access, use and disclosure—

(a) would assist in achieving the purposes of—

(i) promoting safe supply, prescription and dispensing practices; and

(ii) reducing harm from monitored poisons and other high risk medication; or

(b) is for technical or administrative purposes relating to the maintenance of the database; or

(c) is to facilitate evaluation and research into monitored poisons and the operation of the monitored poisons database.

(6) An authorisation under subsection (5) must—

(a) be in writing; and

(b) in the case of an authorisation for a class of person, be published in the Government Gazette.

Note

See also section 42A in relation to authorized officers.

30D Data source entity to provide records and information to monitored poisons database

Unless the regulations otherwise provide, a data source entity must take all reasonable steps to ensure that all records or information in relation to the supply of a monitored poison are provided to the monitored poisons database in the manner or in the form prescribed for the purposes of section 30B(2).

Penalty: 100 penalty units.

30E Pharmacist to check monitored poisons database before supply of monitored supply poison

Unless the regulations otherwise provide, a pharmacist must take all reasonable steps to check the monitored poisons database for the records or information in relation to a person for whom a monitored supply poison may be supplied before supplying the monitored supply poison for that person.

Penalty: 100 penalty units.

30F Registered medical practitioner to check monitored poisons database before prescription or supply of monitored supply poison

Unless the regulations otherwise provide, a registered medical practitioner must take all reasonable steps to check the monitored poisons database for the records or information in relation to a person for whom a monitored supply poison may be prescribed or supplied before prescribing or supplying the monitored supply poison for that person.

Penalty: 100 penalty units.

30G Nurse practitioner to check monitored poisons database before prescription or supply of monitored supply poison

Unless the regulations otherwise provide, a nurse practitioner must take all reasonable steps to check the monitored poisons database for the records or information in relation to a person for whom a monitored supply poison may be prescribed or supplied

before prescribing or supplying the monitored supply poison for that person.

Penalty: 100 penalty units.

30H Authorised supplier to check monitored poisons database before prescription or supply of monitored supply poison

Unless the regulations otherwise provide, an authorised supplier must take all reasonable steps to check the monitored poisons database for the records or information in relation to a person for whom a monitored supply poison may be prescribed or supplied by that authorised supplier in accordance with the supplier's authorisation before prescribing or supplying the monitored supply poison for that person.

Penalty: 100 penalty units.

30I Offences relating to access or use of monitored poisons database unless authorised

(1) A person who is not authorised to do so by or under this Act, the regulations or otherwise by any law must not knowingly access, use or disclose information on the monitored poisons database.

Penalty: 100 penalty units.

(2) A person who is authorised to do so by or under this Act, the regulations or otherwise by any law to access, use or disclose information on the monitored poisons database must not access, use or disclose information on the monitored poisons database other than in accordance with the person's authorisation.

Penalty: 100 penalty units.

30J Protection from liability for duties and functions in relation to monitored poisons database

(1) A registered medical practitioner, nurse practitioner, pharmacist, authorised supplier or authorised user is not liable for anything done in good faith in carrying out any duty or function in relation to the monitored poisons database in accordance with this Act or the regulations.

(2) Without limiting subsection (1)—

(a) the accessing of information on the monitored poisons database in respect of a person or the providing of information to the database in respect of a person does not constitute unprofessional conduct or a breach of professional etiquette or ethics; and

(b) no liability for defamation is incurred by a person referred to in subsection (1) because of the accessing of any person's information or the provision of that information.".

6 Definitions

(1) In section 31(1) of the Principal Act, for the definition of ***hospital*** **substitute**—

"***hospital*** means the following—

(a) a public hospital within the meaning of the **Health Services Act 1988**;

(b) a denominational hospital within the meaning of that Act;

(c) a private hospital within the meaning of that Act;

(d) a day procedure centre within the meaning of that Act;".

(2) In section 31(1) of the Principal Act—

(a) **insert** the following definition—

"***reportable drug event*** has the meaning given in section 32A(2);";

(b) the definition of ***notification of drug-dependent person*** is **repealed**.

7 New section 32A inserted

After section 32 of the Principal Act **insert**—

"**32A Required notification to Secretary—drugs of dependence and Schedule 4, Schedule 8 and Schedule 9 poisons**

(1) A registered medical practitioner, a nurse practitioner or a pharmacist must notify the Secretary as soon as practicable of a reportable drug event.

Penalty: 100 penalty units.

(2) For the purposes of subsection (1), a ***reportable drug event*** is one or more of the following—

(a) for a pharmacist, being requested or directed to sell, supply or dispense any drug of dependence, Schedule 8 poison, Schedule 9 poison or Schedule 4 poison for any person—

(i) in greater quantities than appears to be reasonably necessary; or

(ii) more frequently than appears to be reasonably necessary;

(b) for a registered medical practitioner, having reason to believe that the practitioner's patient is a drug-dependent person in circumstances where—

(i) the patient requests or seeks prescription of a Schedule 9 poison; or

(ii) the registered medical practitioner intends to treat or is treating the patient with a Schedule 9 poison;

(c) any other event, or class of event, which the Secretary declares, under subsection (3), is a reportable drug event.

(3) For the purposes of this section, the Secretary, by notice published in the Government Gazette, may declare an event, or a class of event (including any event that occurs outside Victoria), to be a reportable drug event.".

8 Repeal of Subdivision 2 of Division 10 of Part II

Subdivision 2 of Division 10 of Part II of the Principal Act is **repealed**.

9 Section 34D substituted

For section 34D of the Principal Act **substitute**—

"**34D Exception to Schedule 8 permit requirement—specified circumstances**

Despite section 34C(1), a registered medical practitioner or a nurse practitioner is authorised to administer, supply or prescribe a Schedule 8 poison to or for a person who is not a drug-dependent person during a continuous period greater than 8 weeks without a Schedule 8 permit if the

administration, supply or prescription of that Schedule 8 poison is to treat that person in the circumstances specified by the Secretary in accordance with section 35A.".

10 Exception to Schedule 8 permit requirement—patients in prisons, aged care services and hospitals

In section 34F(c) of the Principal Act, after "hospital" **insert** "or a patient being treated in an emergency department of a hospital, for the period of that treatment in the hospital and a period not exceeding 7 days after that person's discharge from the hospital".

11 Section 35A substituted

For section 35A of the Principal Act **substitute**—

"**35A Secretary may specify circumstances for purposes of section 34D**

(1) The Secretary, by notice published in the Government Gazette, may specify circumstances in which a registered medical practitioner or a nurse practitioner is authorised to administer, supply or prescribe a Schedule 8 poison to or for a person who is not a drug-dependent person during a continuous period greater than 8 weeks without a Schedule 8 permit for the purposes of section 34D.

(2) The Secretary, by notice published in the Government Gazette, may amend or revoke a notice under subsection (1).".

12 Section 36 repealed

Section 36 of the Principal Act is **repealed**.

13 Inspections

After section 42(1)(b) of the Principal Act **insert**—

"(ba) access and examine or inspect records or information required to be included on the monitored poisons database;".

14 New section 42A inserted

After section 42 of the Principal Act **insert**—

"**42A Powers of authorized officers to access, use and disclose information on monitored poisons database**

Without limiting section 42, an authorized officer may access the monitored poisons database and use and disclose information on that database for the purposes of—

(a) implementing and monitoring the use of the database and the records and information in the database; and

(b) carrying out any other function or power as an authorized officer under this Act and the regulations.".

15 Evidentiary

(1) In section 119(f) of the Principal Act, for "stated." **substitute** "stated;".

(2) After section 119(f) of the Principal Act **insert**—

"(g) a certificate signed by the Secretary that a document is an extract from the monitored poisons database is prima facie evidence of the facts stated in that extract.".

16 Regulations

After section 129(1)(ca) of the Principal Act **insert**—

"(cb) prescribing, for the purposes of Division 9 of Part II, any matter necessary or required in relation to—

(i) the monitored poisons database; or

(ii) providing, accessing, using or disclosing information on the monitored poisons database to, or receiving and using information from, entities or health practitioners in Victoria or other States, the Territories or the Commonwealth; or

(iii) prescribing locations, geographical areas or regions in which Division 9, or specified provisions of that Division, are to operate, or not to operate, for any specified period of time or subject to specified conditions; or

(iv) any other matter under that Division;".

17 General regulations

After section 132(zce) of the Principal Act **insert**—

"(zcf) without limiting section 129, prescribing, for the purposes of Division 9 of Part II, any matter necessary or required in relation to—

(i) the monitored poisons database; or

(ii) providing, accessing, using or disclosing information on the monitored poisons database to, or receiving and using information from, entities or health practitioners in

Victoria or other States, the Territories or the Commonwealth; or

(iii) any other matter under that Division;".

18 New section 146 inserted

At the end of Part XII of the Principal Act **insert**—

"**146 Transitional provisions—Drugs, Poisons and Controlled Substances Amendment (Real-time Prescription Monitoring) Act 2017—staged implementation area**

(1) Despite the commencement of Division 9 of Part II, sections 30E, 30F, 30G and 30H do not apply in any staged implementation area for a period not exceeding 12 months after the commencement of that Division.

(2) Subject to subsection (3), the Minister, by order published in the Government Gazette, may—

(a) declare an area or more than one area to be a staged implementation area; and

(b) specify the period, not exceeding 12 months, during which the area is a staged implementation area.

(3) The Minister must not make an order under subsection (2) unless satisfied that—

(a) the monitored poisons database has not been made accessible by the Secretary in the area to which the order is to apply; and

(b) it is appropriate to disapply those sections for the period specified in the order.

(4) In this section ***staged implementation area*** means any location or area specified by the Minister in an order under subsection (2).

(5) This section is repealed on the second anniversary of its commencement.".

19 Repeal of amending Act

This Act is **repealed** on 1 July 2019.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

† *Minister's second reading speech—*

Legislative Assembly: 9 August 2017

Legislative Council: 7 September 2017

The long title for the Bill for this Act was "A Bill for an Act to amend the **Drugs, Poisons and Controlled Substances Act 1981** to provide for a database relating to the monitoring of the supply of certain poisons and controlled substances, to provide for use of the database and for other purposes."