

Version No. 079
Drugs, Poisons and Controlled Substances
Act 1981

No. 9719 of 1981

Version incorporating amendments as at 19 February 2007

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**Drugs, Poisons and Controlled Substances
Act 1981**

No. 9719 of 1981

Version incorporating amendments as at 19 February 2007

An Act to re-enact with Amendments the Law relating to Drugs,
Poisons and Controlled Substances, to amend the **Health Act
1958** and the **Crimes Act 1958** and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by
and with the advice and consent of the Legislative Council
and the Legislative Assembly of Victoria in this present
Parliament assembled and by the authority of the same as
follows (that is to say):

1. Short title and commencement

- (1) This Act may be cited as the **Drugs, Poisons and
Controlled Substances Act 1981**.
- (2) The several provisions of this Act shall come into
operation on a day or on the respective days to be
fixed by proclamation or successive proclamations
of the Governor in Council published in the
Government Gazette.

* * * * *

S. 1(3)
amended by
No. 10002
ss 5(2)(a), 6(2),
7(2), 11(2),
repealed by
No. 101/1986
s. 55(1)(a).

PART I—INTRODUCTORY AND TRANSITIONAL

2. Repeals and revocations

- (1) The Acts and enactments mentioned in the table to this sub-section, to the extent to which they are therein expressed to be repealed are hereby repealed accordingly.

TABLE

<i>Number of Act</i>	<i>Title of Act</i>	<i>Extent of Amendment or Repeal</i>
6889	Poisons Act 1962	So much as has not already been repealed.
7065	Statute Law Revision Act 1963	Items in Schedule relating to the Poisons Act 1962 .
7588	Poisons (Amendment) Act 1967	The whole.
7703	Abolition of Bailiwicks Act 1968	Item in Schedule relating to the Poisons Act 1962 .
8181	Statute Law Revision Act 1971	Item in Schedule relating to the Poisons Act 1962 .
8233	Poisons (Amendment) Act 1971	The whole.
8247	Crimes (Powers of Arrest) Act 1972	Item in Schedule relating to the Poisons Act 1962 .
8266	Poisons (Amendment) Act 1972	The whole.
8287	Dentists Act 1972	Section 45(2).
8424	Medical Practitioners (Amendment) Act 1973	Section 12.
8456	Poisons (Fees) Act 1973	The whole.

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<i>Number of Act</i>	<i>Title of Act</i>	<i>Extent of Amendment or Repeal</i>
8961	Poisons (Drugs of Addiction) Act 1977	The whole.
9023	Health Commission Act 1977	Item 16 of Part A of Schedule One.
9294	Poisons (Amendment) Act 1979	The whole.
9427	Statute Law Revision Act 1980	Item in Third Schedule relating to the Poisons Act 1962 .
9576	Crimes (Classification of Offences) Act 1981	Item in the Schedule relating to the Poisons Act 1962 .

- (2) All proclamations made under the **Poisons Act 1962** and amending any of the Schedules to that Act are revoked.

3. Savings

* * * * *

S. 3(1)
 repealed by
 No. 42/1993
 s. 34.

- (2) On and from the commencement of this section in any order, proclamation, regulation, licence, permit, warrant, authority, Order in Council or other instrument or document made, issued or given under the **Poisons Act 1962** before the commencement of this section and deemed to have been made, issued or given under this Act or continued in force under this Act—
- (a) a reference to a pharmaceutical chemist shall be deemed and taken to be a reference to a pharmacist;

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S. 3(2)(b)
repealed by
No. 42/1993
s. 34.

* * * * *

S. 3(3)
repealed by
No. 10087
s. 3(1)(Sch. 1
item 39).

* * * * *

S. 3(4)
amended by
No. 10087
s. 3(1)(Sch. 1
item 39).

(4) Subject to sub-section (2), nothing in this Act shall affect the continuity of status, operation or effect of any permit issued under section 11 of the **Poisons Act 1962** before the commencement of this section and in force immediately before that commencement, and that permit shall, on and from the date of commencement of this section, be deemed to have been issued under the provisions of this Act that corresponds to section 11 of the **Poisons Act 1962**.

S. 3(5)(6)
repealed by
No. 42/1993
s. 34.

* * * * *

- (7) Except as is in this Act expressly or by necessary implication provided—
- (a) all persons, things and circumstances appointed or created by or under the **Poisons Act 1962** or existing or continuing under that Act immediately before the commencement of this section shall under and subject to this Act continue to have the same status, operation and effect as they respectively would have had if that Act had not been repealed; and
 - (b) in particular and without limiting the generality of paragraph (a), the repeal of the **Poisons Act 1962** shall not disturb the continuity of status, operation or effect of

any order, proclamation, regulation, recommendation, certificate, proceeding, appointment, notification, writ, summons, award, judgment, decree, fee, suspension, revocation, renewal, enquiry, registration, document, panel, submission, remuneration, approval, disapproval, refusal, decision, report, investigation, requirement, forfeiture, direction, analysis, examination, liability or right made, effected, issued, granted, given, instituted, imposed, accrued, incurred or acquired or existing or continuing by or under the repealed Act before the commencement of this section.

* * * * *

S. 3(8)
repealed by
No. 42/1993
s. 34.

4. Definitions

(1) In this Act unless inconsistent with the context or subject-matter—

"aged care service" has the same meaning as it has in the Aged Care Act 1997 of the Commonwealth;

S. 4(1) def. of
"aged care
service"
inserted by
No. 17/2006
s. 3.

"authorised practitioner" means—

(a) a registered medical practitioner whose registration has been endorsed by the Medical Practitioners Board of Victoria under section 66 of the **Medical Practice Act 1994** as qualified to obtain, possess, use, sell or supply Schedule 1 poisons;

S. 4(1) def. of
"authorised
practitioner"
inserted by
No. 18/2000
s. 96(1),
amended by
Nos 11/2002
s. 3(Sch. 1
item 16.1),
80/2004
s. 150(Sch. 2
item 2.1(a)).

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(b) a pharmacist whose registration has been endorsed by the Pharmacy Board of Victoria under section 11 of the **Pharmacy Practice Act 2004** as qualified to obtain, possess, use, sell or supply Schedule 1 poisons;

S. 4(1) def. of "authorized officer" amended by Nos 10262 s. 4, 46/1998 s. 7(Sch. 1).

"authorized officer" means a person authorized by the Secretary under section 41 and any member of the police force;

S. 4(1) def. of "automatic machine" amended by No. 9/1998 s. 10(a)(i).

"automatic machine" means any machine or mechanical device used or capable of being used for the purpose of selling or supplying goods without the personal manipulation or attention of the seller or supplier or his employee or other agent at the time of the sale or supply;

S. 4(1) def. of "Chief General Manager" inserted by No. 10262 s. 4, substituted by No. 42/1993 s. 35(b), repealed by No. 46/1998 s. 7(Sch. 1).

* * * * *

S. 4(1) def. of "Commission" repealed by No. 10262 s. 4.

* * * * *

"Committee" means the Poisons Advisory Committee constituted under Division 3 of Part II;

"Commonwealth standard" means—

- (a) the document called "the Standard for the Uniform Scheduling of Drugs and Poisons", being recommendations of the Public Health Committee of the National Health and Medical Research Council, published by or by the authority of that Council; or
- (b) if the title, formulator or publisher of that document changes, a document prescribed to be the Commonwealth standard—

S. 4(1) def. of "Commonwealth standard" inserted by No. 42/1993 s. 35(c).

and, except in sections 12 to 12I, includes that standard as published or amended from time to time;

"compound" in relation to a poison or controlled substance means a medicament prepared in accordance with a formula and being a combination of—

- (a) a poison or controlled substance; and
- (b) any other substance or substances—

in such a way that the poison or controlled substance cannot be readily separated from the other substance or substances, and **"to compound"** and derivative expressions have corresponding meanings;

* * * * *

S. 4(1) def. of "dangerous poison" repealed by No. 42/1993 s. 35(a).

"dentist" means a registered dentist within the meaning of the **Dental Practice Act 1999**;

S. 4(1) def. of "dentist" substituted by No. 26/1999 s.107(Sch. item 2).

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S. 4(1) def. of
"drug of
addiction"
repealed by
No. 42/1993
s. 35(a).

* * * * *

S. 4(1) def. of
"drug of
dependence"
substituted by
No. 10002
s. 2(a),
amended by
No. 101/1986
s. 58(1)(a),
substituted by
No. 48/1997
s. 36(1)(a),
amended by
Nos 9/1998
s. 10(a)(ii),
74/2004
s. 6(1)(a)–(c).

"drug of dependence" means a substance that
is—

- (a) a drug—
 - (i) specified in column 1 of Part 1 of Schedule Eleven; or
 - (ii) included in a class of drug specified in column 1 of Part 1 of Schedule Eleven; or
- (b) any fresh or dried parts of any plant specified in column 1 of Part 2 of Schedule Eleven; or
- (c) a drug—
 - (i) specified in column 1 of Part 3 of Schedule Eleven; or
 - (ii) included in a class of drug specified in column 1 of Part 3 of Schedule Eleven—

and includes—

- (d) any form of a drug specified in column 1 of Part 1 or column 1 of Part 3 of Schedule Eleven, whether natural or synthetic, and the salts, derivatives and isomers of that drug and any salt of those derivatives and isomers; and

(e) any—

- (i) drug specified in, or drug included in a class of drug specified in column 1 of Part 1 or column 1 of Part 3 of Schedule Eleven, whether natural or synthetic; or
- (ii) salts, derivatives or isomers of a drug specified in column 1 of Part 1 or column 1 of Part 3 of Schedule Eleven; or
- (iii) salt of any derivative or isomer mentioned in sub-paragraph (ii)—
contained in or mixed with another substance;

* * * * *

S. 4(1) def. of "hazardous substance" repealed by No. 42/1993 s. 35(a).

"heroin" means diacetyl morphine (also known as diamorphine) and its salts;

* * * * *

S. 4(1) def. of "industrial and agricultural poison" repealed by No. 42/1993 s. 35(a).

"label"—

- (a) in section 27A, means a statement in writing on a container of a poison or controlled substance; and

(b) in any other case—

includes any tag brand mark or statement in writing on or attached to or used in connexion with any container or package

S. 4(1) def. of "label" amended by No. 42/1993 s. 35(d).

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containing any poison or controlled substance; and "labelled" has a corresponding interpretation;

S. 4(1) def. of "licence" amended by No. 10002 s. 5(2)(b).

"licence" means a valid and unexpired licence under any Part of this Act or under the regulations;

"licensee" means the person named in a licence;

"manufacture" includes the process of refining, manipulating and mixing any poison or controlled substance (including a poison or controlled substance in the raw state); and "manufacturer" has a corresponding interpretation;

S. 4(1) def. of "medical practitioner" repealed by No. 23/1994 s. 118(Sch. 1 item 17.1(a)).

* * * * *

S. 4(1) def. of "medicinal poison" repealed by No. 42/1993 s. 35(a).

* * * * *

S. 4(1) def. of "narcotic plant" repealed by No. 10002 s. 2(b).

* * * * *

S. 4(1) def. of "nurse practitioner" inserted by No. 94/2000 s. 48.

"nurse practitioner" means a nurse practitioner within the meaning of the **Nurses Act 1993** whose registration has been endorsed in accordance with section 8B of that Act as being qualified to obtain and have in her or his possession and to use, sell or supply Schedule 2, 3, 4 or 8 poisons that are prescribed under this Act;

"Order in Council" means an Order made by the Governor in Council published in the Government Gazette;

"pharmacist" means a registered pharmacist within the meaning of the **Pharmacy Practice Act 2004**;

S. 4(1) def. of "pharmacist" substituted by No. 80/2004 s. 150(Sch. 2 item 2.1(b)).

"poison or controlled substance" means—

- (a) a Schedule 1 poison; or
- (b) a Schedule 2 poison; or
- (c) a Schedule 3 poison; or
- (d) a Schedule 4 poison; or
- (e) a Schedule 5 poison; or
- (f) a Schedule 6 poison; or
- (g) a Schedule 7 poison; or
- (h) a Schedule 8 poison; or
- (i) a Schedule 9 poison; or
- (j) a regulated poison other than a Schedule 7 poison;

S. 4(1) def. of "poison or controlled substance" substituted by No. 42/1993 s. 35(e).

"Poisons Code" means the Poisons Code prepared under section 12 as amended or substituted and in force from time to time;

S. 4(1) def. of "Poisons Code" inserted by No. 42/1993 s. 35(f), amended by No. 68/1996 s. 9.

"Poisons List" means the Poisons List in the Poisons Code;

S. 4(1) def. of "Poisons List" inserted by No. 42/1993 s. 35(f).

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S. 4(1) def. of
"potent
substance"
repealed by
No. 42/1993
s. 35(a).

* * * * *

"prescribed" means prescribed by this Act or the regulations;

"proclamation" means proclamation of the Governor in Council;

S. 4(1) def. of
"registered
Chinese
herbal
dispenser"
inserted by
No. 18/2000
s. 96(1).

"registered Chinese herbal dispenser" means a registered Chinese herbal dispenser within the meaning of the **Chinese Medicine Registration Act 2000**;

S. 4(1) def. of
"registered
Chinese
medicine
practitioner"
inserted by
No. 18/2000
s. 96(1).

"registered Chinese medicine practitioner" means a registered Chinese medicine practitioner within the meaning of the **Chinese Medicine Registration Act 2000**;

S. 4(1) def. of
"registered
medical
practitioner"
inserted by
No. 23/1994
s. 118(Sch. 1
item 17.1(b)).

"registered medical practitioner" means a registered medical practitioner within the meaning of the **Medical Practice Act 1994**;

S. 4(1) def. of
"registered
optometrist"
inserted by
No. 56/1996
s. 100(1).

"registered optometrist" means a registered optometrist within the meaning of the **Optometrists Registration Act 1996**;

S. 4(1) def. of
"regulated
poison"
inserted by
No. 42/1993
s. 35(g).

"regulated poison" means—
(a) a Schedule 7 poison; or
(b) a substance included in the Poisons Code in the list of substances that are not for general sale by retail;

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"Regulations" means Regulations made under this Act or any corresponding previous enactment;

* * * * *
S. 4(1) def. of "restricted substance" repealed by No. 42/1993 s. 35(a).

"Schedule 1 Poison" means a substance in Schedule 1 in the Poisons List;

S. 4(1) def. of "Schedule 1 Poison" inserted by No. 42/1993 s. 35(h).

"Schedule 2 Poison" means a substance in Schedule 2 of the Commonwealth standard;

S. 4(1) def. of "Schedule 2 Poison" inserted by No. 42/1993 s. 35(h), amended by No. 74/2004 s. 6(2)(a).

"Schedule 3 Poison" means a substance in Schedule 3 of the Commonwealth standard;

S. 4(1) def. of "Schedule 3 Poison" inserted by No. 42/1993 s. 35(h), amended by No. 74/2004 s. 6(2)(b).

"Schedule 4 Poison" means a substance in Schedule 4 of the Commonwealth standard;

S. 4(1) def. of "Schedule 4 Poison" inserted by No. 42/1993 s. 35(h), amended by No. 74/2004 s. 6(2)(c).

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S. 4(1) def. of
"Schedule 5
Poison"
inserted by
No. 42/1993
s. 35(h),
amended by
No. 74/2004
s. 6(2)(d).

"Schedule 5 Poison" means a substance in
Schedule 5 of the Commonwealth standard;

S. 4(1) def. of
"Schedule 6
Poison"
inserted by
No. 42/1993
s. 35(h),
amended by
No. 74/2004
s. 6(2)(e).

"Schedule 6 Poison" means a substance in
Schedule 6 of the Commonwealth standard;

S. 4(1) def. of
"Schedule 7
Poison"
inserted by
No. 42/1993
s. 35(h),
amended by
No. 74/2004
s. 6(2)(f).

"Schedule 7 Poison" means a substance in
Schedule 7 of the Commonwealth standard;

S. 4(1) def. of
"Schedule 8
Poison"
inserted by
No. 42/1993
s. 35(h),
amended by
No. 74/2004
s. 6(2)(g).

"Schedule 8 Poison" means a substance in
Schedule 8 of the Commonwealth standard;

S. 4(1) def. of
"Schedule 9
Poison"
inserted by
No. 42/1993
s. 35(h),
amended by
No. 74/2004
s. 6(2)(h).

"Schedule 9 Poison" means a substance in
Schedule 9 of the Commonwealth standard;

S. 4(1) def. of
"Secretary"
inserted by
No. 46/1998
s. 7(Sch. 1).

"Secretary" has the same meaning as in the
Health Act 1958;

"sell" means sell, whether by—

- (a) wholesale or retail or otherwise, barter, exchange, deal in, agree to sell, offer or expose for sale, keep or have in possession for sale, send forward, deliver or receive for or for the purpose of sale or in the course of sale; and
- (b) authorize, direct, allow, cause, suffer, permit or attempt any of the acts or things mentioned in paragraph (a)—

and **"sale"** and each of the other derivatives of **"sell"** have corresponding meanings;

* * * * *

S. 4(1) def. of "special poison" repealed by No. 42/1993 s. 35(a).

"substance" includes material, preparation, extract and admixture;

S. 4(1) def. of "substance" amended by No. 48/1997 s. 36(1)(b).

"supply" means—

- (a) supply, provide, give or deliver, whether or not for fee, reward or consideration or in expectation of fee, reward or consideration;
- (b) agree or offer for the purpose of supply as defined in paragraph (a), expose for the purpose of supply as so defined, keep or have in possession for the purpose of supply as so defined, send forward or receive for the purpose of supply as so defined; and

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- (c) authorize, direct, cause, allow, suffer, permit or attempt to do any of the acts or things mentioned in paragraph (a) or paragraph (b)—

and the derivatives of "supply" shall have corresponding meanings;

S. 4(1) def. of "therapeutic use" inserted by No. 42/1993 s. 35(i).

"therapeutic use" means use in or in connection with—

- (a) the preventing, diagnosing, curing or alleviating of a disease, ailment, defect or injury in human beings or animals; or
- (b) influencing, inhibiting, or modifying of a physiological process in human beings or animals; or
- (c) the testing of the susceptibility of human beings or animals to a disease or ailment;

S. 4(1) def. of "veterinary practitioner" inserted by No. 58/1997 s. 96(Sch. item 3.1).

"veterinary practitioner" means a veterinary practitioner registered under the **Veterinary Practice Act 1997**;

S. 4(1) def. of "veterinary surgeon" repealed by No. 58/1997 s. 96(Sch. item 3.1).

* * * * *

"wholesale" means—

- (a) sale or supply for the purposes of resale;
- (b) sale or supply to a person for the purposes of supply by that person to another person; and
- (c) sale or supply for the purposes of use in connexion with a trade, business, profession or industry;

"wholesale dealer" means a person who sells or supplies by wholesale.

(2) A reference in this Act to **"manufacture"** does not include a reference to the process of refining, manipulating and mixing a poison or controlled substance, where the process is carried out by a pharmacist in the lawful practise of his profession in—

- (a) premises used for sale by retail and approved under section 26 of the **Pharmacy Practice Act 2004**; or S. 4(2)(a) substituted by No. 80/2004 s. 150(Sch. 2 item 2.2).
- (b) premises used for sale by retail in circumstances approved under section 31(1)(b) of the **Pharmacy Practice Act 2004**; or S. 4(2)(b) substituted by No. 80/2004 s. 150(Sch. 2 item 2.2).
- (c) a pharmacy department approved under section 26 of that Act— S. 4(2)(c) inserted by No. 80/2004 s. 150(Sch. 2 item 2.2).

in which the pharmacist manufactures preparations of poisons or controlled substances for sale or distribution only from those premises or from such other premises as may be owned and operated by that pharmacist selling by retail.

s. 4A

S. 4(3)
inserted by
No. 10002
s. 8(2),
repealed by
No. 48/1997
s. 36(2),
new s. 4(3)
inserted by
No. 18/2000
s. 96(2).

- (3) A reference in this Act to "**manufacture**" does not include a reference to the process of refining, manipulating and mixing a Schedule 1 poison, where the process is carried out by a registered Chinese medicine practitioner, a registered Chinese herbal dispenser or an authorised practitioner in the lawful practice of his or her profession for the purposes of use, sale or supply by that practitioner or dispenser.

S. 4A
inserted by
No. 54/1997
s. 4.

4A. Act does not apply to certain processed products

- (1) This Act does not apply to—
- (a) a processed fibre product made from cannabis if the product—
 - (i) does not contain more than 0.1 per cent of tetrahydrocannabinol; and
 - (ii) does not contain whole cannabis seeds; and
 - (iii) is in a form not suitable for ingestion, smoking or inhaling purposes; or
 - (b) a processed product made from cannabis seeds if the product—
 - (i) does not contain more than 0.001 per cent of tetrahydrocannabinol; and
 - (ii) does not contain whole cannabis seeds.
- (2) In this section—
- "cannabis"** means a plant or any part of a plant of the genus *Cannabis L*, whether fresh or dried;
- "processed"** means treated by mechanical, chemical or other artificial means but does not include—
- (a) harvesting; or
 - (b) the natural process of decay.

5. Meaning of "possession"

Without restricting the meaning of the word "**possession**", any substance shall be deemed for the purposes of this Act to be in the possession of a person so long as it is upon any land or premises occupied by him or is used, enjoyed or controlled by him in any place whatsoever, unless the person satisfies the court to the contrary.

S. 5
amended by
No. 10002
s. 3(a)(b).

6. Meaning of "corresponding law"

(1) In this Act the expression "**corresponding law**" means any law stated in a certificate purporting to be issued by or on behalf of the Government of—

- (a) any British possession (including any territory which is under Her Majesty's protection or which is governed under a trusteeship agreement by the Government of any part of Her Majesty's dominions) outside Victoria; or
- (b) any foreign country (including any protectorate thereof or any territory which is governed under a trusteeship agreement by the Government thereof)—

to be a law providing for the control and regulation in that possession or country of the manufacture sale use export or import of drugs in accordance with the provisions of—

- (i) the International Opium Convention signed at The Hague on the twenty-third day of January One thousand nine hundred and twelve; or
- (ii) the Convention which is referred to as the Geneva Convention in the preamble to the Act of the Parliament of the United Kingdom known as the Dangerous Drugs Act 1925 and as having been signed on behalf of His Majesty on the nineteenth day of February

s. 7

One thousand nine hundred and twenty-five;
or

(iii) the Single Convention on Narcotic Drugs,
1961 signed at New York on the thirtieth day
of March One thousand nine hundred and
sixty-one.

(2) Any statement in a certificate mentioned in sub-
section (1) as to the effect of the law mentioned in
the certificate or any statement in a certificate
mentioned in sub-section (1) that any facts
constitute an offence against that law shall be
conclusive.

7. Act not to derogate from provisions of certain other Acts

This Act shall be read and construed as being in aid and not in derogation of the **Health Act 1958**, the **Wildlife Act 1975**, the **Liquor Control Reform Act 1998**, the **Medical Practice Act 1994**, the **Pharmacy Practice Act 2004**, the **Veterinary Practice Act 1997**, the **Dentists Act 1972**, the **Alcoholics and Drug-dependent Persons Act 1968**, the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992** and the **Agricultural and Veterinary Chemicals (Victoria) Act 1994**.

8. References in other Acts

In any Act other than this Act and in any rule regulation or by-law made under any Act other than this Act—

* * * * *

S. 7
amended by
Nos 12/1987
s. 36(5)(a),
97/1987
s. 181(2),
23/1994
s. 118(Sch. 1
item 17.2),
46/1992
s. 78(1)
(a)(b) (as
amended by
No. 73/1994
s. 56(1)(a)),
74/2000
s. 3(Sch. 1
item 38.1
(a)(b)), 80/2004
s. 150(Sch. 2
item 2.3).

S. 8(a)
repealed by
No. 42/1993
s. 36.

(b) a reference to a dangerous drug within the meaning of the **Poisons Act 1958** which was by virtue of section 3(3) of the **Poisons Act 1962** deemed to have been a reference to a specified drug within the meaning of the **Poisons Act 1962** shall, notwithstanding anything in section 3(3) of that Act, be deemed to be a reference to a drug of dependence within the meaning of section 4 of this Act.

9. Revocation of proclamation etc.

(1) An Order in Council made for the purposes of this Act may be amended varied or revoked by Order in Council.

* * * * *

S. 9(2)
amended by
No. 10002
s. 16(a)(b),
repealed by
No. 42/1993
s. 37(a).

(3) A proclamation made for the purposes of this Act—

(a) shall be published in the Government Gazette; and

(b) may be amended varied or revoked by proclamation published in the Government Gazette.

* * * * *

S. 9(3)
amended by
No. 42/1993
s. 37(b).

S. 10
repealed by
No. 10002
s. 5(2)(c).

11. Act to bind the Crown

(1) This Act shall bind the Crown in right of the State of Victoria and, so far as the legislative power of the Parliament permits, shall also bind the Crown in all its other capacities.

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(2) Insofar as the Crown in any relevant capacity is bound by this Act, a reference in this Act to a person includes a reference to the Crown in that capacity.

S. 11(3)
repealed by
No. 101/1986
s. 55(1)(b).

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S. 11(4)
repealed by
No. 10002
s. 5(2)(c).

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PART II—POISONS AND CONTROLLED SUBSTANCES

Division 1—Classification

12. Poisons Code

S. 12
substituted by
No. 42/1993
s. 38.

- (1) The Minister may prepare a Poisons Code.
- (2) The Poisons Code must contain—
 - (a) a Poisons List; and
 - (b) any provisions (including appendices) of the Commonwealth standard concerning the labelling, storing, packaging or advertising of poisons or controlled substances that the Minister considers are in a form suitable for inclusion in the Code; and
 - (c) any provisions (including appendices) of the Commonwealth standard relating to the interpretation of provisions included in the Code under paragraph (a) or (b).

12A. The Poisons List

S. 12A
inserted by
No. 42/1993
s. 38.

- (1) The Poisons List may contain—
 - (a) a list of substances that are of plant, animal or mineral origin that in the public interest should be available only from a person registered under the **Chinese Medicine Registration Act 2000** or authorised under another Act, being Schedule 1 poisons; and

S. 12A(1)
amended by
No. 74/2004
s. 7(1)(a).

S. 12A(1)(a)
substituted by
No. 74/2004
s. 7(1)(b).

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S. 12A(1)(b)
amended by
No. 74/2004
s. 7(1)(c).

(b) a list of any of the substances in Schedule 1 of the Poisons List or Schedules 2 to 9 of the Commonwealth standard or the Appendices to the Commonwealth standard that are not for general sale by retail but can only be supplied to persons specifically authorised by this Act or the Regulations, or with a permit or warrant under this Act, to obtain them; and

S. 12A(1)(c)
amended by
No. 74/2004
s. 7(1)(d).

(c) a list of exemptions from Schedule 1 of the Poisons List or Schedules 2 to 9 of the Commonwealth standard.

S. 12A(2)
repealed by
No. 74/2004
s. 7(2).

* * * * *

(3) The Poisons List may specify—

S. 12A(3)(a)
repealed by
No. 74/2004
s. 7(3).

* * * * *

(b) any substance in the list of substances that are not for general sale by retail by incorporating by reference any provisions (including appendices) in the Commonwealth standard relating to that matter, and any provision of that standard relating to the interpretation of any part of the standard so incorporated; and

(c) any substances in the list of exemptions by incorporating by reference any provisions (including appendices) in the Commonwealth standard relating to substances that are wholly or partially exempted from the standard.

(4) In this Act, a reference to a particular substance in Schedule 1 of the Poisons List or to a particular substance in Schedules 2 to 9 of the Commonwealth standard excludes that substance to the extent that it is included in the list of exemptions under sub-section (1)(c).

S. 12A(4) substituted by No. 74/2004 s. 7(4).

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S. 12A Table amended by Nos 23/1994 s. 118(Sch. 1 item 17.3), 46/1998 s. 7(Sch. 1), 18/2000 s. 97, repealed by No. 74/2004 s. 7(5).

12B. Requirements for labelling and other matters

Without limiting section 12(2)(b), in determining for the purposes of that provision whether a provision of the Commonwealth standard is suitable for inclusion in the Poisons Code, the matters which the Minister may take into account include but are not limited to—

S. 12B inserted by No. 42/1993 s. 38.

- (a) whether the provision applies to the State or an individual;
- (b) whether the provision is in the form of a recommendation or suggestion, rather than an obligation;
- (c) whether the provision is in terms sufficiently certain to enable it to be understood and complied with.

12C. What if the Poisons Code conflicts with the Act or regulations?

If there is an inconsistency between the Poisons Code and a provision of this Act or the regulations, the provision of this Act or the regulations prevails.

S. 12C inserted by No. 42/1993 s. 38.

s. 12D

S. 12D
inserted by
No. 42/1993
s. 38.

12D. Incorporation of the Commonwealth standard

- (1) Any part of the Commonwealth standard to be incorporated by reference in the Poisons Code may be so incorporated as in force at a particular time or from time to time.
- (2) To the extent that it is incorporated by reference in the Poisons Code, the Commonwealth standard forms part of that Code.
- (3) Subject to sub-section (4), if any part of the Commonwealth standard, as in force from time to time, is incorporated by reference in the Poisons Code the part so incorporated must be taken to include that part as amended, varied, remade or superseded from time to time.
- (4) If part of the Commonwealth standard, as in force from time to time, is incorporated by reference in the Poisons Code and that part is amended, varied, remade or superseded, then until the date fixed under section 12K as the date on which the new matter takes effect the matter so incorporated must be taken not to have been so amended, varied, remade or superseded.

S. 12E
inserted by
No. 42/1993
s. 38.

12E. Amendment of Code

- (1) The Minister may at any time amend the Poisons Code—
 - (a) to correct—
 - (i) a clerical error or an error arising from an accidental slip or omission; or
 - (ii) an evident material mistake in the description of the Commonwealth standard or a provision of that standard; or

-
- (b) if the Code incorporates a part of the Commonwealth standard as in force at a particular date—
- (i) to change that date; or
 - (ii) to provide that the part of the Commonwealth standard is incorporated as in force from time to time; or
- (c) if part of the Commonwealth standard is incorporated as in force from time to time to provide that the part is incorporated as in force at a particular time; or
- (d) to alter the heading to Schedule 1 in the Poisons List so that it corresponds more closely with the heading of the appropriate Schedule in the Commonwealth standard; or
- (e) if a standard is prescribed for the purpose of paragraph (b) of the definition of "**Commonwealth standard**" in section 4(1), to give effect to that new standard.
- (1A) To ensure consistency with the Commonwealth standard, the Minister may at any time—
- (a) amend the Poisons Code; or
 - (b) revoke and substitute the Poisons Code.
- (1B) The Minister may, at any time, amend the Poisons Code to—
- (a) specify the substances to be included in Schedule 1 in the Poisons List; and
 - (b) amend, revoke, substitute or insert substances in Schedule 1 in the Poisons List.

S. 12E(1)(d)
amended by
No. 74/2004
s. 8(1).

S. 12E(1A)
inserted by
No. 68/1996
s. 10(1).

S. 12E(1B)
inserted by
No. 18/2000
s. 98.

s. 12F

S. 12E(1C)
inserted by
No. 74/2004
s. 8(2).

(1C) The Minister may, at any time, amend the Poisons Code to—

- (a) specify the substances to be included in the Poisons List in the list of substances that are not for general sale by retail but can only be supplied to persons specifically authorised by this Act or the Regulations, or with a permit or warrant under this Act, to obtain them; and
- (b) amend, revoke, substitute or insert substances in the list referred to in paragraph (a).

S. 12E(1D)
inserted by
No. 74/2004
s. 8(2).

(1D) The Minister may, at any time, amend the Poisons Code to—

- (a) specify the substances to be included in the Poisons List in the list of exemptions from Schedule 1 of the Poisons List or Schedules 2 to 9 of the Commonwealth standard; and
- (b) amend, revoke, substitute or insert substances in the list of exemptions referred to in paragraph (a).

S. 12E(2)
amended by
No. 68/1996
s. 10(2).

(2) The provisions of this Act applying to the preparation, notification, tabling and availability of the Poisons Code apply to an amendment to or revocation and substitution of that Code.

S. 12F
inserted by
No. 42/1993
s. 38.

12F. Status of the Poisons Code

S. 12F(1)
amended by
No. 9/1998
s. 10(b).

- (1) The Poisons Code is not a statutory rule for the purposes of the **Subordinate Legislation Act 1994**.
- (2) The Poisons Code is a subordinate instrument for the purposes of the **Interpretation of Legislation Act 1984** except section 32 of that Act.

* * * * *

S. 12F(3)
repealed by
No. 68/1996
s. 11.

12G. Procedure for preparation of the Poisons Code

S. 12G
inserted by
No. 42/1993
s. 38.

- (1) As soon as possible after preparing the Poisons Code, the Minister must publish notice of its preparation in a daily newspaper circulating generally throughout Victoria.
- (2) The Minister may do anything else he or she considers appropriate to bring the preparation of the Code to the attention of the public.
- (3) After complying with sub-sections (1) and (2) the Minister must publish notices of the preparation of the Code in the Government Gazette.
- (4) A notice under this section must—
 - (a) give a brief and general description of the content of the Code; and
 - (b) fix a date, being a date on or after the date of publication of the notice in the Government Gazette, on which the Code takes effect; and
 - (c) state where and when the Code is available for inspection by members of the public; and
 - (d) give details of where, when and from whom a copy of the Code can be obtained.

12H. Tabling before Parliament

S. 12H
inserted by
No. 42/1993
s. 38.

- (1) The Minister must cause a copy of the Poisons Code prepared under section 12 and of the notice of its preparation to be laid before the Legislative Council and the Legislative Assembly on or before the 7th sitting day of that House after the date of publication of that notice in the Government Gazette.

s. 12I

-
- (2) If the Poisons Code incorporates by reference a part of the Commonwealth standard, the Minister must include that incorporated material in the material tabled under sub-section (1).
- (3) If the Poisons Code incorporates by reference a part of the Commonwealth standard as in force from time to time, and that part is amended, varied, remade or superseded, the Minister must, as the case requires—
- (a) cause a copy of the amendment or variation;
or
 - (b) cause a copy of any matter superseding or remaking the earlier matter—

to be laid before the Legislative Council and the Legislative Assembly on or before the 7th sitting day of that House after the date of publication in the Government Gazette of notice that the amendment, variation, remaking or superseding of that matter has taken effect.

S. 12I
inserted by
No. 42/1993
s. 38.

12I. Availability of Code

S. 12I(1)
amended by
No. 46/1998
s. 7(Sch. 1)

- (1) The Minister must ensure that the documents listed in sub-section (2) are kept available at the principal office of the Secretary and at any other appropriate public office specified by the Minister by notice published in the Government Gazette, during normal office hours, for inspection by members of the public, without charge.

- (2) The documents are—
- (a) the Poisons Code as amended or substituted and in force from time to time;
 - (b) any matter incorporated by reference in the Poisons Code and, if the Code incorporates matter as in force from time to time, that matter as amended, varied, remade or superseded and in force for the time being;
 - (c) if any matter is incorporated in the Code as in force from time to time, a copy of each amendment or variation of the matter;
 - (d) a copy of any amendment to the Code;
 - (e) a copy of each notice published in the Government Gazette under section 12G.

S. 12I(2)(a)
amended by
No. 68/1996
s. 12.

12J. What if documents are not notified or made available?

S. 12J
inserted by
No. 42/1993
s. 38.

- (1) A failure to comply with section 12G, 12H or 12I does not affect the validity, operation or effect of the Poisons Code or any matter incorporated in it.
- (2) Despite sub-section (1), a person must not be convicted of an offence against this Act or the regulations, based on any provision in the Poisons Code if, at the time of the commission of the offence, there was, in relation to that provision, a contravention of section 12G or 12I.
- (3) Despite sub-section (1), a person is not prejudicially affected or made subject to any liability under this Act or the regulations based on any provision in the Poisons Code, if it is proved that, at the relevant time, in relation to that provision there was a contravention of section 12G or 12I.

s. 12K

S. 12K
inserted by
No. 42/1993
s. 38.

12K. Commencement of Poisons Code and incorporated materials

- (1) The Poisons Code or an amendment to that Code takes effect on the date fixed for that purpose by notice under section 12G.
- (2) If the Poisons Code incorporates by reference a part of the Commonwealth standard as in force from time to time, and that part is amended, varied, superseded or remade, the amendment, variation or superseding or remaking material takes effect on the date fixed for that purpose by notice published in the Government Gazette.
- (3) On the date of commencement of material incorporated by reference in the Poisons Code that remakes or supersedes any earlier matter, that earlier matter ceases to have effect to the extent that it is part of the Code.

S. 12L
inserted by
No. 42/1993
s. 38,
amended by
No. 46/1998
s. 7(Sch. 1).

12L. Evidence

A document certified in writing purporting to be signed by the Secretary and purporting to be—

- (a) a copy of or an extract from the Poisons Code; or
- (b) a copy of or an extract from any matter incorporated by reference in the Poisons Code; or
- (c) a copy of an amendment of the Poisons Code; or
- (d) a copy of or an extract from any matter amending, varying, remaking or superseding any matter incorporated by reference in the Poisons Code—

is evidence and, in the absence of evidence to the contrary, is proof of the matters stated in the document.

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S. 12M
inserted by
No. 42/1993
s. 38,
repealed by
No. 74/2004
s. 9.

Division 2—Authorized Persons

**13. Persons authorized to have possession etc. of poisons
or controlled substances**

(1) Subject to this Act and the regulations—

- (a) any registered medical practitioner, pharmacist, veterinary practitioner or dentist is hereby authorized to obtain and have in his possession and to use, sell or supply any poison or controlled substance (other than a Schedule 1 poison) or drug of dependence in the lawful practice of his profession as a registered medical practitioner, pharmacist, veterinary practitioner or dentist (as the case may be); and S. 13(1)(a)
amended by
Nos 10002
s. 4(a)(b),
23/1994
s. 118(Sch. 1
item 17.4),
58/1997
s. 96(Sch.
item 3.2),
18/2000
s. 99(1).
- (b) any authorized officer is hereby authorized to obtain and have in his possession and to sell or supply any poison or controlled substance or drug of dependence in the exercise or performance of any power, function or duty conferred or imposed upon him by this Act or the regulations; and S. 13(1)(b)
amended by
Nos 10002
s. 4(b),
56/1996
s. 100(2).
- (ba) any nurse practitioner is hereby authorised to obtain and have in his or her possession and to use, sell or supply any Schedule 2, 3, 4 or 8 poison prescribed in the regulations in relation to the category of nurse practitioner specified in the endorsement of that nurse practitioner's registration in the lawful practice of his or her profession as a nurse S. 13(1)(ba)
inserted by
No. 94/2000
s. 49(1).

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s. 13

practitioner in the category for which he or she is endorsed; and

S. 13(1)(c)
inserted by
No. 56/1996
s. 100(2),
amended by
No. 18/2000
s. 99(2).

- (c) any registered optometrist whose registration is endorsed under section 11 of the **Optometrists Registration Act 1996** is hereby authorised to obtain and have in his or her possession and to use, sell or supply any Schedule 4 poison specified in the endorsement in the lawful practice of his or her profession as a registered optometrist; and

S. 13(1)(d)
inserted by
No. 18/2000
s. 99(2).

- (d) any registered Chinese medicine practitioner whose registration is endorsed under section 8 of the **Chinese Medicine Registration Act 2000** is hereby authorised to obtain and have in his or her possession and to use, sell or supply any Schedule 1 poison in accordance with the endorsement in the lawful practice of his or her profession as a registered Chinese medicine practitioner; and

S. 13(1)(e)
inserted by
No. 18/2000
s. 99(2).

- (e) any registered Chinese herbal dispenser whose registration is endorsed under section 8 of the **Chinese Medicine Registration Act 2000** is hereby authorised to obtain and have in his or her possession and to use, sell or supply any Schedule 1 poison in accordance with the endorsement in the lawful practice of his or her profession as a registered Chinese herbal dispenser.

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- (2) Sub-section (1)(a) or (b) shall not be construed as authorizing a registered medical practitioner, veterinary practitioner or dentist to sell or supply any poison or controlled substance (other than a Schedule 5 poison, a Schedule 6 poison or a Schedule 7 poison that is not a Schedule 7 poison that is included in the Poisons Code in the list of substances that are not for general sale by retail) or drug of dependence by retail in an open shop unless he is licensed under this Act to do so.
- (2AA) Sub-section (1)(ba) shall not be construed as authorising a nurse practitioner referred to in that paragraph to sell or supply any Schedule 2, 3, 4 or 8 poison by retail in an open shop unless the nurse practitioner is licensed under this Act to do so.
- (2A) Sub-section (1)(c) shall not be construed as authorising a registered optometrist referred to in that paragraph to sell or supply any Schedule 4 poison by retail in an open shop unless the optometrist is licensed under this Act to do so.
- (2B) Sub-section (1)(c) applies, despite anything to the contrary in the heading to Schedule 4 contained in the Commonwealth standard.
- (3) Where a pharmacist sells or supplies by wholesale to another pharmacist a poison or controlled substance or drug of dependence for use by the other pharmacist in the lawful practice of his profession as a pharmacist, the sale or supply shall for the purposes of sub-section (1) be regarded as a sale or supply in the lawful practice of his profession by the first-mentioned pharmacist.
- S. 13(2) amended by Nos 10002 s. 4(b), 42/1993 s. 39(1), 23/1994 s. 118(Sch. 1 item 17.4), 58/1997 s. 96(Sch. item 3.2), 56/1996 s. 100(3), 9/1998 s. 5(1).
- S. 13(2AA) inserted by No. 94/2000 s. 49(2).
- S. 13(2A) inserted by No. 56/1996 s. 100(4).
- S. 13(2B) inserted by No. 56/1996 s. 100(4), amended by No. 74/2004 s. 10(a)-(c).
- S. 13(3) amended by No. 10002 s. 4(b).

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S. 13(3A)
inserted by
No. 18/2000
s. 99(3).

- (3A) If a registered Chinese herbal dispenser sells or supplies by wholesale a Schedule 1 poison to—
- (a) any other registered Chinese herbal dispenser in accordance with an endorsement of that other dispenser's registration under section 8 of the **Chinese Medicine Registration Act 2000**; or
 - (b) an authorised practitioner in accordance with an endorsement of the practitioner's registration—

for use by the other registered Chinese herbal dispenser or the authorised practitioner in the lawful practice of his or her profession as a registered Chinese herbal dispenser or as an authorised practitioner, the sale or supply shall for the purposes of sub-section (1) be regarded as a sale or supply in the lawful practice of his or her profession by the first-mentioned registered Chinese herbal dispenser.

S. 13(4)
inserted by
No. 42/1993
s. 39(2),
substituted by
No. 9/1998
s. 5(2).

- (4) A person is authorised to sell or supply by retail, subject to and in accordance with the regulations—
- (a) any Schedule 5 poison; or
 - (b) any Schedule 6 poison; or
 - (c) any Schedule 7 poison that is not a Schedule 7 poison that is included in the Poisons Code in the list of substances that are not for general sale by retail.

S. 13(4A)
inserted by
No. 74/2004
s. 3.

- (4A) A person is authorised to sell or supply by wholesale, subject to and in accordance with the regulations—
- (a) any Schedule 5 poison; or
 - (b) any Schedule 6 poison.

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- (4B) A person is authorised to manufacture and sell or supply by retail, subject to and in accordance with the regulations—
- (a) any Schedule 5 poison; or
- (b) any Schedule 6 poison.
- (4C) A person is authorised to manufacture and sell or supply by wholesale, subject to and in accordance with the regulations—
- (a) any Schedule 5 poison; or
- (b) any Schedule 6 poison.
- (5) Despite sub-section (1)(a), a registered medical practitioner or pharmacist who is—
- (a) also registered as a Chinese medicine practitioner or Chinese herbal dispenser with an endorsement with respect to Schedule 1 poisons is authorised to obtain and have in his or her possession and to use, sell or supply Schedule 1 poisons in accordance with that endorsement in the lawful practice of his or her profession as a registered medical practitioner or pharmacist; or
- (b) an authorised practitioner acting in accordance with an endorsement of his or her registration, is authorised to obtain and have in his or her possession and to use, sell or supply Schedule 1 poisons in the lawful practice of his or her profession as a registered medical practitioner or pharmacist.
- (6) A person who is approved to carry on a pharmacy business or pharmacy depot under Part 3 of the **Pharmacy Practice Act 2004** is authorized to sell or supply by retail, subject to and in accordance with this Act and regulations, any poison or controlled substance or drug of dependence if the sale or supply is under the supervision of a
- S. 13(4B) inserted by No. 74/2004 s. 3.
- S. 13(4C) inserted by No. 74/2004 s. 3.
- S. 13(5) inserted by No. 18/2000 s. 99(4).
- S. 13(6) inserted by No. 80/2004 s. 150(Sch. 2 item 2.4).
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registered pharmacist who is employed or engaged by that person to provide pharmacy services for that pharmacy business or pharmacy depot.

S. 13A
inserted by
No. 18/2000
s. 100.

13A. Chinese medicine practitioners and herbal dispensers must establish therapeutic need

- (1) A registered Chinese medicine practitioner or an authorised practitioner must not administer, prescribe, sell or supply a Schedule 1 poison unless—
 - (a) the poison is for the therapeutic use of a person who has consulted the practitioner; and
 - (b) the practitioner has taken all reasonable steps to ensure that the person has a therapeutic need for the Schedule 1 poison.

Penalty: 100 penalty units.

- (2) A registered Chinese herbal dispenser or an authorised practitioner must not sell or supply a Schedule 1 poison to a person unless—
 - (a) the sale or supply is on production of and in accordance with the original written prescription or order of a registered Chinese medicine practitioner or an authorised practitioner; and
 - (b) the dispenser or authorised practitioner has taken reasonable steps to ensure that the prescription or order is in accordance with any endorsement of the registration of the registered Chinese medicine practitioner or that authorised practitioner.

Penalty: 100 penalty units.

14. Special provisions as to medical practitioners

- (1) Where pursuant to the **Medical Practice Act 1994** the Medical Practitioners Board of Victoria has imposed in relation to the practice of a registered medical practitioner conditions, limitations or restrictions including a condition, limitation or restriction prohibiting the prescription of any drug or substance or class of drugs or substances, being a poison or controlled substance or drug of dependence or poisons or controlled substances or drugs of dependence that registered medical practitioner for the purpose of this Act and the regulations shall be deemed to be not authorized to obtain and have in his possession or to use sell or supply in the lawful practice of his profession the poison or controlled substance or drug of dependence or the poisons or controlled substances or drugs of dependence to which the condition, limitation or restriction relates.
- (2) If the Chinese Medicine Registration Board of Victoria established under the **Chinese Medicine Registration Act 2000** has imposed in relation to the practice of a practitioner registered under that Act a condition, limitation or restriction prohibiting the prescription, ordering or dispensing of any Schedule 1 poison, that registered practitioner for the purposes of this Act and the regulations is deemed to be not authorised to obtain and have in his or her possession or to use sell or supply in the lawful practice of his or her profession the Schedule 1 poison to which the condition, limitation or restriction relates.
- (3) If the Nurses Board of Victoria established under the **Nurses Act 1993** has imposed in relation to the practice of a nurse practitioner conditions, limitations or restrictions including a condition, limitation or restriction prohibiting the prescription of any drug or substance or class of

S. 14 amended by Nos 10002 s. 4(a)–(c), 23/1994 s. 118(Sch. 1 item 17.5(a)–(d)), 18/2000 s. 101 (ILA s. 39B(1)).

S. 14(2) inserted by No. 18/2000 s. 101.

S. 14(3) inserted by No. 67/2003 s. 3.

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drugs or substances, being a poison or controlled substance or drug of dependence or poisons or controlled substances or drugs of dependence that nurse practitioner for the purposes of this Act and the regulations is deemed to be not authorized to obtain and have in his or her possession or to use sell or supply in the lawful practice of his or her profession the poison or controlled substance or drug of dependence or the poisons or controlled substances or drugs of dependence to which the condition, limitation or restriction relates.

Division 3—Poisons Advisory Committee

15. Establishment and membership of Poisons Advisory Committee

- (1) There is established a committee to be called the "Poisons Advisory Committee".
- (2) The Committee consists of up to 9 members appointed by the Minister of whom—

S. 15
amended by
Nos 10002
ss 4(d), 16(c),
10262 s. 4,
42/1993
s. 40(1)(a)(b),
23/1994
s. 118(Sch. 1
items
17.6(a)–(d),
17.7), 46/1992
s. 78(2)(a) (as
amended by
No. 73/1994
s. 56(1)(b))(b)
(as amended
by No.
73/1994
s. 56(1)(c)),
substituted by
No. 68/1996
s. 13.

S. 15(2)(a)
amended by
No. 46/1998
s. 7(Sch. 1).

- (a) one is to be the Secretary or his or her nominee who is also to be the chairperson;
- (b) 2 are to be registered medical practitioners of whom—
 - (i) one must have expertise in clinical pharmacology; and

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- (ii) one must have expertise in the treatment of drug dependence;
 - (c) 2 are to be pharmacists of whom—
 - (i) one must have expertise in community pharmacy; and
 - (ii) one must have expertise in hospital pharmacy;
 - (d) 2 are to be persons with expertise in the pharmaceutical industry of whom—
 - (i) one is to be from the manufacturing sector of that industry; and
 - (ii) one is to be from the wholesaling sector of that industry;
 - (e) one is to be a person with expertise in the manufacturing and distribution of poisons for non-therapeutic use;
 - (f) one is to be the nominee of the Chief Commissioner of Police.
- (3) If the Chief Commissioner of Police fails to nominate a person under sub-section (2)(f) within 1 month of receiving a request in writing from the Minister to do so, the Minister may appoint a person the Minister considers suitable to that office.

15A. Terms and conditions of appointment

- (1) A member of the Committee holds office for a period not exceeding 3 years and is eligible for reappointment.
- (2) The instrument of appointment of a member of the Committee may specify terms and conditions of appointment.

S. 15A
inserted by
No. 68/1996
s. 13.

s. 15B

S. 15A(3)
amended by
No. 46/1998
s. 7(Sch. 1).

(3) A member of the Committee, other than a member who is an employee of the public service, is entitled to receive the fees, travelling and other allowances from time to time fixed by the Minister in respect of that member.

S. 15A(4)
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 60.1),
80/2006
s. 26(Sch.
item 29).

(4) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member of the Committee in respect of the office of member.

S. 15B
inserted by
No. 68/1996
s. 13.

15B. Resignation and removal

- (1) A member of the Committee may resign that office by writing signed by the member and addressed to the Minister.
- (2) The Minister may at any time remove a member of the Committee from office.

S. 15C
inserted by
No. 68/1996
s. 13.

15C. Vacancies

- (1) The Minister may fill a vacancy in the office of member of the Committee however arising.
- (2) An act or decision of the Committee is not invalid only because of—
 - (a) a vacancy in its membership; or
 - (b) a defect or irregularity in the appointment of any of its members.

S. 15D
inserted by
No. 68/1996
s. 13.

15D. Quorum and proceedings

- (1) A quorum of the Committee consists of at least 5 members other than co-opted members of the Committee.
- (2) The chairperson must preside at a meeting of the Committee at which he or she is present.

- (3) If the chairperson is not present at a meeting, the members present may elect a member to preside at the meeting.
- (4) The person presiding at a meeting has a deliberative vote and, in the case of an equality of votes, a second or casting vote.
- (5) The Committee must meet at least 3 times each year at the places and times appointed by the Minister or the chairperson.
- (6) Subject to this Act, the Committee may regulate its own proceedings.

15E. Co-opted members

- (1) To assist in the consideration of a particular matter or issue, the Committee may co-opt any person as a member of the Committee.
- (2) A person co-opted under this section—
 - (a) may only attend meetings relating to and vote on the matters or issues in relation to which he or she is co-opted; and
 - (b) may be removed at any time by the Committee.
- (3) A person co-opted as a member of the Committee other than a person who is an employee of the public service, is entitled to receive the fees, travelling and other allowances from time to time fixed by the Minister.

S. 15E
inserted by
No. 68/1996
s. 13.

S. 15E(3)
amended by
No. 46/1998
s. 7(Sch. 1).

16. Sub-committees

- (1) The Committee may establish any sub-committees that it thinks necessary for the purposes of this Act.
- (2) The Committee may co-opt any person with expertise in any relevant field for the purposes of a sub-committee.

S. 16
amended by
Nos 10262
s. 4, 42/1993
s. 40(2)(a)(b),
substituted by
No. 68/1996
s. 13.

s. 17

- (3) A person co-opted under this section—
- (a) may only attend meetings relating to and vote on the matters or issues in relation to which he or she is co-opted; and
 - (b) may be removed at any time by the Committee.
- (4) A person co-opted to a sub-committee other than a person who is an employee of the public service, is entitled to receive the fees, travelling and other allowances from time to time fixed by the Minister.

S. 16(4)
amended by
No. 46/1998
s. 7(Sch. 1).

17. Functions of the Committee

- (1) The functions of the Committee are—
- (a) to advise the Minister and the Secretary, having regard to the interests of protecting and promoting public health, on—
 - (i) the availability and presentation of drugs and poisons; and
 - (ii) responses to issues relating to drugs and poisons; and
 - (b) to advise the Minister or the Secretary on any matter referred to the Committee by the Minister or the Secretary, as the case may be.
- (2) The Committee must consult with a nominee of the Minister administering the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992** on any issue relating to agricultural and veterinary chemicals.

S. 17
amended by
Nos 10262
s. 4, 12/1994
s. 8,
substituted by
No. 68/1996
s. 13.

S. 17(1)(a)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 17(1)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

18. Officers of committee

A secretary to the committee and any employees that it is necessary and expedient to employ for carrying out the objects and purposes of this Act may be employed under Part 3 of the **Public Administration Act 2004**.

S. 18 amended by No. 68/1996 s. 14, substituted by No. 46/1998 s. 7(Sch. 1), amended by No. 108/2004 s. 117(1) (Sch. 3 item 60.2).

Division 4—Licences, permits and warrants¹

Pt 2 Div. 4 (Heading and s. 19) amended by Nos 10002 s. 16(d)–(g), 10262 s. 4, 42/1993 s. 41(1)(a)–(d)(2)(a)–(c), substituted as Pt 2 Div. 4 (Heading and ss 19–22C) by No. 12/1994 s. 9.

18A. Definitions

In this Division—

"licence" means a licence issued under this Division;

"permit" means a permit issued under this Division;

"warrant" means a warrant issued under this Division.

S. 18A inserted by No. 74/2004 s. 11.

s. 19

S. 19
substituted by
No. 12/1994
s. 9.

19. Issue of licences, permits and warrants

S. 19(1)
amended by
No. 46/1998
s. 7(Sch. 1).

(1) A person may apply in writing to the Secretary for the issue of a licence, permit or warrant.

(2) An application for a licence, permit or warrant must be accompanied by the appropriate prescribed fee.

S. 19(3)
amended by
No. 46/1998
s. 7(Sch. 1).

(3) Subject to this Act and the regulations, the Secretary may, in his or her discretion—

(a) refuse to issue a licence, permit or warrant;
or

S. 19(3)(b)
amended by
No. 46/1998
s. 7(Sch.).

(b) issue to a fit and proper person a licence, permit or warrant subject to such terms, conditions, limitations and restrictions as the Secretary may determine.

S. 19(4)
amended by
No. 74/2004
s. 12.

(4) A licence, permit or warrant under this Division relates only to the premises described in it, and no licence, permit or warrant relating to premises in more than one locality can be issued.

S. 19(5)
amended by
No. 46/1998
s. 7(Sch. 1).

(5) A licence, permit or warrant cannot be issued unless the Secretary is satisfied that the applicant's premises are suitable, sanitary and adequately equipped for the manufacture, sale, supply or use of the poisons or controlled substances to which the licence, permit or warrant relates.

New s. 20
inserted by
No. 12/1994
s. 9.

20. What a licence, permit or warrant can authorise

(1) A licence authorises a person to do all or any of the following—

(a) manufacture and sell or supply by wholesale any Schedule 8 poison or Schedule 9 poison other than heroin;

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- (b) manufacture and sell or supply by wholesale any Schedule 2 poison, Schedule 3 poison, Schedule 4 poison or Schedule 7 poison; **S. 20(1)(b) substituted by No. 74/2004 s. 4(1).**
- (c) manufacture and sell or supply by retail any Schedule 7 poison (other than a Schedule 7 poison included in the Poisons Code in the list of substances that are not for general sale by retail); **S. 20(1)(c) amended by No. 74/2004 s. 4(2).**
- (d) sell or supply by wholesale any Schedule 8 poison or Schedule 9 poison other than heroin;
- (e) sell or supply by wholesale any Schedule 2 poison, Schedule 3 poison, Schedule 4 poison or Schedule 7 poison; **S. 20(1)(e) substituted by No. 74/2004 s. 4(3).**
- (f) sell or supply by retail any Schedule 2 poison; **S. 20(1)(f) substituted by No. 9/1998 s. 4(1)(a).**

* * * * * **S. 20(1)(g) repealed by No. 9/1998 s. 4(1)(b).**

* * * * * **S. 20(2) repealed by No. 9/1998 s. 4(2).**

(3) A permit authorises a person to purchase or otherwise obtain poisons or controlled substances for use for industrial, educational, advisory or research purposes or for the provision of health services.

(3A) A person who is the holder of a permit issued under sub-section (3) authorising the person to purchase or otherwise obtain poisons or controlled substances for the provision of health services is authorised to sell or supply any poison or **S. 20(3A) inserted by No. 74/2004 s. 13.**

controlled substance to which that permit relates without obtaining a further licence to do so under this section if that sale or supply—

- (a) is carried out by a person who is authorised under section 13(1)(a), (ba) or (c) to sell or supply that poison or controlled substance in the lawful practice of his or her profession; and
 - (b) is for the purposes of the provision of health services.
- (4) A warrant authorises a person to purchase or otherwise obtain or use any regulated poison in accordance with the warrant.
- (5) A person who sells or supplies by wholesale or manufactures and sells or supplies by wholesale any Schedule 1 poison is authorised to do so without obtaining a licence under this section.

S. 20(5)
inserted by
No. 18/2000
s. 102.

New s. 21
inserted by
No. 12/1994
s. 9.

21. Duration of a licence, permit or warrant

- (1) A permit or a licence lasts 12 months from its date of issue.
- (2) Despite sub-section (1), a licence or permit may be issued for a shorter period to enable that licence or permit and other licences or permits held by that person to expire simultaneously.
- (3) A warrant lasts until it is cancelled or suspended.

New s. 22
inserted by
No. 12/1994
s. 9.

22. Renewal of licences and permits

- (1) An application for renewal—
 - (a) may be made up to one month before the expiry of the current licence or permit; and
 - (b) must be in writing and accompanied by the appropriate prescribed fee.

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- (2) Subject to this Act and the regulations, on application under sub-section (1), the Secretary, in his or her discretion, may renew a licence or permit.
 - (3) A renewed licence or permit lasts for 12 months from the date of expiry of the previous licence or permit.
 - (4) Despite sub-section (3), a licence or permit may be renewed for a shorter period to enable that licence or permit and other licences or permits held by that person to expire simultaneously.

S. 22(2)
amended by
No. 46/1998
s. 7(Sch. 1).

22A. Amendment

S. 22A
inserted by
No. 12/1994
s. 9.

- (1) Applications for amendment of licences, permits or warrants must be accompanied by the appropriate prescribed fee.
- (2) The Secretary may, in his or her discretion, amend any particulars, including the terms, conditions, limitations or restrictions of a licence, permit or warrant if the amendment is—
 - (a) in the interests of health and safety; or
 - (b) in the public interest; or
 - (c) at the request of the holder of the licence, permit or warrant.

S. 22A(2)
amended by
No. 46/1998
s. 7(Sch. 1).

22B. Inspection

Before issuing, renewing or amending a licence, permit or warrant the Secretary may require the premises to which the licence, permit or warrant relates to be inspected under this Act.

S. 22B
inserted by
No. 12/1994
s. 9,
amended by
No. 46/1998
s. 7(Sch. 1).

s. 22C

22C. Suspension or cancellation

S. 22C
inserted by
No. 12/1994
s. 9.

S. 22C(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) The Secretary may suspend or cancel a licence, permit or warrant if—
- (a) the holder has not complied with the terms, conditions, limitations or restrictions of the licence, permit or warrant; or
 - (b) the holder proves not to be a fit and proper person; or
 - (c) the holder has been convicted of an offence against this Act or the regulations; or
 - (d) the holder requests suspension or cancellation; or
 - (e) the holder ceases to carry on business at the premises.

S. 22C(2)
amended by
No. 46/1998
s. 7(Sch. 1).

- (2) If a licence, permit or warrant is suspended or cancelled under sub-section (1), it ceases to have effect and any document issued to the former holder of the licence, permit or warrant must be surrendered to the Secretary on demand.

Pt 2 Div. 5
(Heading and
s. 20)
amended by
Nos 10262
s. 4, 42/1993
s. 42(1)(2),
repealed by
No. 12/1994
s. 9.

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Pt 2 Div. 6
(Heading and
s. 21)
amended by
Nos 10002
s. 16(h), 10262
s. 4,
repealed by
No. 12/1994
s. 9.

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Pt 2 Div. 7
(Heading and
s. 22)
amended by
Nos 10002
s. 16(i)(i)–(iii),
10262 s. 4,
42/1993
s. 43(a)–(d),
repealed by
No. 12/1994
s. 9.

Division 8—Manufacture and Sale of Poisons or Controlled Substances

23. Manufacture, sale and supply of poisons or controlled substances by wholesale

S. 23
amended by
No. 10002
s. 16(j),
substituted by
No. 12/1994
s. 11.

- (1) A person must not manufacture and sell or supply by wholesale any poison or controlled substance unless he or she is authorised by or licensed under this Act to do so.
- (2) A person must not sell or supply by wholesale any poison or controlled substance unless he or she is authorised by or licensed under this Act to do so.

24. Wholesaling of certain poisons

S. 24
amended by
No. 10002
s. 16(k),
substituted by
No. 42/1993
s. 44,
amended by
Nos 12/1994
s. 12, 18/2000
s. 103.

A person must not sell or supply by wholesale any poison or controlled substance (other than a Schedule 1 poison, a Schedule 5 poison, a Schedule 6 poison or a Schedule 7 poison that is not a Schedule 7 poison that is included in the Poisons Code in the list of substances that are not for general sale by retail) to any person who is not expressly authorised by this Act or the Regulations, or by a licence, permit or warrant under this Act, to obtain that substance by wholesale.

s. 26

S. 25
amended by
No. 10002
s. 16(l) (as
amended by
No. 25/1990
s. 4(2)(b)),
repealed by
No. 42/1993
s. 45(1).

* * * * *

S. 26
amended by
Nos 10002
s. 16(m),
42/1993
s. 45(2),
substituted by
No. 12/1994
s. 13.

26. Retailing of poisons or controlled substances

S. 26(1)
amended by
No. 9/1998
s. 5(3).

- (1) A wholesale dealer must not sell or supply by retail any poison or controlled substance (other than a Schedule 5 poison, a Schedule 6 poison or a Schedule 7 poison that is not a Schedule 7 poison that is included in the Poisons Code in the list of substances that are not for general sale by retail) unless he or she is authorised by or licensed under this Act to do so.
- (2) A person must not manufacture and sell or supply by retail any poison or controlled substance unless he or she is authorised by or licensed under this Act to do so.

S. 27
amended by
Nos 10002
s. 16(m),
42/1993
s. 45(3),
9/1998 s. 5(4).

27. Sale of poisons or controlled substances by persons other than manufacturers etc.

A person (not being a manufacturer or wholesale dealer) shall not sell or supply any poison or controlled substance (other than a Schedule 5 poison, a Schedule 6 poison or a Schedule 7 poison that is not a Schedule 7 poison that is included in the Poisons Code in the list of substances that are not for general sale by retail) unless he is authorized by or licensed under this Act so to do.

27A. Offences concerning labelling and other matters

S. 27A
inserted by
No. 42/1993
s. 46.

(1) A person must not sell or supply a poison or controlled substance with a label that does not comply with the requirements of—

S. 27A(1)
substituted by
No. 74/2004
s. 14(1).

(a) in the case of a Schedule 1 poison, the Poisons Code; or

(b) in the case of any other poison or controlled substance, the Commonwealth standard.

Penalty: 20 penalty units.

(1A) A person must not sell or supply a poison or controlled substance in a container that does not comply with the requirements of—

S. 27A(1A)
inserted by
No. 74/2004
s. 14(1).

(a) in the case of a Schedule 1 poison, the Poisons Code; or

(b) in the case of any other poison or controlled substance, the Commonwealth standard.

Penalty: 20 penalty units.

(2) A person must not sell or supply a Schedule 1 poison—

S. 27A(2)
amended by
No. 74/2004
s. 14(2).

(a) which the person has stored or packaged otherwise than in accordance with the Poisons Code; or

(b) which the person knows to have been stored or packaged otherwise than in accordance with the Poisons Code.

Penalty: 20 penalty units.

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s. 27A

S. 27A(2A)
inserted by
No. 74/2004
s. 14(3).

- (2A) A person must not sell or supply a poison or controlled substance (other than a Schedule 1 poison)—
- (a) which the person has stored or packaged otherwise than in accordance with the Commonwealth standard; or
 - (b) which the person knows to have been stored or packaged otherwise than in accordance with the Commonwealth standard.

Penalty: 20 penalty units.

S. 27A(3)
amended by
No. 74/2004
s. 14(4).

- (3) A person must not advertise for sale or supply a Schedule 1 poison otherwise than in accordance with the Poisons Code.

Penalty: 20 penalty units.

S. 27A(3A)
inserted by
No. 74/2004
s. 14(5).

- (3A) A person must not advertise for sale or supply a poison or controlled substance (other than a Schedule 1 poison) otherwise than in accordance with the Commonwealth standard.

Penalty: 20 penalty units.

S. 27A(4)
inserted by
No. 18/2000
s. 104.

- (4) Nothing in this section applies to a Schedule 1 poison that is sold or supplied by—
- (a) a registered Chinese medicine practitioner or registered Chinese herbal dispenser in accordance with the endorsement of that person's registration under section 8 of the **Chinese Medicine Registration Act 2000**; or
 - (b) an authorised practitioner acting in accordance with an endorsement of that practitioner's registration.

28. House to house sale of poisons or controlled substances prohibited

- (1) A person shall not—
- (a) sell or supply in any street or from house to house; or
 - (b) hawk or peddle, or distribute or cause to be distributed as samples, in any street or public place or from house to house—
- any poison or controlled substance.
- (2) A person shall not purchase or accept or offer to purchase or accept any poison or controlled substance offered for sale or hawked or peddled pursuant to sub-section (1).

S. 28(2)
amended by
No. 10002
s. 14(a).

Penalty: Two years imprisonment or 50 penalty units.

29. Sale of substances in unauthorised containers

- (1) A person shall not sell or supply any drug or medicine which is for internal use or any food drink or condiment in a container—
- (a) of the like description to that prescribed by the regulations for a container in which any poison or controlled substance intended for external use may be sold; or
 - (b) of such a description as not to be readily distinguishable by sight and touch or by either sight or touch from a container in which a poison or controlled substance intended for external use may be sold.
- (2) Nothing in this section shall affect any other requirements of this Act, the Commonwealth standard, the Poisons Code or the regulations with respect to the containers in which drugs or medicines which are or contain poisons or controlled substances may be sold.

S. 29(2)
amended by
Nos 42/1993
s. 47(1),
74/2004
s. 14(6).

30. Vending machines for poisons or controlled substances

- (1) A person shall not—
- (a) whether on or about his premises or elsewhere—
 - (i) install any automatic machine for the sale or supply of any poison or controlled substance; or
 - (ii) sell or supply any poison or controlled substance by means of any automatic machine;
 - (b) allow permit or suffer any such automatic machine for the sale or supply of any poison or controlled substance to be installed on his premises;
 - (c) place or allow permit or suffer to be placed any poison or controlled substance in any automatic machine on his premises or under his control; or
 - (d) allow permit or suffer any person to purchase or be supplied with or otherwise obtain any poison or controlled substance by means of any automatic machine on the premises or under the control of the first-mentioned person.
- (2) Any person who commits any contravention of or fails to comply with any provisions of this section shall be guilty of an offence against this Act and shall for every such offence be liable to a penalty of not more than 10 penalty units or to imprisonment for a term of not more than six months, and to a further penalty of not less than 1 penalty unit and not more than 2½ penalty units for each day on which any offence under this section is continued after conviction by any court.

S. 30(2)
amended by
No. 10002
s. 14(b)(i)–(iii).

- (3) Any automatic machine in respect of which any person is convicted of any offence against the provisions of this section may in the discretion of the court before which proceedings are taken for such offence be forfeited to Her Majesty.

* * * * *

Pt 2 Div. 9
(Heading and
s. 31)
amended by
Nos 10262
s. 4, 46/1998
s. 7(Sch. 1),
repealed by
No. 9/1998
s. 6.

**Division 10—Drugs of Dependence, Schedule 8 poisons,
Schedule 9 poisons and Schedule 4 poisons**

Pt 2 Div. 10
(Heading)
substituted by
No. 10002
s. 5(2)(e),
amended by
No. 42/1993
s. 47(2).

**32. Record keeping in relation to sale or supply of drugs
of addiction**

S. 32
amended by
No. 42/1993
s. 47(3),
substituted by
No. 74/2004
s. 15.

- (1) A person who is licensed under this Part to manufacture, sell, supply or distribute any Schedule 8 poison or Schedule 9 poison must record or cause to be recorded, in accordance with sub-section (2)—
- (a) details of any Schedule 8 poison or Schedule 9 poison obtained by the person; and
 - (b) quantities of those poisons used, sold, supplied or otherwise disposed of; and
 - (c) such other particulars as are prescribed.

Penalty: 60 penalty units.

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- (2) For the purposes of sub-section (1), the record kept must be recorded—
- (a) by printing or writing in a legible form in the English language; or
 - (b) in an electronic form that is readily convertible into legible print in the English language.

33. Medical practitioner or nurse practitioner to give notice that a patient is a drug-dependent person

S. 33(1)
amended by
Nos 10262
s. 4, 23/1994
s. 118(Sch. 1
item 17.8),
46/1998
s. 7(Sch. 1),
94/2000
s. 50(1)(a).

- (1) Any registered medical practitioner or nurse practitioner who has reason to believe that one of his patients is a drug-dependent person shall give notice in writing to the Secretary in the prescribed form.

S. 33(2)
amended by
Nos 10002
s. 4(e)(f) (as
amended by
No. 10087
s. 3(1)(Sch. 1
item 40)),
10262 s. 4,
42/1993
s. 47(4),
12/1994
s. 4(1),
23/1994
s. 118(Sch. 1
item 17.8),
46/1998
s. 7(Sch. 1),
9/1998 s. 7(a),
94/2000
s. 50(1)(b)(i)(ii).

- (2) Any registered medical practitioner who considers it may be necessary to administer, supply or prescribe any Schedule 8 poison or Schedule 9 poison or nurse practitioner who considers it may be necessary to administer, supply or prescribe any Schedule 8 poison to or for one of his patients for a continuous period of 8 weeks or a longer continuous period than 8 weeks shall forthwith upon his considering it necessary so to administer, supply or prescribe the Schedule 8 poison or Schedule 9 poison, or in the case of a nurse practitioner, a Schedule 8 poison, give notice to the Secretary in the prescribed form unless notice has been given pursuant to sub-section (1).

- (3) Any registered medical practitioner who has administered, supplied or prescribed any Schedule 8 poison or Schedule 9 poison or nurse practitioner who has administered, supplied or prescribed any Schedule 8 poison to or for any patient for a continuous period of 8 weeks or more shall as soon as practicable after the expiration of 8 weeks from the commencement of that administration, supply or prescription give notice to the Secretary in the prescribed form unless notice has been given pursuant to sub-section (1) or sub-section (2).
- S. 33(3) amended by Nos 10002 s. 4(f)(g) (as amended by No. 10087 s. 3(1)(Sch. 1 item 40)), 10262 s. 4, 42/1993 s. 47(4), 12/1994 s. 4(1), 23/1994 s. 118(Sch. 1 item 17.8), 46/1998 s. 7(Sch. 1), 9/1998 s. 7(b), 94/2000 s. 50(1)(c).
- (4) Notwithstanding anything in sub-section (2) or sub-section (3), where a period of 8 weeks mentioned in those sub-sections has expired prior to the commencement of section 4 of the **Drugs Poisons and Controlled Substances (Amendment) Act 1983**, it shall be sufficient compliance with sub-section (2) or sub-section (3) if a notice mentioned in either of those sub-sections is given as soon as practicable after that commencement.
- S. 33(4) substituted by No. 10002 s. 4(h), amended by No. 12/1994 s. 4(1).
- (5) For the purposes of this section, a registered medical practitioner administers, supplies or prescribes a Schedule 8 poison or Schedule 9 poison and a nurse practitioner administers, supplies or prescribes a Schedule 8 poison to a patient for a period mentioned in sub-section (2) or sub-section (3) if—
- S. 33(5) amended by Nos 10002 s. 4(f)(i)(ii) (as amended by No. 10087 s. 3(1)(Sch. 1 item 40)), 42/1993 s. 47(4), 23/1994 s. 118(Sch. 1 item 17.8), 94/2000 s. 50(2)(a).

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S. 33(5)(a)
amended by
Nos 10002
s. 4(f)(i)(i)(ii)
(as amended
by No. 10087
s. 3(1)(Sch. 1
item 40)),
42/1993
s. 47(4),
substituted by
No. 94/2000
s. 50(2)(b).

(a) in the case of—

- (i) a registered medical practitioner, he or she actually administers, supplies or prescribes that Schedule 8 poison or Schedule 9 poison for that period; or
- (ii) a nurse practitioner, he or she actually administers, supplies or prescribes that Schedule 8 poison for that period; or

S. 33(5)(b)
amended by
Nos 10002
s. 4(f)(i)(i)(ii)
(as amended
by No. 10087
s. 3(1)(Sch. 1
item 40)),
42/1993
s. 47(4),
substituted by
No. 94/2000
s. 50(2)(b).

(b) in the case of—

- (i) a registered medical practitioner, he or she supplies a quantity or quantities of a Schedule 8 poison or Schedule 9 poison to the patient and instructs the patient to take the drug for that period; or
- (ii) a nurse practitioner, he or she supplies a quantity or quantities of a Schedule 8 poison to the patient and instructs the patient to take the drug for that period; or

S. 33(5)(c)
amended by
Nos 10002
s. 4(f)(i)(i)(ii)
(as amended
by No. 10087
s. 3(1)(Sch. 1
item 40)),
42/1993
s. 47(4),
substituted by
No. 94/2000
s. 50(2)(b).

(c) in the case of—

- (i) a registered medical practitioner, he or she prescribes for the patient a quantity or quantities of a Schedule 8 poison or Schedule 9 poison which, if taken in accordance with the prescription, would be taken for that period; or
- (ii) a nurse practitioner, he or she prescribes for the patient a quantity or quantities of a Schedule 8 poison which, if taken in accordance with the prescription, would be taken for that period.

34. Issue of permit to medical practitioner or nurse practitioner to prescribe a drug of dependence²

- (1) The Secretary may issue a permit in the prescribed form to any registered medical practitioner or nurse practitioner for the purpose of authorizing him—
- (a) in the case of a registered medical practitioner, to administer, prescribe or supply any Schedule 8 poison or Schedule 9 poison to or for a drug-dependent person; or
- (ab) in the case of a nurse practitioner, to administer, prescribe or supply any Schedule 8 poison to or for a drug-dependent person; or
- (b) in the case of a registered medical practitioner, to administer, prescribe or supply any Schedule 8 poison or Schedule 9 poison to or for any person, other than a drug-dependent person, for a continuous period greater than 8 weeks; or
- (c) in the case of a nurse practitioner, to administer, prescribe or supply any Schedule 8 poison to or for any person, other than a drug-dependent person, for a continuous period greater than 8 weeks.
- S. 34(1) amended by Nos 10262 s. 4, 23/1994 s. 118(Sch. 1 item 17.9), 46/1998 s. 7(Sch. 1), 94/2000 s. 50(3)(a).
- S. 34(1)(a) amended by Nos 10002 s. 4(f) (as amended by No. 10087 s. 3(1)(Sch. 1 item 40)) (j), 42/1993 s. 47(5), 12/1994 s. 4(2)(a), 94/2000 s. 50(3)(b).
- S. 34(1)(ab) inserted by No. 94/2000 s. 50(3)(c).
- S. 34(1)(b) amended by Nos 10002 s. 4(f) (as amended by No. 10087 s. 3(1)(Sch. 1 item 40)) (j), 42/1993 s. 47(5), 12/1994 s. 4(2)(b), 94/2000 s. 50(3)(d)(e).
- S. 34(1)(c) inserted by No. 94/2000 s. 50(3)(e).

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S. 34(2)
amended by
Nos 10262
s. 4, 46/1998
s. 7(Sch. 1).

- (2) The Secretary may at any time amend, suspend, or revoke a permit under sub-section (1) and any permit so suspended or revoked shall forthwith cease to have effect and shall be surrendered to the Secretary on demand.

35. Prohibition on administration of drugs for purposes of addiction

S. 35(1)
amended by
Nos 10002
s. 4(f) (as
amended by
No. 10087
s. 3(1)(Sch. 1
item 40)),
10262 s. 4,
42/1993
s. 47(6),
23/1994
s. 118(Sch. 1
item 17.10),
46/1998
s. 7(Sch. 1).

- (1) A registered medical practitioner shall not at any time administer, supply or prescribe any Schedule 8 poison or Schedule 9 poison to or for any person he has reason to believe to be a drug-dependent person unless the registered medical practitioner holds a permit issued by the Secretary pursuant to section 34(1).

S. 35(1A)
inserted by
No. 94/2000
s. 51(1).

- (1A) A nurse practitioner must not at any time administer, supply or prescribe any Schedule 8 poison to or for any person he or she has reason to believe to be a drug-dependent person unless the nurse practitioner holds a permit issued by the Secretary pursuant to section 34(1).

Penalty: 100 penalty units.

S. 35(2)
amended by
Nos 10002
s. 4(f) (as
amended by
No. 10087
s. 3(1)(Sch. 1
item 40)) (j),
10262 s. 4,
42/1993
s. 47(6),
12/1994
s. 4(3),
23/1994
s. 118(Sch. 1
item 17.10),
46/1998
s. 7(Sch. 1).

- (2) A registered medical practitioner shall not administer, supply or prescribe any Schedule 8 poison or Schedule 9 poison to or for any person, other than a drug-dependent person, during a continuous period greater than 8 weeks unless the registered medical practitioner holds a permit issued by the Secretary pursuant to section 34(1).

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(2AA) A nurse practitioner must not at any time administer, supply or prescribe any Schedule 8 poison to or for any person, other than a drug-dependent person, during a continuous period greater than 8 weeks unless the nurse practitioner holds a permit issued by the Secretary pursuant to section 34(1).

S. 35(2AA)
inserted by
No. 94/2000
s. 51(2).

Penalty: 100 penalty units.

(2A) Despite sub-section (2) or sub-section (2AA), a registered medical practitioner or a nurse practitioner is authorised to administer, supply or prescribe a Schedule 8 poison to or for a person, other than a drug-dependent person, during a continuous period greater than 8 weeks without a permit issued under section 34(1) if—

S. 35(2A)
inserted by
No. 9/1998
s. 8,
amended by
No. 94/2000
s. 51(3)(a)(b).

(a) the administration, supply or prescription of that Schedule 8 poison is to treat that person for a medical condition in the circumstances (if any) specified by the Secretary in accordance with section 35A; and

S. 35(2A)(a)
amended by
No. 67/2003
s. 13(1).

(b) the registered medical practitioner or the nurse practitioner has given notice to the Secretary in accordance with section 33(2).

S. 35(2A)(b)
amended by
Nos 94/2000
s. 51(3)(c),
67/2003
s. 13(1).

(3) A registered medical practitioner granted a permit under this Division shall not administer, supply or prescribe any Schedule 8 poison or Schedule 9 poison to or for one of his patients for a continuous period—

S. 35(3)
amended by
No. 10002
s. 4(f) (as
amended by
No. 10087
s. 3(1)(Sch. 1
item 40)),
42/1993
s. 47(6),
23/1994
s. 118(Sch. 1
item 17.10).

(a) other than that specified in the permit; or

(b) in excess of the quantity specified in the permit.

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S. 35(4)
inserted by
No. 94/2000
s. 51(4).

- (4) A nurse practitioner granted a permit under this Division must not administer, supply or prescribe any Schedule 8 poison to or for one of his or her patients for a continuous period—
- (a) other than that specified in the permit; or
 - (b) in excess of the quantity specified in the permit.

Penalty: 100 penalty units.

S. 35(5)
inserted by
No. 74/2004
s. 16.

- (5) For the purposes of this section, a registered medical practitioner administers, supplies or prescribes a Schedule 8 poison or Schedule 9 poison to a patient for a continuous period mentioned in sub-section (2), (2A) or (3) if the registered medical practitioner—
- (a) actually administers, supplies or prescribes that Schedule 8 poison or Schedule 9 poison for that period; or
 - (b) supplies a quantity or quantities of a Schedule 8 poison or Schedule 9 poison to the patient and instructs the patient to take the drug for that period; or
 - (c) prescribes for the patient a quantity or quantities of a Schedule 8 poison or Schedule 9 poison which, if taken in accordance with the prescription, would be taken for that period.

S. 35(6)
inserted by
No. 74/2004
s. 16.

- (6) For the purposes of this section, a nurse practitioner administers, supplies or prescribes a Schedule 8 poison to a patient for a continuous period mentioned in sub-section (2AA), (2A) or (4) if the nurse practitioner—
- (a) actually administers, supplies or prescribes that Schedule 8 poison for that period; or

-
- (b) supplies a quantity or quantities of a Schedule 8 poison to the patient and instructs the patient to take the drug for that period; or
 - (c) prescribes for the patient a quantity or quantities of a Schedule 8 poison which, if taken in accordance with the prescription, would be taken for that period.

35A. Secretary may specify medical conditions

S. 35A
inserted by
No. 9/1998
s. 9.

- (1) The Secretary, by notice published in the Government Gazette, may specify—
 - (a) any medical condition to be a medical condition for the purposes of section 35(2A); and
 - (b) the circumstances (if any) applicable to that medical condition for the purposes of that section.
- (2) The Secretary, by notice published in the Government Gazette—
 - (a) may amend a notice made under sub-section (1) by—
 - (i) adding or removing a medical condition or amending the name of a medical condition; or
 - (ii) adding or removing the circumstances which apply to a medical condition or amending the circumstances which apply to a medical condition; or
 - (b) may revoke a notice made under sub-section (1).

S. 35A(1)
amended by
No. 67/2003
s. 13(1).

S. 35A(2)
amended by
No. 67/2003
s. 13(1).

s. 36

S. 36
amended by
Nos 10002
s. 4(k), 10262
s. 4, 42/1993
s. 47(7),
46/1998
s. 7(Sch. 1).

36. Obligations of pharmacists in relation to dispensing of drugs

Every pharmacist who is called upon to dispense for any person greater quantities of or more frequently than appears to be reasonably necessary any drug of dependence Schedule 8 poison, Schedule 9 poison or Schedule 4 poison shall forthwith report the matter to the Secretary.

S. 36A
inserted by
No. 10002
s. 5(1),
amended by
No. 42/1993
s. 47(8).

36A. Forgery

A person shall not forge or fraudulently alter or utter knowing it to be forged or fraudulently altered, a prescription or order for a Schedule 8 poison, Schedule 9 poison or Schedule 4 poison (not being a drug of dependence).

Penalty: 10 penalty units.

S. 36B
inserted by
No. 10002
s. 5(1).

36B. Unauthorized possession etc. of poison or controlled substance etc.

(1) A person shall not knowingly by false representation, whether oral or in writing or by conduct—

S. 36B(1)(a)
amended by
No. 42/1993
s. 47(9).

(a) obtain a Schedule 8 poison, Schedule 9 poison or Schedule 4 poison from a person authorized by or licensed under this Act or the regulations to possess, manufacture, sell or supply the Schedule 8 poison, Schedule 9 poison or Schedule 4 poison;

S. 36B(1)(b)
amended by
Nos 42/1993
s. 47(9),
23/1994
s. 118(Sch. 1
item 17.11),
58/1997
s. 96(Sch.
item 3.3),
56/1996
s. 100(5).

(b) obtain a prescription or order for a Schedule 8 poison, Schedule 9 poison or Schedule 4 poison from a registered medical practitioner, registered optometrist, dentist, pharmacist or veterinary practitioner or a person authorized by this Act or the regulations to issue or possess the prescription or order;

(c) cause or induce a registered medical practitioner to administer a Schedule 8 poison, Schedule 9 poison or Schedule 4 poison to him by injection or otherwise; or

S. 36B(1)(c)
amended by
Nos 42/1993
s. 47(9),
23/1994
s. 118(Sch. 1
item 17.11).

(d) cause or induce a pharmacist or a person authorized by this Act or the regulations to supply a Schedule 8 poison, Schedule 9 poison or Schedule 4 poison, to dispense a prescription or order for that Schedule 8 poison, Schedule 9 poison or Schedule 4 poison, if the first-mentioned person knows the prescription or order to have been obtained in contravention of this Act or the regulations.

S. 36B(1)(d)
amended by
No. 42/1993
s. 47(9).

Penalty: 10 penalty units.

(2) A person shall not have in his possession a Schedule 8 poison, Schedule 9 poison or Schedule 4 poison unless he is authorized by or licensed under this Act or the regulations to do so.

S. 36B(2)
amended by
No. 42/1993
s. 47(9).

Penalty: 10 penalty units.

(3) In this section a reference to a Schedule 8 poison, Schedule 9 poison or Schedule 4 poison does not include a reference to a drug of dependence.

S. 36B(3)
amended by
No. 42/1993
s. 47(9).

Division 10A—Administration of Medication in Aged Care Services

Pt 2 Div. 10A
(Heading and
ss 36C–36F)
inserted by
No. 17/2006
s. 4.

36C. Effect of this Division

Nothing in this Division affects any other requirement in this Act or the Regulations in respect of the administration of a drug of dependence, a Schedule 9 poison, a Schedule 8 poison or a Schedule 4 poison.

S. 36C
inserted by
No. 17/2006
s. 4.

s. 36D

S. 36D
inserted by
No. 17/2006
s. 4.

36D. Definitions

In this Division—

"approved provider" has the same meaning as it has in the Aged Care Act 1997 of the Commonwealth;

"high level residential care" has the same meaning as it has in the Aged Care Act 1997 of the Commonwealth;

"nurse" means a person registered in division 1, division 3 or division 4 of the register of nurses established under the **Nurses Act 1993**;

"Nurses Board of Victoria" means the Board established under Part 6 of the **Nurses Act 1993**.

S. 36E
inserted by
No. 17/2006
s. 4.

36E. Administration of drugs of dependence, Schedule 9 poisons, Schedule 8 poisons and Schedule 4 poisons in aged care services

A person who is an approved provider of an aged care service must ensure that a nurse manages the administration of any drug of dependence, Schedule 9 poison, Schedule 8 poison or Schedule 4 poison to a resident in an aged care service—

- (a) who is receiving high level residential care; and
- (b) for whom that drug or poison has been supplied on prescription.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

36F. Nurse to have regard to code for guidance

A nurse who manages the administration of any drug of dependence, Schedule 9 poison, Schedule 8 poison or Schedule 4 poison to a resident in an aged care service in accordance with this Division must do so in accordance with the relevant code for guidance (if any) issued by the Nurses Board of Victoria under the **Nurses Act 1993**.

S. 36F
inserted by
No. 17/2006
s. 4.

Division 11—Appeals

37. Appeals

- (1) Any person who feels aggrieved by any refusal of the Secretary to issue or renew any licence or permit or by any order of the Secretary cancelling suspending or revoking any licence or permit may appeal therefrom to the Magistrates' Court within six months after the refusal cancellation suspension or revocation.
- (2) The Court shall entertain inquire into and decide upon the appeal and its decision shall, save as provided by the **Administrative Law Act 1978**, be final and conclusive.

S. 37(1)
amended by
Nos 10262
s. 4, 16/1986
s. 30, 57/1989
s. 3(Sch.
item 59.1),
46/1998
s. 7(Sch. 1).

S. 37(2)
amended by
Nos 16/1986
s. 30, 57/1989
s. 3(Sch. item
59.2(a)–(c)).

Division 12—Sale of Poisons Book

38. Record of sale of poisons

A person who sells or supplies by retail any Schedule 7 poison must keep an accurate record of the sale or supply, setting out the following details—

- (a) the name and address of the person who purchases or obtains the poison or controlled substance;

S. 38
substituted by
Nos 42/1993
s. 48, 12/1994
s. 14,
amended by
No. 18/2000
s. 105(a).

s. 38A

- (b) the date of sale or supply;
- (c) the name and quantity of the poison or controlled substance purchased or obtained.

S. 38A
inserted by
No. 42/1993
s. 48,
amended by
No. 12/1994
s. 16(1).

38A. Authorised possession of certain poisons

A person who purchases or obtains a poison or controlled substance to which section 38 applies and which is supplied to the person in accordance with that section and section 40 is authorised by this Act to purchase or obtain and to possess the poison or controlled substance so supplied.

S. 39
repealed by
No. 12/1994
s. 16(2).

* * * * *

S. 40
amended by
No. 42/1993
s. 49,
substituted by
No. 12/1994
s. 15,
amended by
No. 18/2000
s. 105(b).

40. Sale or supply of poisons or controlled substances to persons under age

A person shall not sell or supply any Schedule 7 poison to a person who is under the age of 18 years.

Division 13—Authorized Officers

41. Secretary may authorize person to carry out functions of authorized officer

S. 41(1)
amended by
Nos 10262
s. 4, 42/1993
s. 50(1),
46/1998
s. 7(Sch. 1).

- (1) For the purposes of this Act, the Secretary may in writing authorize either generally or in any particular case, any of the following persons to exercise and perform the powers, duties and functions of an authorised officer under this Act and the regulations—

S. 41(1)(a)
substituted by
No. 46/1998
s. 7(Sch. 1).

- (a) any employee in the public service;

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- * * * * *
- (c) any officer or employee of a public statutory authority;
- (d) any member of staff of a municipal council.
- (2) An authority under sub-section (1) may be expressed to be in force for a period specified in the authority or may be given for an indefinite period.
- (3) The Secretary may in writing revoke or vary an authority given under sub-section (1).
- (4) A person may be an authorized officer for the purposes of this Act in conjunction with being employed in the public service or a public statutory authority or a member of staff of a municipal council.
- * * * * *
- S. 41(1)(b) repealed by No. 46/1998 s. 7(Sch. 1).
- S. 41(3) amended by Nos 10262 s. 4, 46/1998 s. 7(Sch. 1).
- S. 41(4) amended by Nos 10262 s. 4, 42/1993 s. 50(2), 46/1998 s. 7(Sch. 1).
- S. 41(5) repealed by No. 10002 s. 5(2)(c).

42. Inspections

- (1) For the purpose of ascertaining whether the provisions of this Act and the regulations are being complied with any authorized officer may with such assistance as he thinks necessary at any reasonable time—
- (a) enter upon any premises occupied by any person licensed or otherwise authorized by or under this Act to have in his possession any poison or controlled substance;

-
- (b) examine any room or part of such premises and any goods or records therein;
 - (c) take an account of any poisons or controlled substances therein;
 - (d) on payment or tender of a reasonable price demand select and obtain any sample of any poison or controlled substance which is in or on those premises;
 - (e) seize any poison or controlled substance or any other substance or any document which is in or on those premises with respect to which he has reasonable grounds for believing there has been a contravention of this Act; and
 - (f) detain or remove to some suitable place any poison or controlled substance or other substance or document so seized.
- (2) Every person who—
- (a) refuses or fails to admit any authorized officer demanding to enter in pursuance of the provisions of this section;
 - (b) refuses to permit any authorized officer to select or obtain any sample in pursuance of the provisions of this section; or
 - (c) obstructs or delays any authorized officer in the discharge of his duty or causes or permits any authorized officer to be so obstructed or delayed—

shall be guilty of an offence against this Act.

43. Duties of officers in relation to seized substances

- (1) Where any poison or controlled substance or other substance or document is seized by an authorized officer pursuant to this Part, the authorized officer shall forthwith—
 - (a) give notice of the seizure in the prescribed form to the person apparently in charge thereof; or
 - (b) if there is no person apparently in charge thereof, give notice of the seizure to any person appearing to be the consignor or owner thereof by any name and address attached thereto or to any package containing the poison or controlled substance or the other substance or document if the address is a place in Victoria and otherwise to the importer or consignee or his agent.
- (2) Any person claiming any poison or controlled substance or other substance or document seized under this part may within 96 hours after the seizure complain of the seizure by giving notice verified by statutory declaration of the complaint in the prescribed form to the registrar at the proper venue of the Magistrates' Court and a copy of the notice and the statutory declaration to the authorized officer responsible for the seizure.
- (3) The complaint shall be determined by the Magistrates' Court which (after hearing the evidence) may either confirm or disallow the seizure wholly or in part and make an order accordingly.
- (4) If no complaint is made or if the seizure is confirmed each poison or controlled substance or other substance or document shall thereupon become the property of the Crown and may be destroyed or disposed of as the Minister directs.

S. 43(2)
amended by
No. 57/1989
s. 3(Sch.
item 59.3).

S. 43(3)
amended by
No. 57/1989
s. 3(Sch.
item 59.4).

44. Persons who are liable for contravention of Act

- (1) Where there is sold or supplied to any authorized officer in an unopened package any poison or controlled substance in connexion with the sale or supply of which there is a contravention of or failure to comply with any of the provisions of this Act or the regulations each of the following persons shall, in addition to the person who actually sold or supplied the package to the authorized officer, be liable in respect of the contravention or failure, namely—
- (a) if there is a label on or attached to the package—any person who appears from the label to have manufactured or prepared the poison or controlled substance or to have imported the poison or controlled substance into Victoria or to have enclosed or caused the poison or controlled substance to be enclosed in the package or to have been the wholesale dealer in the poison or controlled substance; or
 - (b) if there is no label on or attached to the package or if there is a label on or attached to the package but the label does not disclose any of the particulars referred to in paragraph (a) any person who has previously sold or supplied the unopened package.
- (2) Any person to whom the provisions of subsection (1) applies shall be deemed to have sold or supplied the unopened package to the authorized officer as on the day and at the place where he purchased the package and shall be liable to the same penalty as if he had actually sold or supplied the unopened package to the authorized officer on that day and at that place.

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- (3) It shall be a good defence to any prosecution brought under the provisions of this section if the person charged shows—
- (a) that the contravention or non-compliance is due to the act or default of some subsequent seller or supplier;
 - (b) that the contravention or non-compliance is due to deterioration or other causes beyond the control of the person so charged;
 - (c) where there is a label on or attached to the package, that he did not in fact attach the label or cause the label to be attached or enclose the poison or controlled substance in the package or cause the poison or controlled substance to be enclosed; or
 - (d) where there is no label on the package or attached thereto that he purchased or obtained the poison or controlled substance already enclosed in a package from some other person and sold or supplied the package in the condition in which he received it.
- (4) Nothing in this section shall affect the liability of any person selling or supplying an unopened package containing a poison or controlled substance to an authorized officer with respect to any contravention or non-compliance due to his default or to other causes within his control; and the conviction of any person under the foregoing provisions of this section shall not exonerate the person selling or supplying the unopened package or any other person from liability with respect to that contravention or non-compliance.
- (5) Without affecting the generality of the application of this or any other provision of this Act to firms or their members, where a firm appears from a
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s. 45

label on or attached to a package containing a poison or controlled substance to have imported manufactured or prepared the poison or controlled substance or to have been the wholesale dealer in the poison or controlled substance or to have enclosed the poison or controlled substance in a package—

S. 44(5)(a)
amended by
No. 57/1989
s. 3(Sch.
item 59.5).

- (a) proceedings under this section may be taken (whether in the Magistrates' Court or otherwise) and penalties recovered accordingly against any member or members of the firm; and
- (b) this section shall be read and construed and have effect as if the name or names of the member or members of the firm had appeared on the label.

Division 14—Offences

S. 45
amended by
No. 57/1989
s. 3(Sch. item
59.6(a)–(d)).

45. Time within which information to be laid

A charge for an offence against any of the provisions of this Act or the regulations (not being an indictable offence, whether or not that offence is capable of being determined summarily) shall be filed within three years from the time when the matter of the charge occurs and not afterwards.

46. Offences

Except insofar as it is otherwise by this Act expressly enacted every person who—

- (a) contravenes or fails to comply with any of the provisions of this Part;
- (b) contravenes or fails to comply with any condition limitation or restriction to which any licence warrant or permit issued under this Part is subject;

- (c) purchases or obtains any poison or controlled substance and gives false information in answer to inquiries required by or under this Act to be made by the seller or supplier; or
- (d) signs his name as a witness to the sale or supply of a poison or controlled substance to a person unknown to him—

shall be guilty of an offence against this Act.

47. Maximum sentence etc.

Notwithstanding anything to the contrary in this Act a person shall not on conviction for any offence of contravening or failing to comply with the regulations relating to—

- (a) the keeping of books; or
- (b) the issuing or dispensing of prescriptions containing substances or preparations to which this Part applies—

be sentenced to imprisonment or to pay a penalty of more than 5 penalty units if the court dealing with the case is satisfied that the offence was committed through inadvertence and was not preparatory to or committed in the course of or in connexion with the commission or intended commission of any other offence against this Act.

48. Offence to receive certain moneys etc.

Where for or in connexion with the manufacture sale or supply of a poison or controlled substance in contravention of this Act a person is proved to have in his possession or to have received money or any other valuable thing the person shall be deemed to have sold or supplied that poison or controlled substance in contravention of this Act unless the court hearing the matter is satisfied to the contrary.

S. 47
amended by
No. 10002
ss 5(2)(d),
14(c).

S. 49
amended by
No. 54/1997
s. 6(a).

49. Obtaining licence by fraud

Any person who for the purpose of obtaining for himself or for any other person the issue grant or renewal of a licence warrant or permit under this Act or an authority under Part IVA of this Act makes any declaration or statement which is false in any material particular or knowingly utters produces or makes use of a declaration or statement which is false in any material particular or a document which contains a declaration or statement that is false in any material particular shall be guilty of an offence against this Act.

50. Immunity of authorized officers

No authorized officer shall be in any way liable to any penalty in respect of anything done by him in the exercise of any power or in the performance of any duty conferred or imposed upon him pursuant to the provisions of this Act and the regulations.

51. Immunity of members of the police force etc.

No member of the police force or person if the member or person is acting under instructions given in writing in relation to a particular case by a member of the police force not below the rank of senior sergeant shall be deemed to be an offender or accomplice in the commission of an offence against this Act although that first-mentioned member or person might but for this section have been deemed to be such an offender or accomplice.

Division 15—Poison Baits

52. Setting of poison baits

(1) A person shall not set lay put or place or knowingly be a party to the setting laying putting or placing of a poison or controlled substance or any fluid or edible matter (not being sown seed or grain) which contains a poison or controlled substance in or upon any road or street or any land whatsoever.

(2) Sub-section (1) does not apply to—

S. 52(2)
amended by
No. 52/1994
s. 97(Sch. 3
item 7.6).

(a) the Secretary within the meaning of the **Conservation, Forests and Lands Act 1987** or any person acting on behalf of the Secretary with respect to the use of poisons or controlled substances for eradicating or controlling on any land pest animals or noxious weeds within the meaning of the **Catchment and Land Protection Act 1994**;

S. 52(2)(a)
amended by
No. 41/1987
s. 103(Sch. 4
item 12.1),
substituted by
No. 52/1994
s. 97(Sch. 3
item 7.1),
amended by
No. 76/1998
s. 7.

(b) the use of a poison or controlled substance or fluid or edible matter (not being sown seed or grain) which contains a poison or controlled substance by a person in or upon any land or premises owned or occupied by him for the purpose of destroying rats, mice or other small vermin commonly found in houses or pest animals within the meaning of the **Catchment and Land Protection Act 1994** (not being wildlife within the meaning of the **Wildlife Act 1975**) or for disinfecting sterilizing or cleansing purposes or for the purpose of manuring or fertilizing the land;

S. 52(2)(b)
amended by
No. 52/1994
s. 97(Sch. 3
item 7.2).

s. 52

(c) the use by an owner or occupier of land of a poison or controlled substance on or adjacent to his land for the purpose of killing or destroying any wildlife within the meaning of the **Wildlife Act 1975**—

S. 52(2)(c)(i) repealed by No. 52/1994 s. 97(Sch. 3 item 7.3).

* * * * *

(ii) which is noxious wildlife within the meaning of the **Wildlife Act 1975**; or

(iii) under and in accordance with an authority or Order in Council published issued or granted under the **Wildlife Act 1975**;

S. 52(2)(d) amended by No. 21/1986 s. 4.

(d) the use by the council of a municipality (including the Corporation of the City of Melbourne and the Corporation of the City of Geelong) or by a local authority within the meaning of the **Public Contracts Act 1958** as in force immediately before the commencement of the **Public Contracts (Repeal) Act 1986** or by any body of persons corporate or unincorporate declared by the Governor in Council by Order published in the Government Gazette to be a body of persons to which this sub-section applies of a poison or controlled substance in or upon any road street drain channel or land whatsoever for the purpose of—

S. 52(2)(d)(i) amended by No. 52/1994 s. 97(Sch. 3 item 7.4).

(i) destroying rats mice or other vermin (not being wildlife within the meaning of the **Wildlife Act 1975**) commonly found in houses or pest animals within the meaning of the **Catchment and Land Protection Act 1994**;

- (ii) disinfecting sterilizing or cleansing;
- (iii) manuring or fertilizing;
- (iv) killing or destroying wildlife within the meaning of the **Wildlife Act 1975**, being wildlife the killing or destruction of which is authorized by or under that Act or that is noxious wildlife within the meaning of that Act; or
- (v) killing or destroying wildlife within the meaning of the **Wildlife Act 1975**, if the council acts under and in accordance with an authority issued or granted under that Act;
- (e) the use of a poison or controlled substance for the purpose of carrying out a power authority function or duty conferred or imposed by or under an Act or in accordance with a licence permit warrant or other authority issued or granted under this Act or any other Act;
- (f) the use of a poison or controlled substance for agricultural, pastoral or horticultural purposes (being a poison or controlled substance to which the **Agricultural Chemicals Act 1958** applies) for agricultural, pastoral or horticultural purposes—

S. 52(2)(d)(iv)
amended by
No. 52/1994
s. 97(Sch. 3
item 7.5).

if and only if the person who or the body of persons which uses a poison or controlled substance of fluid or edible matter in any of the circumstances mentioned in paragraph (a), (b), (c), (d) or (e) takes or causes to be taken all reasonable precautions to prevent access to the poison or controlled substance or the fluid or edible matter by any domestic animal and, if the poison or controlled substance is in a poison bait and is used

for eradicating or controlling pest animals within the meaning of the **Catchment and Land Protection Act 1994**, complies with any applicable regulations under that Act.

- (3) In this section a reference to a domestic animal is a reference to any cattle within the meaning of the **Pounds Act 1958** or any dog cat or fowl or any other animal of any other kind or species whatever (whether a quadruped or not) which is tame or which has been or is being sufficiently tamed to serve some purpose for the use of man.

53. Regulations

Notwithstanding the provisions of this Act the Governor in Council may make regulations prohibiting the use, either absolutely or except under such circumstances or conditions or by such persons as may be prescribed, of any poison or controlled substance for the purpose of killing or destroying any animal or bird or for any other purpose whatsoever likely to cause death or harm to any animal or bird.

Pt 2 Div. 16
(Heading)
amended by
No. 81/1989
s. 3(Sch.
item 10.1).

Division 16—Poisons in Roads and Waterways

54. Special regulations

S. 54(1)
amended by
Nos 10002
s. 14(d),
81/1989
s. 3(Sch.
item 10.2).

- (1) Where in the interests of public safety it is expedient to provide for prohibiting controlling or regulating the putting or discharging or otherwise disposing of poisons or controlled substances or preparations thereof in on or into any road, street, channel, sewer, drain or waterway, the Governor in Council may make regulations for such purposes accordingly and may by those regulations impose penalties of not more than

50 penalty units for any breach of those regulations.

- (2) This section shall be read and construed as in aid of and not in derogation from any other Acts or enactments relating to the subject-matter of subsection (1).

Division 17—Prohibition of Poisons or Controlled Substances

55. Prohibiting sale or supply of poisons or controlled substances

- (1) Where the Minister is of the opinion that it is necessary to take urgent action in the interest of the health or safety of the public, he may, after consulting with the Secretary, recommend to the Governor in Council that the sale or supply use or a specified use or uses of a poison or controlled substance—
- (a) should, subject to such terms and conditions as are specified in the recommendation, be—
- (i) prohibited; or
- (ii) restricted—
- in the whole or any part of Victoria; or
- (b) should, subject to such terms and conditions as are specified in the recommendation, be prohibited in part of Victoria and restricted in another part of Victoria—
- for a period not exceeding three months.

S. 55(1)
amended by
Nos 10262
s. 4, 46/1998
s. 7(Sch. 1).

s. 55

S. 55(3)
amended by
Nos 10262
s. 4, 46/1998
s. 7(Sch. 1).

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- (2) Where a recommendation is made to the Governor in Council under sub-section (1), the Governor in Council may, by Order published in the Government Gazette prohibit or restrict the sale or supply or use of the poison or controlled substance in accordance with the recommendation.
- (3) The Governor in Council may, on the recommendation of the Minister after consulting with the Secretary, by Order published in the Government Gazette—
- (a) extend, or further extend, the period during which a prohibition or restriction under an Order made under sub-section (2) is in force for a period not exceeding three months; and
 - (b) otherwise amend or revoke an Order made under sub-section (2).
- (4) Notice of an Order made under sub-section (2) or sub-section (3) shall be published in a daily newspaper and a rural weekly newspaper circulating throughout Victoria.
- (5) A person who contravenes or fails to comply with an Order including an Order that is amended under sub-section (3) or with the terms and conditions (if any) to which the Order is subject is guilty of an offence and liable to a penalty of not more than 50 penalty units.
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S. 55(5)
amended by
No. 10002
s. 14(d).

PART III—MANUFACTURE OF HEROIN

56. Manufacture of heroin etc.

- (1) On the recommendation of the Minister, made after consulting with the Secretary, the Governor in Council may licence a fit and proper person to manufacture and sell or supply heroin by wholesale.
- (2) Where a licence is in force under sub-section (1), no other licence shall be in force under that sub-section for any period during which the first-mentioned licence is in force.
- (3) On the recommendation of the Minister, made after consulting with the Secretary, the Governor in Council may licence a fit and proper person to formulate heroin.
- (4) For the purposes of this section, a person formulates heroin if he prepares or does any act for the purpose of or in the course of preparing heroin in a form suitable for human therapeutic use.
- (5) Where a licence is in force under sub-section (3) no other licence under that sub-section shall be in force for any period during which the first-mentioned licence is in force.
- (6) The Governor in Council may on the recommendation of the Minister, made after consulting with the Secretary, grant or refuse to grant a licence under sub-section (1) or sub-section (3).

S. 56(1)
amended by
Nos 10262
s. 4, 46/1998
s. 7(Sch. 1).

S. 56(3)
amended by
Nos 10262
s. 4, 46/1998
s. 7(Sch. 1).

S. 56(6)
amended by
Nos 10262
s. 4, 46/1998
s. 7(Sch. 1).

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- (7) A licence under sub-section (1) or sub-section (3)—
- (a) shall remain in force for such period as is specified in the licence;
 - (b) shall be subject to such conditions, limitations and restrictions (if any) as the Governor in Council on the recommendation of the Minister determines and specifies in the licence;
 - (c) shall specify—
 - (i) the premises at which heroin may be manufactured or formulated by the licensee;
 - (ii) the quantity or quantities of heroin which may be manufactured or formulated by the licensee; and
 - (iii) the premises at which the licensee may store or keep heroin or any ingredient used in the manufacture of heroin for the purposes of manufacture or sale or supply by wholesale or for formulation under the licence; and
 - (d) may at any time be revoked or suspended by the Governor in Council on the recommendation of the Minister.
- (8) A licence under sub-section (1) or sub-section (3) shall authorize the manufacture and sale or supply of heroin by wholesale or the formulation of heroin (as the case may be) only at the premises and in the quantities specified in the licence, and authorize the storage or keeping of heroin or any ingredient used in the manufacture of heroin for the purposes of manufacture and sale or supply by wholesale or formulation only at the premises specified in the licence.
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- (9) The Secretary may by instrument permit a registered medical practitioner or pharmacist to purchase or otherwise obtain from a person in respect of whom a licence is in force under sub-section (1) or sub-section (3) such quantities of heroin as are specified in the permit and to use the heroin so obtained for such medicinal purposes as are specified in the permit.
- (10) The Secretary may by instrument permit a fit and proper person to purchase or otherwise obtain from a person in respect of whom a licence is in force under sub-section (1) or sub-section (3) such quantity or quantities of heroin as are specified in the permit and to use the heroin so obtained for such educational experimental or research purposes and at such university or other institution as are specified in the permit.
- (11) On application in that behalf the Secretary may in the Secretary's discretion grant or refuse to grant a permit under sub-section (9) or sub-section (10).
- (12) A permit under sub-section (9) or sub-section (10)—
- (a) shall remain in force for such period as is specified in the permit;
 - (b) shall be subject to such conditions, limitations and restrictions (if any) as the Secretary determines and specifies in the permit; and
 - (c) shall specify the quantity or quantities of heroin that may be obtained under the permit and the purposes for which the heroin so obtained may be used by the person to whom the permit is granted.

S. 56(9)
amended by
Nos 10262
s. 4, 23/1994
s. 118(Sch. 1
item 17.12),
46/1998
s. 7(Sch. 1).

S. 56(10)
amended by
Nos 10262
s. 4, 46/1998
s. 7(Sch. 1).

S. 56(11)
amended by
Nos 10262
s. 4, 46/1998
s. 7(Sch. 1),
12/1999
s. 4(Sch. 2
item 4.1).

S. 56(12)(b)
amended by
Nos 10262
s. 4, 46/1998
s. 7(Sch. 1).

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S. 56(13)
amended by
No. 12/1994
s. 17(1).

S. 56(14)
amended by
No. 10002
s. 14(e).

(13) The provisions of sections 22A, 22C, 37(1) and 37(2) shall not apply to any licence granted under this section.

(14) A person who—

- (a) being the holder of an appropriate licence under sub-section (1) or sub-section (3)—sells or supplies heroin to a person other than a person permitted under this section to purchase or obtain heroin or otherwise than in accordance with any permit granted under this section;
- (b) being the holder of an appropriate licence under sub-section (1) or sub-section (3)—manufactures or formulates heroin otherwise than in accordance with the licence; or
- (c) being the holder of a permit under this section—uses, supplies or administers heroin otherwise than in accordance with the permit—

shall be guilty of an indictable offence and liable to imprisonment for a term of not more than five years or to a penalty of not more than 250 penalty units or to both such penalty and imprisonment.

**PART IV—DELETERIOUS SUBSTANCES AND SEARCH,
SEIZURE AND DETENTION POWERS RELATING TO
VOLATILE SUBSTANCES**

Pt 4 (Heading
and ss 57–62)
substituted as
Pt 4 (Heading
and ss 57–60)
by No. 10002
s. 6(1)(a)(b).

Pt 4 (Heading)
amended by
No. 55/2003
s. 3(1)

Division 1—Deleterious Substances

Pt 4 Div. 1
(Heading)
inserted by
No. 55/2003
s. 3(2).

57. Definitions

S. 57
substituted by
No. 10002
s. 6(1)(b).

(1) In this Part—

"deleterious substances" means—

- (a) methylated spirits; or
- (b) volatile substances;

"methylated spirits" means—

- (a) any spirit which has been methylated or denatured under the provisions of the Commonwealth Act known as the Spirits Act 1906 as amended and in force for the time being or the regulations under that Act;
- (b) methyl alcohol and wood spirit;
- (c) any other spirit to which any methylating substance has been added; or
- (d) any potable liquid with which methylated spirits as defined in paragraphs (a), (b) or (c) is mixed;

"volatile substance" means—

- (a) plastic solvent, adhesive cement, cleaning agent, glue, dope, nail polish remover, lighter fluid, gasoline, or any other volatile product derived from petroleum, paint thinner, lacquer thinner, aerosol propellant or anaesthetic gas; or
 - (b) any substance declared pursuant to sub-section (2) by the Governor in Council to be a volatile substance.
- (2) The Governor in Council may by Order published in the Government Gazette declare a substance to be a volatile substance for the purposes of this Part.
- (3) The Governor in Council may by Order published in the Government Gazette vary or revoke an Order under sub-section (2).

S. 58
substituted by
No. 10002
s. 6(1)(b).

58. Sale of deleterious substances

- (1) Except as otherwise expressly provided in this Act or the regulations, a person shall not sell a deleterious substance to another person if the first-mentioned person knows or reasonably ought to have known or has reasonable cause to believe that the other person intends—
- (a) to use the substance by drinking, inhaling, administering or otherwise introducing it into his body; or
 - (b) to sell or supply the substance to a third person for use by that third person in a manner mentioned in paragraph (a).

- (2) A person who contravenes sub-section (1) is guilty of an offence under this Act and shall be liable—
- (a) where the offence relates to methylated spirits—
to a penalty of not more than 5 penalty units or imprisonment for a term of not more than one month or both that penalty and imprisonment;
 - (b) where the offence relates to a volatile substance—
to a penalty of not more than 50 penalty units or imprisonment for a term of not more than two years or both that penalty and imprisonment.

59. Matters to which this Part does not apply

S. 59
substituted by
No. 10002
s. 6(1)(b).

This Part does not apply to—

- (a) the sale of deleterious substances for a purpose authorized by or under this Act or for a prescribed purpose or for a purpose authorized by or under any other Act or the regulations made under the other Act; or
- (b) the sale of deleterious substances for the purpose of use by another person, being a use which is authorized by or under this Act or is a prescribed use or is a use authorized by or under another Act or the regulations made under that other Act.

60. Evidence

S. 60
substituted by
No. 10002
s. 6(1)(b).

- (1) In proceedings for an offence against section 58 production of evidence that—
- (a) on any article or substance;
 - (b) on any package or other container in which there is an article or substance; or

s. 60A

- (c) on any label or thing affixed, attached or connected to an article or substance or a package or container in which there is an article or substance—

there is a statement that the particular article or substance is or contains a volatile substance is prima facie evidence that the particular article or substance is or contains a volatile substance.

- (2) In proceedings for an offence against section 58 production of evidence that an article contains or a substance is a residue or vapour of a volatile substance is prima facie evidence that the article or substance is or contains a volatile substance.

Pt 4 Div. 2
(Heading and
ss 60A–60T)
inserted by
No. 55/2003
s. 4.

Division 2—Volatile Substances

S. 60A
inserted by
No. 55/2003
s. 4.

60A. Purpose of Division

- (1) The purpose of this Division is to protect the health and welfare of persons under 18 years of age.
- (2) Nothing in this Division makes it an offence or is to be taken to create an offence—
- (a) for a person to possess or have in the person's control a volatile substance or an item used to inhale a volatile substance; or
- (b) for a person to inhale a volatile substance.

S. 60B
inserted by
No. 55/2003
s. 4.

60B. Police to take into account the best interests of person under 18 years of age

In the exercise of any powers under this Division in relation to a person under 18 years of age, a member of the police force must take into account the best interests of the person.

60C. Where can police powers under this Division be exercised?

S. 60C
inserted by
No. 55/2003
s. 4.

- (1) A member of the police force may only exercise the powers under this Division in relation to a person who is—
 - (a) in a public place; or
 - (b) on private premises, if consent to enter the premises is given to the member—
 - (i) by the occupier of those premises; or
 - (ii) where there is no occupier of those premises, the owner of the premises.
- (2) In this section, "**public place**" has the same meaning as it has in the **Summary Offences Act 1966**.

60D. Police may use reasonable force

S. 60D
inserted by
No. 55/2003
s. 4.

A member of the police force may use such force as is reasonably necessary when—

- (a) conducting a search under section 60E or 60F;
- (b) seizing a volatile substance or an item used to inhale a volatile substance under section 60J or 60K;
- (c) apprehending and detaining a person under section 60L.

60E. Police may search person under 18 years of age without warrant

S. 60E
inserted by
No. 55/2003
s. 4.

Subject to sections 60G and 60H, a member of the police force, without warrant, may search a person and any vehicle, package or thing in that person's possession or under his or her control for a volatile substance or an item used to inhale a volatile substance if the member has reasonable grounds for suspecting that the person—

s. 60F

- (a) is under 18 years of age; and
- (b) has in his or her possession or under his or her control a volatile substance or an item used to inhale a volatile substance; and
- (c) is inhaling or will inhale a volatile substance.

S. 60F
inserted by
No. 55/2003
s. 4.

60F. Search of person irrespective of age without warrant

- (1) Subject to sections 60G and 60H, a member of the police force, without warrant, may search a person and any vehicle, package or thing in that person's possession or under his or her control for a volatile substance or an item used to inhale a volatile substance if the member has reasonable grounds for suspecting that the person intends to provide—
 - (a) a volatile substance to a person under 18 years of age to inhale; or
 - (b) an item to a person under 18 years of age to use to inhale a volatile substance.
- (2) A member of the police force may search a person under sub-section (1) irrespective of the age of the person.

S. 60G
inserted by
No. 55/2003
s. 4.

60G. Before search, police to identify self

- (1) Subject to sub-section (2), before a member of the police force commences a search of a person under section 60E or 60F, the member must—
 - (a) inform the person of the member's name, rank and place of duty; and
 - (b) if requested by the person, provide the information referred to in paragraph (a) in writing; and

(c) produce the member's identification for inspection by the person, unless the member is in uniform.

(2) A member of the police force is not required to comply with sub-section (1) if the member believes on reasonable grounds that—

(a) the person is unable to understand the information because of the effects of inhaling a volatile substance; or

(b) it is otherwise impracticable to do so.

60H. Before search, police to give information and request production of substance or item

S. 60H
inserted by
No. 55/2003
s. 4.

(1) Subject to sub-section (2), before a member of the police force commences a search of a person under section 60E or 60F, the member must—

(a) inform the person that, although it is not an offence to possess a volatile substance or an item used to inhale a volatile substance or to inhale a volatile substance, in certain circumstances and using reasonable force, the member may—

(i) search a person for a volatile substance; and

(ii) seize a volatile substance or item used to inhale a volatile substance that is in a person's possession or under a person's control; and

(b) request the person to produce to the member any volatile substance or item used to inhale a volatile substance that is in the person's possession or under the person's control.

(2) A member of the police force is not required to comply with sub-section (1) if the member believes on reasonable grounds that—

s. 60I

- (a) the person is unable to understand the information and request because of the effects of inhaling a volatile substance; or
- (b) it is otherwise impracticable to do so.

S. 60I
inserted by
No. 55/2003
s. 4.

60I. Request for explanation before seizure of volatile substances and items used to inhale volatile substances

- (1) Subject to sub-section (2), if, during the course of conducting a search of a person under section 60E or 60F, a member of the police force detects a volatile substance or item used to inhale a volatile substance, the member must ask the person why he or she is carrying or possessing that volatile substance or item.
- (2) A member of the police force is not required to comply with sub-section (1) if the member believes on reasonable grounds that—
 - (a) the person is unable to understand the request for the explanation referred to in that sub-section because of the effects of inhaling a volatile substance; or
 - (b) it is otherwise impracticable to do so.

S. 60J
inserted by
No. 55/2003
s. 4.

60J. Seizure of volatile substances and items used to inhale when explanation given

A member of the police force may seize a volatile substance or an item used to inhale a volatile substance that is detected during the course of conducting a search under section 60E or 60F if, on hearing the explanation requested under section 60I, the member has reasonable grounds for suspecting that the person—

- (a) is under 18 years of age and is inhaling or will inhale a volatile substance; or

- (b) intends to provide the volatile substance detected to a person under 18 years of age to inhale; or
- (c) intends to provide the item detected to a person under 18 years of age to use to inhale a volatile substance.

60K. Seizure of volatile substances and items used to inhale when no explanation given

S. 60K
inserted by
No. 55/2003
s. 4.

A member of the police force may seize a volatile substance or an item used to inhale a volatile substance that is detected during the course of conducting a search under section 60E or 60F if—

- (a) no explanation referred to in section 60I has been given; and
- (b) the member has reasonable grounds for suspecting that the person—
 - (i) is under 18 years of age and is inhaling or will inhale a volatile substance; or
 - (ii) intends to provide the volatile substance detected to a person under 18 years of age to inhale; or
 - (iii) intends to provide the item detected to a person under 18 years of age to use to inhale a volatile substance.

60L. Apprehension and detention

S. 60L
inserted by
No. 55/2003
s. 4.

- (1) A member of the police force may apprehend and detain a person if the member has reasonable grounds for believing that the person—
 - (a) is under 18 years of age; and
 - (b) is inhaling a volatile substance or has recently inhaled a volatile substance; and

s. 60L

- (c) is likely by act or neglect to cause immediate serious bodily harm to himself or herself or to some other person.
 - (2) A member of the police force may apprehend and detain a person under sub-section (1) irrespective of whether—
 - (a) the person was searched under section 60E or 60F; or
 - (b) any volatile substance or item used to inhale a volatile substance—
 - (i) was seized as a result of such a search; or
 - (ii) was produced in accordance with a request under section 60H(1)(b) and received by a member of the police force.
 - (3) Subject to sub-section (4), on apprehending and detaining a person under sub-section (1) or as soon as practicable thereafter, a member of the police force must inform the person that—
 - (a) the person is not under arrest in relation to any alleged offence; and
 - (b) the person is apprehended and detained with the intention of preventing the person causing immediate serious bodily harm to himself or herself or to some other person.
 - (4) A member of the police force is not required to comply with sub-section (3) if the member believes on reasonable grounds that—
 - (a) the person is unable to understand the information referred to in that sub-section because of the effects of inhaling a volatile substance; or
 - (b) it is otherwise impracticable to do so.
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60M. How long may a person be detained and where?

S. 60M
inserted by
No. 55/2003
s. 4.

- (1) A person who has been apprehended and detained under section 60L must be released immediately upon it becoming known to a member of the police force that the person is not under 18 years of age.
- (2) A person who has been apprehended and detained under section 60L and who is under 18 years of age may only be detained for as long as a member of the police force has reasonable grounds for believing that the person—
 - (a) has recently inhaled a volatile substance; and
 - (b) is likely by act or neglect to cause immediate serious bodily harm to himself or herself or to some other person.
- (3) Subject to sub-section (2), as soon as practicable after apprehending and detaining under section 60L a person who is under 18 years of age, a member of the police force must release the person into the care of a suitable person who—
 - (a) the member reasonably believes is capable of taking care of the detained person; and
 - (b) consents to taking care of the detained person.

Note: Depending on the circumstances of each case, a suitable person may include the detained person's parent, guardian or another adult family member or an employee of an appropriate health or welfare agency.

- (4) If a member of the police force, after taking all reasonable steps, has been unable to release the detained person into the care of a suitable person in accordance with sub-section (3), the member of the police force—

s. 60N

- (a) may release the detained person; or
 - (b) subject to sub-section (2), may continue to detain that person.
- (5) In taking an action under sub-section (4), a member of the police force must take the action which he or she reasonably believes is the most appropriate in the circumstances.
- (6) A member of the police force must not detain a person under section 60L in—
- (a) a police gaol within the meaning of the **Corrections Act 1986**; or
 - (b) a police cell or lock-up.
- (7) A member of the police force must not interview or question a person who is apprehended and detained under section 60L in relation to any offence or alleged offence.

S. 60N
inserted by
No. 55/2003
s. 4.

60N. Return of seized or produced volatile substances and items used to inhale volatile substances

- (1) A member of the police force who—
- (a) receives a volatile substance or an item used to inhale a volatile substance which is produced in accordance with a request under section 60H(1)(b); or
 - (b) seizes a volatile substance or an item used to inhale a volatile substance under section 60J or 60K—

must, as soon as practicable after receiving or seizing the volatile substance or an item used to inhale a volatile substance, inform the person from whom the volatile substance or item was received or seized of his or her right to have it returned.

- (2) A person from whom a volatile substance or item used to inhale a volatile substance was received when it was produced in accordance with a request under section 60H(1)(b) may apply at the place of duty of the member of the police force who received the volatile substance or item for its return within 7 days after it was so received.
- (3) A person from whom a volatile substance or item used to inhale a volatile substance was seized under section 60J or 60K may apply at the place of duty of the member of the police force who seized the volatile substance or item for its return within 7 days after it was seized.
- (4) A volatile substance or an item used to inhale a volatile substance that is received by a member of the police force when it was produced in accordance with a request under section 60H(1)(b) or seized under section 60J or 60K may only be returned to a person under 18 years of age if the person is accompanied by a parent or guardian when collecting the volatile substance or item.

60O. Disposal or making safe of volatile substances and items used to inhale volatile substances

S. 60O
inserted by
No. 55/2003
s. 4.

Despite section 60N, a volatile substance or an item used to inhale a volatile substance received when it was produced in accordance with a request under section 60H(1)(b) or seized under section 60J or 60K may be disposed of or made safe (as the case requires) if—

- (a) the member of the police force who received or seized the volatile substance or item believes that the disposal or making safe of that substance or item is necessary because of the risk to health or safety in removing it from the place of receipt or seizure; or

s. 60P

- (b) the officer in charge of the place of duty of the member of the police force who received or seized a volatile substance or an item used to inhale a volatile substance believes that the disposal or making safe of that substance or item is necessary because of the risk to health or safety in storing it.

S. 60P
inserted by
No. 55/2003
s. 4.

60P. Forfeiture to Crown

- (1) A seized volatile substance or an item used to inhale a volatile substance that is not returned to the person from whom it was seized within 7 days after being so seized is forfeited to the Crown.
- (2) A volatile substance or an item used to inhale a volatile substance received by a member of the police force when it was produced in accordance with a request under section 60H(1)(b) that is not returned to the person from whom it was received within 7 days after being so received is forfeited to the Crown.
- (3) If any volatile substance or item used to inhale a volatile substance is forfeited to the Crown under sub-section (1) or (2)—
- (a) the Minister may direct that it be disposed of in any manner that the Minister thinks fit;
and
- (b) if it is sold, the proceeds of the sale must be paid into the Consolidated Fund.

S. 60Q
inserted by
No. 55/2003
s. 4.

60Q. Records concerning searches, seizure, receipt or disposal of property, apprehensions and detentions

- (1) A member of the police force who conducts a search under section 60E must make a written record of the search containing the prescribed particulars.

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- (2) A member of the police force who conducts a search under section 60F must make a written record of the search containing the prescribed particulars.
 - (3) A member of the police force who receives a volatile substance or an item used to inhale a volatile substance which is produced in accordance with a request under section 60H(1)(b) must make a written record of the receipt containing the prescribed particulars.
 - (4) A member of the police force who seizes a volatile substance or an item used to inhale a volatile substance under section 60J or 60K must make a written record of the seizure containing the prescribed particulars.
 - (5) A member of the police force who apprehends and detains a person under section 60L must make a written record of the apprehension and detention containing the prescribed particulars.
 - (6) A member of the police force who disposes of or makes safe a volatile substance or an item used to inhale a volatile substance under section 60O must make a written record of the disposal or making safe of the substance or item containing the prescribed particulars.
 - (7) A record required to be made by this section must be made as soon as practicable—
 - (a) in the case of a search, after the completion of the search; or
 - (b) in the case of a volatile substance or an item used to inhale a volatile substance received when it was produced in accordance with a request under section 60H(1)(b), after the substance or item was so received; or
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s. 60R

- (c) in the case of a seizure of a volatile substance or an item used to inhale a volatile substance under section 60J or 60K, after the substance or item was seized; or
- (d) in the case of an apprehension and detention under section 60L, after the person who was apprehended and detained is released in accordance with section 60M; or
- (e) in the case of the disposal or making safe of a volatile substance or an item used to inhale a volatile substance under section 60O, after the substance or item was disposed of or made safe.

S. 60R
inserted by
No. 55/2003
s. 4.

60R. Person may request record

- (1) A person who is subjected to a search under section 60E or 60F is entitled, on request and without charge, to a copy of the record of the search if the request is made not later than 1 year after the date of the search.
- (2) A person who produced a volatile substance or an item used to inhale a volatile substance in accordance with a request under section 60H(1)(b) to a member of the police force who received it is entitled, on request and without charge, to a copy of the record of the receipt if the request is made not later than 1 year after the date of the production in accordance with the request under section 60H(1)(b).
- (3) A person from whom a volatile substance or an item used to inhale a volatile substance was seized under section 60J or 60K is entitled, on request and without charge, to a copy of the record of the seizure if the request is made not later than 1 year after the date of the seizure.

- (4) A person who is apprehended and detained under section 60L is entitled, on request and without charge, to a copy of the record of the apprehension and detention if the request is made not later than 1 year after the date of apprehension and detention.
- (5) A person whose property was disposed of or made safe under section 60O is entitled, on request and without charge, to a copy of the record of the disposal or making safe if the request is made not later than 1 year after the date of the disposal or making safe.
- (6) A request under sub-section (1), (2), (3), (4) or (5) is to be made to the officer in charge of the place of duty of the member of the police force who searched the person, received the substance or item produced in accordance with the request under section 60H(1)(b), seized the substance or item, apprehended and detained the person or disposed of or made safe the substance or item (as the case requires).

60S. Chief Commissioner to report on actions under this Division

S. 60S
inserted by
No. 55/2003
s. 4.

- (1) The Chief Commissioner of Police must provide to the Minister for inclusion in the annual report of operations under Part 7 of the **Financial Management Act 1994** a report containing—
 - (a) the number of searches without warrant under section 60E conducted during that financial year; and
 - (b) the number of searches without warrant under section 60F conducted during that financial year; and

s. 60S

- (c) information about the number and type of volatile substances and items used to inhale a volatile substance seized as a result of conducting those searches; and
 - (d) information about the number and type of volatile substances and items used to inhale a volatile substance received by members of the police force when produced in accordance with a request under section 60H(1)(b); and
 - (e) information about the number and type of volatile substances and items used to inhale a volatile substance returned to persons under section 60N; and
 - (f) information about the number and type of volatile substances and items used to inhale a volatile substance disposed of or made safe under section 60O; and
 - (g) information about the number and type of volatile substances and items used to inhale a volatile substance forfeited to the Crown under section 60P; and
 - (h) the number of persons apprehended and detained without warrant under section 60L during that financial year.
- (2) A report provided under this section is not required to specify the exact type of each volatile substance or item used to inhale a volatile substance referred to in the report.

60T. Regulations

S. 60T
inserted by
No. 55/2003
s. 4.

- (1) For the purposes of this Part, the Governor in Council may make regulations for or with respect to—
 - (a) the manner in which searches and seizures under this Division are to be carried out; and
 - (b) particulars to be included in records made under section 60Q; and
 - (c) any other matter or thing necessary or convenient to be prescribed for the purposes of this Part.
- (2) Regulations made under this Part may—
 - (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstance;
 - (c) confer powers or discretions or impose duties on any person.

Pt 4A
(Heading and
ss 61–69M)
inserted by
No. 54/1997
s. 5 (as
amended by
No. 52/1998
s. 311(Sch. 1
item 22)).

New s. 61
inserted by
No. 54/1997
s. 5.

PART IVA—AUTHORITIES FOR LOW-THC CANNABIS

Division 1—Authorities for low-THC cannabis

61. Definitions

(1) In this Part—

"authority" means an authority issued under section 65;

"cannabis" means a plant or any part of a plant of the genus *Cannabis L*, whether fresh or dried;

"inspector" means—

- (a) a person authorised as an inspector under section 69E; or
- (b) a member of the police force;

"low-THC cannabis" means cannabis, the leaves and flowering heads of which do not contain more than 0.35 per cent of tetrahydrocannabinol;

"Secretary" means the Secretary to the Department of Primary Industries;

"serious offence" means an indictable offence involving dishonesty, fraud or cultivation or trafficking in drugs of dependence where the maximum penalty exceeds 3 months imprisonment.

S. 61(1) def. of
"Secretary"
substituted by
No. 56/2003
s. 11(Sch.
item 7.1).

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- (2) For the purposes of section 64, a person is an associate of an applicant for an authority if the person—
- (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in right of the person or on behalf of any other person) in the business of the applicant to which the authority relates, and by virtue of that interest or power, is able or will be able to exercise a significant influence over or with respect to the management or operation of the business to which the authority relates; or
 - (b) holds or will hold any relevant position, whether in right of the person or on behalf of any other person in the business of the applicant to which the authority relates; or
 - (c) is a relative of the applicant.
- (3) In sub-section (2)—
- "relative"** means spouse (including de facto spouse), parent, child or sibling (whether of the full or half blood);
- "relevant financial interest"**, in relation to a business, means—
- (a) any share in the capital of the business; or
 - (b) any entitlement to receive any income derived from the business;
- "relevant position"**, in relation to a business, means the position of director, manager or other executive position or secretary, however that position is designated;
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"relevant power" means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—

- (a) to participate in any directorial, managerial or executive decision; or
- (b) to elect or appoint any person to any relevant position.

New s. 62
inserted by
No. 54/1997
s. 5.

62. Application for authority to cultivate and process low-THC cannabis

- (1) A person may apply to the Secretary for an authority authorising that person, for commercial or research purposes relating to non-therapeutic use—
 - (a) to possess, process, sell or supply cannabis seed which has been harvested from low-THC cannabis; or
 - (b) to cultivate and possess cannabis from seed which has been harvested from low-THC cannabis; or
 - (c) to possess, process, sell or supply cannabis which—
 - (i) is substantially free of leaves and flowering heads; and
 - (ii) does not contain tetrahydrocannabinol in excess of 0.1 per cent.
- (2) An application under sub-section (1) must—
 - (a) be in writing; and
 - (b) be accompanied by the prescribed application fee.

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- (3) An application under sub-section (1) must contain or be accompanied by evidence to the satisfaction of the Secretary that—
- (a) the applicant is a fit and proper person to be given an authority;
 - (b) the applicant intends to undertake bona fide research or commercial activity relating to the non-therapeutic use of cannabis under the authority including—
 - (i) in the case of research, evidence that the research would be conducted by a person with appropriate scientific training using appropriate methodology; or
 - (ii) in the case of commercial activity, evidence of the commercial activity to be carried out.
- (4) An applicant must provide any other information about the applicant or the application which the Secretary reasonably requires.

63. Secretary must investigate application

- (1) On receiving an application under section 62, the Secretary must cause to be carried out all investigations and inquiries that the Secretary considers necessary to properly determine the application.
- (2) The Secretary may refer a copy of an application and any supporting documentation to the Chief Commissioner of Police.
- (3) The Chief Commissioner of Police must inquire into and report to the Secretary on any matters concerning the application that the Secretary requests.

New s. 63
inserted by
No. 54/1997
s. 5.

New s. 64
inserted by
No. 54/1997
s. 5.

64. Matters to be considered in determining applications

- (1) In order to prevent criminal activity in the cultivation and processing of low-THC cannabis, the Secretary must not issue an authority to an applicant unless the Secretary is satisfied that—
 - (a) the applicant or any associate of the applicant has within the 10 years preceding the application not been found guilty of a serious offence; and
 - (b) the applicant and each associate of the applicant is a suitable person to be concerned in or associated with the cultivation, processing, sale or supply of low-THC cannabis; and
 - (c) the applicant's property or premises will be suitable for the cultivation, processing, sale or supply of low-THC cannabis in relation to location, facilities and proposed security arrangements.
- (2) In particular, the Secretary may consider whether—
 - (a) the applicant and each associate of the applicant is of good repute, having regard to character, honesty and integrity;
 - (b) in the case of an applicant that is not a natural person, the applicant has a satisfactory ownership, trust or corporate structure;
 - (c) the applicant is of sound and stable financial background;
 - (d) the applicant has any business association with any person or body who or which, in the opinion of the Secretary, is not of good

repute, having regard to character, honesty and integrity;

- (e) each director, partner, trustee, executive officer and secretary and any other person determined by the Secretary to be associated or connected with the ownership, administration or management of the operations or business of the applicant is a suitable person to act in that capacity.

65. Determination of applications

New s. 65
inserted by
No. 54/1997
s. 5.

- (1) After considering an application and any investigation under section 63, the Secretary must determine an application by—
 - (a) issuing an authority; or
 - (b) refusing to issue an authority.
- (2) The Secretary must notify the applicant in writing of the decision under sub-section (1).

66. Terms and conditions of authorities

New s. 66
inserted by
No. 54/1997
s. 5.

- (1) An authority is issued for the term, not exceeding 3 years, specified in the authority unless it is sooner suspended or cancelled.
- (2) An authority relates only to the premises or site described in it.
- (3) An authority is subject to the terms, conditions, limitations and restrictions specified in it including, but not limited to, terms, conditions, limitations and restrictions relating to—
 - (a) the premises or site at which the activities authorised by the authority may be carried out;
 - (b) the source of seed for sowing, including the authentication of the varietal identity and tetrahydrocannabinol content of the crop from which the seed was harvested;

- (c) the implementation and maintenance of satisfactory security and surveillance measures to restrict access of unauthorised persons to crops and harvested material;
- (d) the keeping of records and other documents;
- (e) the provision of information, records or other documents to the Secretary relating to—
 - (i) the activities carried out under the authority; or
 - (ii) a change in the position of director, manager, secretary or other executive position, however designated or the structure of the business to which the authority relates; or
 - (iii) any other matter that the Secretary reasonably requires;
- (f) the disposal of harvested material and crop residue;
- (g) inspection, supervision and surveillance of seed, plants, crops, harvested material and products by inspectors.

New s. 67
inserted by
No. 54/1997
s. 5.

67. Renewal of authorities

- (1) An application for renewal of an authority—
 - (a) may be made up to one month before the expiry of the current authority; and
 - (b) must be in writing and accompanied by the prescribed fee.
- (2) On receiving an application under sub-section (1), the Secretary, in the Secretary's discretion, may renew the authority.
- (3) A renewed authority lasts for the same period as the previous authority.

68. Authority not transferable

An authority is not transferable to another person.

New s. 68
inserted by
No. 54/1997
s. 5.

69. Amendment of authorities

- (1) The Secretary may, in the Secretary's discretion—
 - (a) amend any terms, conditions, limitations or restrictions to which the authority is subject; or
 - (b) impose new terms, conditions, limitations or restrictions on an authority.
- (2) An amendment under sub-section (1) must be notified in writing to the holder of the authority.

New s. 69
inserted by
No. 54/1997
s. 5.

69A. Suspension or cancellation

- (1) The Secretary may, by notice in writing to the holder of an authority, suspend or cancel an authority if—
 - (a) the holder requests suspension or cancellation; or
 - (b) the holder has not complied with the terms, conditions, limitations or restrictions of the authority; or
 - (c) the holder has failed to comply with this Act or regulations; or
 - (d) the Secretary is satisfied that the holder is no longer a fit and proper person to hold the authority; or
 - (e) the Secretary is satisfied that the holder obtained the authority by fraud, misrepresentation or concealment of facts; or
 - (f) the holder ceases to carry on the research or commercial activity to which the authority relates.

S. 69A
inserted by
No. 54/1997
s. 5.

s. 69B

- (2) If an authority is suspended or cancelled under sub-section (1), it ceases to be of effect and any document issued to the former holder must be surrendered to the Secretary on demand.

S. 69B
inserted by
No. 54/1997
s. 5 (as
amended by
No. 52/1998
s. 311 (Sch. 1
item 22)).

69B. Review by VCAT

- (1) A person may apply to the Victorian Civil and Administrative Tribunal for review of a decision of the Secretary—
- (a) to refuse to issue an authority to that person; or
 - (b) to refuse to renew an authority held by that person; or
 - (c) to suspend, cancel or amend an authority held by that person.
- (2) An application for review under sub-section (1) must be made within 28 days after the later of—
- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 69C
inserted by
No. 54/1997
s. 5.

69C. Offence to fail to comply with authority

A person who is the holder of an authority under this Part must comply with the terms, conditions, limitations or restrictions to which that authority is subject.

Penalty: 100 penalty units.

69D. Catchment and Land Protection Act does not apply

Despite anything to the contrary in the **Catchment and Land Protection Act 1994**, Part 8 of that Act does not apply to the processing, cultivation, possession, sale or supply of low-THC cannabis in accordance with an authority under this Part.

S. 69D
inserted by
No. 54/1997
s. 5.

Division 2—Inspection and enforcement

69E. Inspectors under this Part

- (1) The Secretary, by instrument, may authorise the following persons to be inspectors for the purposes of all or any of the provisions of this Part—
 - (a) any person employed under Part 3 of the **Public Administration Act 2004**; or
 - (b) any other appropriately qualified person.
- (2) The Secretary may determine the terms and conditions of authorisation of inspectors.
- (3) The Secretary may, in writing, revoke the authorisation of an inspector at any time.
- (4) The terms and conditions of authorisation may contain general directions as to how the inspector's powers may be exercised.
- (5) The Secretary must issue an identification certificate to each inspector (other than an inspector who is a member of the police force) which sets out the provisions of this Part for which the inspector is authorised to be an inspector.

S. 69E
inserted by
No. 54/1997
s. 5.

S. 69E(1)(a)
substituted by
No. 12/1999
s. 4(Sch. 2
item 4.2),
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 60.2).

s. 69F

- (6) An inspector, in the course of performing his or her functions under this Part, must produce his or her identification certificate to any person who requests its production.
- (7) In this Division, a reference to an identification certificate in relation to an inspector who is a member of the police force is a reference to written evidence of the fact that he or she is a member of the police force.

S. 69F
inserted by
No. 54/1997
s. 5.

69F. General powers of inspectors

- (1) For the purposes of determining compliance with this Part or an authority, an inspector may, with such assistance as he or she thinks necessary, at any reasonable time—
 - (a) enter and inspect any place, other than premises used as a residence, occupied by any person who is the holder of an authority;
 - (b) inspect, count, examine or mark for identification any product, plant or crop in the place;
 - (c) require a person to produce any document that the inspector reasonably requires for ascertaining whether this Part or an authority is being complied with and—
 - (i) examine the document; and
 - (ii) make copies of it or take extracts from it; and
 - (iii) remove the document for as long as is reasonably necessary to make copies or take extracts;
 - (d) take or remove for examination samples of or from, or specimens of, any plant of a crop or product to determine—

- (i) the tetrahydrocannabinol content of that plant, crop or product; and
 - (ii) that the plant, crop or product has been cultivated or processed in accordance with the authority or that its possession is in accordance with the authority;
- (e) submit any sample or specimen taken in accordance with this Part to a laboratory or place approved by the Secretary for examination and testing.
- (2) An inspector may not exercise any powers under this Part if the inspector fails, on request, to produce his or her identification certificate for inspection by the occupier of the place or the person in charge or apparent control of the place.

69G. Inspector may order harvest or treatment

S. 69G
inserted by
No. 54/1997
s. 5.

- (1) If an inspector is satisfied on reasonable grounds that any plant or crop contravenes this Part or an authority, the inspector may order the harvest of the plant or crop and the treatment of that harvested material.
- (2) An order under sub-section (1) must—
- (a) be in writing; and
 - (b) include a statement of the reasons for ordering the harvest and treatment; and
 - (c) be given to the holder of the authority.

69H. Inspector has power to detain or seize

S. 69H
inserted by
No. 54/1997
s. 5.

If an inspector believes that any plant, crop or product contravenes this Part or an authority, the inspector may detain or seize the plant, crop or product and deal with it in accordance with section 69I.

69I. What happens if an inspector detains or seizes plants, crops or products?

- (1) If an inspector detains or seizes any plant, crop or product, the inspector must immediately—
 - (a) give notice in writing of the detention or seizure including a statement of the reasons for detaining or seizing the plant, crop or product to the holder of the authority; and
 - (b) take or send to a laboratory or place approved by the Secretary for examination and testing, the plant, crop or product or a sample of the plant, crop or product.
- (2) A person must not remove the whole or any part of a plant, crop or product detained or seized while the detention or seizure notice remains in force, except on the written authority or written direction of an inspector or the Secretary.
Penalty: 50 penalty units.
- (3) If the results of the examination or test of the samples taken or sent in accordance with subsection (1)(b) show that the plant, crop or product was not in contravention of this Part or the authority, the inspector must immediately release or return the plant, crop or product to the holder of the authority.
- (4) If the results of the examination or test of the samples taken or sent in accordance with subsection (1)(b) show that the plant, crop or product was in contravention of this Part or the authority, the inspector must—
 - (a) inform the holder of the authority or the person in whose possession the plant, crop or product was found (as the case may be) in writing of the results; and

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- (b) arrange for or order the harvest, disposal or destruction of the plant, crop or product.
 - (5) If an arrangement or order is made for the disposal or destruction of a plant, crop or product under sub-section (4)(b), the inspector must give notice of that arrangement or order before that disposal or destruction takes place.
 - (6) A notice under sub-section (5) must—
 - (a) be in writing; and
 - (b) include a statement of the reasons for arranging or ordering the disposal or destruction; and
 - (c) fix a time for the disposal or destruction; and
 - (d) be given to the holder of the authority.
 - (7) Nothing in this section limits the power of a member of the police force to take legal proceedings in respect of any plant, crop or product found not to comply with this Part or an authority.

69J. Appeal to Secretary if disposal or destruction ordered

S. 69J
inserted by
No. 54/1997
s. 5.

- (1) Within 48 hours of receiving a notice under section 69I(5), the holder of an authority may lodge an appeal in writing against the disposal or destruction with the Secretary.
- (2) Within 3 business days after an appeal is lodged under sub-section (1), the Secretary must determine the appeal by—
 - (a) cancelling the arrangement or order made by the inspector under section 69I; or
 - (b) confirming the arrangement or order made by the inspector under section 69I.

s. 69K

- (3) The Secretary must notify the holder of the authority in writing of the determination made under sub-section (2).

S. 69K
inserted by
No. 54/1997
s. 5.

69K. Offences relating to inspector's exercise of power

- (1) A person must not, without reasonable excuse, hinder or obstruct an inspector in the exercise of a power under this Part.

Penalty: 100 penalty units.

- (2) A person must not, without reasonable excuse, fail to comply with the direction, requirement or order of an inspector.

Penalty: 100 penalty units.

S. 69L
inserted by
No. 54/1997
s. 5.

69L. Inspector may possess cannabis for purposes of this Part

An inspector is authorised to have cannabis in his or her possession in the exercise or performance of any power, function or duty conferred on him or her by this Part or the regulations made under this Part.

Division 3—Regulations under this Part

S. 69M
inserted by
No. 54/1997
s. 5.

69M. Regulations

- (1) The Governor in Council may make regulations for or with respect to—
- (a) fees for applications and renewals for the purposes of this Part;
 - (b) authorising and requiring inspectors to impose fees and charges of such amounts or rates as are prescribed or determined in the manner prescribed for—

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- (i) sampling and testing cannabis plants and crops grown or products produced in accordance with this Part as required under an authority or to determine the tetrahydrocannabinol content of those plants, crops or products;
 - (ii) supervising the harvesting, disposal or destruction of cannabis plants, crops or products;
 - (iii) carrying out inspections, supervision or surveillance of cannabis plants or crops grown or products produced in accordance with this Part to ensure that the terms, conditions, limitations and restrictions of an authority are being complied with;
 - (iv) providing any other service in respect of cannabis plants or crops grown or products produced in accordance with this Part;
- (c) generally prescribing any other matter or thing required or permitted by this Part to be prescribed or necessary to be prescribed to give effect to this Part.
- (2) Regulations made under this Part may—
- (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstance;
 - (c) provide for different fees for different activities or classes of activity or different cases or classes of cases;
 - (d) provide for specific, minimum or maximum or minimum and maximum fees;
 - (e) provide for the waiver or reduction of fees;
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Drugs, Poisons and Controlled Substances Act 1981
No. 9719 of 1981
Part IVA—Authorities for Low-THC Cannabis

s. 69M

-
- (g) in the case of applications for the issue or renewal of authorities, specify fees that reflect the cost of administration of, and the provision of inspection and other services in connection with this Part;
 - (h) leave any matter to be approved or determined by the Secretary or an inspector.

Pt 5 (Heading and ss 63–69) repealed by No. 10002 s. 6(1)(c)(d).

* * * * *

**PART V—DRUGS OF DEPENDENCE AND RELATED
MATTERS**

Pt 6
(Heading and
ss 70–101)
substituted as
Pt 5 (Heading
and ss 70–80)
and Pt 6
(Heading and
ss 81–90) by
No. 10002
s. 7(1).

Pt 5 (Heading)
amended by
No. 52/2006
s. 7.

S. 70
substituted by
No. 10002
s. 7(1).

70. Definitions

- (1) In this Part and Part VI, unless inconsistent with the context or subject-matter—

S. 70(1)
amended by
No. 101/1986
s. 55(1)(c).

"aggregated commercial quantity", in relation to 2 or more drugs of dependence, means a quantity determined as follows—

S. 70(1) def. of
"aggregated
commercial
quantity"
inserted by
No. 61/2001
s. 4(1).

- (a) the quantity of each drug of dependence involved in the alleged offence is determined as a fraction of—
- (i) in the case of a drug of dependence which is a narcotic plant, the commercial quantity specified in column 2 of Part 2 of Schedule Eleven in respect of that drug of dependence; and
- (ii) in the case of any other drug of dependence, the commercial quantity specified in column 2 of Part 3 of Schedule Eleven in

respect of that drug of
dependence; and

- (b) the fractions determined under paragraph (a) are added together; and
- (c) the quantity is an aggregated commercial quantity if the total of those fractions when added together is equal to or greater than the number "1";

Example 1

Jack is in possession of 200 grams of heroin, 200 grams of amphetamine and 800 grams of tetrahydrocannabinol. The individual commercial quantities for each of those drugs is 250 grams, 250 grams and 1 kilogram respectively (as set out in column 2 of Part 3 of Schedule Eleven), so Jack would not be guilty of trafficking in a commercial quantity of each of those individual drugs of dependence.

To aggregate the individual quantities, determine the quantities involved as fractions of the specified commercial quantities:
 $\frac{200}{250}$ (heroin), $\frac{200}{250}$ (amphetamine) and $\frac{800}{1000}$ (tetrahydrocannabinol) ie $\frac{4}{5}$ plus $\frac{4}{5}$ plus $\frac{4}{5}$.
The total of the fractions when added together is $\frac{12}{5}$ or 2.4 which is a number greater than 1. Jack is therefore in possession of a quantity which is not less than an aggregated commercial quantity of 2 or more drugs of dependence.

Example 2

Jill is in possession of 80 cannabis plants and 800 grams of tetrahydrocannabinol. The individual commercial quantities for each of those drugs is 100 plants and 1 kilogram respectively (as set out in column 2 of Part 2 of Schedule Eleven and column 2 of Part 3 of Schedule Eleven), so Jill would not be guilty of trafficking in a commercial quantity of each of those individual drugs of dependence.

To aggregate the individual quantities, determine the quantities involved as fractions of the specified commercial quantities:
 $\frac{80}{100}$ (cannabis plants) and
 $\frac{800}{1000}$ (tetrahydrocannabinol) ie $\frac{8}{10}$ plus $\frac{8}{10}$.
The total of the fractions when added together is $\frac{16}{10}$ or 1.6 which is a number greater than 1.
Jill is therefore in possession of a quantity which is not less than an aggregated commercial quantity of 2 or more drugs of dependence.

Note: Quantities are to be calculated on the quantity specified for a drug of dependence in column 2 of Part 2 of Schedule Eleven (for narcotic plants) and column 2 of Part 3 of Schedule Eleven (for other drugs of dependence) whether or not that drug of dependence is contained in or mixed with another substance. The other substances contained in or mixed with a mixture of drug and substance are not to be included in the calculation.

"aggregated large commercial quantity", in relation to 2 or more drugs of dependence, means a quantity determined as follows—

S. 70(1) def. of "aggregated large commercial quantity" inserted by No. 61/2001 s. 4(1).

- (a) the quantity of each drug of dependence involved in the alleged offence is determined as a fraction of—
 - (i) in the case of a drug of dependence which is a narcotic plant, the large commercial quantity specified in column 1A of Part 2 of Schedule Eleven in respect of that drug of dependence; and
 - (ii) in the case of any other drug of dependence, the large commercial quantity specified in column 1A of Part 3 of Schedule Eleven in respect of that drug of dependence; and

- (b) the fractions determined under paragraph (a) are added together; and
- (c) the quantity is an aggregated large commercial quantity if the total of those fractions when added together is equal to or greater than the number "1";

Note: Quantities are to be calculated on the quantity specified for a drug of dependence in column 1A of Part 2 of Schedule Eleven (for narcotic plants) and column 1A of Part 3 of Schedule Eleven (for other drugs of dependence) whether or not that drug of dependence is contained in or mixed with another substance. The other substances contained in or mixed with a mixture of drug and substance are not to be included in the calculation.

S. 70(1) def. of "automatic forfeiture quantity" inserted by No. 63/2003 s. 45.

"automatic forfeiture quantity", in relation to a drug of dependence the name of which is specified in column 1 of Part 3 of Schedule Eleven, means the quantity of that drug, including any other substance in which it is contained or with which it is mixed, that is specified in column 2B of that Part of that Schedule opposite to the name of that drug of dependence;

Note: see the **Confiscation Act 1997**;

S. 70(1) def. of "cannabis" amended by No. 101/1986 s. 58(1)(b)(i), substituted by No. 48/1997 s. 37(a).

"cannabis" means any fresh or dried parts of a plant of the genus *Cannabis* L;

S. 70(1) def. of "child" inserted by No. 48/1997 s. 37(a).

"child" means a person under 18 years of age;

"commercial quantity"—

- (a) in relation to a drug of dependence the name of which is specified in column 1 of Part 1 of Schedule Eleven, means the quantity that is specified in column 2 of that Part of that Schedule opposite to the name of that drug of dependence;
- (b) in relation to a drug of dependence the name of which is specified in column 1 of Part 2 of Schedule Eleven, means the quantity, or the number of plants, that is specified in column 2 of that Part of that Schedule opposite to the name of that drug of dependence;
- (c) in relation to a drug of dependence the name of which is specified in column 1 of Part 3 of Schedule Eleven—
 - (i) if that drug of dependence is contained in or mixed with another substance and the quantity of that mixture of drug of dependence and other substance is not less than the quantity specified in column 2A of that Part of that Schedule opposite to the name of that drug of dependence, means any amount of that drug of dependence; or
 - (ii) in any other case, means the quantity that is specified in column 2 of that Part of that Schedule opposite to the name of that drug of dependence;
- (d) in relation to 2 or more drugs of dependence, means an aggregated commercial quantity of those drugs;

S. 70(1) def. of "commercial quantity" substituted by Nos 48/1997 s. 37(b), 61/2001 s. 4(2).

s. 70

S. 70(1) def. of
"cultivate"
inserted by
No. 61/2001
s. 4(1).

"cultivate", in relation to a narcotic plant
includes—

- (a) sow a seed of a narcotic plant; or
- (b) plant, grow, tend, nurture or harvest a
narcotic plant;

S. 70(1) def. of
"large
commercial
quantity"
inserted by
No. 61/2001
s. 4(1).

"large commercial quantity"—

- (a) in relation to a drug of dependence the
name of which is specified in column 1
of Part 2 of Schedule Eleven, means the
quantity, or the number of plants, that is
specified in column 1A of that Part of
that Schedule opposite to the name of
that drug of dependence;
- (b) in relation to a drug of dependence the
name of which is specified in column 1
of Part 3 of Schedule Eleven—
 - (i) if that drug of dependence is
contained in or mixed with
another substance and the quantity
of that mixture of drug of
dependence and other substance is
not less than the quantity specified
in column 1B of that Part of that
Schedule opposite to the name of
that drug of dependence, means
any amount of that drug of
dependence; or
 - (ii) in any other case, means the
quantity that is specified in
column 1A of that Part of that
Schedule opposite to the name of
that drug of dependence;
- (c) in relation to 2 or more drugs of
dependence, means an aggregated large
commercial quantity of those drugs;

"narcotic plant" means any plant the name of which is specified in column 1 of Part 2 of Schedule Eleven;

S. 70(1) def. of "narcotic plant" amended by No. 101/1986 s. 58(1)(b)(ii).

"small quantity"—

S. 70(1) def. of "small quantity" amended by Nos 101/1986 s. 58(1)(b)(iii), 48/1997 s. 37(c).

- (a) in relation to any fresh or dried parts of a plant of the genus *Cannabis* L, means the quantity that is specified in column 4 of Part 2 of Schedule Eleven opposite to the name *Cannabis* L specified in column 1 of that part of that Schedule; and
- (b) in relation to any drug of dependence the name of which is specified in column 1 of Part 3 of Schedule Eleven, means the quantity of that drug, including any other substance in which it is contained or with which it is mixed, that is specified in column 4 of that Part of that Schedule opposite to the name of that drug of dependence;

"traffick" in relation to a drug of dependence includes—

- (a) prepare a drug of dependence for trafficking;
- (b) manufacture a drug of dependence; or
- (c) sell, exchange, agree to sell, offer for sale or have in possession for sale, a drug of dependence;

s. 70

S. 70(1) def. of
"traffickable
quantity"
substituted by
No. 48/1997
s. 37(d).

"traffickable quantity", in relation to a drug of dependence—

- (a) the name of which is specified in column 1 of Part 1 of Schedule Eleven, means the quantity that is specified in column 3 of that Part of that Schedule opposite to the name of that drug of dependence;
- (b) the name of which is specified in column 1 of Part 2 of Schedule Eleven, means the quantity, or the number of plants, that is specified in column 3 of that Part of that Schedule opposite to the name of that drug of dependence;
- (c) the name of which is specified in column 1 of Part 3 of Schedule Eleven means the quantity of that drug, including any other substance in which it is contained or with which it is mixed, that is specified in column 3 of that Part of that Schedule opposite to the name of that drug of dependence;

"use" in relation to a drug of dependence means—

- (a) smoke a drug of dependence;
 - (b) inhale the fumes caused by heating or burning a drug of dependence; or
 - (c) introduce a drug of dependence into the body of a person.
- (2) The provisions of section 4(2) and (3) and the interpretations of **"manufacture"**, **"sell"** and **"supply"** in section 4(1) do not apply to this Part.

S. 70(2)
amended by
No. 18/2000
s.105(c).

71. Trafficking in a drug or drugs of dependence—large commercial quantity

A person who, without being authorized by or licensed under this Act or the regulations to do so, trafficks or attempts to traffick in a quantity of a drug of dependence or of 2 or more drugs of dependence that is not less than the large commercial quantity applicable to that drug of dependence or those drugs of dependence is guilty of an indictable offence and liable—

- (a) to level 1 imprisonment (life); and
- (b) in addition to imprisonment, to a penalty of not more than 5000 penalty units.

S. 71 substituted by No. 10002 s. 7(1), amended by Nos 56/1989 s. 286(Sch. 2 item 9), 48/1997 ss 38(1) (2)(a)(b), 41(1)(a)(b), substituted by No. 61/2001 s. 5.

71AA. Trafficking in a drug or drugs of dependence—commercial quantity

A person who, without being authorized by or licensed under this Act or the regulations to do so, trafficks or attempts to traffick in a quantity of a drug of dependence or of 2 or more drugs of dependence that is not less than the commercial quantity applicable to that drug of dependence or those drugs of dependence is guilty of an indictable offence and liable to level 2 imprisonment (25 years maximum).

S. 71AA inserted by No. 61/2001 s. 5.

71AB. Trafficking in a drug of dependence to a child

A person who, without being authorized by or licensed under this Act or the regulations to do so, trafficks or attempts to traffick in a drug of dependence to a child is guilty of an indictable offence and liable to level 3 imprisonment (20 years maximum).

S. 71AB inserted by No. 61/2001 s. 5.

s. 71AC

S. 71AC
inserted by
No. 61/2001
s. 5.

71AC. Trafficking in a drug of dependence

A person who, without being authorized by or licensed under this Act or the regulations to do so, trafficks or attempts to traffick in a drug of dependence is guilty of an indictable offence and liable to level 4 imprisonment (15 years maximum).

S. 71A
inserted by
No. 48/1997
s. 39,
amended by
No. 52/2006
s. 9(1) (ILA
s. 39B(1)).

71A. Possession of substance, material, documents or equipment for trafficking in a drug of dependence

- (1) A person who, without being authorised by or licensed under this Act or the regulations to do so, possesses a substance, material, document containing instructions relating to the preparation, cultivation or manufacture of a drug of dependence or equipment with the intention of using the substance, material, document or equipment for the purpose of trafficking in a drug of dependence is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

S. 71A(2)
inserted by
No. 52/2006
s. 9(1).

- (2) Nothing in this section is limited by section 71C.

S. 71B
inserted by
No. 48/1997
s. 39.

71B. Supply of drug of dependence to a child

- (1) A person who, without being authorised by or licensed under this Act or the regulations to do so—
 - (a) supplies a drug of dependence to a child for the purposes of the supply of that drug of dependence by that child to another child; or

(b) supplies a drug of dependence to a child for the use of that drug of dependence by that child—

is guilty of an indictable offence and liable to a penalty of not more than 1000 penalty units or level 4 imprisonment (15 years maximum) or both.

- (2) Despite section 70(2), in this section "**supply**" has the same meaning as in section 4(1) of this Act.
- (3) This section does not apply to a person who supplies a drug of dependence to a child if, at the time of supplying that drug, that person was also a child.
- (4) It is a defence to a charge under this section for a person charged to prove that he or she believed on reasonable grounds that the person to whom the drug of dependence was supplied was 18 years of age or older.

71C. Possession of tablet press

A person who, without being authorized by or licensed under this Act or the regulations (if any) to do so or otherwise without a lawful excuse, possesses a tablet press is guilty of an indictable offence and liable to a penalty of not more than 600 penalty units or level 6 imprisonment (5 years maximum) or both.

S. 71C
inserted by
No. 52/2006
s. 11.

72. Cultivation of narcotic plants—large commercial quantity

A person who, without being authorized by or licensed under this Act or the regulations to do so, cultivates or attempts to cultivate a narcotic plant in a quantity of a drug of dependence, being a narcotic plant, that is not less than the large commercial quantity applicable to that narcotic

S. 72
substituted by
No. 10002
s. 7(1),
amended by
No. 48/1997
ss 40(1)(2),
41(2)(3),
substituted by
No. 61/2001
s. 6.

s. 72A

plant is guilty of an indictable offence and liable—

- (a) to level 1 imprisonment (life); and
- (b) in addition to imprisonment, to a penalty of not more than 5000 penalty units.

S. 72A
inserted by
No. 61/2001
s. 6.

72A. Cultivation of narcotic plants—commercial quantity

A person who, without being authorized by or licensed under this Act or the regulations to do so, cultivates or attempts to cultivate a narcotic plant in a quantity of a drug of dependence, being a narcotic plant, that is not less than the commercial quantity applicable to that narcotic plant is guilty of an indictable offence and liable to level 2 imprisonment (25 years maximum).

S. 72B
inserted by
No. 61/2001
s. 6.

72B. Cultivation of narcotic plants

A person who, without being authorized by or licensed under this Act or the regulations to do so, cultivates or attempts to cultivate a narcotic plant is guilty of an indictable offence and liable—

- (a) if the trial judge (or magistrate on a summary hearing) is satisfied on the balance of probabilities that the offence was not committed by the person for any purpose related to trafficking in that plant, to level 8 imprisonment (1 year maximum) or a penalty of not more than 20 penalty units or both; or
- (b) in any other case, to level 4 imprisonment (15 years maximum).

S. 72C
inserted by
No. 61/2001
s. 6.

72C. Defence to prosecution for offences involving cultivation

It is a good defence to a prosecution for an offence against section 72, 72A or 72B involving the cultivation of a narcotic plant if the person charged with the offence adduces evidence which

satisfies the court on the balance of probabilities that, having regard to all the circumstances (including his or her conduct) in which the matter alleged to constitute the offence arose or preparatory to the alleged commission of the offence, he or she did not know or suspect and could not reasonably have been expected to have known or suspected that the narcotic plant was a narcotic plant.

73. Possession of a drug of dependence

S. 73
substituted by
No. 10002
s. 7(1).

(1) A person who without being authorized by or licensed under this Act or the regulations to do so has or attempts to have in his possession a drug of dependence is guilty of an indictable offence and liable—

(a) where the court is satisfied on the balance of probabilities that—

(i) the offence was committed in relation to a quantity of cannabis or tetrahydrocannabinol that is not more than the small quantity applicable to cannabis or tetrahydrocannabinol;

S. 73(1)(a)(i)
amended by
No. 48/1997
s. 42(1)(a).

(ii) the offence was not committed for any purpose related to trafficking in cannabis or tetrahydrocannabinol—

S. 73(1)(a)(ii)
amended by
No. 48/1997
s. 42(1)(b).

to a penalty of not more than 5 penalty units;

(b) subject to paragraph (a), where the court is satisfied on the balance of probabilities that the offence was not committed by the person for any purpose relating to trafficking in that drug of dependence—to a penalty of not more than 30 penalty units or to level 8 imprisonment (1 year maximum) or to both that penalty and imprisonment; or

S. 73(1)(b)
amended by
No. 48/1997
s. 41(4).

s. 74

S. 73(1)(c)
amended by
No. 48/1997
s. 41(5).

(c) in any other case—to a penalty of not more than 400 penalty units or to level 6 imprisonment (5 years maximum) or to both that penalty and imprisonment.

(2) Where a person has in his possession, without being authorized by or licensed under this Act or the regulations to do so, a drug of dependence in a quantity that is not less than the traffickable quantity applicable to that drug of dependence, the possession of that drug of dependence in that quantity is prima facie evidence of trafficking by that person in that drug of dependence.

S. 74
substituted by
No. 10002
s. 7(1),
amended by
No. 48/1997
s. 41(6).

74. Introduction of a drug of dependence into the body of another person

A person who, without being authorized by or licensed under this Act or the regulations to do so, introduces or attempts to introduce a drug of dependence into the body of another person is guilty of an offence against this Act and liable to a penalty of not more than 30 penalty units or to level 8 imprisonment (1 year maximum) or to both that penalty and imprisonment.

S. 75
substituted by
No. 10002
s. 7(1).

75. Use of drug of dependence

A person who, without being authorized by or licensed under this Act or the regulations to do so uses or attempts to use a drug of dependence is guilty of an offence against this Act and liable—

S. 75(a)
amended by
No. 48/1997
s. 42(2).

(a) where the court is satisfied on the balance of probabilities that the offence was committed in relation to cannabis or tetrahydrocannabinol—to a penalty of not more than 5 penalty units; and

S. 75(b)
amended by
No. 48/1997
s. 41(7).

(b) in any other case—to a penalty of not more than 30 penalty units or to level 8 imprisonment (1 year maximum) or to both that penalty and imprisonment.

76. Adjourned bonds to be given in certain cases

S. 76 substituted by No. 10002 s. 7(1), amended by No. 57/1989 s. 3(Sch. item 59.7 (a)(b)).

(1) Where before the Magistrates' Court—

S. 76(1) amended by No. 49/1991 s. 119(7) (Sch. 4 item 6).

(a) in relation to cannabis—

S. 76(1)(a) amended by No. 48/1997 s. 43(1)(a).

- (i) a person is charged with an offence under section 72B and at the hearing the court is satisfied on the balance of probabilities that the offence was not committed by the person for any purpose relating to trafficking in cannabis;
- (ii) a person is charged with an offence under section 73 and at the hearing the court is satisfied on the balance of probabilities that the offence was not committed by the person for any purpose relating to trafficking in cannabis;
- (iii) a person is charged with an offence under section 75; or
- (iv) a person is charged with an offence under section 79 or section 80, being an offence that relates to an offence mentioned in sub-paragraphs (i), (ii) or (iii) of this paragraph and, where that last-mentioned offence relates to the

S. 76(1)(a)(i) amended by No. 61/2001 s. 7(a).

possession or cultivation of cannabis, the court is satisfied on the balance of probabilities that the last-mentioned offence would not have been committed by the person for any purpose relating to trafficking in cannabis or the court is satisfied on the balance of probabilities that the last-mentioned offence would, if committed, have related to a quantity of cannabis which was not more than the small quantity applicable to cannabis; and

S. 76(1)(ab)
inserted by
No. 48/1997
s. 43(1)(a).

- (ab) in relation to any drug of dependence specified in column 1 of Part 3 of Schedule Eleven—
- (i) a person is charged with an offence under section 73 and at the hearing the court is satisfied on the balance of probabilities that the offence—
 - (A) was committed in relation to a quantity of that drug which was not more than the small quantity applicable to that drug; and
 - (B) was not committed for any purpose relating to trafficking in that drug; or
 - (ii) a person is charged with an offence under section 75 and at the hearing the court is satisfied on the balance of probabilities that the offence was committed in relation to a quantity of that drug which was not more than the small quantity applicable to that drug; or

-
- (iii) a person is charged with an offence under section 79 or section 80, being an offence that relates to an offence mentioned in sub-paragraphs (i) or (ii), and the court is satisfied on the balance of probabilities that the last-mentioned offence—
- (A) would, if committed, have been committed in relation to a quantity of that drug which was not more than the small quantity applicable to that drug; and
- (B) would not have been committed for any purpose relating to trafficking in that drug; and
- (b) a person mentioned in paragraph (a) or (ab) has not previously been convicted of an offence under—
- (i) section 36B(2), Part III of this Act or this Part;
- (ii) Part II or Part III of the **Poisons Act 1962**;
- (iii) Part XVIII of the **Health Act 1958**;
- (iv) a provision of the law of another State or Territory of the Commonwealth corresponding to any provision mentioned in sub-paragraphs (i), (ii) or (iii); or
- (v) Division 2 of Part XIII of the Act of the Commonwealth known as the Customs Act 1901 as amended and in force for the time being; or
- S. 76(1)(b) amended by No. 48/1997 s. 43(1)(b).
- S. 76(1)(b)(v) amended by No. 93/2005 s. 14(1).

Drugs, Poisons and Controlled Substances Act 1981
No. 9719 of 1981
Part V—Drugs of Dependence and Related Matters

s. 76

S. 76(1)(b)(vi)
inserted by
No. 93/2005
s. 14(2).

(vi) section 307.1, 307.2, 307.3, 307.4, 307.5, 307.6, 307.7, 307.8, 307.9 or 307.10 of the Criminal Code of the Commonwealth as amended and in force for the time being—

and has not previously been dealt with under this section; and

S. 76(1)(c)
amended by
No. 48/1997
s. 43(1)(b).

(c) in relation to a person mentioned in paragraph (a) or (ab) the court is satisfied beyond reasonable doubt that the person is guilty of the offence with which he is charged—

the court, without proceeding to conviction, shall having regard to the character and antecedents of the person and to all the circumstances and the public interest, adjourn the further hearing to a time and place to be fixed (such time being not more than twelve months thereafter) and allow the person charged to go at large upon his giving an undertaking under section 75(1) of the **Sentencing Act 1991**, unless the court considers it appropriate to proceed to a conviction.

S. 76(1A)
inserted by
No. 48/1997
s. 43(2).

- (1A) If a person to whom sub-section (1) applies is, on a charge for an offence in relation to a drug of dependence other than cannabis or tetrahydrocannabinol, released on giving an undertaking under section 75(1) of the **Sentencing Act 1991**, the court must attach to the undertaking a condition that the person completes an approved drug education and information program.
- (2) Where sub-section (1) applies to a person and the magistrates' court proceeds to a conviction, the court shall state its reasons for doing so.

(3) In determining whether a person has been previously convicted of an offence for the purposes of paragraph (b) of sub-section (1), proceedings under the **Children's Court Act 1973** or under any Act of the Commonwealth or of a State or Territory of the Commonwealth which corresponds to that Act shall be disregarded.

(4) A person or body may apply to the Secretary for approval for a program for the purposes of this section.

S. 76(4)
inserted by
No. 48/1997
s. 43(3),
amended by
No. 46/1998
s. 7(Sch. 1).

(5) An application under sub-section (4) must be accompanied by the prescribed application fee.

S. 76(5)
inserted by
No. 48/1997
s. 43(3).

(6) The Secretary—

(a) may grant an approval subject to any conditions, limitations or restrictions specified in the approval; and

(b) must specify the period during which an approval continues in force.

S. 76(6)
inserted by
No. 48/1997
s. 43(3),
amended by
No. 46/1998
s. 7(Sch. 1).

77. Forging prescriptions and orders for drugs of dependence

A person shall not forge or attempt to forge or fraudulently alter or attempt to fraudulently alter or utter or attempt to utter knowing it to be forged or fraudulently altered a prescription or order for a drug of dependence.

S. 77
substituted by
No. 10002
s. 7(1),
amended by
No. 48/1997
s. 41(8).

Penalty: 20 penalty units or level 8 imprisonment (1 year maximum) or both.

s. 78

S. 78
substituted by
No. 10002
s. 7(1),
amended by
No. 48/1997
s. 41(9).

78. Obtaining drugs of dependence etc. by false representation

A person shall not knowingly by false representation, whether oral or in writing or by conduct—

S. 78(b)
amended by
Nos 23/1994
s. 118(Sch. 1
item 17.13),
74/2000
s. 3(Sch. 1
item 38.2).

- (a) obtain or attempt to obtain a drug of dependence from a person authorized by or licensed under this Act or the regulations to possess, manufacture, sell or supply the drug of dependence;
- (b) obtain or attempt to obtain a prescription or order for a drug of dependence from a registered medical practitioner, dentist, pharmacist or veterinary practitioner or a person authorized by this Act or the regulations to issue or possess the prescription or order;
- (c) cause or induce or attempt to cause or induce a registered medical practitioner to administer by injection or otherwise, a drug of dependence to him; or
- (d) cause or induce or attempt to cause or induce a pharmacist or a person authorized by this Act or the regulations to supply a drug of dependence, to dispense a prescription or order for a drug of dependence, if the first-mentioned person knew the prescription or the order to have been obtained in contravention of this Act or the regulations.

S. 78(c)
amended by
No. 23/1994
s. 118(Sch. 1
item 17.13).

Penalty: 20 penalty units or level 8 imprisonment (1 year maximum) or both.

79. Conspiring

S. 79
substituted by
No. 10002
s. 7(1).

- (1) A person who conspires with another person or other persons to commit an offence against any provision of sections 71, 71AA, 71AB, 71AC, 71A, 71B, 72, 72A, 72B or 73 is guilty of an indictable offence and liable to the same punishment pecuniary penalties and forfeiture as if he has committed the first-mentioned offence.
- (2) A person who conspires with another person or persons to commit an offence against any of the provisions of sections 74, 75, 77 or 78 is guilty of an offence against this Act and liable to the same punishment pecuniary penalties and forfeiture as if he has committed the first-mentioned offence.

S. 79(1)
amended by
Nos 48/1997
s. 47(a),
61/2001
s. 7(b).

80. Aiding and abetting etc.

S. 80
substituted by
No. 10002
s. 7(1).

- (1) A person who aids, abets, counsels, procures, solicits or incites the commission of an offence against any of the provisions of sections 71, 71AA, 71AB, 71AC, 71A, 71B, 72, 72A, 72B or 73 is guilty of an indictable offence and liable to the same punishment pecuniary penalties and forfeiture as if he has committed the relevant offence against any of the provisions of sections 71, 71AA, 71AB, 71AC, 71A, 71B, 72, 72A, 72B or 73.
- (2) A person who aids, abets, counsels, procures, solicits or incites the commission of an offence against any of the provisions of sections 74, 75, 77 or 78 is guilty of an offence against this Act and liable to the same punishment pecuniary penalties and forfeiture as if he has committed the relevant

S. 80(1)
amended by
Nos 48/1997
s. 47(b),
61/2001
s. 7(c)(i)(ii).

s. 80

offence against any of the provisions of sections 74, 75, 77 or 78.

(3) A person who in Victoria—

- (a) conspires with another person or persons to commit; or
- (b) aids, abets, counsels or procures the commission of—

an offence in any place outside Victoria being an offence punishable under the provisions of a corresponding law in force in that place shall be guilty of the same offence and liable to the same punishment pecuniary penalty and forfeiture as if the offence committed outside Victoria had been committed inside Victoria.

S. 80(4)
amended by
No. 61/2001
s. 7(d).

(4) A person who in Victoria does an act preparatory to the commission of an offence in a place outside Victoria being an offence under a law which is in relation to the provisions of sections 71, 71AA, 71AB, 71AC, 71A, 71B, 72, 72A, 72B, 73, 74, 75, 77 or 78 a corresponding law shall be guilty of the same offence and liable to the same punishment pecuniary penalty and forfeiture as if the first-mentioned offence were committed in Victoria.

S. 80(5)
inserted by
No. 20/1987
s. 3.

(5) A person who sells or supplies a hypodermic needle or a syringe is not guilty of an offence under this section by reason only of that sale or supply—

- (a) if the person is, or is engaged or employed by, a pharmacist and the sale or supply is made in the course of the lawful practice of a pharmacist; or

S. 80(5)(b)
substituted by
No. 12/1994
s. 6(1).

- (b) if the sale or supply is by a specified person or organisation or specified class of persons or organisations in specified circumstances as authorised by Order in Council published in the Government Gazette.

(6) The Secretary must keep a list of all persons and organisations authorised under sub-section (5)(b).

S. 80(6)
inserted by
No. 12/1994
s. 6(2),
amended by
No. 46/1998
s. 7(Sch. 1).

(7) The Secretary must ensure that—

S. 80(7)
inserted by
No. 12/1994
s. 6(2),
amended by
No. 46/1998
s. 7(Sch. 1).

(a) a copy of the list is kept available for inspection by members of the public during normal office hours without charge at the Secretary's principal office; and

S. 80(7)(a)
amended by
No. 12/1999
s. 4(Sch. 2
item 4.1).

(b) a copy of the list is made available, without charge, to any member of the public on request.

s. 80A

Pt 5A
(Heading and
ss 80A–80H)
inserted by
No. 18/2006
s. 3.

PART VA—COCAINE KITS

Division 1—Cocaine Kits

S. 80A
inserted by
No. 18/2006
s. 3.

80A. What is a cocaine kit?

A cocaine kit is constituted by two or more of the following items packaged for use as a unit for the purposes of preparing for introduction, or for introducing, cocaine into the body of a person—

- (a) a razor blade;
- (b) a tube;
- (c) a mirror;
- (d) a scoop;
- (e) a glass bottle;
- (f) any other item for use together with any item referred to in paragraphs (a) to (e) to prepare for introduction, or to introduce, cocaine into the body of a person.

S. 80B
inserted by
No. 18/2006
s. 3.

80B. Offence to display a cocaine kit in a retail outlet

- (1) A person must not display a cocaine kit in a retail outlet.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (2) In this section, "**retail outlet**" includes—
- (a) a shop;
 - (b) a market.

80C. Offence to sell a cocaine kit

A person must not sell a cocaine kit if the person selling the cocaine kit knows or is reckless as to whether the cocaine kit is sold for the purpose of preparing for introduction, or introducing, cocaine into the body of any person.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

Note: See definition of "sell" in section 4(1).

S. 80C
inserted by
No. 18/2006
s. 3.

Division 2—Enforcement

80D. Seizure of cocaine kits

A member of the police force may seize a cocaine kit if he or she has reasonable grounds for suspecting that the cocaine kit is displayed or is for sale in contravention of this Part.

S. 80D
inserted by
No. 18/2006
s. 3.

80E. Retention and return of seized cocaine kits

- (1) If a member of the police force seizes a cocaine kit under this Part, the member of the police force must take reasonable steps to return the cocaine kit to the person from whom it was seized or its lawful owner if the reason for its seizure no longer exists.
- (2) If a cocaine kit seized under this Part has not been returned to the person from whom it was seized or its lawful owner within 3 months after it was seized, a member of the police force must take reasonable steps to return it to that person or owner unless—

S. 80E
inserted by
No. 18/2006
s. 3.

s. 80F

- (a) proceedings for the purpose for which the cocaine kit was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
- (b) the Magistrates' Court makes an order under section 80F extending the period during which the cocaine kit may be retained.

S. 80F
inserted by
No. 18/2006
s. 3.

80F. Magistrates' Court may extend 3 month period

- (1) A member of the police force may apply to the Magistrates' Court—
 - (a) within 3 months after a cocaine kit is seized under this Part; or
 - (b) if an extension has been granted under this section, before the end of the period of the extension—
for an extension (not exceeding 3 months) of the period during which the cocaine kit may be retained.
- (2) The Magistrates' Court may make an order under this section if the Court is satisfied that—
 - (a) the making of the order is in the interests of justice; and
 - (b) the total period of retention does not exceed 12 months; and
 - (c) retention of the cocaine kit is necessary for the purposes of an investigation into whether a contravention of this Part has occurred.
- (3) At least 7 days prior to the hearing of an application under this section, the applicant must give notice of the application to the person from whom the cocaine kit was seized or its lawful owner described in the application.

80G. Forfeiture and destruction of seized cocaine kits

S. 80G
inserted by
No. 18/2006
s. 3.

- (1) Subject to section 80E, any cocaine kit that a member of the police force has seized and retained under this Part is forfeited to the Crown if the member—
- (a) cannot find the person from whom it was seized or its lawful owner, despite making reasonable enquiries; or
 - (b) cannot return it to the person from whom it was seized or its lawful owner, despite making reasonable efforts.
- (2) Any cocaine kit forfeited to the Crown under subsection (1) may be destroyed in any manner the Minister thinks fit.

80H. Court may order forfeiture to the Crown

S. 80H
inserted by
No. 18/2006
s. 3.

A court which finds a person guilty of an offence against section 80B or 80C may order that the cocaine kit to which the offence relates—

- (a) be forfeited to the Crown; and
 - (b) be destroyed in accordance with the order.
-

Pt 6
(Heading and
ss 70–101)
substituted as
Pt 6 (Heading
and ss 81–90)
by No. 10002
s. 7(1).

PART VI—SEARCH SEIZURE AND FORFEITURE

S. 81
substituted by
No. 10002
s. 7(1).

81. Warrant to search premises

S. 81(1)
amended by
Nos 16/1986
s. 30, 101/1986
s. 58(1)(c),
57/1989
s. 3(Sch. item
59.8(a)–(c)),
48/1997
s. 44(1)(a).

(1) Any magistrate who is satisfied by evidence on oath or by affidavit of any member of the police force of or above the rank of sergeant or for the time being in charge of a police station that there is reasonable ground for believing that there is, or will be within the next 72 hours, on or in any land or premises—

S. 81(1)(a)
amended by
No. 48/1997
s. 44(1)(b).

- (a) any thing in respect of which an offence under this Act or the regulations has been or is reasonably suspected to have been committed or is being or is likely to be committed within the next 72 hours;
- (b) any thing which there is reasonable ground to believe will afford evidence of the commission of an offence under this Act or the regulations; or
- (c) any document directly or indirectly relating to or concerning a transaction or dealing which is or would be, if carried out, an offence under this Act or the regulations or under a provision of a law in force in a place outside Victoria corresponding to Part V of this Act—

may at any time issue a warrant under his hand authorizing a member of the police force named in the warrant to enter and search the land or

premises for any such thing or document and to seize and carry it before the Court so that the matter may be dealt with according to law.

- (1A) A magistrate who issues a warrant under sub-section (1), if satisfied on reasonable grounds by the evidence given under that sub-section that the thing or document to which the warrant relates is also tainted property within the meaning of the **Confiscation Act 1997**, may, in that warrant, direct that the applicant hold or retain that thing or document as if it were tainted property seized under a warrant under section 79 of that Act as and from the date when that thing or document is no longer required for evidentiary purposes under this Act.

S. 81(1A)
inserted by
No. 63/2003
s. 46(1).

- (1B) A direction under sub-section (1A)—

S. 81(1B)
inserted by
No. 63/2003
s. 46(1).

- (a) may only be made in relation to an offence under this Act which is a Schedule 1 offence within the meaning of the **Confiscation Act 1997**; and
- (b) does not apply to a thing which may be destroyed or disposed of under sub-section (3)(e).

S. 81(1B)(a)
amended by
No. 87/2004
s. 25.

- (2) Every warrant under sub-section (1) shall be in or to the effect of the form of Schedule Ten.
- (3) A member of the police force to whom a warrant under sub-section (1) is addressed may at any time or times by day or night but within one month from the date of the warrant and with such assistance as may be necessary—
- (a) enter, if need be by force, the land or premises named in the warrant;

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S. 81(3)(d)
amended by
Nos 48/1997
s. 44(2)(a)(b),
63/2003
s. 46(2).

- (b) arrest all persons on or in that land or those premises who are found offending against a provision of this Act or the regulations;
- (c) search the land or premises or any vehicle boat or aircraft or any person found on or in that land or those premises or in any vehicle boat or aircraft thereon or therein; and
- (d) seize and carry away or, unless a direction under sub-section (1A) applies, deal with as mentioned in paragraph (e)—
 - (i) any thing in respect of which an offence under this Act or the regulations has been or is reasonably suspected to have been committed;
 - (ii) any thing which there is reasonable ground to believe will afford evidence of the commission of an offence under this Act or the regulations; and
 - (iii) any document directly or indirectly relating to or concerning a transaction or dealing which is or would be, if carried out, an offence against this Act or the regulations or under a provision of a law in force in a place outside Victoria corresponding to a provision of Part V of this Act; and

S. 81(3)(e)
inserted by
No. 48/1997
s. 44(2)(b).

- (e) if—
 - (i) the thing is—
 - (A) a drug of dependence or a substance that contains a drug of dependence; or
 - (B) a poison or controlled substance; or

-
- (C) an instrument, device or substance that is or has been used or is capable of being used for or in the cultivation, manufacture, sale or use or in the preparation for cultivation, manufacture, sale or use of a drug of dependence; and
- (ii) an analyst or botanist within the meaning of section 120 certifies in writing to the member of the police force executing the warrant that destruction or disposal of the thing is required in the interests of health or safety—
- destroy or dispose of the thing after taking, where practicable, any samples of it as are required for the purposes of this Act.
- (4) Where a member of the police force to whom a warrant is addressed executes the warrant he shall as soon as practicable after executing the warrant—
- (a) endorse the warrant to that effect; and
- (b) cause to be lodged with the registrar of the Magistrates' Court at the venue nearest to the land or premises where the warrant was executed a report signed by the member and containing particulars of—
- (i) all searches undertaken;
- (ii) all persons arrested; and
- (iii) all things and documents seized and carried away; and
- (iv) all samples taken; and
- S. 81(4)(b) amended by No. 57/1989 s. 3(Sch. item 59.9).
- S. 81(4)(b)(iii) amended by No. 48/1997 s. 44(3).
- S. 81(4)(b)(iv) inserted by No. 48/1997 s. 44(3).

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S. 81(4)(b)(v)
inserted by
No. 48/1997
s. 44(3).

(v) all things destroyed or disposed of—

in execution of the warrant.

S. 81(4A)
inserted by
No. 63/2003
s. 46(3).

(4A) If a direction under sub-section (1A) was made, a report referred to in sub-section (4)(b) must also include particulars of whether a seized thing or document is being held or retained as if it were tainted property within the meaning of the **Confiscation Act 1997** seized under a warrant under section 79 of that Act.

S. 81(5)
amended by
No. 57/1989
s. 3(Sch. item
59.10(a)(b)).

(5) On application in that behalf by a person made to the Magistrates' Court at the venue at which a report has been lodged pursuant to sub-section (4), the Court may make an order authorizing the person to inspect the report if the person satisfies the Court that he is—

(a) a person who was arrested in the course of the execution of the warrant;

(b) the owner or occupier of premises upon which the warrant was executed; or

(c) the owner of the property seized and carried away in the execution of the warrant; or

S. 81(5)(c)
amended by
No. 48/1997
s. 44(4).

(d) the owner of property destroyed or disposed of in execution of the warrant.

S. 81(5)(d)
inserted by
No. 48/1997
s. 44(4).

S. 81(6)
inserted by
No. 48/1997
s. 44(5).

(6) If a sample of a thing referred to in sub-section (3)(e) taken in execution of a warrant is sufficient to enable an analysis or examination to be made both in the investigation of an offence and on behalf of a person arrested in the course of the execution of the warrant, a part of the sample taken sufficient for analysis or examination must,

on request by the person arrested, be delivered to an analyst or botanist within the meaning of section 120 nominated by that person.

81A. Notice that seized thing or document is being held for purposes of Confiscation Act 1997

S. 81A
inserted by
No. 63/2003
s. 47.

- (1) If a thing or document seized under a warrant issued under section 81 to which a direction under section 81(1A) applies is no longer required for evidentiary purposes under this Act, the person to whom that warrant was issued must give notice to all persons known to have an interest in that thing or document that the thing or document is being held or retained as if it were tainted property seized under a warrant under section 79 of the **Confiscation Act 1997**.
- (2) A notice under sub-section (1) must be—
 - (a) given within 7 days after the thing or document is no longer required for evidentiary purposes under this Act; and
 - (b) in the prescribed form.

81B. Application for tainted property to be held or retained—return of warrant to court

S. 81B
inserted by
No. 63/2003
s. 47.

- (1) When a thing or document is brought before the Magistrates' Court to be dealt with according to law in accordance with the warrant issued under section 81 under which that thing or document was seized, the member of the police force to whom the warrant was addressed or another member of the police force may apply to the Court for a direction that the thing or document so seized be held or retained as if it were tainted property seized under a warrant under section 79 of the **Confiscation Act 1997**.

s. 81C

- (2) An application may only be made under subsection (1) if a direction under section 81(1A) was not made in relation to the warrant when it was issued.

S. 81C
inserted by
No. 63/2003
s. 47.

81C. Court may make direction

- (1) On an application under section 81B, if the Court is satisfied on reasonable grounds that the thing or document seized under the warrant issued under section 81 is tainted property within the meaning of the **Confiscation Act 1997**, the Court may direct that the thing or document be held or retained by the member of the police force as if it were tainted property seized under a warrant under section 79 of that Act.
- (2) A direction under this section takes effect on and from the date that the thing or document is no longer required for evidentiary purposes under this Act.
- (3) In determining whether the thing or document which is the subject of the application is in fact tainted property within the meaning of the **Confiscation Act 1997**, the Court may require the applicant to provide any information that the Court considers necessary.

S. 81D
inserted by
No. 63/2003
s. 47.

81D. Notice of direction under section 81C

- (1) If the Magistrates' Court makes a direction under section 81C, the applicant for the direction must give notice to all persons known to have an interest in the thing or document to which the direction applies that the thing or document is being held or retained as if it were tainted property seized under a warrant under section 79 of the **Confiscation Act 1997** by virtue of a direction made under section 81C.

-
- (2) A notice under sub-section (1) must be—
- (a) given within 7 days after the thing or document is no longer required for evidentiary purposes under this Act; and
 - (b) in the prescribed form.

81E. Effect of directions under sections 81(1A) and 81C

S. 81E
inserted by
No. 63/2003
s. 47.

If a direction has been made under section 81(1A) or 81C, the thing or document to which the direction applies—

- (a) is deemed, on and from the date on which the thing or document is no longer required for evidentiary purposes under this Act, to have been seized as tainted property under a warrant under section 79 of the **Confiscation Act 1997**; and
- (b) is to be dealt with under that Act accordingly.

82. Search without warrant

S. 82
substituted by
No. 10002
s. 7(1).

Where a member of the police force has reasonable grounds for suspecting that—

- (a) on or in a vehicle in or upon a public place;
- (b) on an animal in a public place;
- (c) in the possession of a person in a public place;
- (d) on or in a boat or vessel, underway or not; or
- (e) on or in an aircraft—

there is a drug of dependence in respect of which an offence has been committed or is reasonably suspected to have been committed under a provision of Part V, the member may with such assistance as he thinks necessary—

- (f) search the vehicle, animal, person, boat vessel or aircraft;
- (g) seize and carry away any instrument device or substance which he reasonably believes to be used or capable of being used for or in the manufacture, sale, preparation for manufacture, preparation for sale, or use of any drug of dependence;
- (h) seize and carry away the drug of dependence—

and deal with it according to law.

83. Forfeiture of drug of dependence or substance before conviction

S. 83 substituted by No. 10002 s. 7(1).

- (1) Upon application in that behalf by a member of the police force the Magistrates' Court may upon proof that—

S. 83(1) amended by Nos 16/1986 s. 30, 101/1986 s. 58(1)(d)(iii), 57/1989 s. 3(Sch. item 59.11).

- (a) a substance is or contains a drug of dependence or a poison or controlled substance; or
- (b) an instrument, device or substance is an instrument, device or substance that is or has been used or is capable of being used for or in the cultivation, manufacture, sale or use or in the preparation for cultivation, manufacture, sale or use of a drug of dependence—

S. 83(1)(b) substituted by No. 101/1986 s. 58(1)(d)(i).

and upon such notice being given to such persons as the court directs, order that the instrument or device or the whole or any part or parts of the substance, drug of dependence or poison or controlled substance be forfeited to Her Majesty and either destroyed or disposed of in such manner as is provided in the order, and may also make a finding of fact as to—

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(c) the quantity of the drug of dependence, substance or poison or controlled substance produced to, or inspected by, the court, the quantity ordered to be destroyed or disposed of, the quantity remaining, and the fact that what remains is part of what was produced to, or inspected by, the court; or

S. 83(1)(c)
amended by
No. 101/1986
s. 58(1)(d)(ii).

(d) the nature of any instrument or device produced to, or inspected by, the court—

S. 83(1)(d)
amended by
No. 101/1986
s. 58(1)(d)(ii).

and may also order that the quantity remaining of the substance, drug of dependence or poison or controlled substance be forfeited to Her Majesty and either destroyed or disposed of in such manner as is provided in the order when no longer required for the purpose of any subsequent proceedings.

(1A) The Magistrates' Court has power—

- (a) to give any directions; or
- (b) to authorise the Minister to give any appropriate directions—

S. 83(1A)
inserted by
No. 101/1986
s. 58(1)(d)(iv),
amended by
No. 57/1989
s. 3(Sch.
item 59.12).

necessary to give effect to any order made by it under sub-section (1).

(2) Where a finding of fact is made under sub-section (1), production in any subsequent proceedings of an order containing the finding of fact shall be conclusive evidence of the matters to which the finding relates.

S. 83(2)
amended by
No. 101/1986
s. 58(1)(d)(v).

(3) In sub-section (1) "**cultivation**", in relation to a drug of dependence that is a narcotic plant, includes—

S. 83(3)
inserted by
No. 101/1986
s. 58(1)(d)(vi).

- (a) the sowing of a seed of a narcotic plant; and
- (b) the planting, growing, tending, nurturing or harvesting of a narcotic plant.

Drugs, Poisons and Controlled Substances Act 1981
No. 9719 of 1981
Part VI—Search Seizure and Forfeiture

s. 90

S. 83(4)
inserted by
No. 101/1986
s. 58(1)(d)(vi),
amended by
No. 57/1989
s. 3(Sch.
item 59.13).

- (4) Without limiting the manner in which evidence may be given on an application under sub-section (1), the Court may inspect any place, process or thing.

S. 83(5)
inserted by
No. 48/1997
s. 44(6).

- (5) If an order is made under sub-section (1) requiring the destruction or disposal of an instrument or device or the whole or any part of any substance, drug of dependence or poison or controlled substance, the order may be executed before the end of any appeal period applicable under section 90 if a sample of the thing to be destroyed or disposed of is taken in accordance with this Act and kept until the end of that appeal period and the determination of any appeal made within that period.

S. 84
substituted by
No. 10002
s. 7(1),
repealed by
No. 101/1986
s. 58(1)(e).

* * * * *

Ss 85–89
substituted by
No. 10002
s. 7(1),
repealed by
No. 101/1986
s. 55(1)(d).

* * * * *

S. 90
substituted by
No. 10002
s. 7(1).

90. Appeals

S. 90(1)
amended by
Nos 101/1986
s. 55(1)(e),
25/1990
s. 4(1)(a).

- (1) Notwithstanding anything to the contrary in any other Act a person (including the Crown) affected by an order made under section 83 may appeal against the decision as if the order were or were part of a sentence imposed on conviction for the drug related offence to which the order relates,

being a sentence which is not fixed by law and against which an appeal may be brought.

- (2) Notwithstanding anything to the contrary in any other Act, a person (including the Crown) affected by the refusal or failure of the Magistrates' Court to make an order under section 83 may appeal in accordance with Rules of court against that failure or refusal.
- (3) On an appeal under sub-section (1) the court to which the appeal is made may confirm vary or revoke the order to which the appeal relates.
- (4) An appeal under sub-section (2) shall be by way of a re-hearing, and the court may in relation to the hearing and determination of the appeal exercise any powers which by or under this Act are conferred on a court in relation to the hearing and determination of an application for an order of the kind to which the appeal relates.
- (5) Where an appeal under sub-section (1) is made by the Crown, proceedings on the appeal shall be instituted and conducted in the name of the Crown by the Director of Public Prosecutions.
- (6) An appeal under this section may be heard with any other appeal against the conviction or sentence for the drug related offence which is the subject-matter of the first-mentioned appeal.
- (7) A person's right of appeal under this section is in addition to any other right of appeal which the person may have.

S. 90(2)
amended by
Nos 101/1986
s. 55(1)(e),
57/1989
s. 3(Sch.
item 59.14),
25/1990
s. 4(1)(b).

* * * * *

Ss 91–101
repealed by
No. 10002
s. 7(1).

PART VII—PROCEEDINGS

S. 102
amended by
No. 10002
s. 9(a)(b).

102. Identity of seller of substances

For the purposes of this Act other than Part V any person on whose behalf a sale or supply is made shall be deemed to be the person who sells or supplies, and where a sale or supply is made by an employee assistant or apprentice of a person, that employee assistant or apprentice shall be liable to the like penalties as the person on whose behalf he makes any sale.

S. 103
substituted by
No. 18/2006
s. 4.

103. Offences by corporations

- (1) In this section, "**officer**"—
- (a) in relation to a corporation within the meaning of the Corporations Act, has the same meaning as in section 9 of that Act; and
 - (b) in relation to a corporation that is not a corporation within the meaning of that Act, means any person (by whatever name called) who is concerned or takes part in the management of the corporation—
- but does not include an employee of the corporation.
- (2) If a corporation is guilty of an offence against this Act, any officer of the corporation who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence is also guilty of that offence and liable to the penalty for that offence.
- (3) If in a proceeding for an offence against this Act it is necessary to establish the intention of a corporation, it is sufficient to show that a servant or agent of the corporation had that intention.

- (4) A statement made by an officer of a corporation is admissible as evidence against the corporation in any proceeding against the corporation for an offence against this Act.

104. Burden of proof

In any proceedings against any person for an offence against this Act the burden of proving any matter of exception qualification or defence shall lie upon the person seeking to avail himself thereof.

* * * * * S. 105
amended by
Nos 10002
s. 10(1)
(a)-(c)(2)-(5),
16/1986 s. 30,
repealed by
No. 51/1989
s. 149(1).

* * * * * Ss 106-109
repealed by
No. 10002
s. 11(1).

* * * * * Pt 8
(Heading and
ss 110-117)
amended by
Nos 10002
s. 12(1)-(19)
(as amended
by No. 10087
s. 3(1)(Sch. 1
item 41)),
16/1986 s. 30,
110/1986
s. 140(2),
repealed by
No. 101/1986
s. 55(1)(d).

PART IX—EVIDENTIARY

118. List of licences and permits

S. 118
amended by
No. 10262 s. 4,
substituted by
No. 42/1993
s. 51.

S. 118(1)
amended by
No. 12/1994
s. 17(2)(a),
46/1998
s. 7(Sch. 1),
54/1997
s. 6(b).

S. 118(2)(a)
amended by
No. 12/1994
s. 17(2)(b).

S. 118(3)
amended by
No. 46/1998
s. 7(Sch. 1),
12/1999
s. 4(Sch. 2
item 4.1).

S. 118(4)
amended by
No. 46/1998
s. 7(Sch. 1)

S. 118(5)
amended by
Nos 12/1994
s. 17(2)(c)(i),
46/1998
s. 7(Sch. 1).

- (1) The Secretary must keep a list of the persons holding current licences, permits or warrants under this Act except licences, permits or warrants under section 34 or 56 or authorities under Part IVA.
- (2) The list must contain—
 - (a) the full name and the residential or business address of each holder of a licence, permit or warrant; and
 - (b) any other prescribed particulars.
- (3) The Secretary must ensure that a copy of the list is kept available for inspection by members of the public during normal office hours without charge, at the Secretary's principal office.
- (4) The Secretary may take any steps that he or she considers appropriate to bring the existence of the list to the notice of members of the public.
- (5) In any proceedings the production of a document certified in writing purporting to be signed by the Secretary and purporting to be a copy of or an extract from the list as at a particular date is evidence and, in the absence of evidence to the contrary is proof—
 - (a) of the matters stated; and

- (b) that at that date the persons whose names appear in the document held current licences, permits or warrants under this Act. **S. 118(5)(b) amended by No. 12/1994 s. 17(2)(c)(ii).**
- (6) In any proceedings, the absence of a person's name from a document that complies with subsection (5) is evidence and in the absence of evidence to the contrary is proof that on the relevant date the person was not the holder of a licence, permit or warrant under this Act and that is required to be listed under this section. **S. 118(6) amended by No. 12/1994 s. 17(2)(d).**

119. Evidentiary

In any legal proceedings under this Act—

- (a) the production of a copy of the Government Gazette containing the several registers as last published in relation to the time in question of registered medical practitioners pharmacists dentists or veterinary practitioners shall if the name of the defendant does not appear in any of such registers be prima facie evidence that he is not a registered medical practitioner or a pharmacist dentist veterinary practitioner; **S. 119(a) amended by Nos 42/1993 s. 52(a)–(c), 23/1994 s. 118(Sch. 1 item 17.14), 74/2000 s. 3(Sch. 1 item 38.3 (a)(b)).**
- (b) a certificate that any person is or is not or was or was not on a certain date or for a certain period a registered medical practitioner shall if purporting to be signed by the President or any 2 members of the Medical Practitioners Board of Victoria be prima facie evidence of the facts therein stated; **S. 119(b) amended by No. 23/1994 s. 118(Sch. 1 item 17.15 (a)(b)).**
- (c) a certificate that any person is or is not or was or was not on a certain date or for a certain period a pharmacist shall if purporting to be signed by the registrar of the Pharmacy Board of Victoria be prima facie evidence of the facts therein stated;

s. 120

S. 119(e)
amended by
No. 74/2000
s. 3(Sch. 1
item 38.4
(a)(b)).

S. 119(ea)
inserted by
No. 54/1997
s. 6(c),
amended by
No. 56/2003
s. 11(Sch.
item 7.2).

S. 119(f)
amended by
Nos 10262
s. 4, 46/1998
s. 7(Sch. 1).

- (d) a certificate that any person is or is not or was or was not on a certain date or for a certain period a registered dentist shall if purporting to be signed by the registrar of the Dental Board of Victoria be prima facie evidence of the facts therein stated;
- (e) a certificate that any person is or is not or was or was not on a certain date or for a certain period a veterinary practitioner shall if purporting to be signed by the registrar of the Veterinary Practitioners Registration Board of Victoria be prima facie evidence of the facts therein stated;
- (ea) a certificate that any person is or is not or was or was not on a certain date or for a certain period a holder of an authority under Part IVA, if purporting to be signed by the Secretary of the Department of Primary Industries, shall be prima facie evidence of the facts therein stated;
- (f) a certificate that any person is or is not or was or was not on a certain date or for a certain period a person who holds a licence permit warrant or authority under this Act shall if purporting to be signed by the Secretary be prima facie evidence of the facts therein stated.

120. Analyst's etc. certificates

- (1) In any legal proceedings for an offence against this Act the production of a certificate purporting to be signed by an analyst or by a botanist with respect to any analysis or examination made by him shall, without proof of the signature of the person appearing to have signed the certificate or that he is an analyst or botanist (as the case requires) be sufficient evidence—

-
- (a) in the case of a certificate purporting to be signed by an analyst, of the identity or quantity or both the identity and quantity of the thing analysed, of the result of the analysis and of the matters relevant to such proceedings stated in the certificate; and
- (b) in the case of the certificate purporting to be signed by a botanist, of the identity or quantity or both the identity and quantity of the thing examined.
- (2) The provisions of sub-section (1) do not apply—
- (a) if a copy of the certificate was not served on the defendant at least seven days before the hearing; or
- (b) if the defendant, at least three days before the hearing, gave notice in writing personally or by post to the informant and to the analyst or botanist (as the case requires) that he requires the analyst or botanist to attend as a witness.
- (3) For the purpose of sub-section (2) a copy of the certificate shall be deemed to be served on the defendant under paragraph (a) if—
- (i) not less than ten days before the hearing a copy of the certificate is lodged with the court of hearing which is hereby authorized to make such copy available to the defendant; and
- (ii) notice in writing has been given to the defendant that a copy of such certificate will be so lodged with the court.
- (4) Service of a copy of a certificate for the purposes of this section may be effected and proved—
- (a) in any manner in which service of a summons may be effected and proved; or
- S. 120(1)(a) amended by No. 101/1986 s. 58(1)(f).**
- S. 120(1)(b) amended by No. 101/1986 s. 58(1)(f).**

- (b) where the certificate was served with the summons and proof of service of the summons is by affidavit, by stating in the affidavit that a copy of the certificate was served with the summons.
- (5) Where an analysis or examination has been carried out for the purpose of any legal proceedings for an offence against this Act the court may, in addition to any other order as to costs, make such order as it thinks proper—
- (a) as to the expenses of and remuneration to be paid for the analysis or examination; and
- (b) where the analyst or botanist has been required by the defendant to attend as a witness, as to the conduct money of the analyst or botanist.
- (6) In this section—

S. 120(6)
def. of
"analyst"
amended by
Nos 66/1995
s. 3(a),
33/2001 s. 21.

"analyst" means a person employed by the Government of Victoria as an analyst or a person of a prescribed class employed or approved under a prescribed law of another State or Territory;

S. 120(6) def.
of "botanist"
substituted by
No. 87/1991
s. 52,
amended by
No. 66/1995
s. 3(b).

"botanist" means the chief botanist or his or her delegate under the **Royal Botanic Gardens Act 1991** or a person of a prescribed class employed or approved under a prescribed law of another State or Territory.

121. Evidentiary effect of certain statements

For the purposes of this Act a statement of the quantity of the poison or controlled substance or the proportion which the poison or controlled substance bears to the total ingredients of a preparation shall be expressed in accordance with one of the forms specified in Schedule Twelve.

122. Proof that a substance is poison etc.

In any prosecution for a contravention of or failure to comply with any provision of this Act or any regulations thereunder, whenever it is necessary or proper to provide in respect of any particular article or substance that it is a poison or controlled substance then in every such case—

- (a) evidence that any substance commonly sold under the same name or description as the said particular article or substance is a poison or controlled substance shall be prima facie evidence that the said particular article or substance also conforms to the same description accordingly; and
- (b) evidence that any particular article or substance or the container thereof is labelled "Poison" or "Poisonous, not to be taken" or "Schedule 1" or "Schedule 2" or "Schedule 3" or "Schedule 4" or "Schedule 5" or "Schedule 6" or "Schedule 7" "Schedule 8" or "Schedule 9" or (whether alone or in combination with any other words or symbols) "S. 1", "S. 2", "S. 3", "S. 4", "S. 5", "S. 6", "S. 7", "S. 8" or "S. 9" shall be prima facie evidence that the particular article or substance is a poison or controlled substance.

S. 122(b)
amended by
No. 42/1993
s. 53(a)(b).

122A. Evidence of market value of drugs of dependence

S. 122A
inserted by
No. 101/1986
s. 55(1)(f).

- (1) In any proceedings under this Act or the regulations or under the **Confiscation Act 1997**—
 - (a) a member of the police force; or
 - (b) any other person—whom the court is satisfied is experienced—

S. 122A(1)
amended by
No. 108/1997
s. 152(1)(a).

s. 123

S. 122A(1)(c)
amended by
Nos 48/1997
s. 47(c),
61/2001
s. 7(e).

(c) in the investigation of offences under section 71, 71AA, 71AB, 71AC, 71A, 71B, 72, 72A, 72B, 73, 79(1) or 80(1) of this Act; or

(d) in the assessment of the market value of drugs of dependence—

may give evidence in accordance with sub-section (2).

(2) A person mentioned in sub-section (1) may give evidence to the best of that person's information, knowledge and belief, of the market value of a drug of dependence at a particular time or during a particular period, despite any rule of law or practice relating to hearsay evidence.

(3) Any evidence given under this section is, in the absence of evidence to the contrary, conclusive evidence of the matters testified to.

S. 123
amended by
Nos 10002
s. 14(f)(i)(ii),
12/1994 s. 18.

123. General offence

Every person who contravenes or fails to comply with any provision of this Act or any regulation made under this Act shall be guilty of an offence against this Act and if no penalty is expressly provided with respect to such offence shall be liable to a penalty of not more than 100 penalty units.

PART X—DRUG REHABILITATION AND RESEARCH FUND

124. Drug Rehabilitation and Research Fund

For the purposes of this Act there shall be established within the Public Account a trust fund to be known as the "Drug Rehabilitation and Research Fund" hereinafter referred to as "the Fund".

125. Appropriation of moneys for purposes of Fund

All moneys arising from fines penalties and forfeitures under this Act shall be appropriated for the purposes of the Fund.

S. 125
amended by
Nos 10002
s. 14(g),
101/1986
s. 55(1)(g),
48/1997
s. 47(d),
108/1997
s. 152(1)(b).

126. Payments out of Fund

(1) Into the Fund shall be paid—

(a) all moneys arising from fines penalties and forfeitures under this Act less conversion costs as defined in sub-section (3);

S. 126(1)(a)
amended by
Nos 10002
s. 14(g),
101/1986
s. 55(1)(h),
90/1991
s. 36(a),
48/1997
s. 47(e),
108/1997
s. 152(1)(c).

(b) all money appropriated by Parliament for the purposes of the Fund;

S. 126(1)(b)
repealed by
No. 31/1994
s. 3(Sch. 1
item 18), new
s. 126(1)(b)
inserted by
No. 108/1997
s. 152(1)(d).

Drugs, Poisons and Controlled Substances Act 1981
No. 9719 of 1981
Part X—Drug Rehabilitation and Research Fund

s. 126

S. 126(2)
amended by
No. 108/1997
s. 152(1)(e).

- (c) all other moneys received for the purposes of the Fund; and
 - (d) all moneys authorized or required by this Act to be paid into the Fund.
- (2) The Minister may pay out of the Fund such sums as he deems fit, and subject to such conditions, limitations and restrictions as he determines, for or towards—
- (a) organizations involved in the rehabilitation of drug-dependent persons;
 - (b) the development of drug education programmes;
 - (c) the dissemination of information on drugs and drug abuse;
 - (d) research into drug addiction and the treatment of drug-dependent persons;
 - (e) the enforcement of this Act; and
 - (f) any other purpose in connexion with the control and prevention of drug abuse.

S. 126(3)
inserted by
No. 90/1991
s. 36(b),
substituted by
No. 108/1997
s. 152(2).

- (3) The conversion costs that may be deducted under section 126(1)(a) are the reasonable costs and expenses incurred in locating, storing, maintaining or disposing of, or otherwise in connection with the conversion into money of, property forfeited under this Act.

S. 126(4)
inserted by
No. 90/1991
s. 36(b),
substituted by
No. 108/1997
s. 152(2).

- (4) Conversion costs must be paid by the State to the person who, or body which, incurred the costs.

127. Payments into Fund

(1) Where before the commencement of this section a member of the police force has in pursuance of his powers under the **Poisons Act 1962** seized any money in connexion with the commission of an offence in relation to—

- (a) a drug of addiction within the meaning of that Act;
- (b) a specified drug within the meaning of that Act; or
- (c) an hallucinogenic drug within the meaning of that Act—

and immediately before the commencement of this section—

- (d) no person has been charged with the commission of an offence in relation to that drug or that money; or
- (e) a person has been charged with the commission of an offence in relation to that drug or that money but that person has absconded or cannot now be found—

the Governor in Council may by Order published in the Government Gazette authorize the payment of that money into the Fund, and the money shall be paid into the Fund in accordance with the Order.

(2) Where a person satisfies the Governor in Council—

- (a) that any money paid into the Fund pursuant to sub-section (1) is money owned by him; and

(b) that the money was not obtained in relation to or as a result of or derived because of the commission of an offence under the **Poisons Act 1962** or this Act in relation to a drug of addiction or specified drug, a drug of dependence or an hallucinogenic drug (as the case may be)—

the Governor in Council may by Order published in the Government Gazette authorize the payment out of the Fund to that person of the amount claimed by him to the extent to which that amount is an amount in respect of which the Governor in Council is satisfied of the matters mentioned in paragraph (a) and paragraph (b).

(3) The Governor in Council shall not authorize a payment out of the Fund under this section unless the claim for payment out of the Fund has been made within 12 months of the publication in the Government Gazette of the Order under subsection (1).

128. Acceptance of gifts etc. to Fund

The Minister, may on behalf of the Fund accept gifts, devises, bequests and assignments of real or personal property and may act as executor or administrator of an estate or as a trustee of moneys or other properties where in the opinion of the Minister it is expedient to do so for or in connexion with the objects of the Fund.

PART XI—REGULATIONS

129. Regulations

S. 129
amended by
No. 10002
s. 13(1)(a)(f).

(1) For the purpose of preventing the improper use of drugs of dependence and Schedule 1 poisons, Schedule 4 poisons, Schedule 8 poisons and Schedule 9 poisons or any preparation of them or any of them the Governor in Council may make regulations for or with respect to regulating or controlling the manufacture sale possession administration use supply distribution and storage of those substances and preparations and in particular, without affecting the generality of the foregoing provisions of this section or of any other provisions of this Act, for or with respect to—

S. 129(1)
amended by
Nos 42/1993
s. 54(1),
18/2000
s. 106(1)(a).

(a) regulating the issue by registered medical practitioners, registered Chinese medicine practitioners, registered optometrists, nurse practitioners, dentists or veterinary practitioners of prescriptions for any such substance or preparation and the dispensing of any such prescriptions;

S. 129(1)(a)
amended by
Nos 23/1994
s. 118(Sch. 1
item 17.16),
58/1997
s. 96(Sch.
item 3.4),
56/1996
s. 100(6)(a),
94/2000
s. 52(1)(a),
18/2000
s. 106(1)(b).

Drugs, Poisons and Controlled Substances Act 1981
No. 9719 of 1981
Part XI—Regulations

s. 129

S. 129(1)(aa)
inserted by
No. 10002
s. 13(1)(b),
amended by
Nos 23/1994
s. 118(Sch. 1
item 17.16),
58/1997
s. 96(Sch.
item 3.4),
56/1996
s. 100(6)(b),
94/2000
s. 52(1)(b),
18/2000
s. 106(1)(c),
11/2002
s. 3(Sch. 1
item 16.2
(a)(b)).

(aa) prohibiting either absolutely or subject to conditions the issue by registered medical practitioners, registered Chinese medicine practitioners, registered optometrists, nurse practitioners, veterinary practitioners and dentists of prescriptions or orders or classes of prescriptions or orders for any such substance or preparation;

S. 129(1)(ab)
inserted by
No. 10002
s. 13(1)(b),
amended by
No. 18/2000
s. 106(1)(d).

(ab) prohibiting either absolutely or subject to conditions the dispensing by pharmacists or registered Chinese herbal dispensers of prescriptions or orders or classes of prescriptions or orders for any such substance or preparation;

S. 129(1)(b)
amended by
No. 10002
s. 13(1)(c).

(b) requiring persons engaged in the manufacture sale supply dispensing, administration, prescription and distribution of any such substance or preparation to keep books and records and furnish information in writing or otherwise;

S. 129(1)(ba)
inserted by
No. 17/2006
s. 5.

(ba) regulating, for the purposes of Division 10A of Part II, the administration of drugs of dependence, Schedule 9 poisons, Schedule 8 poisons and Schedule 4 poisons to residents of aged care services;

(c) the custody accumulation administration use supply and storage of any such substance or preparation;

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- (ca) prohibiting either absolutely or subject to conditions or in any specified circumstances or classes of circumstances the prescription, sale, supply, dispensing or administration of any such substance or preparation;
- (d) regulating the transfer or conveyance of any such substance or preparation;
- (e) regulating the supply of any such substance or preparation to drug-dependent persons;
- (f) regulating and controlling advertising by any person in relation to any such substances or preparations or any of them and prescribing the form and contents of such advertisements;
- (g) generally prescribing all such matters and things as are necessary or convenient to be prescribed for carrying this Act into effect; and
- (h) prescribing a penalty of not more than 100 penalty units for any contravention of or failure to comply with the regulations made under this section.
- (2) Notwithstanding anything to the contrary in paragraph (h) of sub-section (1) or in any regulations made under that sub-section, a person who being a registered medical practitioner, registered Chinese medicine practitioner or registered Chinese herbal dispenser, registered optometrist, nurse practitioner, veterinary practitioner, dentist or pharmacist, contravenes or fails to comply with a regulation made under that sub-section is guilty of an indictable offence and liable to a penalty of not more than 200 penalty units or to imprisonment for a term of not more than five years or to both such penalty and imprisonment.

S. 129(1)(ca)
inserted by
No. 10002
s. 13(1)(d).

S. 129(1)(h)
amended by
No. 10002
s. 13(1)(e).

S. 129(2)
inserted by
No. 10002
s. 13(1)(g),
amended by
Nos 23/1994
s. 118(Sch. 1
item 17.17),
58/1997
s. 96(Sch.
item 3.5),
56/1996
s. 100(6)(c),
94/2000
s. 52(1)(c),
18/2000
s. 106(1)(e).

130. Construction of section 129

The provisions of section 129 with respect to the making of regulations shall (without prejudice to the generality of the powers conferred by the said section) extend and apply to the making of regulations for or with respect to providing that any specified breach of the regulations made under the said section shall be regarded—

- (a) as infamous conduct in a professional respect within the meaning and for the purposes of any Act; or
- (b) as unprofessional conduct within the meaning and for the purposes of the **Pharmacy Practice Act 2004**;
- (c) as unprofessional conduct within the meaning and for the purposes of the **Nurses Act 1993**.

S. 130(b)
substituted by
No. 80/2004
s. 150(Sch. 2
item 2.5).

S. 130(c)
substituted by
No. 94/2000
s. 52(2).

S. 131
amended by
Nos 10002
s. 14(h),
42/1993
s. 54(2)(a)(b).

131. Regulations as to regulated poisons

For the purpose of protecting persons engaged in the manufacture sale use or distribution of regulated poisons or for the protection of the public from regulated poisons the Governor in Council may make regulations for or with respect to—

- (a) prohibiting the possession manufacture sale supply distribution or use of any regulated poisons either absolutely or except under such circumstances or conditions as may be prescribed (including, without limiting the generality of the foregoing, prohibiting a person from having in his possession, manufacturing, selling, distributing or using any regulated poison or class of regulated poisons unless he is authorized by or

S. 131(a)
amended by
No. 42/1993
s. 54(2)(a)(b).

- | | |
|--|--|
| <p>licensed or permitted under this Act or the regulations so to do);</p> <p>(b) prescribing any regulated poison to be an hallucinogenic drug for the purposes of Part VI;</p> | <p>S. 131(b) amended by No. 42/1993 s. 54(2)(b).</p> |
| <p>* * * * *</p> | <p>S. 131(c)(d) repealed by No. 12/1994 s. 10(1).</p> |
| <p>* * * * *</p> | <p>S. 131(e) amended by No. 10002 s. 13(2), repealed by No. 12/1994 s. 10(1).</p> |
| <p>(f) prescribing precautions to be taken in and regulating or controlling the manufacture storage use or handling of any such regulated poisons; and</p> <p>(g) prescribing penalties not exceeding 100 penalty units for breaches of the regulations.</p> | <p>S. 131(f) amended by No. 42/1993 s. 54(2)(a).</p> <p>S. 131(g) amended by No. 10002 s. 13(2).</p> |

132. General regulations

The Governor in Council may make regulations for or with respect to—

- (a) prescribing forms to be used for the purposes of this Act;
- (b) the colouring of any poison or controlled substance;
- (c) the sale supply and safe custody of poisons or controlled substances including the specifications of cupboards and other receptacles and the manner of storage of any poison or controlled substance;

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- (d) prohibiting the sale or supply of any product (whether by wholesale or by retail) or any class of products containing any poison or controlled substances unless the product or class of products is packaged in accordance with regulations made under this section and contains no more than a specified concentration of any specified poison or controlled substance;
- (e) the minimum size of packages or containers in which poisons or controlled substances or any class of poisons or controlled substances may be sold or supplied or offered for sale or supply;
- (f) specifying the containers in which any poison or controlled substance may be sold or supplied and prohibiting the use of such containers for other substances;
- (g) prescribing the Schedule 2, 3, 4 or 8 poisons that a nurse practitioner or category of nurse practitioner is authorised to obtain and have in his or her possession and to use, sell or supply;

New s. 132(g)
inserted by
No. 94/2000
s. 52(3).

S. 132(g)–(i)
repealed by
No. 10002
s. 13(3)(a).

* * * * *

S. 132(j)
amended by
No. 42/1993
s. 55(a).

- (j) prohibiting and controlling advertising by any person in relation to Schedule 3 poisons or any class of Schedule 3 poisons and prescribing the form and contents of such advertisements;

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- | | |
|---|---|
| (k) providing for the dispensing of prescriptions for poisons or controlled substances issued by registered medical practitioners, nurse practitioners, dentists or veterinary practitioners in other States; | S. 132(k) amended by Nos 23/1994 s. 118(Sch. 1 item 17.18(b)), 74/2000 s. 3(Sch. 1 item 38.5), 94/2000 s. 52(4)(a). |
| (l) labelling and specifying the particulars (including antidotes) to be included in labels attached to containers of poisons and controlled substances; | |
| (m) applications for licences, permits, warrants and authorities issued under this Act, and the issue, renewal, amendment, suspension or cancellation of them; | S. 132(m) substituted by No. 12/1994 s. 10(2)(a). |
| (n) prescribing terms and conditions limitations and restrictions to which licences warrants and permits issued under this Act shall be subject; | S. 132(n) amended by Nos 10002 s. 13(3)(b), 12/1994 s. 10(2)(b). |
| (o) prescribing fees for applications for the issue, renewal and amendment of licences, permits, warrants, authorisations and approvals under the Act and pro rata fees for periods of less than 12 months; | S. 132(o) substituted by No. 12/1994 s. 10(2)(c). |
| (oa) prescribing penalties not exceeding 100 penalty units for the breach of terms, conditions, limitations and restrictions of authorisations and approvals; | S. 132(oa) inserted by No. 12/1994 s. 10(2)(c). |
| (p) the inspection of premises stocks books and any other documents relating to poisons or controlled substances; | |
-

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S. 132(q)
amended by
Nos 23/1994
s. 118(Sch. 1
item 17.18(a)),
58/1997
s. 96(Sch.
item 3.5),
56/1996
s. 100(7),
94/2000
s. 52(4)(b),
18/2000
s. 106(2)(a)(b).

(q) exempting from all or any of the provisions of this Act and the regulations substances or preparations containing any poison or controlled substance which by their nature are not capable of being used in evasion of this Act and the regulations or which are sold or supplied by a pharmacist or registered Chinese herbal dispenser or according to the prescription of a registered medical practitioner, registered Chinese medicine practitioner, registered optometrist, nurse practitioner, veterinary practitioner or dentist for an individual and specific case;

S. 132(r)
amended by
No. 12/1994
s. 16(3)(a).

(r) the procedure to be followed in relation to the sale or supply and recording of poisons or controlled substances;

S. 132(s)
repealed by
No. 12/1994
s. 16(3)(b).

* * * * *

(t) specifying the persons or classes of persons authorized or entitled to purchase obtain use or be in possession of any poison or controlled substance;

(u) providing that all persons are authorized or entitled to purchase or obtain or have in their possession or use specified poisons or controlled substances or specified classes of poisons or controlled substances;

(v) providing for the disposal of automatic machines forfeited pursuant to the provisions of this Act;

(w) prohibiting the sale or supply of any poison or controlled substance by self-service methods other than any methods prescribed;

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- | | |
|---|--|
| (x) prescribing a penalty of not more than 100 penalty units for any contravention of or failure to comply with the regulations; | S. 132(x)
amended by
No. 10002
s. 13(3)(c). |
| (y) the administration and use of Schedule 3 poisons or any class of Schedule 3 poison; | S. 132(y)
amended by
No. 42/1993
s. 55(b)(i)(ii). |
| (z) regulating and controlling the issue by registered medical practitioners, nurse practitioners, dentists or veterinary practitioners of prescriptions for any Schedule 3 poison and the dispensing of any such prescriptions; | S. 132(z)
amended by
Nos 42/1993
s. 55(c),
23/1994
s. 118(Sch. 1
item 17.18(b)),
74/2000
s. 3(Sch. 1
item 38.5),
94/2000
s. 52(4)(c). |
| (za) regulating and controlling the sale or supply by pharmacists of Schedule 3 poisons to persons without direction from a registered medical practitioner, nurse practitioner, veterinary practitioner or dentist; | S. 132(za)
amended by
Nos 42/1993
s. 55(d),
23/1994
s. 118(Sch. 1
item 17.18(a)),
74/2000
s. 3(Sch. 1
item 38.6),
94/2000
s. 52(4)(d). |
| (zb) prescribing the manner in which Schedule 3 poisons may be dispensed by pharmacists and the keeping of records of each transaction effected by a pharmacist; | S. 132(zb)
amended by
No. 42/1993
s. 55(d). |
| (zc) regulating and controlling the dispensing and sale or supply of Schedule 4 poisons by pharmacists without a prescription from a registered medical practitioner, nurse practitioner, dentist or veterinary practitioner in emergency circumstances to the extent that the quantity of any Schedule 4 poison so dispensed sold or supplied does not exceed three days medication or, where a Schedule 4 poison is or is contained in a pre-packed | S. 132(zc)
amended by
Nos 42/1993
s. 55(e)(i)(ii),
23/1994
s. 118(Sch. 1
item 17.18(a)),
74/2000
s. 3(Sch. 1
item 38.6),
94/2000
s. 52(4)(e). |
-

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pharmaceutical preparation, the minimum standard package containing the preparation;

S. 132(zca) inserted by No. 42/1993 s. 54(3).

(zca) amending the Commonwealth Standard in so far as it is incorporated in the Poisons Code;

S. 132(zcb) inserted by No. 42/1993 s. 54(3), repealed by No. 74/2004 s. 17.

* * * * *

(zd) generally prescribing all such matters and things as are authorized or required to be prescribed or are necessary or convenient to be prescribed for carrying into effect the objects of this Act.

S. 132A inserted by No. 42/1993 s. 56.

132A. Regulations may incorporate other documents

- (1) Regulations under any provision of this Act may apply, adopt or incorporate by reference any document formulated or published by a person or body, either—
 - (a) without modification or as modified by the regulations; or
 - (b) as formulated or published on or before the date when the regulations are made; or
 - (c) as formulated or published from time to time.
- (2) Regulations under any provision of this Act may apply, adopt or incorporate by reference the Poisons Code or any part of that Code.
- (3) Section 32 of the **Interpretation of Legislation Act 1984** applies to regulations under any provision of this Act that incorporate by reference any part of the Poisons Code as if that part were a statutory rule.

132B. Scope of regulations

The regulations may—

- (a) be of general or limited application; and
- (b) apply to different classes of persons, licences, permits, warrants, authorisations and approvals; and
- (c) provide for different fees for different activities or classes of activity or different cases or classes of cases; and
- (d) in the case of applications for the issue, renewal or amendment of licences, permits or warrants, specify fees that reflect the cost of administration of, and the provision of inspection services in connection with, the licence, permit and warrant system; and
- (e) in the case of fees for applications for the issue, renewal or amendment of licences, permits or warrants, may vary according to the kinds of poisons or controlled substances to which the licence, permit or warrant relates; and
- (f) confer powers or discretions or impose duties on any person.

S. 132B
inserted by
No. 12/1994
s. 7.

133. Strict compliance with prescribed forms not necessary

Forms set out in any regulations made under this Act or forms to the like effect may be used for the purposes thereof and shall be sufficient in law.

s. 133A

133A. Exemption from regulatory impact statement procedure

S. 133A
inserted by
No. 25/1990
s. 3.

S. 133A(1)
substituted by
No. 42/1993
s. 57(1),
amended by
No. 68/1996
s. 15(a).

S. 133A(2)
amended by
Nos 42/1993
s. 57(2),
68/1996
s. 15(b).

S. 133A(3)
amended by
Nos 42/1993
s. 57(2),
68/1996
s. 15(c).

- (1) The provisions of the **Subordinate Legislation Act 1994** with respect to the preparation of regulatory impact statements do not apply to a regulation which is consistent with, and gives effect in Victoria to, the Commonwealth standard.
- (2) Any regulation to which sub-section (1) applies may be disallowed, in whole or in part, by resolution of either House of Parliament in accordance with the requirements of section 23 of the **Subordinate Legislation Act 1994**.
- (3) Disallowance of a regulation under sub-section (2) must be taken to be disallowance by Parliament for the purposes of the **Subordinate Legislation Act 1994**.

PART XII—TRANSITIONAL PROVISIONS

Pt 12
(Heading and
ss 134, 135)
substituted as
Pt 12
(Heading and
ss 134–136)
by No.
42/1993 s. 58.
Pt 12
(Heading)
amended by
No. 61/2001
s. 9.

134. References

S. 134
substituted by
No. 42/1993
s. 58.

(1) In this section "**subordinate instrument**" has the same meaning as in the **Interpretation of Legislation Act 1984**.

(2) In—

- (a) an Act other than this Act; or
- (b) a subordinate instrument made under this Act or any other Act; or
- (c) any licence, warrant, permit or other instrument under this Act; or
- (d) any other document whatever—

a reference of a kind listed in Column 1 of the Table must in relation to any period occurring on or after the commencement of this section and unless inconsistent with the context or subject matter be taken to be a reference of the kind listed opposite in Column 2.

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TABLE

Column 1	Column 2
Old Reference	New Reference
Domestic poison	Schedule 5 poison
Special poison (if the reference relates to a Schedule 1 poison)	Schedule 1 poison
Narcotic drug	Schedule 8 poison or Schedule 9 poison
Hallucinogenic drug	Schedule 8 poison or Schedule 9 poison
Dangerous poison (if the reference relates to a Schedule 1 poison)	Schedule 1 poison
Medicinal poison	Schedule 2 poison
Potent substance	Schedule 3 poison
Restricted substance	Schedule 4 poison
Hazardous substance	Schedule 5 poison
Industrial and Agricultural poison	Schedule 6 poison
Dangerous poison (if the reference relates to a Schedule 7 poison)	Schedule 7 poison
Special poison (if the reference relates to a Schedule 7 poison)	Schedule 7 poison
Special poison (if the reference relates to a regulated poison)	Regulated poison
Drug of addiction	Schedule 8 poison or Schedule 9 poison
Substance specified in Schedule One of the Drugs, Poisons and Controlled Substances Act 1981	Schedule 1 poison
Substance specified in Schedule Two of the Drugs, Poisons and Controlled Substances Act 1981	Schedule 2 poison
Substance specified in Schedule Three of the Drugs, Poisons and Controlled Substances Act 1981	Schedule 3 poison
Substance specified in Schedule Four of the Drugs, Poisons and Controlled Substances Act 1981	Schedule 4 poison
Substance specified in Schedule Five of the Drugs, Poisons and Controlled Substances Act 1981	Schedule 5 poison
Substance specified in Schedule Six of the Drugs, Poisons and Controlled Substances Act 1981	Schedule 6 poison

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Column 1	Column 2
Old Reference	New Reference
Substance specified in Part 1 of Schedule Seven of the Drugs, Poisons and Controlled Substances Act 1981	Schedule 7 poison
Substance specified in Part 2 of Schedule Seven of the Drugs, Poisons and Controlled Substances Act 1981	Regulated poison
Substance specified in Schedule Eight of the Drugs, Poisons and Controlled Substances Act 1981	Schedule 8 poison or Schedule 9 poison

- (3) Despite sub-section (2), on or after the commencement of section 97 of the **Chinese Medicine Registration Act 2000**, a reference in Column 2 in the Table to a Schedule 1 poison is not to be taken to be a reference to a Schedule 1 poison within the meaning of this Act as amended by the **Chinese Medicine Registration Act 2000**.

S. 134(3)
inserted by
No. 18/2000
s. 107.

135. Instruments to continue

- (1) The amendments made to this Act by the **Health and Community Services (General Amendment) Act 1993** do not affect the continuity of status, operation or effect of any licence, permit, warrant or authority in force under this Act immediately before the commencement of this section.
- (2) Sub-section (1) does not affect the operation of section 134.

S. 135
substituted by
No. 42/1993
s. 58.

135A. Transitional provisions—Drugs, Poisons and Controlled Substances (Amendment) Act 1994

Despite the repeal of the **Drugs, Poisons and Controlled Substances (Amendment) Act 1994** by the **Drugs, Poisons and Controlled Substances and Therapeutic Goods (Victoria) Acts (Amendment) Act 2004**, a warrant to which section 19(2) of the **Drugs, Poisons and Controlled Substances (Amendment) Act 1994**

S. 135A
inserted by
No. 74/2004
s. 18.

s. 136

(including a suspended warrant) applied immediately before that repeal must be taken to have been issued under this Act and may be amended, suspended or cancelled accordingly.

S. 136
inserted by
No. 42/1993
s. 58.

136. Continuity of Poisons Advisory Committee

The Poisons Advisory Committee is the same body after as before the commencement of the **Health and Community Services (General Amendment) Act 1993**.

S. 137
inserted by
No. 61/2001
s. 10.

137. Transitional provisions—Drugs, Poisons and Controlled Substances (Amendment) Act 2001

- (1) The amendments to this Act made by the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001** apply only to offences alleged to have been committed after the commencement of that Act.
- (2) For the purposes of sub-section (1), if an offence is alleged to have been committed between two dates, one before and one on or after the commencement of the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001**, the offence is alleged to have been committed before the commencement of that Act.

S. 138
inserted by
No. 74/2004
s. 5.

138. Refund of licence fee in relation to Schedule 5 poisons and Schedule 6 poisons

- (1) The Secretary may refund to a licence holder an amount equal to the proportion of the fee paid for a licence in relation to the period that starts on the date of the commencement of the **Drugs, Poisons and Controlled Substances and Therapeutic Goods (Victoria) Acts (Amendment) Act 2004** and ends on the expiry of the licence if—

-
- (a) the licence is issued under Division 4 of Part II for—
- (i) the sale or supply by wholesale of a Schedule 5 poison or a Schedule 6 poison; or
 - (ii) the manufacture and sale or supply by retail of a Schedule 5 poison or a Schedule 6 poison; or
 - (iii) the manufacture and sale or supply by wholesale of a Schedule 5 poison or a Schedule 6 poison; and
- (b) at that commencement, the licence has a period of at least 6 months to run before its expiry.

- (2) A refund paid to a licence holder under subsection (1) is to be paid from the Consolidated Fund which is, to the necessary extent, appropriated accordingly.

139. Transitional provisions relating to licences—Drugs, Poisons and Controlled Substances and Therapeutic Goods (Victoria) Acts (Amendment) Act 2004

S. 139
inserted by
No. 74/2004
s. 5.

- (1) An application for a new licence of a kind referred to in section 20(1)(b) or (e) of this Act as in force immediately before the commencement of the **Drugs, Poisons and Controlled Substances and Therapeutic Goods (Victoria) Acts (Amendment) Act 2004** or for the renewal of such a licence must be taken to be an application for a licence or for its renewal (as the case requires) of a kind of licence referred to in the relevant section as amended by the **Drugs, Poisons and Controlled Substances and Therapeutic Goods (Victoria) Acts (Amendment) Act 2004**.

-
- (2) A licence—
- (a) of a kind referred to in section 20(1)(b) or (e) of this Act as in force immediately before the commencement of the **Drugs, Poisons and Controlled Substances and Therapeutic Goods (Victoria) Acts (Amendment) Act 2004** (including a suspended licence); and
 - (b) in existence at the date of that commencement—
- must be taken to have been issued under this Act as amended by the **Drugs, Poisons and Controlled Substances and Therapeutic Goods (Victoria) Acts (Amendment) Act 2004** and may be renewed, amended, suspended or cancelled accordingly.
- (3) The amendments to section 20(1)(b) and (e) made by the **Drugs, Poisons and Controlled Substances and Therapeutic Goods (Victoria) Acts (Amendment) Act 2004** do not affect the continuity or suspension of a licence of a kind referred to in section 20(1)(b) or (e) of this Act as in force immediately before the commencement of that Act.
-

SCHEDULES

* * * * *

**Schs 1-9
repealed.³**

Drugs, Poisons and Controlled Substances Act 1981
No. 9719 of 1981

Sch. 10

Sch. 10
substituted by
No. 10002
s. 8(1),
amended by
Nos 16/1986
s. 30, 101/1986
s. 58(1)(g),
57/1989
s. 3(Sch. item
59.15(a)-(c)),
48/1997
s. 44(7)(a)-(c),
63/2003
s. 48(1)(2).

SCHEDULE TEN

(Section 81)

Drugs, Poisons and Controlled Substances Act 1981

SEARCH WARRANT

To _____ a member of the Police Force

WHEREAS I, the undersigned, a *Magistrate _____ in the
State of Victoria, am satisfied by the *evidence on oath or *by affidavit
of:

_____ a member of the
Police Force of or above the rank of Sergeant or for the time being in
charge of a police station, that there is reasonable ground for believing
that there *is _____ in a certain
*are
*will be within the next 72 hours

land or _____
premises situate at _____
*certain things
*or documents

to wit:

- * (1) upon or in respect of which an offence under the **Drugs Poisons and Controlled Substances Act 1981** or the Regulations under that Act, has been or is reasonably suspected to have been committed or is being or is likely to be committed within the next 72 hours;
- * (2) which there is reasonable ground to believe is intended to be used for the purpose of committing an offence under the **Drugs Poisons and Controlled Substances Act 1981** or the Regulations under that Act;
- * (3) which is a document directly or indirectly relating to or concerning a transaction or dealing which is or would be, if carried out, an offence under the **Drugs Poisons and Controlled Substances Act 1981** or the Regulations under that Act or under a provision of a law in force in a place outside Victoria and which corresponds to a provision of Part V of that Act.

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Sch. 10

These are therefore in Her Majesty's name to authorize and require you—

* (1) to enter and search the said *land or
*premises
for such *things
*or documents
and if any such *things
*or documents be found to seize and destroy or
dispose of them in accordance with section 81 of the **Drugs,
Poisons and Controlled Substances Act 1981** or carry them
before the Magistrates' Court so that the matter may be dealt with
according to law.

* (2) in relation to a specified thing or a specified document to which
this warrant relates which is also tainted property within the
meaning of the **Confiscation Act 1997**, to hold or retain that
thing or document as if it were tainted property seized under a
warrant under section 79 of that Act as and from the date when
that thing or document is no longer required for evidentiary
purposes under the **Drugs, Poisons and Controlled Substances
Act 1981**.

Given under my hand this day of

*Magistrate

*Strike out whichever is not applicable.

Drugs, Poisons and Controlled Substances Act 1981
No. 9719 of 1981

Sch. 11

Sch. 11 substituted by No. 10002 s. 8(1), amended by S.R. No. 1/1985 (paras (1)–(9)), substituted by S.R. No. 268/1985, amended by No. 101/1986 s. 58(1)(h)(i)–(iii), S.R. Nos 138/1989 (para. (3)(a)(b)), 314/1990 (para. (3)(a)–(g)), 69/1993 para. (3)(a)(b), No. 48/1997 ss 45(1)(a)–(h)(2), 46, S.R. Nos 107/1999 regs 3(1)(a)–(e)(2), 4, 85/2000 reg. 3, Nos 61/2001 s. 8, 63/2003 s. 49, 74/2004 s. 19(a)(b).

SCHEDULE ELEVEN

PART 1

Column 1	Column 2	Column 3
<i>Drug</i>	<i>Quantity of pure drug</i>	<i>Quantity of pure drug</i>
	Kilograms	Grams
ACETORPHINE		2·0
N-ACETYLAMPHETAMINE	2·0	2·0
ACETYLDIHYDROCODEINE	10·0	100·0
ACETYLMETHADOL		2·0
N-ACETYLMETHYLAMPHETAMINE	2·0	2·0
ALPRAZOLAM		0·5
ANILERIDINE		25·0
BARBITURATES	2·0	50·0
1, 4-BENZODIAZEPINES not included elsewhere in this Part		10·0
BENZOXAZOCINES	2·0	50·0
BENZETHIDINE		10·0
BENZYLMORPHINE		5·0
BEZITRAMIDE		5·0
BROMAZEPAM		3·0
4-BROMO-2,5-DIMETHOXYAMPHETAMINE	0·5	0·5
4-BROMO-2,5-DIMETHOXYMETHYLAMPHETAMINE	0·5	0·5
4-BROMO-2,5-DIMETHOXYPHENETHYLAMINE (NEXUS)	0·5	0·5
BUFOTENINE		2·0
BUTORPHANOL	1·5	2·0
CHLORAL HYDRATE	2·0	50·0
CHLORDIAZEPOXIDE		5·0
1-CHLORO-1-PHENYL-2-AMINOPROPANE	2·0	2·0

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Column 1	Column 2	Column 3
<i>Drug</i>	<i>Quantity of pure drug</i>	<i>Quantity of pure drug</i>
	Kilograms	Grams
2-(2-CHLOROPHENYL)-2-(METHYLAMINO) CYCLOHEXANONE (KETAMINE)	2.0	20.0
1-CHLORO-1-PHENYL-2-METHYLAMINO-PROPANE	2.0	2.0
CLOBAZAM		5.0
CLONAZEPAM		2.5
CLONITAZENE		5.0
CODEINE (when in excess of 10.0 grams)	2.0	100.0
CODEINE N-OXIDE		10.0
CODOXIME		10.0
DESOMORPHINE		2.0
DIAMPROMIDE		5.0
DIAZEPAM		2.0
DIETHYLPROPION	2.0	50.0
N, N-DIETHYLTRYPTAMINE	2.0	2.0
DIFENOXIN		5.0
DIHYDROCODEINE (when in excess of 5.0 grams)	2.0	100.0
DIHYDROHYDROXYMORPHINE		2.0
DIHYDROMORPHINE		10.0
DIMENOXADOL		10.0
DIMEPHEPTANOL		10.0
2,5-DIMETHOXY-4-METHYLAMPHETAMINE	0.5	0.5
N, N-DIMETHYLTRYPTAMINE	0.5	0.5
DIOXAPHETYL BUTYRATE		2.0
DIPHENOXYLATE	2.0	3.0
DIPIANONE		10.0
ECGONINE		10.0
EPHEDRINE (when in excess of 20 grams)	2.0	100.0

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Sch. 11

Column 1	Column 2	Column 3
<i>Drug</i>	<i>Quantity of pure drug</i>	<i>Quantity of pure drug</i>
	Kilograms	Grams
ETHYLMORPHINE	2.0	2.0
N-ETHYL-1-PHENYLCYCLOHEXYLAMINE	0.001	0.001
ETONITAZENE		5.0
ETORPHINE	2.0	2.0
ETOXERIDINE		5.0
FENTANYL	0.05	0.005
FLUNITRAZEPAM		0.5
FLURAZEPAM		3.0
N-FORMYLAMPHETAMINE	2.0	2.0
N-FORMYLMETHYLAMPHETAMINE	2.0	2.0
FURETHIDINE		1.0
GLUTETHIMIDE	2.0	100.0
HARMALINE	5.0	5.0
HARMINE	5.0	5.0
HYDROCODONE		2.0
HYDROMORPHONE		2.0
HYDROXYAMPHETAMINE	2.0	2.0
4-HYDROXYBUTANOIC ACID (GHB)	2.0	50.0
N-HYDROXY-3, 4-METHYLENEDIOXYAMPHETAMINE	0.5	0.5
KETOBEMIDONE		2.0
LORAZEPAM		0.5
LYSERGAMIDE	0.01	0.1
LYSERGIC ACID	0.002	0.002
MECLOQUALONE	50.0	50.0
MESCALINE	7.5	7.5
METAZOCINE		7.0
METHADONE	2.0	2.0
METHAQUALONE	2.0	50.0
METHORPHAN		2.0

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Sch. 11

Column 1	Column 2	Column 3
<i>Drug</i>	<i>Quantity of pure drug</i>	<i>Quantity of pure drug</i>
	Kilograms	Grams
4-METHOXYAMPHETAMINE	0.5	0.5
4-METHOXYMETHYLAMPHETAMINE	0.5	0.5
5-METHOXY- <i>N, N</i> - DIETHYLTRYPTAMINE	0.5	0.5
5-METHOXY- <i>N, N</i> - DIMETHYLTRYPTAMINE	0.5	0.5
METHOXYAMPHETAMINES	0.5	0.5
2-METHYLAMINO-PROPIOPHENONE (METHCATHINONE)	2.0	2.0
METHYLDESORPHINE		2.0
METHYLDIHYDROMORPHINE		2.0
3,4-METHYLENEDIOXY- <i>N</i> - ETHYLAMPHETAMINE	0.5	0.5
(3,4-METHYLENEDIOXYPHENYL)-2- BROMOPROPANE	0.5	0.5
<i>N</i> -METHYL-1-(3,4- METHYLENEDIOXYPHENYL)-2- BUTANAMINE (MBDB)	0.5	2.0
1-(3,4-METHYLENEDIOXYPHENYL)-3- BROMOPROPANE	0.5	0.5
(3,4-METHYLENEDIOXYPHENYL)-2- PROPANONE	0.5	0.5
METHYLPHENIDATE	2.0	5.0
METOPON		2.0
MONOACETYLMORPHINE		2.0
MORAMIDE	2.0	2.0
MORPHERIDINE		2.0
MORPHINAN		2.0
MORPHINE	1.5	2.0
MORPHINE <i>N</i> -OXIDE		2.0
MORPHINONE		2.0
MYROPHINE		20.0
NALBUPHINE	1.5	2.0

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Column 1	Column 2	Column 3
<i>Drug</i>	<i>Quantity of pure drug</i>	<i>Quantity of pure drug</i>
	Kilograms	Grams
NICOCODINE (when in excess of 0.1 grams)	2.0	2.0
NICODICODINE (when in excess of 0.1 grams)	2.0	2.0
NICOMORPHINE		2.0
NITRAZEPAM		1.0
7-NITRO-1,4-BENZODIAZEPINES not included elsewhere in this Part		2.5
NORACYMETHADOL		2.0
NORCODEINE (when in excess of 10.0 grams)	2.0	100.0
NORMETHADONE		5.0
NORMORPHINE		20.0
NORPIPANONE		10.0
OXAZEPAM		10.0
OXYCODONE		5.0
OXYMORPHONE	2.0	2.0
PENTAZOCINE	5.0	5.0
PETHIDINE	5.0	10.0
PHENYLACYLMORPHAN		2.0
PHENADOXONE		10.0
PHENAMPROMIDE		10.0
PHENAZOCINE		1.0
PHENCYCLIDINE	0.1	0.001
PHENDIMETRAZINE		5.0
PHENMETRAZINE		5.0
PHENOMORPHAN		5.0
PHENOPERIDINE		1.0
PHENTERMINE	2.0	50.0
1-PHENYL-2-CHLOROPROPANE	2.0	2.0

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Column 1	Column 2	Column 3
<i>Drug</i>	<i>Quantity of pure drug</i>	<i>Quantity of pure drug</i>
	Kilograms	Grams
1-(1-PHENYLCYCLOHEXYL) PYRROLIDINE	0·1	0·001
1-PHENYL-2-NITROPROPENE	2·0	2·0
PHENYLPROPANOLAMINE (when in excess of 20·0 grams)	2·0	100·0
PHENYL-2-PROPANONE	2·0	2·0
PHENYL-2-PROPANONE OXIME	2·0	2·0
PIMINODINE		10·0
PIPERIDINE DERIVATIVES INCLUDING—ALLYLPRODINE, MEPRODINE, PHENOPERIDINE and PRODINE	1·0	2·0
PIRITRAMIDE		1·0
PROHEPTAZINE		1·0
PROPERIDINE		25·0
PROPIRAM		2·0
PROPOXYPHENE	2·0	2·0
PSEUDOEPHEDRINE (when in excess of 20·0 grams)	2·0	100·0
PSILOCIN	0·1	0·1
PSILOCYBIN	0·1	0·1
TEMAZEPAM		3·0
THEBACON	2·0	2·0
THEBAINE	2·0	2·0
THIAMBUTENE		5·0
1-[1-(2-THIENYL) CYCLOHEXYL] PIPERIDINE	0·1	0·001
TRIMEPERIDINE		10·0

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PART 2

Column 1	Column 1A (Large Commercial Quantity)	Column 2 (Commercial Quantity)	Column 3 (Traffickable Quantity)	Column 4 (Small Quantity)
Plant	<i>Quantity</i>	<i>Quantity</i>	<i>Quantity</i>	<i>Quantity</i>
<i>Cannabis L.</i>	250 kg or 1000 plants	25.0 kg or 100 plants	250.0 g or 10 plants	50.0 g
<i>Erythroxylum coca</i> Lam		80.0 kg	800.0 g	
<i>Erythroxylum nova-granatense</i> (Morris) Hier		80.0 kg	800.0 g	
<i>Papaver bracteatum</i> Lindley		10.0 kg	100.0 g	
<i>Papaver somniferum L.</i>		10.0 kg	100.0 g	

PART 3

Column 1	Column 1A (Large Commercial Quantity)	Column 1B (Large Commercial Quantity)	Column 2 (Commer- cial Quantity)	Column 2A (Commer- cial Quantity)	Column 2B (Automatic Forfeiture Quantity)	Column 3 (Traffick- able Quantity)	Column 4 (Small Quantity)
Drug	Quantity	Quantity of mixture of substance and drug of dependence	Quantity	Quantity of mixture of substance and drug of depend- ence	Quantity	Quantity	Quantity
AMPHETAMINE	750.0 g	2.50 kg	250.0 g	1.25 kg	75.0 g	6.0 g	1.0 g
BUPRENORPHINE						2.0g	
COCAINE	750.0 g	1.0 kg	250.0 g	500.0 g	30.0 g	3.0 g	1.0 g
DIACETYLMORPHINE (Heroin)	750.0 g	1.0 kg	250.0 g	500.0 g	30.0 g	3.0 g	1.0 g
LYSERGIC ACID DIETHYLAMIDE	150.0 mg		50.0 mg		3.0 mg	1.5 mg	0.2 mg
METHYLAMPHETAMINE	750.0 g	2.50 kg	250.0 g	1.25 kg	75.0 g	6.0 g	1.0 g
METHYLENEDIOXY- AMPHETAMINES	750.0 g	1.0 kg	100.0 g	500.0 g	30.0 g	3.0 g	0.75 g
3,4-METHYLENEDIOXY- AMPHETAMINE (MDA)	750.0 g	1.0 kg	100.0 g	500.0 g	30.0 g	3.0 g	0.75 g
3,4-METHYLENEDIOXY-N- METHYLAMPHETAMINE (MDMA)	750.0 g	1.0 kg	100.0 g	500.0 g	30.0 g	3.0 g	0.75 g
TETRAHYDROCANNABINOL	3.0 kg	25.0 kg	1.0 kg	10.0 kg	600.0 g	25.0 g	1.0 g
ANABOLIC AND ANDROGENIC STEROIDAL AGENTS, other than in implant preparations for use in animals			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g

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Column 1	Column 1A	Column 1B	Column 2	Column 2A	Column 2B	Column 3	Column 4
Drug	(Large Commercial Quantity) Quantity	(Large Commercial Quantity) Quantity of mixture of substance and drug of dependence	(Commercial Quantity) Quantity	(Commercial Quantity) Quantity of mixture of substance and drug of dependence	(Automatic Forfeiture Quantity) Quantity	(Traffickable Quantity) Quantity	(Small Quantity) Quantity
ATAMESTANE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
BOLANDIOL			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
BOLASTERONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
BOLAZINE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
BOLDENONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
BOLENOL			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
CALUSTERONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
CHLORANDROSTENOLONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
CLOSTEBOL			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
DANAZOL			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
DIHYDROLONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
DIMETHANDROSTANOLONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
DROSTANOLONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
ENESTEBOL			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
EPITIOSTANOL			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
ETHYLDIENOLONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
ETHYLOESTRENOL			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
FLUOXYMESTERONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
FORMEBOLONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
FURAZABOL			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
HYDROXYSTENOZOL			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
MEBOLAZINE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
MEPITIOSTANE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
MESABOLONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
MESTANOLONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
MESTEROLONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
METHANDIENONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
METHANDRIOL			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
METHENOLONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
METHYLCLOSTEBOL			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
METHYLTESTOSTERONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
METHYLTRIENOLONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
METRIBOLONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
MIBOLERONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
NANDROLONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
NORANDROSTENOLONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
NORBOLETHONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
NORCLOSTEBOL			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g
NORETHANDROLONE			5-0 kg	5-0 kg	300-0 g	500-0 g	50-0 g

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Column 1	Column 1A	Column 1B	Column 2	Column 2A	Column 2B	Column 3	Column 4
Drug	(Large Commercial Quantity) Quantity	(Large Commercial Quantity) Quantity of mixture of substance and drug of dependence	(Commercial Quantity) Quantity	(Commercial Quantity) Quantity of mixture of substance and drug of dependence	(Automatic Forfeiture Quantity) Quantity	(Traffickable Quantity) Quantity	(Small Quantity) Quantity
NORMETHANDRONE			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g
OVANDROTONE			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g
OXABOLONE			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g
OXANDROLONE			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g
OXYMESTERONE			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g
OXYMETHOLONE			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g
PRASTERONE			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g
PROPETANDROL			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g
QUINBOLONE			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g
ROXIBOLONE			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g
SILANDRONE			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g
STANOLONE			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g
STANAZOLOL			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g
STENBOLONE			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g
TESTOLACTONE			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g
TESTOSTERONE, other than in implant preparations for use in animals			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g
THIOMESTERONE			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g
TRENBOLONE, other than in implant preparations for use in animals			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g
TRESTOLONE			5.0 kg	5.0 kg	300.0 g	500.0 g	50.0 g

Note: kg = kilogram
g = gram
mg = milligram

SCHEDULE TWELVE

Section 121

STATEMENTS OF STRENGTH OF PREPARATIONS

- (a) In respect of a tablet, capsule, pastille, packaged single dose of powder, or similar discreet product unit, the quantity of each poison or controlled substance in the product unit.
- (b) In respect of a solid preparation intended for extemporaneous preparation of either a single dose or a single stated amount of a liquid for therapeutic use, the quantity of each poison or controlled substance in the immediate container.
- (c) In respect of a liquid for internal therapeutic use, the volume of the normal dose and the quantity of each poison or controlled substance in that volume.
- (d) In respect of any other preparation, the portion of each poison or controlled substance shall be expressed as follows:
 - (i) In respect of a liquid poison or controlled substance in a liquid preparation, the weight or volume of the poison or controlled substance per stated volume of the preparation;
 - (ii) In respect of a liquid poison or controlled substance in a solid or semi-solid preparation, the weight or volume of the poison or controlled substance per stated weight of the preparation;
 - (iii) In respect of a solid or semi-solid poison or controlled substance in a liquid preparation, the weight of the poison or controlled substance per stated volume of the preparation;
 - (iv) In respect of a solid or semi-solid poison or controlled substance in a solid or semi-solid preparation, the weight of the poison or controlled substance per stated weight of the preparation;
 - (v) In respect of a gaseous poison or controlled substance in a liquid preparation, the weight of the poison or controlled substance per stated volume of the preparation;
 - (vi) In respect of a gaseous poison or controlled substance in a solid or semi-solid preparation, the weight of the poison or controlled substance per stated weight of the preparation;
 - (vii) In respect of a gaseous poison or controlled substance in a gaseous preparation, the weight of the poison or controlled substance per stated weight of the preparation.

ENDNOTES

1. General Information

The **Drugs, Poisons and Controlled Substances Act 1981** was assented to on 12 January 1982 and came into operation on 18 December 1983: Government Gazette 14 December 1983 page 3955.

2. Table of Amendments

This Version incorporates amendments made to the **Drugs, Poisons and Controlled Substances Act 1981** by Acts and subordinate instruments.

Drugs, Poisons and Controlled Substances (Amendment) Act 1983, No. 10002/1983 (as amended by Act Nos 10087, 25/1990)

Assent Date: 13.12.83
Commencement Date: 18.12.83: Government Gazette 14.12.83 p. 3954
Current State: All of Act in operation

Statute Law Revision Act 1984, No. 10087/1984

Assent Date: 22.5.84
Commencement Date: 22.5.84: s. 3(2)
Current State: All of Act in operation

Health (Amendment) Act 1985, No. 10262/1985

Assent Date: 10.12.85
Commencement Date: S. 4(Sch.) on 1.3.86: Government Gazette 26.2.86 p. 451
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Courts Amendment Act 1986, No. 16/1986

Assent Date: 22.4.86
Commencement Date: S. 30(Sch.) on 1.7.86: Government Gazette 25.6.86 p. 2180
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Public Contracts (Repeal) Act 1986, No. 21/1986

Assent Date: 22.4.86
Commencement Date: 22.4.86
Current State: All of Act in operation

Crimes (Confiscation of Profits) Act 1986, No. 101/1986

Assent Date: 16.12.86
Commencement Date: 1.8.87: Government Gazette 22.7.87 p. 1924
Current State: All of Act in operation

Supreme Court Act 1986, No. 110/1986

Assent Date: 16.12.86
Commencement Date: 1.1.87: s. 2
Current State: All of Act in operation

Animal Preparations Act 1987, No. 12/1987

Assent Date: 5.5.87
Commencement Date: S. 37 on 5.5.87: s. 2(1); rest of Act on 29.6.88: Government Gazette 29.6.88 p. 1893
Current State: All of Act in operation

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Drugs, Poisons and Controlled Substances (Amendment) Act 1987, No. 20/1987

Assent Date: 12.5.87
Commencement Date: 12.5.87
Current State: All of Act in operation

Conservation, Forests and Lands Act 1987, No. 41/1987

Assent Date: 19.5.87
Commencement Date: S. 103(Sch. 4 item 12.1) on 1.7.87: Government Gazette 24.6.87 p. 1694
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Liquor Control Act 1987, No. 97/1987

Assent Date: 1.12.87
Commencement Date: S. 181(2) on 3.5.88: Government Gazette 27.4.88 p. 1044
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Magistrates' Court Act 1989, No. 51/1989

Assent Date: 14.6.89
Commencement Date: S. 149(1) on 1.9.90: Government Gazette 25.7.90 p. 2216
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Children and Young Persons Act 1989, No. 56/1989

Assent Date: 14.6.89
Commencement Date: S. 286(Sch. 2 item 9) on 23.9.91: Government Gazette 28.8.91 p. 2368
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Water (Consequential Amendments) Act 1989, No. 81/1989

Assent Date: 5.12.89
Commencement Date: 1.11.90: Government Gazette 15.8.90 p. 2473
Current State: All of Act in operation

Drugs, Poisons and Controlled Substances (Amendment) Act 1990, No. 25/1990

Assent Date: 5.6.90
Commencement Date: S. 4(2) on 13.12.83: s. 2(1); rest of Act on 5.6.90: s. 2(2)
Current State: All of Act in operation

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Sentencing Act 1991, No. 49/1991

Assent Date: 25.6.91
Commencement Date: 22.4.92: Government Gazette 15.4.92 p. 898
Current State: All of Act in operation

Royal Botanic Gardens Act 1991, No. 87/1991

Assent Date: 10.12.91
Commencement Date: 1.7.92: Government Gazette 1.7.92 p. 1629
Current State: All of Act in operation

Crimes (Confiscation of Profits) (Amendment) Act 1991, No. 90/1991

Assent Date: 10.12.91
Commencement Date: S. 36 on 1.9.92: Government Gazette 12.8.92 p. 2179
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Vermin and Noxious Weeds (Poison Baits) Act 1992, No. 4/1992

Assent Date: 5.5.92
Commencement Date: S. 6 never came into operation and was repealed by s. 97 of Act No. 52/1994 on 16.12.94
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Agricultural and Veterinary Chemicals (Control of Use) Act 1992, No. 46/1992 (as amended by No. 73/1994)

Assent Date: 23.6.92
Commencement Date: S. 78(2)(a) on 15.3.95: Government Gazette 9.3.95 p. 502; s. 78(1)(2)(b) on 1.8.96: Special Gazette (No. 89) 1.8.96 p. 2
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Health and Community Services (General Amendment) Act 1993, No. 42/1993

Assent Date: 1.6.93
Commencement Date: Ss 33, 34, 36, 38, 50, 56, 60 on 21.8.94; ss 35, 37, 39–49, 51–55, 57–59, 61 on 10.9.94: Government Gazette 18.8.94 p. 2240
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Drugs, Poisons and Controlled Substances (Amendment) Act 1994, No. 12/1994

Assent Date: 3.5.94
Commencement Date: Pts 1, 2(ss 1–7) on 3.5.94: s. 2(1); ss 8, 11, 18 on 10.9.94; rest of Act on 11.9.94: Government Gazette 18.8.94 p. 2240
Current State: All of Act in operation

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Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: Ss 1, 2 on 17.5.94: s. 2(1); rest of Act on 1.7.94:
Government Gazette 23.6.94 p. 1672
Current State: All of Act in operation

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 3(Sch. 1 item 18) on 7.7.94: Government Gazette
7.7.94 p. 1878—see **Interpretation of Legislation
Act 1984**
Current State: This information relates only to the provision/s
amending the **Drugs, Poisons and Controlled
Substances Act 1981**

Catchment and Land Protection Act 1994, No. 52/1994

Assent Date: 15.6.94
Commencement Date: S. 97(Sch. 3 item 7) on 16.12.94: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Drugs, Poisons and Controlled
Substances Act 1981**

Drugs, Poisons and Controlled Substances (Amendment) Act 1995, No. 66/1995

Assent Date: 17.10.95
Commencement Date: 17.10.95: s. 2(1)
Current State: All of Act in operation

Optometrists Registration Act 1996, No. 56/1996

Assent Date: 10.12.96
Commencement Date: S. 100 on 1.7.98: s. 2(4)
Current State: This information relates only to the provision/s
amending the **Drugs, Poisons and Controlled
Substances Act 1981**

Health Acts (Further Amendment) Act 1996, No. 68/1996

Assent Date: 17.12.96
Commencement Date: Pt 3(ss 8–15) on 17.12.96: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Drugs, Poisons and Controlled
Substances Act 1981**

Sentencing and Other Acts (Amendment) Act 1997, No. 48/1997

Assent Date: 11.6.97
Commencement Date: Ss 35–42, 44–47 on 1.9.97: s. 2(2); s. 43 on 11.6.98:
Government Gazette 11.6.98 p. 1314
Current State: This information relates only to the provision/s
amending the **Drugs, Poisons and Controlled
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Drugs, Poisons and Controlled Substances (Amendment) Act 1997, No. 54/1997
(as amended by No. 52/1998)

Assent Date: 21.10.97
Commencement Date: Ss 1–4 on 21.10.97: s. 2(1); ss 5, 6 on 1.10.98:
Government Gazette 13.8.98 p. 2182
Current State: All of Act in operation

Veterinary Practice Act 1997, No. 58/1997

Assent Date: 28.10.97
Commencement Date: S. 96(Sch. item 3) on 17.3.98: Government Gazette
12.3.98 p. 520
Current State: This information relates only to the provision/s
amending the **Drugs, Poisons and Controlled
Substances Act 1981**

Confiscation Act 1997, No. 108/1997

Assent Date: 23.12.97
Commencement Date: S. 152 on 1.7.98: Government Gazette 25.6.98 p. 1561
Current State: This information relates only to the provision/s
amending the **Drugs, Poisons and Controlled
Substances Act 1981**

Drugs, Poisons and Controlled Substances (Amendment) Act 1998, No. 9/1998

Assent Date: 28.4.98
Commencement Date: Ss 1, 2 on 28.4.98: s. 2(1); rest of Act on 31.12.98:
Government Gazette 10.12.98 p. 2998
Current State: All of Act in operation

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Drugs, Poisons and Controlled
Substances Act 1981**

**Conservation, Forests and Lands (Miscellaneous Amendments) Act 1998,
No. 76/1998**

Assent Date: 10.11.98
Commencement Date: S. 7 on 15.12.98: s. 2(5)
Current State: This information relates only to the provision/s
amending the **Drugs, Poisons and Controlled
Substances Act 1981**

Public Sector Reform (Further Amendments) Act 1999, No. 12/1999

Assent Date: 11.5.99
Commencement Date: S. 4(Sch. 2 item 4) on 11.5.99: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Drugs, Poisons and Controlled
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Dental Practice Act 1999, No. 26/1999

Assent Date: 1.6.99
Commencement Date: S. 107(Sch. item 2) on 1.7.00: s. 2(3)
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Chinese Medicine Registration Act 2000, No. 18/2000

Assent Date: 16.5.00
Commencement Date: Ss 96–107 on 1.1.02: Government Gazette 4.10.01 p. 2511
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 38) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Nurses (Amendment) Act 2000, No. 94/2000

Assent Date: 5.12.00
Commencement Date: Ss 48–52 on 1.11.01: s. 2(3)
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Health (Amendment) Act 2001, No. 33/2001

Assent Date: 19.6.01
Commencement Date: S. 21 on 20.6.01: s. 2(1)
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Drugs, Poisons and Controlled Substances (Amendment) Act 2001, No. 61/2001

Assent Date: 23.10.01
Commencement Date: 1.1.02: s. 2(2)
Current State: All of Act in operation

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 16.1) on 1.1.02: s. 2(2)(b); s. 3(Sch. 1 item 16.2) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

**Drugs, Poisons and Controlled Substances (Volatile Substances) Act 2003,
No. 55/2003**

Assent Date: 16.6.03
Commencement Date: Ss 3, 4 on 1.7.04: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Drugs, Poisons and Controlled
Substances Act 1981**

Fisheries (Amendment) Act 2003, No. 56/2003

Assent Date: 16.6.03
Commencement Date: S. 11(Sch. item 7) on 17.6.03: s. 2
Current State: This information relates only to the provision/s
amending the **Drugs, Poisons and Controlled
Substances Act 1981**

Confiscation (Amendment) Act 2003, No. 63/2003

Assent Date: 30.9.03
Commencement Date: Ss 45–49 on 1.12.03: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Drugs, Poisons and Controlled
Substances Act 1981**

Health Legislation (Amendment) Act 2003, No. 67/2003

Assent Date: 14.10.03
Commencement Date: Ss 3, 13(1) on 15.10.03: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Drugs, Poisons and Controlled
Substances Act 1981**

**Drugs, Poisons and Controlled Substances and Therapeutic Goods (Victoria)
Acts (Amendment) Act 2004, No. 74/2004**

Assent Date: 9.11.04
Commencement Date: Ss 3–19 on 10.11.04: s. 2
Current State: This information relates only to the provision/s
amending the **Drugs, Poisons and Controlled
Substances Act 1981**

Pharmacy Practice Act 2004, No. 80/2004

Assent Date: 16.11.04
Commencement Date: S. 150(Sch. 2 item 2) on 1.7.05: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Drugs, Poisons and Controlled
Substances Act 1981**

Major Crime Legislation (Seizure of Assets) Act 2004, No. 87/2004

Assent Date: 23.11.04
Commencement Date: S. 25 on 1.1.05: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Drugs, Poisons and Controlled
Substances Act 1981**

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Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 60) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Road Safety and Other Acts (Vehicle Impoundment and Other Amendments) Act 2005, No. 93/2005

Assent Date: 29.11.05
Commencement Date: S. 14 on 30.11.05: s. 2(1)
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Drugs, Poisons and Controlled Substances (Aged Care Services) Act 2006, No. 17/2006

Assent Date: 9.5.06
Commencement Date: 30.5.06: s. 2
Current State: All of Act in operation

Drugs, Poisons and Controlled Substances (Prohibition of Display and Sale of Cocaine Kits) Act 2006, No. 18/2006

Assent Date: 9.5.06
Commencement Date: 19.5.06: s. 2
Current State: All of Act in operation

Drugs, Poisons and Controlled Substances (Amendment) Act 2006, No. 52/2006

Assent Date: 15.8.06
Commencement Date: Ss 7, 9(1), 11 on 19.2.07: Government Gazette 15.2.07 p. 261
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 29) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Drugs, Poisons and Controlled Substances Act 1981**

Proclamation, S.R. No. 43/1984

Date of Making: 14.2.84
Date of Commencement: 14.2.84

Proclamation, S.R. No. 277/1984

Date of Making: 17.7.84
Date of Commencement: 17.7.84

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Proclamation, S.R. No. 1/1985	
<i>Date of Making:</i>	18.12.84
<i>Date of Commencement:</i>	18.12.84
Proclamation, S.R. No. 2/1985	
<i>Date of Making:</i>	12.12.84
<i>Date of Commencement:</i>	12.12.84
Proclamation, S.R. No. 77/1985	
<i>Date of Making:</i>	26.2.85
<i>Date of Commencement:</i>	26.2.85
Proclamation, S.R. No. 90/1985	
<i>Date of Making:</i>	5.12.84
<i>Date of Commencement:</i>	5.12.84
Proclamation, S.R. No. 91/1985	
<i>Date of Making:</i>	20.12.83
<i>Date of Commencement:</i>	20.12.83
Proclamation, S.R. No. 92/1985	
<i>Date of Making:</i>	14.2.84
<i>Date of Commencement:</i>	14.2.84
Proclamation, S.R. No. 93/1985	
<i>Date of Making:</i>	15.5.84
<i>Date of Commencement:</i>	15.5.84
Proclamation, S.R. No. 94/1985	
<i>Date of Making:</i>	13.6.84
<i>Date of Commencement:</i>	13.6.84
Proclamation, S.R. No. 165/1985	
<i>Date of Making:</i>	16.10.84
<i>Date of Commencement:</i>	16.10.84
Proclamation, S. R. No. 187/1985	
<i>Date of Making:</i>	28.5.85
<i>Date of Commencement:</i>	28.5.85
Proclamation, S. R. No. 208/1985	
<i>Date of Making:</i>	4.6.85
<i>Date of Commencement:</i>	4.6.85
Proclamation, S.R. No. 268/1985	
<i>Date of Making:</i>	25.6.85
<i>Date of Commencement:</i>	25.6.85
Proclamation, S.R. No. 92/1986	
<i>Date of Making:</i>	16.4.86
<i>Date of Commencement:</i>	16.4.86
Proclamation, S.R. No. 179/1986	
<i>Date of Making:</i>	8.7.86
<i>Date of Commencement:</i>	8.7.86

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Proclamation, S.R. No. 82/1987	
<i>Date of Making:</i>	14.4.87
<i>Date of Commencement:</i>	14.4.87
Proclamation, S.R. No. 254/1987	
<i>Date of Making:</i>	29.9.87
<i>Date of Commencement:</i>	29.9.87
Proclamation, S.R. No. 366/1987	
<i>Date of Making:</i>	8.12.87
<i>Date of Commencement:</i>	8.12.87
Proclamation, S.R. No. 138/1989	
<i>Date of Making:</i>	14.6.89
<i>Date of Commencement:</i>	14.6.89
Proclamation, S.R. No. 23/1990	
<i>Date of Making:</i>	13.2.90
<i>Date of Commencement:</i>	13.2.90
Proclamation, S.R. No. 250/1990	
<i>Date of Making:</i>	18.9.90
<i>Date of Commencement:</i>	18.9.90
Proclamation, S.R. No. 314/1990	
<i>Date of Making:</i>	7.11.90
<i>Date of Commencement:</i>	7.11.90
Proclamation, S.R. No. 194/1991	
<i>Date of Making:</i>	8.10.91
<i>Date of Commencement:</i>	8.10.91
Proclamation, S.R. No. 230/1992	
<i>Date of Making:</i>	4.8.92
<i>Date of Commencement:</i>	4.8.92
Proclamation, S.R. No. 263/1992	
<i>Date of Making:</i>	8.9.92
<i>Date of Commencement:</i>	8.9.92
Proclamation, S.R. No. 289/1992	
<i>Date of Making:</i>	27.10.92
<i>Date of Commencement:</i>	27.10.92
Proclamation, S.R. No. 305/1992	
<i>Date of Making:</i>	17.11.92
<i>Date of Commencement:</i>	17.11.92
Proclamation, S.R. No. 350/1992	
<i>Date of Making:</i>	22.12.92
<i>Date of Commencement:</i>	27.1.93: para. (1)
Proclamation, S.R. No. 67/1993	
<i>Date of Making:</i>	4.5.93
<i>Date of Commencement:</i>	4.5.93

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Proclamation, S.R. No. 69/1993

Date of Making: 11.5.93

Date of Commencement: 11.5.93

Proclamation, S.R. No. 86/1993

Date of Making: 8.6.93

Date of Commencement: 8.6.93

Proclamation, S.R. No. 136/1993

Date of Making: 20.7.93

Date of Commencement: 20.7.93

Drugs, Poisons and Controlled Substances (Drugs of Dependence) Regulations 1999,
S.R. No. 107/1999

Date of Making: 17.8.99

Date of Commencement: 17.8.99

Drugs, Poisons and Controlled Substances (Drugs of Dependence) Regulations 2000,
S.R. No. 85/2000

Date of Making: 29.8.00

Date of Commencement: 29.8.00

Government Gazettes 29 December 1983, page 4187

22 February 1984, page 575

3. Explanatory Details

¹ Pt 2 Div. 4: Sections 19–21 of the **Drugs, Poisons and Controlled Substances (Amendment) Act 1994**, No. 12/1994 read as follows:

19. Transitional provisions relating to licences, permits and warrants

- (1) An application for a new licence, permit or warrant or for the renewal of a licence, permit or warrant under the provisions of the Principal Act in force before the commencement of this sub-section is deemed to be an application under the Principal Act as amended by this Part for a licence, permit or warrant.
- (2) A licence, permit or warrant—
 - (a) in force under the Principal Act immediately before the commencement of this sub-section (including a suspended licence, permit or warrant); or
 - (b) issued under the **Poisons Act 1962** continued by the Principal Act and in force immediately before the commencement of this sub-section (including a suspended licence, permit or warrant)—must be taken to have been issued under the Principal Act as amended by this Part and may be renewed, amended, suspended or cancelled accordingly.
- (3) The amendments to the Principal Act made by section 9 do not affect the continuity or suspension of a licence, permit or warrant in force immediately before the commencement of this sub-section.

20. Transitional provisions for short-term licences, permits and warrants

- (1) In this section, "**specified authority**" means—
- (a) a permit for educational, advisory or research purposes or for the provision of health services that was in force under the Principal Act immediately before the commencement of this section; or
 - (b) a licence, permit or warrant in force under the **Poisons Act 1962** continued by the Principal Act and in force immediately before the commencement of this section; or
 - (c) a licence under section 19 of the Principal Act or an industrial permit under section 21(1)(a) of the Principal Act in force immediately before the commencement of this section.
- (2) If the anniversary of the date of issue of a specified authority falls between 1 January and 30 June—
- (a) that specified authority expires on 31 December in the year in which this section commences; and
 - (b) a licence, permit or warrant (which corresponds as nearly as practicable to the original) is to be issued under the Principal Act as amended by this Act for a period commencing on 1 January immediately following that date of expiry and ending in the next year on the anniversary of the date of issue of the original specified authority.

- (3) If the anniversary of the date of issue of a specified authority falls between 1 July and 31 December—
 - (a) that specified authority expires on 31 December in the year in which this section commences; and
 - (b) a licence, permit or warrant (which corresponds as nearly as practicable to the original) is to be issued under the Principal Act as amended by this Act for a period commencing on 1 January immediately following that date of expiry and ending on the date in that year that corresponds with the anniversary of the date of issue of the original specified authority.
- (4) Any further licence, permit or warrant issued to that person must be in accordance with the Principal Act as amended by this Act.
- (5) The Chief General Manager may charge pro rata fees in accordance with the regulations for a licence, permit or warrant issued under this section.

21. Chief General Manager's powers in respect of short-term licences, permits and warrants

- (1) The Chief General Manager may, in his or her discretion, amend, suspend or cancel any licence, permit or warrant referred to in section 20.
 - (2) Without limiting sub-section (1), the Chief General Manager may, at the holder's request, cancel a licence or permit referred to in section 20 if this is necessary to enable that licence or permit and other licences or permits issued to the holder (whether referred to in section 20 or issued under the Principal Act) to expire simultaneously.
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² S. 34: Section 5 of the **Drugs, Poisons and Controlled Substances (Amendment) Act 1994**, No. 12/1994 reads as follows:

5. Transitional provisions for permits for drugs of addiction

An application for a permit under section 34 of the Principal Act made immediately before the commencement of this section must be taken to be an application under section 34 as amended by this Part.

³ Schs 1–9 (*Repealed*):

Sch. 1 substituted by S.R. Nos 268/1985, 250/1990 para. (3), amended by S.R. No. 230/1992 para. (3), substituted by S.R. No. 67/1993 para. (3), amended by S.R. No. 86/1993 para. (3), repealed by No. 42/1993 s. 59.

Sch. 2 amended by No. 10002 s. 15(a)(i)(ii), S.R. Nos 77/1985, para. (1), 93/1985 regs 1, 2, 94/1985 para. (a)(i)–(xiv), 165/1985 para. (a), 208/1985 regs 1(a)(b), 2(a)(b), substituted by S.R. No. 268/1985, amended by S.R. Nos 92/1986 reg. 1, 82/1987 reg. 3(a), 254/1987 reg. 3(a), substituted by S.R. No. 250/1990 para. (4), amended by S.R. Nos 194/1991 para. (3), 230/1992 paras (4)(5), 263/1992 para. (3), 289/1992 para. (3), 305/1992 para. (3), 350/1992 para. (4), substituted by S.R. No. 67/1993 para. (4), amended by S.R. Nos 86/1993 para. (4)(a)(b), 136/1993 para. (3), repealed by No. 42/1993 s. 59.

Sch. 3 amended by No. 10002 s. 15(b)(i)–(iv), S.R. Nos 94/1985 para. (b)(i)–(ix), 165/1985 para. (b), 187/1985, 208/1985 reg. 3(a)(b), substituted by S.R. No. 268/1985, amended by S.R. Nos 254/1987 reg. 3(b)(i)–(iii), 23/1990 para. (3)(a), substituted by S.R. No. 250/1990 para. (5), amended by S.R. Nos 194/1991 para. (4), 230/1992 paras (4)(6), 263/1992 para. (4), 289/1992 para. (4), substituted by S.R. No. 67/1993 para. (5), amended by S.R. Nos 86/1993 para. (5)(a)–(c), 136/1993 para. (4), repealed by No. 42/1993 s. 59.

Sch. 4 amended by No. 10002 s. 15(c)(i)–(xxix) (as amended by No. 25/1990 s. 4(2)(a)(i)), GG 29.12.83 p. 4187, S.R. Nos 43/1984 regs 1, 2, 277/1984 para. (a)(i)–(vi), 2/1985 para. (a)(i)–(iv), 77/1985 para. (2), 90/1985 para. (a), 94/1985 para. (c)(i)–(xxi), 165/1985 para. (c)(i)–(iv), 208/1985 regs 4(a)–(i), 5(a)–(l), substituted by S.R. No. 268/1985, amended by S.R. Nos 92/1986 reg. 2, 82/1987 reg. 3(b), 254/1987 reg. 3(c)(i)(ii), 23/1990 para. (3)(b), substituted by S.R. No. 250/1990 para. (6), amended by S.R. Nos 194/1991 para. (5), 230/1992 paras (4)(7), 263/1992 para. (5), 289/1992 para. (5), 305/1992 para. (4), 350/1992 para. (5), substituted by S.R. No. 67/1993 para. (6),

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amended by S.R. Nos 86/1993 para. (6)(a)–(zm), 136/1993 para. (5)(a)–(p), repealed by No. 42/1993 s. 59.

Sch. 5 amended by No. 10002 s. 15(d)(i)–(ix) (as amended by No. 25/1990 s. 4(2)(a)(ii)), S.R. Nos 94/1985 para. (d)(i)–(iv), 165/1985 para. (d), 208/1985 reg. 6, substituted by S.R. Nos 268/1985, 250/1990 para. (7), amended by S.R. Nos 194/1991 para. (6), 230/1992 paras (4)(8), 263/1992 para. (6), 289/1992 para. (6), 305/1992 para. (5), 350/1992 para. (6), substituted by S.R. No. 67/1993 para. (7), amended by S.R. Nos 86/1993 para. (7)(a)–(d), 136/1993 para. (6)(a)–(h), repealed by No. 42/1993 s. 59.

Sch. 6 amended by No. 10002 s. 15(e)(i)–(xiii), GGs 29.12.83 pp 4187, 4188, 22.2.84 p. 575, S.R. Nos 43/1984 reg. 3, 2/1985 para. (b)(i)(ii), 90/1985 para. (b), 94/1985 para. (e)(i)–(vi), 165/1985 para. (e)(i)–(iv), 208/1985 regs 7(a)–(h), 8(a)–(h), substituted by S.R. No. 268/1985, amended by No. 12/1987 s. 36(5)(b)(i)(ii)(A)(B), S.R. Nos 254/1987 reg. 3(d)(i)–(iii), 366/1987 reg. 3, substituted by S.R. No. 250/1990 para. (8), amended by S.R. Nos 194/1991 para. (7), 230/1992 paras (4)(9), 263/1992 para. (7), 289/1992 para. (7), 305/1992 para. (6), substituted by S.R. No. 67/1993 para. (8), amended by S.R. Nos 86/1993 para. (8)(a)–(k), 136/1993 para. (7)(a)–(g), repealed by No. 42/1993 s. 59.

Sch. 7 amended by No. 10002 s. 15(f)(i)–(xii), GG 22.2.84 p. 575, S.R. Nos 277/1984 para. (b)(i)–(vi), 2/1985 para. (c)(i), 77/1985 para. (3), 94/1985 paras (f)(i)(g)(i)–(vii), 165/1985 para. (f), 208/1985 regs 9(a)–(c), 10(a)–(e), substituted by S.R. No. 268/1985, amended by S.R. Nos 92/1986 reg. 3, 82/1987 reg. 3(c), 23/1990 para. (3)(c), substituted by S.R. No. 250/1990 para. (9), amended by S.R. Nos 194/1991 paras (8)(9), 230/1992 paras (4)(10)(11), 263/1992 paras (8)(9), 289/1992 paras (8)(9), 305/1992 paras (7)(8), 350/1992 para. (7), substituted by S.R. No. 67/1993 para. (9), amended by S.R. Nos 86/1993 para. (9)(a)–(c), 136/1993 paras (8)(a)–(m), (9)(a)–(v), repealed by No. 42/1993 s. 59.

Sch. 8 amended by S.R. No. 208/1985 reg. 11, substituted by S.R. No. 268/1985, amended by S.R. No. 179/1986 reg. 2, substituted by S.R. No. 250/1990 para. (10), amended by S.R. Nos 194/1991 para. (10), 230/1992 para. (10), 305/1992 para. (9), substituted by S.R. No. 67/1993 para. (10), amended by S.R. Nos 86/1993 para. (10), 136/1993 para. (10)(a)(b), repealed by No. 42/1993 s. 59.

Sch. 9 repealed by No. 42/1993 s. 59.