

Queensland



DRUGS MISUSE AMENDMENT ACT 1995

Act No. 18 of 1995

Queensland



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Queensland



Drugs Misuse Amendment Act 1995

Act No. 18 of 1995

An Act to amend the *Drugs Misuse Act 1986*, and for other purposes

[Assented to 11 April 1995]

The Parliament of Queensland enacts—**Short title**

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

Commencement

2. This Act commences on a day to be fixed by proclamation.

Act amended

3. This Act amends the *Drugs Misuse Act 1986*.

Insertion of new s 19A

4. After section 19—

insert—

‘Application of s 43K and 43L to anything removed, seized or retained under this part

‘**19A.(1)** Sections 43K¹ and 43L² apply, with all necessary changes, to anything removed, seized or retained by a police officer under this part.

‘**(2)** Subsection (1) applies subject to the following provisions—

- section 14(7) (Power to stop, search, seize and remove vehicles etc.)
- section 15(8) and (9) (Power to detain and search persons)
- section 18(5) (Power to search).’

¹ Section 43K (Receipt for seized things)

² Section 43L (Procedure after thing seized)

Insertion of new pt 5A

5. After section 43—

insert—

**‘PART 5A—CONTROLLED SUBSTANCES
INFORMATION REQUIREMENTS**

‘Definitions

‘43A. In this part—

“authorised officer” means—

- (a) an environmental health officer; or
- (b) a police officer.

“controlled substance” means—

- (a) a substance specified in schedule 6; or
- (b) a salt, derivative or stereo-isomer of a substance specified in schedule 6; or
- (c) a salt of a derivative or stereo-isomer of a substance specified in schedule 6;

but does not include a compound consisting of a substance specified in schedule 6 and of a substance not specified in schedule 6.

“environmental health officer” means an environmental health officer appointed as an inspector under the *Health Act 1937*, section 27 (Appointment of officers).

“executive officer”, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

“obstruct” includes hinder, resist and attempt to obstruct.

“official identity card”, of an authorised officer, means an identity card—

- (a) if the authorised officer is a police officer—issued by the Commissioner of the Police Service containing the officer’s

photograph and identifying the person as a police officer; or

- (b) if the authorised officer is an environmental health officer—issued by—
- (i) the chief executive of the department in which the *Health Act 1937* is administered; or
 - (ii) a regional director of a regional health authority;

containing the officer’s photograph and identifying the person as an environmental health officer.

“prescribed documents” means the documents prescribed by regulation mentioned in section 43D(1).³

“register” means the register mentioned in section 43D(1)(c).

“relevant transaction” see section 43C.⁴

“supply” means give, distribute, sell or supply.

‘Application of part

‘43B. This part applies to the supply of a controlled substance under a relevant transaction.

‘What is a relevant transaction?

‘43C. A **“relevant transaction”** for the supply of a controlled substance is—

- (a) a transaction for the supply of the substance by a person to anyone else in the ordinary course of the person’s business; or
- (b) another act, prescribed by regulation, by which the substance is supplied.

³ Section 43D (Requirements for supply of controlled substance under relevant transactions)

⁴ Section 43C (What is a relevant transaction?)

‘Requirements for supply of controlled substance under relevant transactions

‘43D.(1) A person who supplies a controlled substance under a relevant transaction to anyone else (a **“recipient”**) must—

- (a) obtain, as prescribed by regulation, from the recipient the documents, and the evidence of the recipient’s identity, prescribed by regulation; and
- (b) keep, as prescribed by regulation—
 - (i) the documents mentioned in paragraph (a); and
 - (ii) any other document about the supply of the controlled substance under the relevant transaction; and
- (c) keep, as prescribed by regulation, a relevant transactions register (a **“register”**) showing the details of—
 - (i) the relevant transactions; and
 - (ii) if the person has to report the loss or theft of a controlled substance under section 43E⁵—the reporting of the loss or theft to a police officer.

Maximum penalty—

- (a) for a first offence—20 penalty units; or
- (b) for a second or later offence—40 penalty units.

‘(2) This section applies subject to section 43F,⁶ which deals with the liability of employees.

‘Requirement to report loss or theft of controlled substance

‘43E.(1) This section applies to a person who—

- (a) owns a controlled substance; or
- (b) has possession of a controlled substance for the purpose of supplying the substance under a relevant transaction.

⁵ Section 43E (Requirement to report loss or theft of controlled substance)

⁶ Section 43F (Employee’s liability)

‘(2) If the substance is lost or stolen, the person must report the loss or theft of the substance to a police officer within 2 days after the person finds out about it.

Maximum penalty—

- (a) for a first offence—20 penalty units; or
- (b) for a second or later offence—40 penalty units.

‘(3) This section applies subject to section 43F, which deals with the liability of employees.

‘Employee’s liability

‘43F.(1) In this section—

“**controlled substance information requirements**” means the requirements under the following sections—

- section 43D (Requirements for supply of controlled substances under relevant transactions)
- section 43E (Requirement to report loss or theft of controlled substance).

‘(2) This section applies to an employee who in the ordinary course of employment has the task of complying with the controlled substance information requirements for the employee’s employer.

‘(3) If the employee intentionally or recklessly fails to comply with the controlled substance information requirements, the employee commits an offence.

Maximum penalty—

- (a) for a first offence—20 penalty units; or
- (b) for a second or later offence—40 penalty units.

‘(4) In a proceeding, evidence that an employee supplied, or helped in the supply of, a controlled substance under a relevant transaction is evidence that the employee had the task mentioned in subsection (2).

‘False name or address

‘43G. A person must not obtain, or attempt to obtain, a controlled substance from someone else under a relevant transaction by giving the other person—

- (a) an order for the supply of a controlled substance stating a false name or address; or
- (b) false evidence of the identity of the person to be supplied.

Maximum penalty—20 penalty units.

‘Production or display of authorised officer’s official identity card

‘43H.(1) An authorised officer (other than a police officer in uniform) may exercise a power under this part in relation to someone else only if the officer—

- (a) first produces his or her official identity card for inspection by the person; or
- (b) has his or her card displayed so that it is clearly visible to the person.

‘(2) However, if for any reason, it is not practicable to comply with subsection (1), the authorised officer must produce the official identity card for inspection by the person at the first reasonable opportunity.

‘Authorised officer may enter person’s premises and inspect register and documents

‘43I.(1) If an authorised officer suspects on reasonable grounds a person has supplied a controlled substance to anyone else under a relevant transaction, the authorised officer may enter—

- (a) a part of the person’s business premises open to the public when the part is open to the public; or
- (b) any part of the premises with the person’s consent.

‘(2) An authorised officer who is lawfully on another person’s business premises and suspects on reasonable grounds that the person has supplied a controlled substance to anyone else under a relevant transaction may—

- (a) require the person or the person's employee or agent (the **"supplier"**) to produce the register and the prescribed documents; and
- (b) inspect, take extracts from and make copies of the register or prescribed documents; and
- (c) inspect, examine, photograph or film anything stored at the premises that may be a controlled substance; and
- (d) require the supplier to give the authorised officer reasonable help to exercise the powers mentioned in paragraphs (b) and (c).

Example of paragraph (d)—

An authorised officer may make a reasonable requirement of the supplier to take an extract from and make copies of the register or prescribed documents for the officer.

'(3) The supplier must—

- (a) produce the register and prescribed documents the authorised officer has asked for; and
- (b) comply with a requirement under subsection (2)(d), unless the supplier has a reasonable excuse for not complying with it.

Maximum penalty for subsection (3)—

- (a) for a first offence—20 penalty units; or
- (b) for a second or later offence—40 penalty units.

'Power to seize evidence

'43J. An authorised officer who is lawfully on someone else's business premises may seize a thing if the officer believes on reasonable grounds the thing is evidence of the commission of an offence against this part.

'Receipt for seized things

'43K.(1). As soon as practicable after an authorised officer seizes a thing the officer must give a receipt for it to the person from whom it was seized.

'(2) However, if for any reason it is not practicable to comply with subsection (1), the officer must leave the receipt in a conspicuous position

and in a reasonably secure way at the place of seizure.

‘(3) The receipt must describe generally each thing seized and its condition.

‘(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the notice required by the section (given the thing’s nature, condition and value).

‘Procedure after thing seized

‘43L.(1) If a thing is seized by an authorised officer under section 43J,⁷ the officer must allow a person who would be entitled to the seized thing if it were not in the officer’s possession to inspect it and, if it is a document, to take extracts from or make copies of it.

‘(2) If the seized thing is a document, an authorised officer may take extracts from or make copies of it.

‘(3) The authorised officer must return the seized thing to the person at the end of—

- (a) 6 months; or
- (b) if a prosecution for an offence involving it is started within the 6 months—the prosecution for the offence and any appeal from the prosecution.

‘(4) Despite subsection (3), the authorised officer must return the seized thing to the person immediately the officer stops being satisfied its retention as evidence is necessary.

‘Forfeiture on conviction

‘43M.(1) Despite section 43L,⁸ if the owner of the seized thing is convicted of an offence for which the thing was retained as evidence under section 43J, the court may order its forfeiture to the State.

‘(2) This section does not limit the court’s powers under the *Penalties and Sentences Act 1992* or any other law.

⁷ Section 43J (Power to seize evidence)

⁸ Section 43L (Procedure after thing seized)

‘Dealing with forfeited things

‘43N. On the forfeiture of a thing to the State under section 43M,⁹ the thing becomes the State’s property and may be destroyed or disposed of as directed by the Commissioner of the Police Service.

‘Power to require name and address

‘43O.(1) An authorised officer may require a person to state the person’s name and address if the authorised officer—

- (a) finds the person committing an offence against this part; or
- (b) finds the person in circumstances that lead, or has information that leads, the authorised officer to suspect, on reasonable grounds, the person—
 - (i) has committed an offence against section 43G;¹⁰ or
 - (ii) has just committed an offence against another provision of this part; or
- (c) finds the person on business premises entered by the authorised officer under section 43I¹¹ and, after exercising a power under section 43I(2)(b) or (c) on the premises, suspects on reasonable grounds the person has committed an offence against either or both of the following provisions—
 - section 43D (Requirements for supply of controlled substance under relevant transactions)
 - section 43F(3) (Employee’s liability).

‘(2) When making the requirement, the authorised officer must warn the person it is an offence to fail to state the person’s name and address, unless the person has a reasonable excuse.

‘(3) The authorised officer may require the person to give evidence of the correctness of the person’s stated name or address if the officer suspects, on

⁹ Section 43M (Forfeiture on conviction)

¹⁰ Section 43G (False name or address)

¹¹ Section 43I (Authorised officer may enter person’s premises and inspect register and documents)

reasonable grounds, the stated name or address is false.

‘(4) A person must comply with a requirement under subsection (1) or (3), unless the person has a reasonable excuse for not complying with it.

Maximum penalty—20 penalty units.

‘(5) The person does not commit an offence against this section if—

- (a) the authorised officer required the person to state the person’s name and address on suspicion of the person having committed an offence against this part; and
- (b) the person is not proved to have committed the offence.

‘Police officer may arrest without warrant

‘43P. A police officer may arrest a person without a warrant if the officer believes on reasonable grounds that—

- (a) the person has just committed an offence against section 43O(4);¹² and
- (b) proceedings by way of complaint and summons against the person would be ineffective.

‘Obstruction of authorised officers

‘43Q.(1) A person must not obstruct an authorised officer in the exercise of a power under this part, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

‘(2) This section does not limit the *Police Service Administration Act 1990*, section 10.20A (Assault etc. of police officer).

‘Responsibility for acts or omissions of representatives

‘43R.(1) In this section—

“representative” means—

¹² Section 43O (Power to require name and address)

(a) of a corporation—an executive officer, employee or agent of the corporation; or

(b) of an individual—an employee or agent of the individual.

“state of mind” of a person includes—

(a) the person’s knowledge, intention, opinion, belief or purpose; and

(b) the person’s reasons for the intention, opinion, belief or purpose.

‘(2) Subsections (3) and (4) apply in a proceeding for an offence against this part.

‘(3) If it is relevant to prove a person’s state of mind about a particular act or omission, it is sufficient to show—

(a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and

(b) the representative had the state of mind.

‘(4) An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

‘Executive officers must ensure corporation complies with part

‘**43S.(1)** The executive officers of a corporation must ensure the corporation complies with this part.

‘(2) If a corporation commits an offence against a provision of this part, each of the corporation’s executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty prescribed for the contravention of the provision by an individual.

‘(3) Evidence that a corporation has been convicted of an offence against a provision of this part is evidence each of the corporation’s executive officers committed the offence of failing to ensure the corporation complies with the provision.

‘(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

‘(5) In this section—

“**convicted**” of an offence means that the corporation has been found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction was recorded.

‘**Compensation**

‘**43T.(1)** A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise by an authorised officer of a power under this part.

‘(2) Payment of compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court of competent jurisdiction; or
- (b) an offence against this part brought against the person making the claim for compensation.

‘(3) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

‘**Evidence of controlled substance by label**

‘**43U.(1)** This section applies if, in a proceeding for an offence against this part, it is relevant to prove that a substance owned or supplied by, or in the possession of, a person was a controlled substance.

‘(2) The substance is proved to have been a controlled substance if—

- (a) there is evidence that the container containing the substance had a label indicating the substance was a controlled substance; and

- (b) an authorised officer gives evidence that the authorised officer believes the container contained a controlled substance; and
- (c) written notice mentioned in section 43V(4) has not been received from the person summonsed or charged by—
 - (i) if the proceedings have been brought by a police officer—the Commissioner of the Police Service; or
 - (ii) if the proceedings have been brought by an environmental health officer—the chief executive of the department in which the *Health Act 1937* is administered; and
- (d) the court considers the belief mentioned in paragraph (b) to be reasonable; and
- (e) there is no evidence to the contrary.

‘Evidence of controlled substance—notice of challenge required

‘**43V.(1)** This section applies if a summons has been served on a person for, or a person has been charged with, an offence to which section 43T¹³ applies.

‘**(2)** A notice in the approved form (the “**notice**”) must be served on the person when the person is served with the summons or charged with the offence.

‘**(3)** The notice may be served on the person in the same way as a summons may be served under the *Justices Act 1886*, section 56 (Service of summons).

‘**(4)** The notice must inform the person that, if the person intends challenging that a substance claimed in the charge to be a controlled substance was a controlled substance, the person must give—

- (a) if the proceedings have been brought by a police officer—the Commissioner of the Police Service; or
- (b) if the proceedings have been brought by an environmental health officer—the chief executive of the department in which the *Health Act 1937* is administered;

¹³ Section 43T (Compensation)

written notice of the intention at least 14 days before the day fixed for the hearing.

‘(5) If a summons is served on the person, a statement in a deposition made for the *Justices Act 1886*, section 56(3)(b) that the notice was served as required by subsection (2) is evidence of the fact.

‘(6) The *Justices Act 1886*, section 56(5) applies to the deposition.

‘(7) If the person is charged with an offence mentioned in subsection (1), a statement in a deposition made for the *Justices Act 1886*, section 56(7) that the notice was served as required by subsection (2) is evidence of the fact.

‘(8) The *Justices Act 1886*, section 56(8) applies to the deposition.’.

Amendment of s 56 (Analyst’s certificate)

6. Section 56—

insert—

‘(2) In subsection (1)—

“**proceedings**”, for an offence, include an application made under section 32(1).¹⁴’.

Replacement of s 59 (Regulations)

7. Section 59—

omit, insert—

‘Regulations

‘**59.(1)** The Governor in Council may make regulations under this Act.

‘(2) A regulation may be made about the following matters—

- (a) specifying where, and the time for which, the register and the prescribed documents mentioned in part 5A¹⁵ must be kept;

¹⁴ Section 32 (Forfeiture of dangerous drugs)

¹⁵ Part 5A (Controlled substances information requirements)

- (b) making provision for anything about the supply of a controlled substance under a relevant transaction for which part 5A does not make provision or adequate provision;
- (c) exempting a person from compliance with the whole, or part, of part 5A with or without conditions;
- (d) prescribing offences for contraventions of a regulation and fixing a maximum penalty of a fine of not more than 20 penalty units.’.

Insertion of new sch 6

8. After schedule 5—

insert—

‘SCHEDULE 6**‘CONTROLLED SUBSTANCES**

section 43C of the Act

1 – Chloro-Phenyl – 2 – Aminopropane

1 – Phenyl – 2 – Chloropropane

1 – Phenyl – 2 – Methylaminopropane

1 – Phenyl – 2 – Nitro propene

Acetic Anhydride

Benzyl Cyanide

Boron Tribromide

Ephedrine

Hydriodic Acid

Phenyl Acetic Acid

Phenylpropanolamine

Phenyl – 2 – Propanone

Phenyl – 2 – Propanone Oxime

Pseudoephedrine

Pyridine

Red phosphorous.’.

Repeal

9. The *Drugs Misuse Act Amendment Act 1990* is repealed.

SCHEDULE**MINOR AMENDMENTS**

section 3 of the Act

1. Section 4(1), definitions “medical practitioner”, “Minister” and “police officer”—*omit.***2. Section 4(1)—***insert—*

‘**“approved form”** means a form approved by the chief executive under section 58A.¹⁶

“police officer” includes a person mentioned in the *National Crime Authority Act 1984* (Cwlth), section 49 whose services are made available to the National Crime Authority.’.

3. Section 10(3), from ‘Minister for Health’ to ‘Medical Services)—*omit, insert—*

‘Minister administering the *Health Act 1937*’.

4. Section 18(1) and (2), ‘form prescribed by regulation’—*omit, insert—*

‘approved form’.

¹⁶ Section 58A (Chief executive may approve forms)

SCHEDULE (continued)

5. Section 20(1), ‘a form prescribed by regulation’—

omit, insert—

‘an approved form’.

6. Section 36(5)(a) and (b)—

omit, insert—

- ‘(a) the registrar or a deputy registrar of the Supreme Court if that court makes the order; or
- (b) the registrar of a Childrens Court constituted by a Judge if that court makes the order; or
- (c) the clerk of the court at the place where—
 - (i) a Childrens Court constituted by a Childrens Court Magistrate or a Magistrate; or
 - (ii) a Magistrates Court constituted by a Magistrate; is the court making the order;’.

7. Section 41(7), penalty—

omit, insert—

‘Maximum penalty—2 years imprisonment’.

8. Section 41(8), penalty—

omit, insert—

‘Maximum penalty—5 years imprisonment’.

9. Section 48(5), penalty—

omit, insert—

‘Maximum penalty—2 years imprisonment’.

SCHEDULE (continued)

10. Section 48(6), penalty—

omit, insert—

‘Maximum penalty—5 years imprisonment’.

11. Section 52A, from ‘or member’ to ‘Department of Health’—

omit, insert—

‘, authorised by the Minister administering the *Health Act 1937*,’.

12. Section 54(4)(a) and (b)—

omit, insert—

- ‘(a) the registrar or a deputy registrar of the Supreme Court if that court makes the order; or
- (b) the registrar of the court if the court making the order is a District Court or a Childrens Court constituted by a Judge; or
- (c) the clerk of the court at the place where—
 - (i) a Childrens Court constituted by a Childrens Court Magistrate or a Magistrate; or
 - (ii) a Magistrates Court constituted by a Magistrate;is the court making the order;’.

13. After section 58—

insert—

‘Chief executive may approve forms

‘**58A.** The chief executive may approve forms for use under this Act.’.

SCHEDULE (continued)

14. Section 61—*omit.*