

Queensland



DRUGS MISUSE ACT 1986

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Information about this reprint

This Act is reprinted as at 14 March 1997. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
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The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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DRUGS MISUSE ACT 1986

[as amended by all amendments that commenced on or before 14 March 1997]

An Act to consolidate and amend the law relating to the misuse of drugs and to make further provision for the prevention of the misuse of drugs and for other purposes

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Drugs Misuse Act 1986*.

Interpretation

4.(1) In this Act—

“**analyst**” means a person appointed by the Minister by notification published in the gazette to be an analyst for the purpose of this Act.

“**approved form**” means a form approved by the chief executive under section 58A.¹

“**correctional institution**” means a prison or community corrections centre within the meaning of the *Corrective Services Act 1988*.

“**dangerous drug**” means—

- (a) a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 or 2 or, where the thing so specified is a plant, any part of the thing; and
- (b) a thing being a salt, derivative or stereo-isomer of a thing referred

¹ Section 58A (Chief executive may approve forms)

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to in paragraph (a) or any salt of such a derivative or stereo-isomer;

and includes a thing referred to in paragraph (a) or (b) that is contained in a natural substance or in any preparation, solution or admixture.

“drug dependent person” means a person—

- (a) who, as a result of repeated administration to the person of dangerous drugs—
 - (i) demonstrates impaired control; or
 - (ii) exhibits drug-seeking behaviour that suggests impaired control;over the person’s continued use of dangerous drugs; and
- (b) who, when the administration to the person of dangerous drugs ceases, suffers or is likely to suffer mental or physical distress or disorder.

“educational institution” means a primary, secondary or special school within the meaning of the *Education (General Provisions) Act 1989* or any other similar institution which may from time to time be established, but does not include an educational institution solely conducting tertiary or adult education.

“intellectually handicapped citizen” means an intellectually handicapped citizen within the meaning of the *Intellectually Handicapped Citizens Act 1985*.

“pharmacist” means a person registered at the material time as a pharmacist under the *Pharmacy Act 1976*.

“place” includes a vehicle.

“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.

“produce” means—

- (a) prepare, manufacture, cultivate, package or produce;
- (b) offering to do any act specified in paragraph (a);
- (c) doing or offering to do any act preparatory to, in furtherance of,

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or for the purpose of, any act specified in paragraph (a).

“supply” means—

- (a) give, distribute, sell, administer, transport or supply;
- (b) offering to do any act specified in paragraph (a);
- (c) doing or offering to do any act preparatory to, in furtherance of, or for the purpose of, any act specified in paragraph (a).

“unlawfully” means without authorisation, justification or excuse by law.

“vehicle” includes any aircraft or vessel.

“visual surveillance device” means any instrument, apparatus, equipment or device capable of being used to record and monitor images simultaneously with their taking place.

(2) It is hereby declared that—

- (a) a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 or 2; and
- (b) a dangerous drug specified in the *Drugs Misuse Regulation 1987*, schedule 3, 4 or 5;

includes any salt, derivative or stereo-isomer of that thing and any salt of such derivative or stereo-isomer.

(3) In—

- (a) this Act the term ‘an offence defined in part 2’; and
- (b) sections 10, 11 and 12 the term ‘a crime defined in this part’;

shall be read and construed as including any conspiracy to commit such offence or crime.

PART 2—DRUG TRAFFICKING

Trafficking in dangerous drugs

5. A person who carries on the business of unlawfully trafficking in a dangerous drug is guilty of a crime.

Maximum penalty—

- (a) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1—25 years imprisonment;
- (b) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2—20 years imprisonment.

Supplying dangerous drugs

6.(1) A person who unlawfully supplies a dangerous drug to another, whether or not such other person is in Queensland, is guilty of a crime.

Maximum penalty—

- (a) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 and the offence is one of aggravated supply—25 years imprisonment;
- (b) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 and paragraph (a) does not apply—20 years imprisonment;
- (c) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2 and the offence is one of aggravated supply—20 years imprisonment;
- (d) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2 and paragraph (c) does not apply—15 years imprisonment.

(2) For the purposes of this section, an offence is one of aggravated supply if the offender is an adult and—

- (a) the person to whom the thing is supplied is a minor; or
- (b) the person to whom the thing is supplied is an intellectually handicapped citizen; or
- (c) the person to whom the thing is supplied is within an educational institution; or
- (d) the person to whom the thing is supplied is within a correctional institution; or

- (e) the person to whom the thing is supplied does not know he or she is being supplied with the thing.

Receiving or possessing property obtained from trafficking or supplying

7.(1) A person who receives or possesses property (other than a dangerous drug) obtained, directly or indirectly, from the commission of—

- (a) an offence defined in section 5 or 6; or
- (b) an act done at a place not in Queensland which if it had been done in Queensland would have constituted an offence defined in section 5 or, as the case may be, 6, and which is an offence under the laws in force in the place where it was done;

knowing or believing the property to have been so obtained, is guilty of a crime.

Maximum penalty—20 years imprisonment.

(2) Where the property so obtained has been—

- (a) mortgaged, pledged or exchanged for other property; or
- (b) converted into other property in any manner whatever;

any person who knowing or believing—

- (c) that the other property is wholly or in part the property for which the property so obtained has been mortgaged, pledged or exchanged or into which the same has been converted; and
- (d) that the property so obtained was obtained under such circumstances as to constitute a crime under subsection (1);

receives or possesses the whole or any part of the other property for which the property so obtained has been mortgaged, pledged or exchanged or into which the property so obtained has been converted, is guilty of a crime.

Maximum penalty—20 years imprisonment.

(3) For the purpose of proving the receiving of property it is sufficient to show that the accused person has, either alone or jointly with some other person, aided in concealing the property or disposing of it.

Producing dangerous drugs

8. A person who unlawfully produces a dangerous drug is guilty of a crime.

Maximum penalty—

- (a) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 and the quantity of the thing is of or exceeds the quantity specified in the *Drugs Misuse Regulation 1987*, schedule 4 in respect of that thing—25 years imprisonment;
- (b) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 and the quantity of the thing is of or exceeds the quantity specified in the *Drugs Misuse Regulation 1987*, schedule 3 but less than the quantity specified in the *Drugs Misuse Regulation 1987*, schedule 4 in respect of that thing and the person convicted—
 - (i) satisfies the judge constituting the court before which the person is convicted that when the person committed the offence the person was a drug dependant person—20 years imprisonment;
 - (ii) does not so satisfy the judge constituting the court before which the person is convicted—25 years imprisonment;
- (c) in any other case where the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1—20 years imprisonment;
- (d) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2 and the quantity of the thing is of or exceeds the quantity specified in the *Drugs Misuse Regulation 1987*, schedule 3 in respect of that thing—20 years imprisonment;
- (e) in any other case where the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2—15 years imprisonment.

Publishing or possessing instructions for producing dangerous drugs

8A.(1) A person who unlawfully publishes instructions, or unlawfully has possession of a document containing instructions, about the way to produce a dangerous drug commits a crime.

Maximum penalty—

- (a) if the dangerous drug to which the instructions relate is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1—25 years imprisonment; or
- (b) if the dangerous drug to which the instructions relate is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2—20 years imprisonment.

(2) In this section—

“document” containing instructions about the way to produce a dangerous drug includes anything designed to enable electronic access specifically to the instructions.

Example of a thing designed to enable electronic access to instructions—

A document containing a computer password specifically designed to give access through a computer to the instructions.

“publish” includes publish to any person and supply, exhibit and display to any person, whether the publication is made orally or in written, electronic or another form.

Possessing dangerous drugs

9. A person who unlawfully has possession of a dangerous drug is guilty of a crime.

Maximum penalty—

- (a) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 and the quantity of the thing is of or exceeds the quantity specified in the *Drugs Misuse Regulation 1987*, schedule 4 in respect of that thing—25 years imprisonment;
- (b) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 and the quantity of the thing is of or

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exceeds the quantity specified in the *Drugs Misuse Regulation 1987*, schedule 3 but is less than the quantity specified in the *Drugs Misuse Regulation 1987*, schedule 4 in respect of that thing and the person convicted—

- (i) satisfies the judge constituting the court before which the person is convicted that when the person committed the offence the person was a drug dependant person—20 years imprisonment;
- (ii) does not so satisfy the judge constituting the court before which the person is convicted—25 years imprisonment;
- (c) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2 and the quantity of the thing is of or exceeds the quantity specified in the *Drugs Misuse Regulation 1987*, schedule 3 in respect of that thing—20 years imprisonment;
- (d) in any other case where the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 or 2—15 years imprisonment.

Possessing things

10.(1) A person who has in his or her possession anything—

- (a) for use in connection with the commission of a crime defined in this part; or
- (b) that the person has used in connection with such a purpose;

is guilty of a crime.

Maximum penalty—15 years imprisonment.

(2) A person who unlawfully has in his or her possession anything (not being a hypodermic syringe or needle)—

- (a) for use in connection with the administration, consumption or smoking of a dangerous drug; or
- (b) that the person has used in connection with such a purpose;

commits an offence against this Act.

Maximum penalty—2 years imprisonment.

(3) A person (other than a medical practitioner, pharmacist or person or member of a class of persons authorised so to do by the Minister administering the *Health Act 1937*) who supplies a hypodermic syringe or needle to another, whether or not such other person is in Queensland, for use in connection with the administration of a dangerous drug commits an offence against this Act.

Maximum penalty—2 years imprisonment.

(4) A person who has in his or her possession a thing being a hypodermic syringe or needle who fails to use all reasonable care and take all reasonable precautions in respect of such thing so as to avoid danger to the life, safety or health of another commits an offence against this Act.

Maximum penalty—2 years imprisonment.

(4A) A person who has in his or her possession a hypodermic syringe or needle that has been used in connection with the administration of a dangerous drug who fails to dispose of such hypodermic syringe or needle in accordance with the procedures prescribed by regulation commits an offence against this Act.²

Maximum penalty—2 years imprisonment.

(5) A person found committing an offence defined in this section may be arrested without warrant by a police officer.

Possessing suspected property

10A.(1) A person who has in his or her possession any property (other than a dangerous drug, hypodermic syringe or needle) reasonably suspected of—

- (a) having been acquired for the purpose of committing an offence defined in this part; or
- (b) having been used in connection with the commission of such an offence; or
- (c) having been furnished or intended to be furnished for the purpose

² Earlier reprints of this Act incorrectly showed this provision as subsection (4B).

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- of committing such an offence; or
- (d) being the proceeds of such an offence; or
- (e) having been acquired with the proceeds of such an offence; or
- (f) being property into which the proceeds of such an offence have, in some other manner, been converted;

who does not give an account satisfactory to the court of how the person lawfully came by or had such property in the person's possession commits an offence against this Act.

Maximum penalty—2 years imprisonment.

(1A) A person found committing an offence defined in subsection (1) may be arrested without warrant by a police officer.

(2) Where the person declares that he or she received the property from some other person or that he or she was employed as a carrier, agent or servant to convey the property to some other person, the court may cause every such person and also, if necessary, every other person through whose possession the property has passed to be brought to the same or another court and examined concerning the property.

(3) A person brought to the court pursuant to subsection (2) who appears to the court to have had possession of the property and to have had reasonable cause to believe the same—

- (a) to have been acquired for the purpose of committing an offence defined in this part; or
- (b) to have been used in connection with the commission of such an offence; or
- (c) to have been furnished or intended to be furnished for the purpose of committing such an offence; or
- (d) to be the proceeds of such an offence; or
- (e) to have been acquired with the proceeds of such an offence; or
- (f) to be property into which the proceeds of such an offence have, in some other manner, been converted;

commits an offence against this Act.

Maximum penalty—2 years imprisonment.

(4) For the purpose of proving the possession of any property it is sufficient to show that the defendant has, either alone or jointly with some other person, aided in concealing the property or disposing of it.

Permitting use of place

11. A person who, being the occupier or concerned in the management or control of a place, permits the place to be used for the commission of a crime defined in this part is guilty of a crime.

Maximum penalty—15 years imprisonment.

Parties to offences committed outside Queensland

12. A person who, in Queensland, is a party to an act done at a place not in Queensland which if it had been done in Queensland would have constituted a crime defined in this part and which is an offence under the laws in force in the place where it was done is guilty of a crime and is liable to the same punishment and forfeiture as if the act had been done in Queensland.

Certain offences may be dealt with summarily

13.(1) Where a person charged with the commission of a crime defined in section 6, 8, 9, 10(1), 11 or 12 or an attempt to commit any such crime is liable upon conviction to a maximum of 15 years imprisonment proceedings in respect of a charge of the offence may be taken summarily.

(2) Where a person is charged with the commission of a crime defined in section 7 or an attempt to commit any such crime in respect of property obtained from the commission of—

- (a) an offence defined in section 6; or
- (b) an act referred to in section 7(1)(b) which if it had been done in Queensland would have constituted an offence defined in section 6;

which offence or act is of such a nature, or is committed under such circumstances, that the person who committed the offence or act—

- (c) upon conviction is liable, pursuant to section 6, to a maximum of

15 years imprisonment; or

- (d) might be summarily convicted under the laws in force in the place where it was committed;

proceedings in respect of a charge of the crime or an attempt to commit any such crime may be taken summarily.

(3) If a person is charged with the commission of a crime, or an attempt to commit a crime, defined in section 8A, proceedings in relation to the charge may be taken summarily.

(4) A person against whom proceedings are taken summarily under this section is liable, on conviction, to a maximum of 2 years imprisonment.

PART 3—POWERS OF SEARCH ETC.

Power to stop, search, seize and remove vehicles etc.

14.(1) If a police officer reasonably suspects a vehicle, or anything in it—

- (a) may afford evidence as to the commission of an offence defined in part 2; or
- (b) may be liable to forfeiture under part 5;

the police officer may stop and detain the vehicle and search it and anything in it.

(2) A police officer who stops and detains a vehicle pursuant to subsection (1) and reasonably believes that it is not practicable to carry out a search of the vehicle or anything in it at the place where the police officer stops the vehicle may remove it and anything in it to another place for the purpose of carrying out the search.

(3) A vehicle shall not be detained longer or taken further than is reasonable in the circumstances for the purpose of carrying out the search authorised by subsection (1).

(4) Where a police officer carries out a search pursuant to subsection (1)(a) the police officer may seize anything found as a result of the search, including the vehicle, that the police officer reasonably suspects

may afford evidence as to the commission of an offence defined in part 2 so as to examine it or have it examined to determine if it will afford such evidence.

(5) Where a police officer has seized anything pursuant to subsection (4) the police officer may retain it if the police officer reasonably believes it will afford evidence as to the commission of an offence defined in part 2 so as to use it as such evidence.

(6) Where a police officer carries out a search pursuant to subsection (1)(b) the police officer may seize anything found as a result of the search, including the vehicle, that the police officer reasonably suspects may be liable to forfeiture under part 5.

(7) Anything seized pursuant to subsection (6) shall be returned to the owner of the thing at the expiration of 14 days from the date of seizure unless—

- (a) a forfeiture or restraining order in respect of that thing is made under part 5 within that period; or
- (b) the owner consents to retention of that thing beyond that period by a police officer.

Power to detain and search persons

15.(1) If a police officer reasonably suspects a person to have in the person's possession anything that—

- (a) may afford evidence as to the commission of an offence defined in part 2; or
- (b) may be liable to forfeiture under part 5;

the police officer may detain that person.

(2) Where a person is detained pursuant to subsection (1) a police officer may search or direct a search of—

- (a) the person or that person; or
- (b) anything in the possession of that person.

(3) A police officer who detains a person pursuant to subsection (1) and reasonably believes that it is not practicable to carry out a search pursuant to subsection (2) at the place where the person is detained, may take the person

and anything in the possession of the person to another place for the purpose of carrying out the search.

(4) A person shall not be detained longer or taken further than is reasonable in the circumstances for the purpose of carrying out the search pursuant to subsection (2).

(5) Where a person is detained pursuant to subsection (1)(a) a person who carries out a search pursuant to subsection (2), or the police officer directing it, may seize anything found as a result of the search that the police officer reasonably suspects may afford evidence as to the commission of an offence defined in part 2 so as to examine it or have it examined to determine if it will afford such evidence.

(6) Where a police officer has seized anything pursuant to subsection (5) the police officer may retain it if the police officer reasonably believes it will afford evidence as to the commission of an offence defined in part 2 so as to use it as such evidence.

(7) Where a person is detained pursuant to subsection (1)(b) a person who carries out a search authorised by subsection (2), or the police officer directing it, may seize anything found as a result of the search that the police officer reasonably suspects may be liable to forfeiture under part 5.

(8) Anything seized pursuant to subsection (7) shall be returned to the owner of the thing at the expiration of 14 days from the date of seizure unless—

- (a) a forfeiture or restraining order in respect of that thing is made under part 5 within that period; or
- (b) the owner consents to retention of that thing beyond that period by a police officer.

(9) Where a police officer has seized clothing worn by the person searched pursuant to subsection (5) that person shall be left with or given reasonably suitable clothing.

Who may conduct personal searches

16. A search of the person of a person or of that person's clothing while it is being worn shall be carried out by a police officer of the same sex as the person searched or by a medical practitioner.

Internal and body cavity searches

17.(1) A police officer of or above the rank of inspector who reasonably suspects that a person has secreted within the person's body or in any of the person's body cavities a dangerous drug, may require the person to permit a medical practitioner, nominated by the police officer, and a person acting in aid of the medical practitioner, to conduct—

- (a) an examination of any internal part of the person's body; or
- (b) an examination of any cavity of the person's body;

by any means whatever, whether or not associated with or facilitated by the use of any machine, instrument or device.

(2) Where a person required to permit an examination referred to in subsection (1) refuses the person's permission, the examination may nevertheless be conducted with the use of such force as is reasonably necessary.

(3) Where a medical practitioner is requested to conduct an examination referred to in subsection (1) it shall be lawful for the medical practitioner and a person acting in aid of the medical practitioner to conduct the examination by such means as are necessary, and it shall not be necessary to inquire whether or not the person to be examined has permitted the conduct of the examination.

(3A) However, a medical practitioner shall not be obliged to conduct an examination if the medical practitioner reasonably believes that to do so would be prejudicial to the health of the person concerned.

(4) A medical practitioner or a person acting in aid of the medical practitioner is not liable in any proceedings, whether civil or criminal, for any act done, without negligence, in the course of carrying out an examination of a person pursuant to a request made to the medical practitioner by a police officer under subsection (1).

Power to search

18.(1) Upon complaint on oath before a justice by a police officer that such officer reasonably suspects that a search of a place may reveal evidence of the commission of an offence defined in part 2, the justice may issue a warrant in the approved form directed to a police officer.

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(2) Upon complaint on oath before a magistrate by a police officer, that such officer reasonably suspects that a search of a place may reveal property that is liable to forfeiture under part 5, the magistrate may issue a warrant in the approved form directed to a police officer.

(3) A warrant issued under subsection (1) shall be, for the period stipulated in the warrant, authority for a police officer executing the warrant to—

- (a) enter or re-enter at any time the place specified in the warrant;
- (b) search the place so entered or re-entered;
- (ba) detain all or any of the persons found in the place so entered or re-entered and exercise in respect of any person so detained the powers specified in section 15 as if that person had been detained under section 15(1);
- (c) pass through, from, over and along any other place for the purpose of making that entry or re-entry;
- (d) seize anything found by the police officer in, on or about the place that the police officer reasonably suspects may afford evidence as to the commission of an offence defined in part 2 so as to examine it or have it examined to determine if it will afford such evidence;
- (e) retain anything seized by the police officer pursuant to paragraph (d) if the police officer reasonably believes it will afford evidence as to the commission of an offence defined in part 2 so as to use it as such evidence.

(4) A warrant issued under subsection (2) shall be, for the period stipulated in the warrant, sufficient authority for any police officer executing the warrant to—

- (a) enter or re-enter at any time the place specified in the warrant;
- (b) search the place so entered or re-entered;
- (ba) detain all or any of the persons found in the place so entered or re-entered and exercise in respect of any person so detained the powers specified in section 15 as if that person had been detained under section 15(1);
- (c) pass through, from, over and along any other place for the

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purpose of making that entry or re-entry;

- (d) seize property found by the police officer that the police officer reasonably suspects is liable to forfeiture under part 5.

(5) Property seized in pursuance of a warrant issued under subsection (2) shall be returned to the owner of the property at the expiration of 14 days from the date of seizure unless—

- (a) a forfeiture or restraining order in respect of that property is made under part 5 within that period; or
- (b) the owner consents to retention of the property beyond that period by a police officer.

(6) For the purpose of obtaining a warrant under subsection (1) or (2)—

- (a) an application for the warrant and submissions concerning the application may be made; and
- (b) any information concerning the application may be furnished; and
- (c) an oath may be administered and made;

in whole or in part by telephone, telex, radio or other similar facility.

(7) Where an application for the issue of a search warrant is made pursuant to subsection (6) the following provisions apply—

- (a) the application shall only be made to a magistrate;
- (b) the applicant shall inform the magistrate of the applicant's name, rank and number (if any) in the police service, and the magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant is a police officer;
- (c) the applicant shall inform the magistrate of the facts on which the applicant seeks the issue of the search warrant;
- (d) if it appears to the magistrate from the information furnished by the applicant that there are proper grounds for the issue of a search warrant, the magistrate shall inform the applicant of the facts on which the magistrate relies as grounds for the issue of the warrant, and shall not proceed to issue the warrant unless the applicant undertakes to make a complaint in writing under oath verifying those facts;

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- (e) if the applicant gives such an undertaking, the magistrate may make out, and sign, a search warrant, noting on the warrant the facts on which the magistrate relies as grounds for the issue of the warrant;
- (f) the search warrant shall be deemed to have been issued, and shall come into force, when signed by the magistrate;
- (g) the magistrate shall inform the applicant of the terms of the warrant;
- (h) the applicant shall, as soon as practicable after the issue of the search warrant, forward to the magistrate a complaint in writing under oath verifying the facts referred to in paragraph (d).

(8) When a warrant is issued by a magistrate as the result of an application made pursuant to subsection (6), the magistrate shall, unless otherwise requested by the applicant, send the warrant, within 7 days of its issue, to the commissioner of the police service.

(9) When it is necessary for a police officer to satisfy any person that a warrant under this section was issued and, for reasonable cause, that officer cannot at the time produce the warrant, the police officer may produce a form of the warrant completed and endorsed in accordance with subsection (10) and that production shall be deemed to be a production of the warrant.

(10) To comply with subsection (9), a police officer—

- (a) shall complete a form of warrant substantially in the terms of the warrant issued by the magistrate; and
- (b) shall write on that form of warrant a statement that a warrant in those terms was issued giving—
 - (i) the name of the magistrate who issued the warrant; and
 - (ii) the date on which and time and place at which the warrant was issued; and
 - (iii) the date on which and time at which the warrant expires.

(11) The police officer who executes a warrant issued under this section shall endorse on the reverse side of the warrant or form of warrant such of the following particulars as are applicable—

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- (a) the date and time of execution;
- (b) the description of anything seized;
- (c) the name, rank, number (if any) in the police service of the police officer and the police officer's signature.

(12) Notwithstanding subsection (1) or (2), when a police officer reasonably believes that—

- (a) anything that—
 - (i) may afford evidence of the commission of an offence defined in part 2; or
 - (ii) is liable to forfeiture under part 5;is, or is in possession of a person, in, on or about any place; and
- (b) it will be concealed or destroyed unless that place is entered and searched immediately;

the police officer may enter that place and exercise any of the powers the police officer would be permitted to exercise if a warrant had been issued to the police officer pursuant to subsection (1) or, as the case may be, (2).

Police officers to supply information

19.(1) Where a police officer—

- (a) stops a vehicle; or
- (b) detains a person; or
- (c) enters a place;

pursuant to this part the police officer shall supply his or her name, rank, station and number (if any) in the police service to the person in charge of the vehicle, person detained or, as the case may be, occupier of the place.

(2) Where a police officer removes, seizes or retains anything pursuant to this part the police officer shall inform the person from whose possession it is removed, seized or retained, of the place to which the thing is to be taken.

(3) Where a police officer removes a vehicle pursuant to section 14(2) the police officer shall, if practicable, inform the person in charge and the owner of the vehicle or an agent of that person or owner that the person is

entitled to be present when the vehicle is searched.

(4) That police officer and any person carrying out the search of the vehicle shall permit that person, owner or agent to be present during the time the vehicle is searched.

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

19A.(1) Sections 43K and 43L 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)³
- section 15(8) and (9)⁴
- section 18(5).⁵

Register of searches

20.(1) Where a police officer—

- (a) stops a vehicle; or
- (b) detains a person; or
- (c) enters a place;

pursuant to this part (other than in pursuance of a warrant issued under section 18), the police officer shall at the first reasonable opportunity record in a register kept in an approved form the matters following—

- (d) in the case of the stoppage of a vehicle—
 - (i) the place at which the vehicle was stopped;
 - (ii) the reason for the stoppage;
 - (iii) if the vehicle or anything in it is searched—the date, time and

³ Section 14 (Power to stop, search, seize and remove vehicles etc.)

⁴ Section 15 (Power to detain and search persons)

⁵ Section 18 (Power to search)

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place of the search;

- (e) in the case of the detention of a person—
 - (i) the name of the person or, if it is unknown, a description of the person;
 - (ii) the place at which the person was detained;
 - (iii) the date, time and length of detention;
 - (iv) the reason for the detention;
 - (v) if the person is searched, where the search took place;
- (f) in the case of the entry of a place—
 - (i) the identification of the place;
 - (ii) the date and time of entry;
 - (iii) the reason why a warrant was not obtained;
- (g) in the case of the search of a vehicle, person or, as the case may be, place—
 - (i) who or what was searched;
 - (ii) the reason for the search;
 - (iii) a description of anything that was taken away;
- (h) in any such case—the name, rank and number (if any) in the police service of the police officer and the police officer's signature.

(2) Any entries made in the register shall be available for inspection by—

- (a) the owner of the vehicle or thing; or
- (b) the person; or
- (c) the occupier of the place;

to which or, as the case may be, to whom they relate or his or her agent.

(3) Failure to make the entries referred to in subsection (1) in relation to the stoppage of a vehicle, the detention of a person or, as the case may be, the entry of a place or to make them available for inspection as required by subsection (2) shall be prima facie evidence that the stoppage, detention or,

as the case may be, entry and any search made pursuant to the stoppage, detention or entry were unlawful.

Persons arrested may be taken to places for investigation

21. Notwithstanding any other law to the contrary or the terms of the warrant upon which the person was arrested, when a person is arrested on a charge of having committed an offence defined in part 2 the person may, within the period of 48 hours from the time of the person's arrest with the person's consent in writing (witnessed by a justice), be taken to a place for the purpose of investigating such offence.

Power to require name, address

22.(1) A police officer who reasonably suspects that an offence defined in part 2 has been committed and reasonably requires to know information about a person in order to assist the police officer to investigate the offence, may require of that person—

- (a) the person's name and address; and
- (b) the person's date and place of birth;

and if the police officer reasonably suspects that any of the required particulars given is false, may require evidence as to the correctness thereof and such other particulars as the officer reasonably believes will enable that person to be readily located and identified.

(2) A person who, when required under subsection (1) to give any particulars or evidence of the correctness thereof—

- (a) refuses or fails to give such particulars; or
- (b) states false particulars; or
- (c) without reasonable excuse refuses or fails to produce that evidence; or
- (d) produces false evidence with respect to such particulars;

commits an offence against this Act.

Maximum penalty—1 month's imprisonment.

(3) A police officer may arrest without warrant a person who has or

whom the police officer suspects on reasonable grounds has committed an offence defined in subsection (2) provided the police officer first warns that person of the police officer's intention to do so and gives the person a further opportunity of complying with the requisition directed to the person under subsection (1).

Fingerprints etc.

23.(1) Where a person is arrested on a charge of having committed an offence defined in this Act a police officer may take or cause to be taken from the person all such particulars as the police officer considers necessary for the identification of that person or the investigation of an offence including the person's voice print, photograph, fingerprints, palm prints, footprints, toe prints and handwriting and, except in the case of voice prints and handwriting, the police officer may use such force as is reasonably necessary to obtain such particulars.

(2) Where a person is acquitted of an offence defined in this Act, or the charge against the person is withdrawn or dismissed, any particulars obtained pursuant to subsection (1), at the request of the person from whom they were taken, shall be destroyed in the person's presence except where—

- (a) they are, in the opinion of the director of public prosecutions, required as evidence in respect of any other offence; or
- (b) proceedings in respect of any other offence have been commenced at the time of such acquittal, withdrawal or dismissal and the particulars are required as evidence in respect of that other offence.

PART 4—TRACKING AND LISTENING DEVICES

Use of tracking devices by police

24.(1) A police officer who reasonably suspects—

- (a) that a crime defined in part 2 has been, is being or is about to be committed; and

- (b) that—
- (i) the dangerous drug with which the offence is concerned is in or on anything that is moveable (other than an aircraft); or
 - (ii) a person involved or suspected to be involved in the commission of the offence is in or on any vehicle (other than an aircraft);

may place a tracking device in or on that thing or vehicle.

(2) A police officer who exercises the power conferred by subsection (1), at the first reasonable opportunity, shall furnish a written report upon the exercise of the power and the circumstances in which it was exercised to the commissioner of the police service and the commissioner shall at the first reasonable opportunity, bring the report to the notice of the Minister.

Interception warrant

25. Upon application made by a police officer of or above the rank of inspector a judge of the Supreme Court may order that there be issued an interception warrant authorising a police officer to—

- (a) put a listening device or a visual surveillance device or both in the place specified in the interception warrant; and
- (b) intercept private conversations by means of the listening device or record and monitor visual images by means of the visual surveillance device, or both;

if the judge is satisfied there are reasonable grounds for suspecting that a person has committed, is committing or is about to commit a crime defined in part 2 for which an offender is liable to the punishment of 20 years imprisonment.

Emergency permit

26.(1) If, upon personal application made by a police officer of or above the rank of inspector, a judge of the Supreme Court is satisfied that there exist circumstances that would justify the issue of an interception warrant, but that the interception of private conversations should commence before an interception warrant could, with all practical diligence, be obtained under section 25 the judge may order, orally or in writing, that there be issued an

emergency permit authorising a police officer to—

- (a) put a listening device or a visual surveillance device or both in a place specified in the emergency permit; and
- (b) intercept private conversations by means of the listening device or record and monitor visual images by means of the visual surveillance device, or both.

(2) An emergency permit shall remain in force for a period of 48 hours or such shorter period as the judge orders.

Power of entry

27. For the purpose of putting or servicing a listening device or a visual surveillance device or both in or retrieving it from the place specified in the interception warrant or emergency permit the interception warrant or emergency permit may authorise a police officer to exercise any of the powers of entry the police officer would be permitted to exercise if a warrant to search the place referred to in the interception warrant or emergency permit had been issued by a justice pursuant to section 18.

Applications subject to certain provisions, conditions etc.

28.(1) An application for an interception warrant or emergency permit shall be subject to the following provisions—

- (a) the application shall be made as prescribed by rules of court or, if no procedure is so prescribed, as a judge of the Supreme Court directs;
- (b) the application shall be heard *ex parte* in the judge's chambers in the presence of such person as the judge permits and no other person;
- (c) the judge may receive and act on such information as the judge thinks fit;
- (d) no transcript shall be made of the information received by the judge;
- (e) no notice or report relating to the application shall be published and no record of the application or of any order made thereon

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shall be available for search by a person except by direction of the judge hearing the application or, in the case of the judge's absence or incapacity, some other judge of the Supreme Court.

(2) In considering an application for an interception warrant or emergency permit a judge shall have regard to—

- (a) the gravity of the matter being investigated;
- (b) the extent to which the privacy of a person is likely to be interfered with if the application is granted;
- (c) the extent to which the prevention or detection of the offence being investigated is likely to be assisted if the application is granted;

and may grant the application and issue an interception warrant or, as the case may be, emergency permit subject to such conditions, limitations and restrictions as are in the judge's opinion necessary in the public interest.

Application of the Invasion of Privacy Act

29.(1) A listening device used for the interception of private conversations under the authority of an interception warrant or an emergency permit—

- (a) for the purposes of the application of the *Invasion of Privacy Act 1971*, section 45(2) or 47—shall be deemed to have been used pursuant to an authorisation given under section 43(2)(c)(i) of that Act; and
- (b) for the purposes of the application of the provisions of the *Invasion of Privacy Act 1971*, part 4—other than those referred to in paragraph (a), shall not be taken to have been used in contravention of section 43 of that Act.

(2) For the purposes of this part the terms 'listening device' and 'private conversations' have the same meanings, respectively, as are ascribed to those terms by the *Invasion of Privacy Act 1971*, section 4.

Commissioner to report

29A. Where a judge of the Supreme Court orders that there be issued an

interception warrant or emergency permit the police officer who made the application shall, at the first reasonable opportunity, furnish a written report upon the exercise of the power and the circumstances in which it was exercised to the commissioner of the police service and the commissioner shall, at the first reasonable opportunity, bring the report to the notice of the Minister.

PART 5—FORFEITURE AND RESTRAINT

Interpretation

30.(1) In this part—

“**court**” means—

- (a) the Supreme Court; or
- (b) in relation to an application for the forfeiture of dangerous drugs to any value, or for the forfeiture or restraint of personal property (other than an estate or interest in land) with a value of not more than \$25 000 or to both these applications—
 - (i) a Magistrates Court constituted by a magistrate; or
 - (ii) if the offender is a child within the meaning of the *Juvenile Justice Act 1992*—the Childrens Court constituted by a Childrens Court judge, Childrens Court magistrate or magistrate.

“**proceeds**” of an offence means property derived directly or indirectly from the commission of the offence.

(2) For the purposes of this part, a person shall be deemed to have been convicted of an offence defined in part 2 if—

- (a) that person has been found guilty of the offence by a court, or has pleaded that he or she is guilty of the offence, but is discharged, absolutely or conditionally, without conviction; or
- (b) a court, at the request of that person, takes the offence into account in determining the penalty for some other offence.

(3) Where pursuant to this part, real property, or an estate or interest in land other than real property, vests in the Crown it shall, where the Minister so directs, be held upon trust by the public trustee for and on behalf of the Crown.

Jurisdiction

31. Jurisdiction is conferred on a court to hear and determine applications under this part and to make orders authorised by this part.

Forfeiture of dangerous drugs

32.(1) Upon application made to it (which application may be made ex parte) a court may, where anything that is alleged to be a dangerous drug is produced before it, upon being satisfied beyond reasonable doubt that the thing or any part of the thing is a dangerous drug, order the whole or any part of the thing be forfeited to the Crown.

(2) Where an order is made pursuant to subsection (1), the court shall, in its order, make a finding of fact—

- (a) as to—
 - (i) the identity and quantity of the thing produced; and
 - (ii) the quantity ordered to be forfeited; and
 - (iii) the quantity remaining; and
- (b) that what remains is part of what was produced.

(3) Production in proceedings in respect of a charge against a person of having committed an offence defined in part 2 of an order made pursuant to subsection (1) shall be conclusive evidence of the matters contained therein.

(4) Where a person is convicted of an offence defined in part 2—

- (a) anything that is alleged to be a dangerous drug in respect of which an order was not made under subsection (1); or
- (b) the remainder of anything produced pursuant to subsection (1);

and in respect of which the offence was committed shall by virtue of such conviction be forfeited to the Crown.

(5) Where a person charged with an offence defined in part 2 is not convicted of any offence on that charge the court before which the person was charged may order—

- (a) that anything that is alleged to be a dangerous drug in respect of which an order was not made under subsection (1); or
- (b) that the remainder of anything produced pursuant to subsection (1);

and in respect of which the offence was alleged to have been committed, be forfeited to the Crown and any such thing or remainder of such thing shall thereby be forfeited accordingly.

(6) Upon forfeiture to the Crown in accordance with this section such thing is freed from all other claims of title, property or interest and may be—

- (a) destroyed or disposed of; or
- (b) retained by any person;

in accordance with the written direction of the Minister.

Liability of property (other than a dangerous drug) to forfeiture

33.(1) Property (other than a dangerous drug) is liable to forfeiture under this part if the property is—

- (a) acquired for the purpose of committing an offence defined in part 2; or
- (b) used in connection with the commission of such an offence; or
- (c) furnished or intended to be furnished for the purpose of committing such an offence; or
- (d) the proceeds of such an offence; or
- (e) acquired with the proceeds of such an offence; or
- (f) property into which the proceeds of such an offence have, in some other manner, been converted.

(2) Where—

- (a) there has been an accretion to a person's property in consequence

of the commission of an offence defined in part 2 (either by that person or some other person); and

- (b) identification of specific property as being liable to forfeiture under subsection (1) is not possible (either because the property has been dissipated or for any other reason);

the whole of the person's property is liable to forfeiture under this part but, on an application for forfeiture, only so much of the property as is necessary to realise a sum equal to the value of the accretion shall be forfeited.

(3) Where a person charged with the commission of an offence defined in part 2 was in possession of property at or immediately after the commission of the offence the court hearing an application made under section 34(1) shall presume that the property is liable to forfeiture unless that person proves to the contrary.

Forfeiture orders

34.(1) Where a court is satisfied, upon application made to it—

- (a) that property is liable to forfeiture in consequence of the commission of an offence defined in part 2; and
- (b) that a person—
 - (i) has been convicted of such an offence; or
 - (ii) is dead, cannot be found or is for any other reason not amenable to justice;

the court may order that the property be forfeited to the Crown and shall specify in any such order, other than an order in respect of money, the amount that it considers is the value of the property.

(2) Where property that is liable to forfeiture under section 33 is received or acquired by a person who was not a party to the commission of the offence by virtue of which the property is liable to forfeiture, an order for forfeiture of the property may be made unless that person proves—

- (a) that the person gave valuable consideration for the property; and
- (b) that at the time of receiving or acquiring the property the person neither knew nor had reason to suspect the circumstances by

virtue of which the property is liable to forfeiture.

(3) In considering whether it is appropriate to make a forfeiture order under subsection (1) or (2) the court may have regard to—

- (a) any extreme hardship that may be likely to be caused to any person by the operation of such an order; and
- (b) the use that is ordinarily made of the property.

(4) A court that makes a forfeiture order in respect of property may also, if it is satisfied—

- (a) that it would not be contrary to the public interest for the property to be returned to the person in whom the property was vested immediately before the making of the forfeiture order; and
- (b) that there is no other reason why the property should not be returned to that person;

by order declare that the forfeiture order may be discharged as provided by section 39(1).

(5) Subject to subsection (6), any question of fact to be decided by a court on an application for forfeiture shall be decided on the balance of probabilities.

(6) Where, on an application for forfeiture, a person is alleged to have committed an offence defined in part 2 of which the person has not been convicted, a court shall be satisfied, in relation to that allegation, that the evidence adduced before it—

- (a) if the offence is a crime defined in that part—is sufficient to put the person upon trial for that crime; or
- (b) if the offence is an offence defined in section 10(2)—is sufficient for a court to hold that the person has a case to answer.

Interested parties entitled to notice and appearance

35. Where an application for forfeiture of property is made under section 34 a person who has an interest in the property is entitled—

- (a) to such notice of the application as may be determined by the

court to which the application is made; and

- (b) to appear and be heard on the application.

Effect of forfeiture

36.(1) Upon the making of a forfeiture order under section 34 the property to which it relates shall divest from the person in whom it is vested at that time and vest in the Crown and, subject to any further order made in relation to that property by a court, shall be destroyed or disposed of in accordance with the Minister's directions.

(2) A person who is in possession of property forfeited to the Crown under section 34 or of documents of title to such property shall deliver the property or the documents of title to a person authorised in that behalf by the Minister, upon demand of that authorised person.

(3) Where a person has delivered property or documents of title to property in compliance with subsection (2) the person shall thereby be discharged from any duty or obligation had by him or her to any other person in relation to the disposition of the property or documents of title and from all liability that, but for this subsection, might have arisen by reason of such delivery.

(4) The registrar of titles and any other person charged with the keeping of registers relating to property forfeited to the Crown pursuant to this part shall, upon request in that regard and upon production to him or her of sufficient evidence of the forfeiture record—

- (a) the forfeiture to and vesting in the Crown of the property; or
(b) where the Minister so directs, the public trustee as being the holder upon trust for and on behalf of the Crown of the property;

in the register in his or her keeping and may do so notwithstanding—

- (c) any other Act to the contrary; or
(d) that any relevant document of title to the property is not produced to him or her.

(5) In all proceedings and for all purposes a certificate purporting to be by—

- (a) the registrar or a deputy registrar of the Supreme Court if that

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- court makes the order; or
- (b) the registrar of the Childrens Court constituted by a judge if that court makes the order; or
 - (c) the clerk of the court at the place where—
 - (i) the 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;

as to the making of the order and the property to which the order relates shall be conclusive evidence of the matters contained therein.

(6) Where a certificate referred to in subsection (5) is duly produced to the registrar of the Supreme Court for registration the registrar shall, upon payment of the appropriate fee, register the certificate in the court and thereupon the certificate shall be a record of the court and the order to which it refers shall be deemed to be a judgment of the court, duly entered, obtained by the Crown as plaintiff in an action for the recovery of possession of the property to which the order relates against the person from whom the property has been divested under subsection (1), and all such proceedings may be taken to recover the property as could be taken if the judgment had been given by the court in favour of the Crown.

Effect of forfeiture order on third parties

37.(1) Where an application for forfeiture of property has been made under section 34, any person who claims an estate or interest in the property may apply to the court for an order under subsection (2).

(2) Where—

- (a) a person has made an application under subsection (1); and
- (b) a forfeiture order has been made in respect of property, whether before or after the making of the application;

the court hearing the application may, if it is satisfied on the balance of probabilities that the person was not a party to the commission of the offence, make an order—

- (c) declaring the nature, extent and value of the person's estate or

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interest in the property (including accruing interest (if any)); and

- (d) declaring that there is payable by the Crown to the person an amount equal to the value of the person's estate or interest in the property as declared by the court pursuant to paragraph (c).

(3) Where, on application by a person, a court makes an order under subsection (2) in respect of property, the court may also, if it is satisfied—

- (a) that it would not be contrary to the public interest for the property to be transferred to the person; and
- (b) that there is no other reason why the property should not be transferred to the person;

make an order declaring that the person is entitled to discharge the forfeiture order as provided by section 39.

(4) An application under subsection (1) in respect of property may be made—

- (a) at the hearing of the application for a forfeiture order in respect of the property; or
- (b) at any time after the making of a forfeiture order in respect of the property, by a person who was not given notice by the prosecution of the making of the application for the forfeiture order and who did not appear at the hearing of the lastmentioned application; or
- (c) at any time after the making of a forfeiture order in respect of the property, if the court is satisfied that there are special grounds for permitting the making of such an application.

(5) Without limiting the generality of subsection (4)(c), special grounds for permitting the making of an application by a person under subsection (1) after the making of a forfeiture order include—

- (a) that the person was unable to appear at the hearing of the application for the forfeiture order;
- (b) that the person, for a good reason, did not appear at the hearing of the application for the forfeiture order;
- (c) that particular evidence proposed to be adduced by the person in connection with the application under subsection (1) was not

available to the person at the time of the hearing of the application for the forfeiture order.

(6) A person who makes an application under subsection (1) in respect of property, otherwise than at the hearing of an application for a forfeiture order in respect of the property, shall give notice to the Minister of the making of the application and of the date, time and place for the hearing of the application.

Discharge of forfeiture

38.(1) Where—

- (a) property has been forfeited to the Crown by order made under section 34 in reliance on the conviction of a person of an offence defined in part 2; and
- (b) that person has appealed against the conviction;

a court hearing the appeal, if it allows the appeal, may order that the forfeiture order be quashed.

(2) Subject to section 41(2), where a forfeiture order in respect of property is quashed as provided by subsection (1) or by a court hearing an appeal against the making of the forfeiture order, the person whose property it was immediately before forfeiture or the person's legal personal representative may, by application in writing, request the Minister to return the property.

(3) The Minister by certificate shall certify whether or not—

- (a) the property is still in specie and still vested in the Crown; or
- (b) the property has been disposed of or destroyed.

(4) Where the Minister certifies pursuant to subsection (3)(a), the property shall thereby divest from the Crown and vest in the applicant.

(5) Where the Minister certifies pursuant to subsection (3)(b), there is payable to the applicant by the Crown the amount specified in the forfeiture order as the value of the property.

(6) Where—

- (a) a person applies to the Minister under subsection (2) for the return of property that is still vested in the Crown; and

- (b) pursuant to an order made under section 37(2), an amount has been paid by the Crown to another person in respect of that other person's interest in the property;

then, notwithstanding subsections (4) and (5), the Minister shall inform the firstmentioned person that the property will be returned to the firstmentioned person on payment to the Crown of an amount equal to the amount mentioned in paragraph (b) and, where that amount is paid to the Crown, the Minister shall arrange for the property to be returned to the firstmentioned person.

(7) Where—

- (a) a person applies to the Minister under subsection (2) for the return of property that is not still vested in the Crown; and
- (b) pursuant to an order made under section 37(2), an amount has been paid by the Crown to another person in respect of that other person's interest in the property;

then, notwithstanding subsections (4) and (5), there is payable to the firstmentioned person the amount specified in the forfeiture order as the value of the property, reduced by an amount equal to the amount mentioned in paragraph (b).

(8) Where—

- (a) a person applies to the Minister under subsection (2) for the return of the property that is not still vested in the Crown; and
- (b) the property has been transferred to another person pursuant to section 39(4);

there is payable to the firstmentioned person the amount specified in the forfeiture order as the value of the property, reduced by the amount specified in an order made under section 37(2) as the value of the other person's interest in the property.

Discharge of forfeiture order by payment to Crown

39.(1) Where a court that has made a forfeiture order in respect of property makes an order under section 34(4) in respect of the forfeiture order, the payment to the Crown, while the property is still vested in the Crown, of the amount specified in the forfeiture order as the value of the

property operates to discharge the forfeiture order.

(2) Where—

- (a) a forfeiture order has been made in respect of property; and
- (b) on application by a person, a court makes an order under section 37(2) in respect of the property and an order under section 37(3) in respect of the forfeiture order;

the person may, while the property is still vested in the Crown pay to the Crown—

- (c) if the Crown has already made a payment to the person in accordance with the order made under section 37(2)—the amount specified in the forfeiture order as to the value of the property; or
- (d) in any other case—the amount specified in the forfeiture order as the value of the property, reduced by the amount specified in the order made under section 37(2) as the value of the person's interest in the property;

and the making of that payment by the person operates to discharge the forfeiture order.

(3) Where a forfeiture order in respect of property is discharged as provided by subsection (1), the Minister shall arrange for the property to be returned to the person in whom it was vested immediately before the making of the forfeiture order.

(4) Where a forfeiture order in respect of property is discharged as provided by subsection (2), the Minister shall arrange for the property to be transferred to the person who made the payment to the Crown in accordance with that subsection.

Certain instruments exempt from stamp duty and fees

40. Where it is necessary to make any instrument or to correct registers kept in respect of property transferred from the Crown or, as the case may be, the public trustee—

- (a) the instrument shall be exempt from stamp duty under the *Stamp Act 1894*; and

- (b) no fees shall be payable in respect of the instrument in any office in which such registers are kept.

Restraining order

41.(1) Where a court is satisfied, upon application made to it—

- (a) that property may be liable to forfeiture in consequence of the commission of an offence defined in part 2; and
- (b) that proceedings have been, or are about to be, commenced against a person in respect of such offence;

it may make a restraining order in respect of that property, and such other ancillary order as it thinks fit.

(2) Where a court hearing an appeal quashes a forfeiture order it may make a restraining order in respect of the property to which the order relates, and such other ancillary order as it thinks fit.

(3) Upon the making of a restraining order—

- (a) the management and control of the property to which it relates shall pass to the person named in the order as manager of the property and remain in that person while the order remains in force;
- (b) the person whose property it is is incompetent in law to pass title of property to which it relates while the order remains in force;
- (c) a person who holds property to which it relates on account of the person whose property it is shall hold that property on account of the person named in the order as manager of the property while the order remains in force and shall deal with that property as directed by the manager.

(4) The manager named in a restraining order is empowered to deal with and dispose of property of which he or she is manager in and for the purposes of the management as if the manager were the absolute owner thereof subject always to the manager being prudent and diligent in the management thereof and to the manager complying with conditions specified in the order as regulating the management thereof.

(5) Where a restraining order has been made the applicant therefor shall

cause a copy of the order to be given to every person who, to the applicant's knowledge, is holding property affected by the order on account of the person to whose property the order relates.

(5A) In the case of property held by a bank or body corporate it shall be sufficient compliance with subsection (5) if a copy of the order is given to the manager, branch manager or other person charged with the control of the property on account of the person to whose property the order relates and a copy of an order so given, or given to any other person who is holding property to which the order relates shall be deemed to have been given to every person employed in the service of that bank, body corporate or such lastmentioned other person.

(6) A person—

- (a) to whose property a restraining order relates; or
- (b) to whom a copy of a restraining order has been given or is deemed to have been given;

shall not attempt to do or purport to do any act in disobedience to or wilful disregard of the order, while it remains in force.

(7) A person who contravenes subsection (6) in respect to an order made by a magistrate commits an offence against this Act.

Maximum penalty—2 years imprisonment.

(8) A person who contravenes subsection (6) in respect to an order made by a judge is guilty of a crime.

Maximum penalty—5 years imprisonment.

(9) Upon production of a copy of a restraining order made under this section, the registrar of titles and any other person charged with the keeping of registers relating to property referred to in the order shall not register any dealing with respect to that property until the order has been revoked or discharged.

Procedure upon application for restraining order

42.(1) Upon an application for a restraining order, the court may require notice of the application to be given to such person as it considers should be informed of the proceedings.

(2) Every person to whom notice of an application has been given shall be entitled to be heard with respect to the matter of the application.

(3) Where notice of an application is given to a person in respect of whose property a restraining order is sought or to a bank or other person holding property on account of a person in respect of whose property a restraining order is sought, the notice shall have effect as if it were a copy of a restraining order duly made in respect of that person's property, until the matter of the application has been disposed of.

Variation, revocation, discharge of order

43.(1) A restraining order made under section 41(1) is discharged—

- (a) if at the expiration of the period ordered by the court in that regard, proceedings against a person have not been commenced in respect of an offence defined in part 2;
- (b) upon the making of a forfeiture order in respect of property to which the restraining order relates;
- (c) if the person charged with committing the offence, by reason of which charge the restraining order was made, has been acquitted of the charge or the charge has been withdrawn;
- (d) if the person charged with committing the offence, by reason of which the restraining order was made, having been convicted of the charge, has had his or her conviction quashed on appeal, unless the court hearing the appeal otherwise orders.

(2) A restraining order made under section 41(1) or (2) may, upon application made to a court of like jurisdiction to the court that made the order, be varied or revoked at any time for any reason appearing to the court to be sufficient.

(3) Upon an application for revocation of a restraining order, the applicant shall cause notice of the application to be given to—

- (a) the manager of property to which the restraining order relates; and
- (b) such other person as the court considers should be informed of the proceedings;

and the manager and such other person shall be entitled to be heard with respect to the matter of the application.

PART 5A—CONTROLLED SUBSTANCES INFORMATION REQUIREMENTS

Definitions

43A. In this part—

“authorised officer” means—

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

“chief executive for health” means the chief executive of the department in which the *Health Act 1937* is administered.

“controlled substance” means—

- (a) a substance specified in the *Drugs Misuse Regulation 1987*, schedule 6; or
- (b) a salt, derivative or stereo-isomer of a substance specified in the *Drugs Misuse Regulation 1987*, schedule 6; or
- (c) a salt of a derivative or stereo-isomer of a substance specified in the *Drugs Misuse Regulation 1987*, schedule 6;

but does not include a compound consisting of a substance specified in the *Drugs Misuse Regulation 1987*, schedule 6 and of a substance not specified in the *Drugs Misuse Regulation 1987*, schedule 6.

“environmental health officer” means an environmental health officer appointed as an inspector under the *Health Act 1937*, section 27.⁶

“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

⁶ Section 27 (Appointment of officers)

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 the chief executive for health 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).

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

“**relevant transaction**” see section 43C.

“**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.

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 43E—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, 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.

(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 43D⁷
- section 43E.⁸

(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

⁷ Section 43D (Requirements for supply of controlled substance under relevant transactions)

⁸ Section 43E (Requirement to report loss or theft of controlled substance)

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, 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, 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.

Dealing with forfeited things

43N. On the forfeiture of a thing to the State under section 43M, 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; 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 43I 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 43D⁹
 - section 43F(3).¹⁰

(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 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

⁹ Section 43D (Requirements for supply of controlled substance under relevant transactions)

¹⁰ Section 43F (Employee's liability)

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); 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.¹¹

Responsibility for acts or omissions of representatives

43R.(1) In this section—

“representative” means—

- (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

¹¹ Section 10.20A (Assault etc. of police officer)

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 43T 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 56.¹²

(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;

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)

¹² Section 56 (Service of summonses)

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.

PART 6—MISCELLANEOUS

Criminal Code to be read with Act

44. The Criminal Code shall, with all necessary adaptations, be read and construed with this Act.

Attempt to commit offence

44A.(1) In lieu of the Criminal Code, section 536 the following provision shall apply—

‘A person who attempts to commit a crime defined in part 2 is deemed to be guilty of the intended crime and is liable to the same punishment and forfeiture as a person who commits the intended crime.’

(2) Where a person is charged summarily with a crime defined in part 2 that person may be convicted in those summary proceedings of attempting to commit that crime.

Proceedings for offences

45.(1) Proceedings with a view to the summary conviction of a person upon a charge of an offence defined in this Act or for an examination of witnesses in relation to an indictable offence defined in this Act shall be before a magistrate.

(1A) However, any justice may adjourn such proceedings and may grant or refuse bail.

(2) Where an offence may be prosecuted on indictment or summarily the proceedings before a magistrate shall be proceedings with a view to the committal of the defendant for trial or sentence unless the prosecution elects that they shall be proceedings with a view to summary conviction.

(3) Where proceedings have been commenced against a person upon a charge of a crime defined in part 2 a magistrate has jurisdiction to hear and determine the proceedings with a view to the summary conviction of the person upon the charge, notwithstanding that the proceedings have commenced more than 1 year after the matter to which the charge relates arose.

(3A) Proceedings with a view to the summary conviction of a person upon a charge of an offence defined in this Act may be heard and determined at a place appointed for the holding of Magistrates Courts in any district appointed for the purpose of Magistrates Courts under the *Justices Act 1886* or in any division deemed to be such a district, regardless of where the offence was committed.

(3B) Subsection (3A) shall not be construed to confer jurisdiction in a case to which the *Justices Act 1886*, section 139(3) or the *Bail Act 1980*, section 33A applies except in accordance with whichever of those sections is applicable.

(4) Where proceedings are taken with a view to summary conviction of a defendant and the magistrate forms the opinion that the charge ought to be prosecuted on indictment, the magistrate shall abstain from determining the charge summarily and shall instead deal with the proceedings as proceedings with a view to the committal of the defendant for trial or sentence.

(5) Where, pursuant to subsection (4), the magistrate abstains from determining summarily proceedings in respect of a charge—

- (a) the plea of the defendant taken at the outset of the hearing shall be disregarded; and
- (b) the evidence adduced in the proceedings before the magistrate's decision to abstain shall be deemed to be evidence in the proceedings with a view to the committal of the defendant for trial or sentence; and
- (c) before committing the defendant for trial or sentence the magistrate shall address the defendant in accordance with the *Justices Act 1886*, section 104.

Protection of informers

46.(1) Where an informer supplies information to a police officer in respect of the commission of an offence defined in part 2 the informer's identity at all times shall be kept confidential.

(2) A person who discloses the name of an informer, or any other particular that may be likely to lead to the informer's identification, is guilty of a crime.

Maximum penalty—5 years imprisonment.

(3) A person is not criminally responsible for an offence defined in subsection (2) if the person proves that the disclosure was made in good faith for the protection of the interests of the informer or for the public good.

Source of information not to be disclosed

47.(1) Where an informer supplies information to a police officer in respect of the commission of an offence defined in part 2 then in any proceedings whether under this Act or otherwise—

- (a) the prosecutor; or
- (b) a person who appears as a witness for the prosecution; or
- (c) where a police officer appears as a witness for the defence, that police officer;

shall not be asked and if asked shall not be compelled to disclose the name of an informer, or other particular that may be likely to lead to the informer's identification, or the fact that in respect of the offence he or she received information from an informer or he or she furnished information to an informer or the nature of the information.

(2) In any proceedings arising out of a charge of having committed an offence defined in part 2 a police officer appearing as a prosecutor or witness shall not be compelled to produce any reports or documents, made or received by the police officer in the police officer's official capacity or containing confidential information in relation to such offence, or to make any statement in relation to such reports, documents or information.

Power to prohibit publication of proceedings

48.(1) In any proceedings arising out of a charge of having committed an offence defined in part 2—

- (a) a magistrate hearing and determining the matter summarily or conducting the examination of witnesses; or
- (b) the judge presiding at the court to which a person has been committed for trial or sentence;

may make an order (which shall remain in force for such time as the magistrate or judge orders) prohibiting the publication of the whole or any part of such proceedings and the name and address of any witness.

(2) An application for an order under subsection (1) may be made in chambers in the presence of such person as the magistrate or judge permits and no other person.

(3) On the hearing of the application the magistrate or judge may receive and act upon such information as the magistrate or judge thinks fit.

(4) When considering an application to prohibit publication regard shall be had to—

- (a) the safety of any person; and
- (b) the extent to which the detection of offences of a like nature may be affected; and
- (c) the need to guarantee the confidentiality of information given by an informer.

(5) A person who acts in contravention of an order made by a magistrate under subsection (1) commits an offence against this Act.

Maximum penalty—2 years imprisonment.

(6) A person who acts in contravention of an order made by a judge under subsection (1) is guilty of a crime.

Maximum penalty—5 years imprisonment.

(7) This section is in addition to and not in substitution for the *Children's Services Act 1965*, section 138 and the *Juvenile Justice Act 1992*.

Certain proceedings relating to sentence may be determined in chambers

49.(1) A court before which a person is convicted of an offence defined in part 2 may, with the consent of the prosecution and the defendant, adjourn the proceedings to chambers so as to determine the question of sentence.

(2) An application to adjourn proceedings to chambers may be made in chambers.

(3) In determining the question of sentence pursuant to this section the following provisions shall apply—

- (a) the proceedings shall be as prescribed by rules of court or, if no procedure is so prescribed, as the court directs;
- (b) the proceedings shall be heard in chambers in the presence of such person as the court permits and no other person;
- (c) the court may receive and act on such information as it thinks fit;
- (d) no transcript shall be made of the proceedings unless directed by the court;
- (e) no notice or report relating to the proceedings shall be published and no record of the proceedings (other than the order as to the sentence to be imposed) shall be available for search by a person except by direction of the court or, in the absence or incapacity of the judge or magistrate who constituted the court, another judge of the Supreme Court or, as the case may be, another magistrate.

Summary conviction for indictable offences

50. The provisions of the Criminal Code, section 659 shall have no application when a person has been summarily convicted of a crime defined in this Act.

Defence of supply of lawfully prescribed drug in a small quantity

51.(1) A person is not criminally responsible for an offence defined in section 6 if the dangerous drug is one specified in the *Drugs Misuse Regulation 1987*, schedule 5 and if the person proves that—

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- (a) it was prescribed for the person by a medical practitioner for a condition with which the person was suffering at the time it was prescribed; and
- (b) it was given by the person to a person whom the person reasonably believed to be suffering from the same or a similar condition; and
- (c) the quantity given was no greater than a single dosage prescribed for the person; and
- (d) it was immediately consumed in the person's presence by the person to whom it was given.

(2) A person is not criminally responsible for an offence defined in section 9 if the dangerous drug is one specified in the *Drugs Misuse Regulation 1987*, schedule 5 and if the person proves that—

- (a) it was given to the person by a person to whom the person reasonably believed it had been prescribed by a medical practitioner for the same or a similar condition with which the person was suffering at the time it was given to the person; and
- (b) the quantity received by the person was no greater than a single dosage prescribed for that person; and
- (c) it was immediately consumed by the person in that person's presence.

Police officer permitted to destroy certain property

52. It is lawful for a police officer acting in good faith, or any person acting in good faith and at the officer's direction, to destroy property if—

- (a) the property is a dangerous drug or was used in the commission of an offence defined in part 2; and
- (b) it is not reasonably practicable to take possession of the property or to take it to a police station or to keep it there; and
- (c) the officer believes that unless it is destroyed there is a risk it may be used in the commission of an offence defined in part 2.

Prescribed persons permitted to receive and dispose of dangerous drugs

52A. It is lawful for a person, authorised by the Minister administering the *Health Act 1937*, acting in good faith and in the proper discharge of the person's professional duties, to receive from any person anything which the person reasonably believes to be a dangerous drug provided that—

- (a) in the case of a dangerous drug specified in the *Drugs Misuse Regulation 1987*, schedule 3 the quantity of such thing is reasonably believed to be less than the quantity specified in that schedule in respect of that thing; and
- (b) it is forthwith disposed of in accordance with the procedure prescribed by regulation.

Police may use assistants and employ reasonable force

53.(1) In any case in which a police officer is authorised by this Act to do anything the police officer may use such assistants, animals, vehicles and equipment as the police officer considers necessary to do that thing.

(2) In any case in which a police officer is authorised by this Act to do anything the police officer may use, or direct to be used, such force as is reasonably necessary to do that thing.

(3) If, in doing anything referred to in subsection (2) a police officer proposes to use force against a person, or the property of a person then present, the police officer shall, if practicable, first warn that person that he or she proposes to use that force.

Power to fine

54.(1) A person liable to imprisonment for an offence defined in this Act may be ordered to pay a fine in addition to or instead of the imprisonment to which the person is liable.

(2) A fine to which a person is liable under subsection (1) shall not exceed—

- (a) 5 000 penalty units where the offence is one of which the person is convicted on indictment; or

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- (b) 100 penalty units where the offence is one of which the person is convicted in summary proceedings.

(3) Where pursuant to this section, a person is ordered to pay a fine the court may, on the application of the prosecution, instead of ordering the person to be imprisoned in default of payment of the fine or that the amount of the fine be recovered by levy and distress, order that the amount of the fine be recovered in accordance with the following provisions of this section.

(4) Where an order referred to in subsection (3) is made—

- (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 the Childrens Court constituted by a judge; or
- (c) the clerk of the court at the place where—
- (i) the 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;

shall furnish to the Attorney-General a certificate of the order and that certificate may be registered in a court having jurisdiction in civil proceedings in which the amount claimed is the amount required by the order to be paid.

(5) The registrar of a court to whom a certificate referred to in subsection (4) is duly produced for registration shall, upon payment of the appropriate fee register the certificate in the court and thereupon the certificate shall be a record of the court in which it is registered and the order to which it refers shall be deemed to be a judgment of that court, duly entered, obtained by the Crown as plaintiff against the person in default as defendant for the payment to the Crown of money comprising—

- (a) the amount of the fine; and
- (b) costs of registration of the certificate in the court;

and all such proceedings (including proceedings in bankruptcy) may be

taken to recover the amount of the judgment as if the judgment had been given by the court in favour of the Crown.

No costs to be awarded

55. No costs shall be awarded with respect to any proceedings arising out of a charge of having committed an offence defined in this Act.

Analyst's certificate

56.(1) In any proceedings for an offence defined in this Act the production of a certificate purporting to be signed by an analyst with respect to an analysis or examination made by the analyst shall, without proof of the analyst's signature or that the analyst is an analyst, be evidence of—

- (a) the identity and quantity of the thing analysed or examined;
- (b) the result of the analysis or examination and of the matters relevant to the proceedings stated in the certificate;

and, in the absence of evidence to the contrary, shall be conclusive such evidence.

(2) In subsection (1)—

“**proceedings**”, for an offence, include an application made under section 32(1).¹³

Evidentiary provisions

57. In respect of a charge against a person of having committed an offence defined in part 2—

- (a) it is not necessary to particularise the dangerous drug in respect of which the offence is alleged to have been committed;
- (b) that person shall be liable to be convicted as charged notwithstanding that the identity of the dangerous drug to which the charge relates is not proved to the satisfaction of the court that hears the charge if the court is satisfied that the thing to which the

¹³ Section 32 (Forfeiture of dangerous drugs)

charge relates was at the material time a dangerous drug;

- (c) proof that a dangerous drug was at the material time in or on a place of which that person was the occupier or concerned in the management or control of is conclusive evidence that the drug was then in the person's possession unless the person shows that he or she then neither knew nor had reason to suspect that the drug was in or on that place;
- (d) the operation of the Criminal Code, section 24 is excluded unless that person shows an honest and reasonable belief in the existence of any state of things material to the charge;
- (e) the burden of proving any authorisation to do any act or make any omission lies on that person.

Receiving or possessing some only of the property alleged

58. If in respect of a charge against a person of having committed an offence defined in section 7, the jury or magistrate finds specially that the person committed the offence in respect of some, but not all, of the property alleged by the prosecution that person shall not by reason only of that finding be entitled to be acquitted or have the charge dismissed, and the judge or magistrate shall enter a conviction for that offence in respect of the property so found by the jury or magistrate.

Chief executive may approve forms

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

Regulation-making power

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 5A¹⁴ must be kept;
- (b) making provision for anything about the supply of a controlled

¹⁴ Part 5A (Controlled substances information requirements)

- 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 in the *Drugs Misuse Regulation 1987*, schedules 1 to 5 a thing as a dangerous drug for this Act;
 - (e) prescribing in the *Drugs Misuse Regulation 1987*, schedules 1 to 5 quantities of a dangerous drug for this Act;
 - (f) prescribing in the *Drugs Misuse Regulation 1987*, schedule 6 a substance as a controlled substance for this Act;
 - (g) prescribing offences for contraventions of a regulation and fixing a maximum penalty of a fine of not more than 20 penalty units.

Non-application of Statutory Instruments Act, pt 7

60. The *Statutory Instruments Act 1992*, part 7 does not apply to the *Drugs Misuse Regulation 1987*.

Transitional—offences committed before the enactment of Drugs Misuse Amendment Act 1996

62.(1) To prevent doubt, it is declared that the *Drugs Misuse Amendment Act 1996* (the “**amending Act**”) does not affect proceedings for an offence against this Act committed before the commencement of the amending Act.

(2) The proceedings may be continued or started as if the amending Act had not been passed.

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 14 March 1997. Future amendments of the Drugs Misuse Act 1986 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 44 of 1992	23 April 1993
2	to Act No. 18 of 1995	5 July 1996
3	to Act No. 49 of 1996	6 December 1996
3A	to Act No. 79 of 1996	6 February 1997

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed names and titles	2
Corrected minor errors	2, 3
Obsolete and redundant provisions	2
Renumbered provisions	1, 2

6 List of legislation

Drugs Misuse Act 1986 No. 36

date of assent 5 September 1986

ss 1–2 commenced on date of assent

remaining provisions commenced 27 October 1986 (proc pubd gaz 25 October 1986 p 1242)

Note—Repealed by Criminal Code No. 37 of 1995 s 460(1) sch 4 (not yet proclaimed into force) (automatic commencement under AIA s 15DA(2) deferred to 14 June 1997 (1996 SL No. 84 s 2(2))

as amended by—

Drugs Misuse Act Amendment Act 1987 No. 53

date of assent 1 October 1987

ss 1–2 commenced on date of assent

s 10(a)(iii) commenced 6 May 1989 (proc pubd gaz 6 May 1989 p 213)

remaining provisions commenced 31 October 1987 (proc pubd gaz 31 October 1987 p 819)

Corrective Services (Consequential Amendments) Act 1988 No. 88 s 3 sch 1

date of assent 1 December 1988

commenced 15 December 1988 (see s 2(2) of Act and order publ gaz 10 December 1988 p 1675)

Bail Act and Other Acts Amendment Act 1988 No. 105 pt 5 (as amended by Act No. 38 of 1989)

date of assent 14 December 1988

commenced 4 December 1989 (proc publ gaz 11 November 1989 p 1961)

Drugs Misuse Act Amendment Act 1989 No. 34

date of assent 28 April 1989

ss 1–2 commenced on date of assent

remaining provisions commenced 6 May 1989 (proc publ gaz 6 May 1989 p 213)

Drugs Misuse Act Amendment Act 1990 No. 9

date of assent 25 May 1990

ss 1–2 commenced on date of assent

s 10 never proclaimed into force and om 1995 No. 18 s 9

remaining provisions commenced 11 August 1990 (proc publ gaz 11 August 1990 p 2249)

Statute Law (Miscellaneous Provisions) Act 1990 No. 88 s 3 sch

date of assent 6 December 1990

commenced on date of assent

Juvenile Justice Act 1992 No. 44 ss 1–2, 235 sch 3

date of assent 19 August 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 1993 (1993 SL No. 313)

Statute Law (Miscellaneous Provisions) Act 1993 No. 32 ss 1–3 sch 2

date of assent 3 June 1993

commenced on date of assent

Drugs Misuse Amendment Act 1995 No. 18

date of assent 11 April 1995

ss 1–2 commenced on date of assent

s 6 commenced 8 December 1995 (1995 SL No. 358)

remaining provisions commenced 12 April 1996 (automatic commencement under AIA s 15DA(2))

Drugs Misuse Amendment Act 1996 No. 49

date of assent 15 November 1996

commenced on date of assent

Health Legislation Amendment Act (No. 2) 1996 No. 61 ss 1–2, 15 sch

date of assent 9 December 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 20 December 1996 (1996 SL No. 402)

Justice Legislation (Miscellaneous Provisions) Act 1996 No. 79 pts 1, 11

date of assent 12 December 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 28 February 1997 (1997 SL No. 35)

7 List of annotations**Commencement**

s 2 om R1 (see RA s 37)

Arrangement of Act

s 3 om R1 (see RA s 36)

Interpretation

- s 4 amd 1988 No. 88 s 3 sch 1; 1989 No. 34 s 4(b); 1990 No. 9 s 4(b);
1996 No. 49 s 3(2)
def “**approved form**” ins 1995 No. 18 s 3 sch
def “**correctional institution**” ins 1989 No. 34 s 4(a)(i)
def “**dangerous drug**” amd 1996 No. 49 s 3(1)
def “**educational institution**” ins 1989 No. 34 s 4(a)(ii)
amd 1993 No. 32 s 3 sch 2
def “**intellectually handicapped citizen**” ins 1989 No. 34 s 4(a)(iii)
def “**medical practitioner**” ins 1987 No. 53 s 4
om 1995 No. 18 s 3 sch
def “**Minister**” ins 1990 No. 9 s 4(a)
om 1995 No. 18 s 3 sch
def “**pharmacist**” ins 1989 No. 34 s 4(a)(iii)
def “**police officer**” sub 1989 No. 34 s 4(a)(iv); 1995 No. 18 s 3 sch
def “**visual surveillance device**” ins 1989 No. 34 s 4(a)(v)

Trafficking in dangerous drugs

- s 5 amd 1988 No. 88 s 3 sch 1; 1989 No. 34 s 5; 1990 No. 9 s 5; 1996 No. 49
s 4; 1996 No. 79 s 36

Supplying dangerous drugs

- s 6 amd 1988 No. 88 s 3 sch 1
sub 1989 No. 34 s 6; 1990 No. 9 s 6
amd 1996 No. 49 s 5

Receiving or possessing property obtained from trafficking or supplying

- s 7 amd 1988 No. 88 s 3 sch 1; 1990 No. 9 s 7

Producing dangerous drugs

- s 8 amd 1988 No. 88 s 3 sch 1; 1989 No. 34 s 7; 1990 No. 9 s 8; 1996 No. 49
s 6

Publishing or possessing instructions for producing dangerous drugs

- s 8A ins 1996 No. 49 s 7

Possessing dangerous drugs

s 9 amd 1988 No. 88 s 3 sch 1; 1989 No. 34 s 8; 1990 No. 9 s 9; 1996 No. 49 s 8

Possessing things

s 10 amd 1987 No. 53 s 5; 1988 No. 88 s 3 sch 1; 1989 No. 34 s 9; 1995 No. 18 s 3 sch

Possessing suspected property

s 10A ins 1989 No. 34 s 10

Permitting use of place

s 11 amd 1988 No. 88 s 3 sch 1

Certain offences may be dealt with summarily

s 13 amd 1987 No. 53 s 6; 1988 No. 88 s 3 sch 1; 1989 No. 34 s 11; 1996 No. 49 s 9

Power to search

s 18 amd 1987 No. 53 s 7; 1995 No. 18 s 3 sch

Police officers to supply information

s 19 amd 1990 No. 9 s 10 (never proclaimed into force and om 1995 No. 18 s 9)

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

s 19A ins 1995 No. 18 s 4

Register of searches

s 20 amd 1995 No. 18 s 3 sch

Persons arrested may be taken to places for investigation

s 21 amd 1987 No. 53 s 8

Power to require name, address

s 22 amd 1987 No. 53 s 9

Interception warrant

s 25 amd 1988 No. 88 s 3 sch 1; 1989 No. 34 s 12; 1990 No. 9 s 11

Emergency permit

s 26 amd 1989 No. 34 s 13

Power of entry

s 27 amd 1989 No. 34 s 14

Commissioner to report

s 29A ins 1989 No. 34 s 15

Interpretation

s 30 amd 1989 No. 34 s 16; 1992 No. 44 s 235 sch 3

Forfeiture of dangerous drugs

s 32 amd 1989 No. 34 s 17; 1990 No. 9 s 12

Effect of forfeiture

s 36 amd 1995 No. 18 s 3 sch

Restraining order

s 41 amd 1988 No. 88 s 3 sch 1; 1995 No. 18 s 3 sch

PART 5A—CONTROLLED SUBSTANCES INFORMATION REQUIREMENTS

pt hdg ins 1995 No. 18 s 5

Definitions

s 43A ins 1995 No. 18 s 5

def “**chief executive for health**” ins 1996 No. 61 s 15 sch

def “**controlled substance**” amd 1996 No. 49 s 10

def “**official identity card**” amd 1996 No. 61 s 15 sch

Application of part

s 43B ins 1995 No. 18 s 5

What is a relevant transaction

s 43C ins 1995 No. 18 s 5

Requirements for supply of controlled substance under relevant transactions

s 43D ins 1995 No. 18 s 5

Requirement to report loss or theft of controlled substance

s 43E ins 1995 No. 18 s 5

Employee’s liability

s 43F ins 1995 No. 18 s 5

False name or address

s 43G ins 1995 No. 18 s 5

Production or display of authorised officer’s official identity card

s 43H ins 1995 No. 18 s 5

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

s 43I ins 1995 No. 18 s 5

Power to seize evidence

s 43J ins 1995 No. 18 s 5

Receipt for seized things

s 43K ins 1995 No. 18 s 5

Procedure after thing seized

s 43L ins 1995 No. 18 s 5

Forfeiture on conviction

s 43M ins 1995 No. 18 s 5

Dealing with forfeited things

s 43N ins 1995 No. 18 s 5

Power to require name and address

s 43O ins 1995 No. 18 s 5

Police officer may arrest without warrant

s 43P ins 1995 No. 18 s 5

Obstruction of authorised officers

s 43Q ins 1995 No. 18 s 5

Responsibility for acts or omissions of representatives

s 43R ins 1995 No. 18 s 5

Executive officers must ensure corporation complies with part

s 43S ins 1995 No. 18 s 5

Compensation

s 43T ins 1995 No. 18 s 5

Evidence of controlled substance by label

s 43U ins 1995 No. 18 s 5

Evidence of controlled substance—notice of challenge required

s 43V ins 1995 No. 18 s 5

Attempt to commit offence

s 44A ins 1989 No. 34 s 18

Proceedings for offences

s 45 amd 1987 No. 53 s 10; 1988 No. 105 s 34

Protection of informers

s 46 amd 1988 No. 88 s 3 sch 1

Source of information not to be disclosed

s 47 amd 1989 No. 34 s 19

Power to prohibit publication of proceedings

s 48 amd 1988 No. 88 s 3 sch 1; 1992 No. 44 s 235 sch 3; 1995 No. 18 s 3 sch

Certain proceedings relating to sentence may be determined in chambers

s 49 amd 1988 No. 88 s 3 sch 1; 1990 No. 9 s 13

Defence of supply of lawfully prescribed drug in a small quantity

s 51 amd 1996 No. 49 s 11

Prescribed persons permitted to receive and dispose of dangerous drugs

s 52A ins 1989 No. 34 s 20
amd 1990 No. 88 s 3 sch; 1993 No. 32 s 3 sch 2; 1995 No. 18 s 3 sch;
1996 No. 49 s 12

Power to fine

s 54 amd 1988 No. 88 s 3 sch 1; 1990 No. 9 s 14; 1995 No. 18 s 3 sch

Analyst's certificate

s 56 amd 1995 No. 18 s 6

Receiving or possessing some only of the property alleged

s 58 amd 1989 No. 34 s 21

Chief executive may approve forms

s 58A ins 1995 No. 18 s 3 sch

Regulation-making power

- prov hdg** sub 1996 No. 49 s 13(1)
s 59 sub 1995 No. 18 s 7
 amd 1996 No. 49 s 13(2)–(3)

Non-application of Statutory Instruments Act, pt 7

- s 60** prev s 60 om R1 (see RA s 40)
 pres s 60 ins 1996 No. 49 s 14

Transitional declaration for Drugs Misuse Amendment Act 1996

- s 61** prev s 61 ins 1990 No. 9 s 15
 om 1995 No. 18 s 3 sch
 pres s 61 ins 1996 No. 49 s 14
 exp 16 November 1996 (see s 61(2))
 om R3 (see RA s 37)

Transitional—offences committed before the enactment of Drugs Misuse Amendment Act 1996

- s 62** ins 1996 No. 49 s 14

SCHEDULE 1

- amd 1996 No. 49 s 15
 (prev reg pubd gaz 31 October 1987 pp 836–47, sch 1)
 reloc 1996 No. 49 s 21

SCHEDULE 2

- amd 1987 No. 53 s 11; 1989 No. 34 s 22; 1996 No. 49 s 16
 (prev reg pubd gaz 31 October 1987 pp 836–47, sch 2)
 prev 1996 No. 49 s 21

SCHEDULE 3

- amd 1987 No. 53 s 12; 1989 No. 34 s 23
 sub 1990 No. 88 s 3 sch
 amd 1996 No. 49 s 17
 (prev reg pubd gaz 31 October 1987 pp 836–47, sch 3)
 reloc 1996 No. 49 s 21

SCHEDULE 4

- amd 1996 No. 49 s 18
 (prev reg pubd gaz 31 October 1987 pp 836–47, sch 4)
 reloc 1996 No. 49 s 21

SCHEDULE 5

- amd 1987 No. 53 s 13; 1996 No. 49 s 19
 (prev reg pubd gaz 31 October 1987 pp 836–47, sch 5)
 reloc 1996 No. 49 s 21

SCHEDULE 6

prev sch 6 om R1 (see RA s 40)

pres sch 6 ins 1995 No. 18 s 8

amd 1996 No. 49 s 20

(prev reg pubd gaz 31 October 1987 pp 836–47, sch 6)

reloc 1996 No. 49 s 21