

Queensland



# DRUGS MISUSE ACT 1986

**Reprinted as in force on 11 August 2000  
(includes amendments up to Act No. 28 of 2000)**

**Reprint No. 4D**

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# Information about this reprint

This Act is reprinted as at 11 August 2000. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

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 11 August 2000]

**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*.

### Definitions

4. In this Act—

“**analyst**” means a person who, under section 4C, is appointed as, or declared to be, an analyst.

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

“**authorised health officer**” see section 14.

“**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

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<sup>1</sup> Section 58A (Chief executive may approve forms)

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- (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.

**“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, 2 or 2A 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 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.



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**“environmental health officer”** means an environmental health officer appointed as an inspector under the *Health Act 1937*, section 27.<sup>2</sup>

**“intellectually handicapped citizen”** means an intellectually handicapped citizen within the meaning of the *Intellectually Handicapped Citizens Act 1985*.<sup>3</sup>

**“official identity card”**, of an authorised health officer or an environmental health officer, means an identity card issued by the chief executive for health containing a recent photograph of the officer and identifying the officer as an officer under the *Health Act 1937*.

**“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.

**“prescribed substance”** means—

- (a) a dangerous drug specified in the *Drugs Misuse Regulation 1987*, schedule 2A; or
- (b) a controlled substance.

**“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, 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);

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<sup>2</sup> *Health Act 1937*, section 27 (Appointment of officers)

<sup>3</sup> *Intellectually Handicapped Citizens Act 1985* was renamed the *Intellectually Disabled Citizens Act 1985* by the *Intellectually Handicapped Citizens Act Amendment Act 1989*, s 4 and subsequently repealed by the *Guardianship and Administration Act 2000*, s 262.

- (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.

### **Salts, derivatives and stereo-isomers**

**4A.** It is hereby declared that—

- (a) a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1, 2 or 2A; 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.

### **Construction of particular terms**

**4B.** 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.

### **Analysts**

**4C.(1)** The Minister may, by gazette notice, appoint as an analyst for this Act, a person the Minister is satisfied has the qualifications, standing and experience necessary to be an analyst for this Act.

**(2)** Also, a regulation may declare a person who holds a stated appointment, qualification or other recognition under the law of another

State or the Commonwealth as an analyst, whether that or another term is used, to be an analyst for this Act.

## **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;
- (c) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2A—5 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;

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- (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;
- (e) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2A—5 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, (“**offence property**”) 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—

- (a) if the offence or act, from the commission of which the offence property was obtained, related to a dangerous drug that is a thing

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specified in the *Drugs Misuse Regulation 1987*, schedule 1 or 2—20 years imprisonment; or

- (b) if the offence or act, from the commission of which the offence property was obtained, related to a dangerous drug that is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2A—5 years imprisonment.

(2) Where the offence property 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 offence property has been mortgaged, pledged or exchanged or into which the same has been converted; and
- (d) that the offence property 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 offence property has been mortgaged, pledged or exchanged or into which the offence property has been converted, is guilty of a crime.

Maximum penalty—

- (a) if the offence or act, from the commission of which the offence property was obtained, related to a dangerous drug that is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 or 2—20 years imprisonment; or
- (b) if the offence or act, from the commission of which the offence property was obtained, related to a dangerous drug that is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2A—5 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;
- (f) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2A—5 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;
- (c) if the dangerous drug to which the instructions relate is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2A—2 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;

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- (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 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;
- (e) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2A—2 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—

- (a) if possession of the thing is for use, or has been used, in connection with the commission of a crime relating to a dangerous drug that is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 or 2—15 years imprisonment; or



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- (b) if possession of the thing is for use, or has been used, in connection with the commission of a crime relating to a dangerous drug that is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2A—2 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.<sup>4</sup>

Maximum penalty—2 years imprisonment.

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<sup>4</sup> Earlier reprints of this Act incorrectly showed this provision as subsection (4B).

(6) For subsection (1), the dangerous drug to which the commission of a crime relates is the dangerous drug directly or indirectly involved and in relation to which proof is required to establish the commission of the crime.

*Example—*

Suppose a person is guilty of a crime against this section because he or she has in his or her possession equipment for use in connection with the commission of a crime defined in section 8 of unlawfully producing a dangerous drug. That dangerous drug is the dangerous drug referred to in the penalty for subsection (1).

### **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 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.

(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.

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(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.(1)** 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—

- (a) if the place is permitted to be used for the commission of a crime in relation to a dangerous drug that is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 or 2—15 years imprisonment; or
- (b) if the place is permitted to be used for the commission of a crime in relation to a dangerous drug that is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2A—2 years imprisonment.

(2) For subsection (1), the dangerous drug to which the commission of a crime relates is the dangerous drug directly or indirectly involved and in relation to which proof is required to establish the commission of the crime.

*Example—*

Suppose a person is guilty of a crime against this section because, being the occupier of a place, he or she permitted another person to use the place for the commission of a crime defined in section 8A of publishing instructions about the way to produce a dangerous drug. That dangerous drug is the dangerous drug referred to in the penalty for subsection (1).

### **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 not more than 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 not more than 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 not more than 2 years imprisonment.

### **PART 3—ENFORCEMENT POWERS OF AUTHORISED HEALTH OFFICERS**

#### **Authorised health officers may exercise powers under Health Act for enforcing s 9 for particular dangerous drugs**

**14.(1)** The chief executive for health may, by signed writing, authorise an officer, or officer of a class of officer, within the meaning of the *Health Act 1937* (“**authorised health officer**”) to enforce section 9 for a dangerous drug that is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2A.

(2) For enforcing section 9, an authorised health officer may exercise the powers conferred on the officer under the *Health Act 1937*, section 132.<sup>5</sup>

#### **Production or display of officer’s official identity card**

**15.(1)** An authorised health officer may exercise a power for enforcing section 9 for a dangerous drug that is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2A in relation to someone else (the “**other person**”) only if the officer—

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<sup>5</sup> *Health Act 1937*, Section 132 (Powers of officers)

- (a) first produces the officer's official identity card for the other person's inspection; or
- (b) has the official identity card displayed so that it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised health officer must produce the official identity card for the other person's inspection at the first reasonable opportunity.

## 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)** If a court is satisfied beyond reasonable doubt that a thing, or any part of it, is any of the following, the court may, on application made to it, order that all or any part of the thing be forfeited to the State—

- (a) a dangerous drug;
- (b) a chemical used or intended to be used in or for manufacturing a dangerous drug;
- (c) property contaminated by a chemical used in or for manufacturing a dangerous drug.

(2) The application may be made in the absence of any other party.

(3) If, in a proceeding against a person for a charge of an offence against a provision of part 2, the person admits to a court either of the following in relation to a thing the charge alleges is or contains a dangerous drug, the court may order that the thing be forfeited to the State—

- (a) the identity and quantity of the dangerous drug;
- (b) the quantity, but not the identity of the thing alleged to be a dangerous drug.

(4) If the court makes an order on an application under subsection (1) or (3), in relation to a thing that is or contains a dangerous drug, the court must, in its order, make a finding of fact as to—

- (a) the identity of the dangerous drug; and

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(b) the quantity of the thing ordered to be forfeited.

(5) However, the court may not make an order of fact as to the identity of a dangerous drug unless, under subsection (3), the person charged admits the identity of the dangerous drug.

(6) Production in proceedings in respect of a charge against a person of having committed an offence defined in part 2 of an order made under subsection (1) or (3) is, unless the contrary is proved, conclusive evidence of the matters contained therein.

(7) Subsection (6) applies in relation to an order made under subsection (1) on or after the commencement of this subsection only if a representative sample of the thing forfeited is retained for analysis and, if required, production before a court in a proceeding for a charge of an offence to which the thing relates.

(8) If a court finds a person guilty of an offence against a provision of part 2, whether or not a conviction is recorded for the offence, any of the following that is alleged to be involved in the offence is forfeited to the State—

- (a) a dangerous drug for which an order was not made under subsection (1) or (3);
- (b) a chemical used or intended to be used in or for manufacturing a dangerous drug;
- (c) property contaminated by a chemical used in or for manufacturing a dangerous drug.

(9) 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.



**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

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- (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

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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 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 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.

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(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;

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- (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 financial institution 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 financial institution, 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 financial institution 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—

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

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

**“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 43D<sup>6</sup>

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<sup>6</sup> Section 43D (Requirements for supply of controlled substance under relevant transactions)

- section 43E.<sup>7</sup>

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

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

Maximum penalty—

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

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

### **False name or address**

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

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

Maximum penalty—20 penalty units.

### **Production or display of officer's official identity card**

**43H.(1)** An environmental health officer may exercise a power under this part in relation to someone else (the "**other person**") only if the officer—

- (a) first produces the officer's official identity card for the other person's inspection; or

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<sup>7</sup> Section 43E (Requirement to report loss or theft of controlled substance)

- (b) has the official identity card displayed so that it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the environmental health officer must produce the official identity card for the other person's inspection at the first reasonable opportunity.

### **Environmental health officer may enter person's premises and inspect register and documents**

**43I.(1)** If an environmental health officer suspects on reasonable grounds a person has supplied a controlled substance to anyone else under a relevant transaction, the environmental health 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 environmental health 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 environmental health officer reasonable help to exercise the powers mentioned in paragraphs (b) and (c).

*Example of paragraph (d)—*

An environmental health 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 environmental health 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 environmental health 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 environmental health 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 environmental health 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 environmental health officer may take extracts from or make copies of it.

(3) The environmental health 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 environmental health 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 environmental health officer may require a person to state the person's name and address if the environmental health 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 environmental health 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 environmental health 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 43D<sup>8</sup>
  - section 43F(3).<sup>9</sup>

(2) When making the requirement, the environmental health 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 environmental health 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 environmental health officer required the person to state the person's name and address on suspicion of the person having committed an offence against this part; and
  - (b) the person is not proved to have committed the offence.

### **Obstruction of environmental health officers**

**43Q.** A person must not obstruct an environmental health officer in the exercise of a power under this part, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

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<sup>8</sup> Section 43D (Requirements for supply of controlled substance under relevant transactions)

<sup>9</sup> Section 43F (Employee's liability)

**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 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 environmental health 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.

## **PART 5B—TRIAL PLANTING OF CANNABIS SATIVA FOR COMMERCIAL FIBRE PRODUCTION**

### **Purpose of pt 5B**

**43W.** The purpose of this part is to enable research to be carried out under controlled conditions into the suitability of low-level drug content cannabis sativa as a commercial fibre crop.

### **Exemption—trial planting of cannabis sativa for research purposes**

**43X.(1)** A regulation may exempt a person from compliance with stated provisions of this Act for the time and on conditions stated in the regulation.

**(2)** The regulation may authorise a stated person to possess lawfully obtained seed of cannabis sativa that will produce low-level drug content cannabis sativa plants.

**(3)** However, a regulation for this section may only be made to enable the person to grow low-level drug content cannabis sativa and perform research functions, including plant-breeding, consistent with the purpose of this part.

**(4)** The exemption operates only if the conditions of the exemption are complied with.

**(5)** In this section—

**“low-level”** means—

- (a)** for a plant of cannabis sativa used for plant breeding—the leaves and flowering heads of the plant contain not more than 1% of tetrahydrocannabinol; or
- (b)** for a plant of cannabis sativa used for field trials—the leaves and flowering heads of the plant contain not more than 0.35% of tetrahydrocannabinol.

### **Expiry of pt 5B**

**43Y.(1)** This part expires 3 years after it commences.

**(2)** However, a regulation made before the end of the 3 years may defer the expiry of this part, but only for 1 year.

## **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.

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**(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<sup>10</sup> 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.<sup>11</sup>

### **Protection of informers**

**46.(1)** Where an informer supplies information to a police officer in

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<sup>10</sup> *Justices Act 1886*, section 139 (Where summary cases to be heard) or *Bail Act 1980*, section 33A (Certain offences may be dealt with)

<sup>11</sup> *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)



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—

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- (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 *Child Protection Act 1999*, sections 186 and 187<sup>12</sup> and the *Juvenile Justice Act 1992*.

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<sup>12</sup> *Child Protection Act 1999*, sections 186 (Prohibition of publication of certain information for proceedings) and 187 (Restrictions on reporting certain court proceedings) were renumbered as sections 192 and 193 under the *Child Protection Act 1999*, s 193A

**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<sup>13</sup> shall have no application when a person has been summarily convicted of a crime defined in this Act.

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<sup>13</sup> Criminal Code, section 659 (Effect of summary conviction for indictable offences)

**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—

- (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.

**Prescribed persons permitted to receive and dispose of dangerous drugs**

**52A.(1)** 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—

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- (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.

(2) It is lawful for a person who—

- (a) as an officer or employee of the department within which the *Health Act 1937* is administered, performs duties that include duties as a property officer for the police service; and
- (b) is authorised under that Act;

to possess a dangerous drug while actually performing the duties.

(3) It is lawful for a person who, as a staff member within the meaning of the *Police Service Administration Act 1990*, section 1.4, is performing the duties of a property officer in the police service, to possess a dangerous drug while actually performing the duties.

### **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
- (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.

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- (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 the 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).<sup>14</sup>

**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 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;

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<sup>14</sup> Section 32 (Forfeiture of dangerous drugs)

- (d) the operation of the Criminal Code, section 24<sup>15</sup> 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.

### **Evidence of prescribed substance by label**

**57A.(1)** This section applies if, in a proceeding for an offence against this Act, it is relevant to prove that a substance owned or supplied by, or in the possession of, a person was a prescribed substance.

**(2)** The substance is proved to have been a prescribed substance if—

- (a) there is evidence that the container containing the substance had a label indicating the substance was a prescribed substance; and
- (b) a police officer, authorised health officer or environmental health officer gives evidence that the police officer, authorised health officer or environmental health officer believes the container contained a prescribed substance; and
- (c) written notice mentioned in section 57B(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 authorised health officer or an environmental health—the chief executive for health; and
- (d) the court considers the belief mentioned in paragraph (b) to be reasonably held; and
- (e) there is no evidence to the contrary.

### **Evidence of prescribed substance—notice of challenge required**

**57B.(1)** This section applies if a summons has been served on a person

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<sup>15</sup> Criminal Code, section 24 (Mistake of fact)



for, or a person has been charged with, an offence to which section 57A applies.

(2) A notice in the approved form 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.<sup>16</sup>

(4) The notice must inform the person that, if the person intends challenging that a substance claimed in the charge to be a prescribed substance was a prescribed substance, the person must give written notice of challenge to—

- (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 authorised health officer or an environmental health officer—the chief executive for health.

(5) The notice of challenge must be given to the commissioner or chief executive at least 14 days before the day fixed for the hearing of the offence.

(6) 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.

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

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

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

### **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

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<sup>16</sup> *Justices Act 1886*, section 56 (Service of summonses)

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 5A<sup>17</sup> must be kept;
- (b) making provision for anything about the supply of a controlled substance under a relevant transaction for which part 5A does not make provision or adequate provision;
- (c) exempting a person from compliance with the whole, or part, of part 5A with or without conditions;
- (d) prescribing 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.

### **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

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<sup>17</sup> Part 5A (Controlled substances information requirements)

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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 11 August 2000. 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                             |
| amdt   | = | amendment                    | prov   | = | provision                                |
| ch     | = | chapter                      | pt     | = | part                                     |
| def    | = | definition                   | pubd   | = | published                                |
| div    | = | division                     | R[X]   | = | Reprint No.[X]                           |
| exp    | = | expires/expired              | RA     | = | Reprints Act 1992                        |
| gaz    | = | gazette                      | reloc  | = | relocated                                |
| hdg    | = | heading                      | renum  | = | renumbered                               |
| ins    | = | inserted                     | rep    | = | repealed                                 |
| lap    | = | lapsed                       | s      | = | section                                  |
| notfd  | = | notified                     | sch    | = | schedule                                 |
| o in c | = | order in council             | sdiv   | = | subdivision                              |
| om     | = | omitted                      | SIA    | = | Statutory Instruments Act 1992           |
| orig   | = | original                     | SIR    | = | Statutory Instruments<br>Regulation 1992 |
| p      | = | page                         | SL     | = | subordinate legislation                  |
| para   | = | paragraph                    | sub    | = | substituted                              |
| prec   | = | preceding                    | unnum  | = | unnumbered                               |
| pres   | = | present                      |        |   |  |
| prev   | = | previous                     |        |   |  |

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman 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  |
| 3B          | to Act No. 79 of 1996 | 14 March 1997    |
| 3C          | to Act No. 17 of 1997 | 4 July 1997      |
| 3D          | to Act No. 48 of 1997 | 21 November 1997 |
| 3E          | to Act No. 19 of 1998 | 8 April 1998     |
| 3F          | to Act No. 41 of 1998 | 2 March 1999     |
| 4           | to Act No. 19 of 1999 | 6 November 1999  |
| 4A          | to Act No. 19 of 1999 | 24 March 2000    |
| 4B          | to Act No. 5 of 2000  | 7 April 2000     |
| 4C          | to Act No. 22 of 2000 | 14 July 2000     |

## 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**—This Act was to have been repealed by the Criminal Code No. 37 of 1995 s 460(1) sch 4 but the 1995 Code was never proclaimed into force and was repealed by 1997 No. 3 s 121

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) and order pubd gaz 10 December 1988 p 1675)

### **Bail Act and Other Acts Amendment Act 1988 No. 105 pt 5**

date of assent 14 December 1988

commenced 4 December 1989 (proc pubd 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 pubd 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 from 1995 No. 18 s 9

remaining provisions commenced 11 August 1990 (proc pubd 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)

**Miscellaneous Acts (Non-bank Financial Institutions) Amendment Act 1997 No. 17 ss 1–2, 74 sch**

date of assent 15 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 163)

**Weapons and Other Legislation Amendment Act 1997 No. 48 ss 1, 2(2), pt 3**

date of assent 29 August 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 14 November 1997 (1997 SL No. 381)  
rep 31 December 1998 (see s 58)

**Police and Other Legislation (Miscellaneous Provisions) Act 1998 No. 19 ss 1, 2(2)–(3) pt 3**

date of assent 26 March 1998

s 18 commenced 25 January 1995 (see s 2(2))

s 19 commenced 18 December 1998 (1998 SL No. 373)

remaining provisions commenced on date of assent

**Health and Other Legislation Amendment Act 1998 No. 41 ss 1, 2(2), 14(1) sch 1**

date of assent 27 November 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 21 December 1998 (1998 SL No. 346)

**Child Protection Act 1999 No. 10 ss 1–2(2), 205 sch 3**

date of assent 30 March 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 23 March 2000 (2000 SL No. 45)

**Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch**

date of assent 30 April 1999

commenced on date of assent

**Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 373 sch 2, 461 (prev s 373) sch 3**

date of assent 23 March 2000

ss 1–2, 373 sch 2 commenced on date of assent (see s 2(2))

remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

**Police Powers and Responsibilities and Other Acts Amendment Act 2000 No. 22 pts 1, 3**

date of assent 23 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2)

**Drugs Misuse Amendment Act 2000 No. 28 pts 1–2**

date of assent 27 July 2000

commenced on date of assent

## 7 List of annotations

**Commencement**

s 2 om R1 (see RA s 37)

**Arrangement of Act**

s 3 om R1 (see RA s 36)

**Definitions**

prov hdg sub 1998 No. 19 s 16(1)

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 “analyst” sub 1998 No. 19 s 16(2)



- def “**approved form**” ins 1995 No. 18 s 3 sch  
 def “**authorised health officer**” ins 2000 No. 28 s 3(1)  
 def “**chief executive for health**” reloc from s 43A 2000 No. 28 s 15(2)  
 def “**controlled substance**” reloc from s 43A 2000 No. 28 s 15(2)  
 def “**correctional institution**” ins 1989 No. 34 s 4(a)(i)  
 def “**dangerous drug**” amd 1996 No. 49 s 3(1); 2000 No. 28 s 3(2)  
 def “**educational institution**” ins 1989 No. 34 s 4(a)(ii)  
     amd 1993 No. 32 s 3 sch 2  
 def “**environmental health officer**” reloc from s 43A 2000 No. 28  
     s 15(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 “**official identity card**” ins 2000 No. 28 s 3(1)  
 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 “**prescribed substance**” ins 2000 No. 28 s 3(1)  
 def “**visual surveillance device**” ins 1989 No. 34 s 4(a)(v)  
 (2)–(3) renum as ss 4A–4B 1998 No. 19 s 16(5)

**Salts, derivatives and stereo-isomers**

- prov hdg** ins 1998 No. 19 s 16(3)  
**s 4A** (prev s 4(2)) renum 1998 No. 19 s 16(5)  
     amd 2000 No. 28 s 4

**Construction of particular terms**

- prov hdg** ins 1998 No. 19 s 16(4)  
**s 4B** (prev s 4(3)) renum 1998 No. 19 s 16(5)

**Analysts**

- s 4C** ins 1998 No. 19 s 17

**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; 2000 No. 28 s 5

**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; 2000 No. 28 s 6

**Receiving or possessing property obtained from trafficking or supplying**

- s 7** amd 1988 No. 88 s 3 sch 1; 1990 No. 9 s 7; 2000 No. 28 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; 2000 No. 28 s 8

**Publishing or possessing instructions for producing dangerous drugs**

- s 8A** ins 1996 No. 49 s 7  
     amd 2000 No. 28 s 9

**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; 2000 No. 28 s 10

**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; 2000 No. 5 s 461 sch 3; 2000 No. 28 s 11

**Possessing suspected property**

**s 10A** ins 1989 No. 34 s 10  
amd 2000 No. 5 s 461 sch 3

**Permitting use of place**

**s 11** amd 1988 No. 88 s 3 sch 1; 2000 No. 28 s 12

**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; 2000 No. 28 s 13

**PART 3—ENFORCEMENT POWERS OF AUTHORISED HEALTH OFFICERS**

**pt hdg** prev pt 3 hdg om 2000 No. 5 s 373 sch 2  
pres pt 3 hdg ins 2000 No. 28 s 14

**Authorised health officers may exercise powers under Health Act for enforcing s 9 for particular dangerous drugs**

**s 14** prev s 14 om 2000 No. 5 s 373 sch 2  
pres s 14 ins 2000 No. 28 s 14

**Production or display of officer's official identity card**

**s 15** prev s 15 om 2000 No. 5 s 373 sch 2  
pres s 15 ins 2000 No. 28 s 14

**Who may conduct personal searches**

**s 16** om 2000 No. 5 s 373 sch 2

**Internal and body cavity searches**

**s 17** om 2000 No. 5 s 373 sch 2

**Power to search**

**s 18** amd 1987 No. 53 s 7; 1995 No. 18 s 3 sch  
om 2000 No. 5 s 373 sch 2

**Police officers to supply information**

**s 19** amd 1990 No. 9 s 10 (never proclaimed into force and om 1995 No. 18 s 9)  
om 2000 No. 5 s 373 sch 2

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

**s 19A** ins 1995 No. 18 s 4  
om 2000 No. 5 s 373 sch 2

**Register of searches**

**s 20** amd 1995 No. 18 s 3 sch  
om 2000 No. 5 s 373 sch 2

**Persons arrested may be taken to places for investigation**

**s 21**      amd 1987 No. 53 s 8  
               om 2000 No. 5 s 373 sch 2

**Power to require name, address**

**s 22**      amd 1987 No. 53 s 9  
               om 2000 No. 5 s 373 sch 2

**Fingerprints etc.**

**s 23**      om 2000 No. 5 s 373 sch 2

**PART 4—TRACKING AND LISTENING DEVICES**

**pt hdg**     om 2000 No. 5 s 373 sch 2

**Use of tracking devices by police**

**s 24**      om 2000 No. 5 s 373 sch 2

**Interception warrant**

**s 25**      amd 1988 No. 88 s 3 sch 1; 1989 No. 34 s 12; 1990 No. 9 s 11  
               om 2000 No. 5 s 373 sch 2

**Emergency permit**

**s 26**      amd 1989 No. 34 s 13  
               om 2000 No. 5 s 373 sch 2

**Power of entry**

**s 27**      amd 1989 No. 34 s 14  
               om 2000 No. 5 s 373 sch 2

**Applications subject to certain provisions, conditions etc.**

**s 28**      om 2000 No. 5 s 373 sch 2

**Application of the Invasion of Privacy Act**

**s 29**      om 2000 No. 5 s 373 sch 2

**Commissioner to report**

**s 29A**     ins 1989 No. 34 s 15  
               om 2000 No. 5 s 373 sch 2

**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; 1998 No. 19 s 18; 2000 No. 22  
               s 31

**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; 1997 No. 17 s 74 sch

**Procedure upon application for restraining order**

**s 42**      amd 1997 No. 17 s 74 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 **“authorised officer”** sub 2000 No. 5 s 373 sch 2  
 om 2000 No. 28 s 15(1)  
 def **“chief executive for health”** ins 1996 No. 61 s 15 sch  
 reloc to s 4 2000 No. 28 s 15(2)  
 def **“controlled substance”** amd 1996 No. 49 s 10  
 reloc to s 4 2000 No. 28 s 15(2)  
 def **“environmental health officer”** reloc to s 4 2000 No. 28 s 15(2)  
 def **“official identity card”** amd 1996 No. 61 s 15 sch; 2000 No. 5 s 373  
 sch 2  
 om 2000 No. 28 s 15(1)

**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 officer’s official identity card**

- s 43H** ins 1995 No. 18 s 5  
 amd 2000 No. 5 s 373 sch 2  
 sub 2000 No. 28 s 16

**Environmental health officer may enter person’s premises and inspect register and documents**

- prov hdg** amd 2000 No. 28 s 17(1)  
**s 43I** ins 1995 No. 18 s 5  
 amd 2000 No. 28 s 17(2)

**Power to seize evidence**

- s 43J** ins 1995 No. 18 s 5  
 amd 2000 No. 28 s 18

**Receipt for seized things**

- s 43K** ins 1995 No. 18 s 5  
 amd 2000 No. 28 s 19

**Procedure after thing seized**

- s 43L** ins 1995 No. 18 s 5  
 amd 2000 No. 28 s 20

**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  
amd 2000 No. 28 s 21**Police officer may arrest without warrant**s 43P ins 1995 No. 18 s 5  
om 2000 No. 5 s 461 sch 3**Obstruction of environmental health officers**prov hdg amd 2000 No. 28 s 22(1)  
s 43Q ins 1995 No. 18 s 5  
amd 2000 No. 5 s 373 sch 2; 2000 No. 28 s 22(2)**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  
amd 2000 No. 28 s 23**Evidence of controlled substance by label**s 43U ins 1995 No. 18 s 5  
om 2000 No. 28 s 24**Evidence of controlled substance—notice of challenge required**s 43V ins 1995 No. 18 s 5  
amd 1999 No. 19 s 3 sch  
om 2000 No. 28 s 24**PART 5B—TRIAL PLANTING OF CANNABIS SATIVA FOR COMMERCIAL FIBRE PRODUCTION**pt hdg ins 1998 No. 19 s 19  
exp 18 December 2001 (see s 43Y and 1998 SL No. 373)**Purpose of pt 5B**s 43W ins 1998 No. 19 s 19  
exp 18 December 2001 (see s 43Y and 1998 SL No. 373)**Exemption—trial planting of cannabis sativa for research purposes**s 43X ins 1998 No. 19 s 19  
exp 18 December 2001 (see s 43Y and 1998 SL No. 373)**Expiry of pt 5B**s 43Y ins 1998 No. 19 s 19  
exp 18 December 2001 (see s 43Y and 1998 SL No. 373)

**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; 1999 No. 10 s 205 sch 3

**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

**Police officer permitted to destroy certain property**

s 52 om 2000 No. 5 s 461 sch 3

**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; 1998 No. 19 s 20; 1998 No. 41 s 14(1) sch

**Police may use assistants and employ reasonable force**

s 53 om 2000 No. 5 s 373 sch 2

**Power to fine**

s 54 amd 1988 No. 88 s 3 sch 1; 1990 No. 9 s 14; 1995 No. 18 s 3 sch; 1999 No. 19 s 3 sch

**Analyst's certificate**

s 56 amd 1995 No. 18 s 6

**Evidence of prescribed substance by label**

s 57A ins 2000 No. 28 s 25

**Evidence of prescribed substance—notice of challenge required**

s 57B ins 2000 No. 28 s 25

**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  
              om 1997 No. 48 s 53

**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