

POISONS (AMENDMENT) BILL, 1981

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are to amend the Poisons Act, 1966 ("the Principal Act"), so as—

- (a) to provide that any substance which is represented as being one of certain other substances shall be deemed, for certain purposes, to be that other substance (Schedule 1 (4), (5) (c), (5) (f), (7) (b) and (8) (c));
- (b) to remove the requirement that a search warrant granted under section 43 (2) of the Principal Act must name a member of the police force to exercise the powers conferred thereby (Schedule 1 (9) (a));
- (c) to provide that the powers conferred upon a member of the police force by a search warrant granted under section 43 (2) of the Principal Act may be exercised by day or by night (Schedule 1 (9) (b));
- (d) to provide for the granting of search warrants by telephone to members of the police force (Schedule 1 (10)—proposed section 43A);
- (e) to provide that certain vehicles, vessels and persons may be stopped, detained and searched where it is suspected that prohibited substances are unlawfully in possession (Schedule 1 (10)—proposed section 43B);
- (f) to enable a court to order—
 - (i) that any vehicle, vessel or equipment used in the course of the commission of certain offences against the Principal Act be forfeited to Her Majesty (Schedule 1 (11)—proposed section 45AC (2) (a)); and
 - (ii) that persons convicted by it of certain offences against the Principal Act pay to Her Majesty the proceeds derived by them from the commission of those offences (Schedule 1 (11)—proposed section 45AC (2) (b));

- (g) to enable a court before which certain proceedings are being taken under the Principal Act to prohibit the disposition of the defendant's property pending determination of the proceedings (Schedule 1 (11)—proposed section 45AD);
- (h) to make certain amendments by way of statute law revision (Schedule 2); and
- (i) to make other provisions of a minor or consequential nature.

This Bill also contains savings and transitional provisions (Schedule 3).

POISONS (AMENDMENT) BILL, 1981

No. , 1981.

A BILL FOR

An Act to amend the Poisons Act, 1966, to provide for the granting of search warrants by telephone to members of the police force, to confer on members of the police force certain powers in relation to the search of vehicles, vessels and persons, to confer certain powers on courts in relation to the forfeiture of vehicles, vessels and equipment used in the commission of certain offences and the recovery of proceeds unlawfully derived by persons convicted of certain offences, and for other purposes.

[MR K. J. STEWART—15 *April*, 1981.]

Poisons (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 Short title.

1. This Act may be cited as the "Poisons (Amendment) Act, 1981".

Commencement.

2. (1) This section, section 1, section 5 in its application to Schedule 2 and Schedule 2 shall commence on the date of assent to this Act.
- 10 (2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

- 15 3. The Poisons Act, 1966, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

20 SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION.

SCHEDULE 3.—SAVINGS AND TRANSITIONAL PROVISIONS.

Poisons (Amendment).

Amendment of Act No. 31, 1966.

5. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

Savings and transitional provisions.

5 6. Schedule 3 has effect.

SCHEDULE 1.**(Sec. 5.)****AMENDMENTS TO THE PRINCIPAL ACT.**

- (1) (a) Section 4 (1), definition of "Drug of addiction"—
10 Omit the definition, insert instead:—
"Drug of addiction" means—
(a) prepared opium;
(b) Indian hemp; or
15 (c) any substance specified in Schedule Eight of the
Poisons List.
- (b) Section 4 (1), definition of "Premises"—
Omit the definition, insert instead:—
"Premises" includes any structure, building, aircraft, vehicle,
20 vessel or place (whether built upon or not), and any
part thereof.
- (c) Section 4 (1), definition of "Supply"—
Omit "sell, or", insert instead "sell and distribute, and also
includes".

Poisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) Section 16 (1) (a)—

5 After “surgeon”, insert “, and he obtains possession or attempts to obtain possession of it in the lawful practice of his profession as such”.

(3) (a) Section 17 (1) (c)—

Omit “distributed,”.

(b) Section 17 (1) (g)—

10 Omit “or distribution”.

(c) Section 17 (1) (i)—

Omit “distribution without consideration”, insert instead “free distribution”.

(4) Section 18A (3)—

15 After section 18A (2), insert:—

20 (3) Any substance (not being a restricted substance prescribed for the purposes of section 16) which, for the purpose of its being supplied, is represented (whether verbally, in writing or by conduct) as being a particular restricted substance prescribed for the purposes of section 16 shall, for the purposes of subsection (1), be deemed to be that particular restricted substance.

(5) (a) Section 21 (1) (a)—

Omit “, supplies or otherwise deals in”, insert instead “or supplies”.

(b) Section 21 (1) (c)—

25 Omit “, distribution,”.

Poisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 21 (1D)—

After section 21 (1C), insert:—

5
10
 (1D) Any substance (not being prepared opium or Indian hemp) which, for the purpose of its being supplied, is represented (whether verbally, in writing or by conduct) as being prepared opium or Indian hemp shall, for the purposes of subsection (1), be deemed to be prepared opium or Indian hemp, as the case may require.

(d) Section 21 (2) (a)—

Omit “, distribute”.

(e) Section 21 (2A) (b)—

15
 Omit “course of the practice of his profession”, insert instead “lawful practice of his profession as such”.

(f) Section 21 (5)—

After section 21 (4), insert:—

20
 (5) Any substance (not being a drug of addiction other than prepared opium or Indian hemp) which, for the purpose of its being supplied, is represented (whether verbally, in writing or by conduct) as being a particular drug of addiction other than prepared opium or Indian hemp shall, for the purposes of subsection (2A), be deemed to be that particular drug of addiction.

(6) (a) Section 24 (1) (b), (e)—

25
 Omit “, distribution, ” wherever occurring.

(b) Section 24 (1) (h)—

Omit “infamous conduct”, insert instead “misconduct”.

Poisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 24 (1) (i)—

Omit “, distribution”.

5 (7) (a) Section 32 (1) (a)—

Omit “, distributes, supplies, or otherwise deals in”, insert instead “or supplies”.

(b) Section 32 (4)—

After section 32 (3), insert:—

10

(4) Any substance (not being a prohibited drug) which, for the purpose of its being supplied, is represented (whether verbally, in writing or by conduct) as being a particular prohibited drug shall, for the purposes of subsection (1), be deemed to be that particular prohibited drug.

15 (8) (a) Section 33A (1) (b)—

Omit “or otherwise deals in”.

(b) Section 33A (1) (d)—

Omit “, or the dealing in,”.

(c) Section 33A (5)—

20

After section 33A (4), insert:—

(5) Any growing plant (not being a prohibited plant) which, for the purpose of its being supplied, is represented (whether verbally, in writing or by conduct) as being a particular prohibited plant shall, for the purposes of subsection (1), be deemed to be that particular prohibited plant.

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Poisons (Amendment).

SCHEDULE 1—continued.**AMENDMENTS TO THE PRINCIPAL ACT—continued.****(9) (a) Section 43 (2)—**

Omit “named in the warrant” where firstly occurring.

5 (b) Section 43 (2)—

After “times”, insert “(whether by day or by night)”.

(c) Section 43 (4)—

Omit “this section” wherever occurring, insert instead “subsection (1)”.

10 (d) Section 43 (5)—

After section 43 (4), insert:—

15 (5) Any person who wilfully delays or obstructs any member of the police force in the exercise of his powers under subsection (2) or (3) shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding \$2,000, or to imprisonment for a term not exceeding 2 years, or to both such penalty and imprisonment.

(10) Sections 43A, 43B—

After section 43, insert:—

20 Telephone search warrants.

43A. (1) Upon complaint made by telephone by a member of the police force to a stipendiary magistrate that the member of the police force suspects or believes that—

(a) there is, in any premises—

25 (i) a restricted substance prescribed for the purposes of section 16 in a quantity in excess of that prescribed for the purposes of section 18A (2) in respect thereof;

*Poisons (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (ii) a drug of addiction or a prohibited drug in a quantity in excess of that prescribed for the purposes of section 45A (4) in respect thereof; or

(iii) a prohibited plant,

that is, in contravention of this Act, in the possession or under the control of any person; and

10 (b) the restricted substance, drug of addiction, prohibited drug or prohibited plant, or any quantity thereof, will be destroyed or otherwise disposed of before the expiration of the period of time within which it is, having regard to all of the circumstances, reasonably practicable for him to obtain a
15 warrant under section 43 (2) in respect of those premises and exercise any powers conferred on him thereunder,

the stipendiary magistrate may, if he is satisfied that there are reasonable grounds for that suspicion or belief, grant by telephone a search warrant to the member of the police force, authorising him, together with any other member of the police force and at any time or times
20 (whether by day or by night) within 24 hours from the time the warrant is granted to enter, if need be by force, the premises named in the warrant and to search the premises and any person found therein.

25 (2) A stipendiary magistrate grants a search warrant under subsection (1) by stating the terms of the warrant by telephone to a member of the police force.

(3) Where a stipendiary magistrate grants a search warrant under subsection (1), he shall cause a record to be made in writing of—

30 (a) the name of the complainant;

(b) the details of the complaint;

(c) the terms of the warrant; and

(d) the date and time when the warrant was granted.

Poisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) A member of the police force perfects a search warrant granted to him under subsection (1)—

- 5
- (a) by causing a record to be made in writing of the terms of the warrant; and
 - (b) by endorsing the record with the name of the stipendiary magistrate by whom, and the date and time when, the warrant was granted.

10

(5) A search warrant granted under subsection (1) and perfected in accordance with subsection (4) is not invalidated by any defect, other than a defect which affects the substance of the warrant in a material particular.

15

(6) Where a member of the police force searching any premises or person pursuant to a warrant granted and perfected under this section has reasonable ground for suspecting that an offence against this Act has been committed in relation to any restricted substance prescribed for the purposes of section 16, any drug of addiction, any prohibited drug or any prohibited plant which he finds

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in those premises or in the possession of any persons found therein, he may seize and detain that substance, drug or plant and remove it from those premises.

(7) Any person who wilfully delays or obstructs any member of the police force in the exercise of his powers under this section shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding \$2,000, or to imprisonment for a term not exceeding 2 years, or to both such penalty and imprisonment.

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(8) Within 7 days after having been granted a search warrant under subsection (1), a member of the police force shall—

- 30
- (a) where he has perfected the warrant in accordance with subsection (4)—furnish the warrant to the stipendiary magistrate by whom it was granted; or

Poisons (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- 5 (b) in any other case—furnish to the stipendiary magistrate by whom the warrant was granted a statement in writing to the effect that the warrant was not perfected.

Powers of detention and search.

43B. (1) In this section—

10 “police vessel” means a vessel ordinarily used by members of the police force in the execution of their duty;

“prohibited substance” means—

- 15 (a) a restricted substance prescribed for the purposes of section 16;
- (b) a drug of addiction;
- (c) a prohibited drug; or
- 20 (d) a prohibited plant.

(2) A member of the police force of or above the rank of sergeant, or in charge of a police station or police vessel, may at any time with as many members of the police force as he thinks necessary—

- 20 (a) enter into any part of any vessel or aircraft; and
- (b) search and inspect the vessel or aircraft.

25 (3) A member of the police force of or above the rank of sergeant, or in charge of a police station or police vessel, may, for the purpose of enabling the powers conferred on members of the police force by subsection (2) to be exercised, stop and detain any vessel or aircraft in which he reasonably suspects there is any prohibited substance which is, in contravention of this Act, in the possession or under the control of any person.

Poisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) A member of the police force may stop, search and detain—

- 5 (a) any person in whose possession or under whose control he reasonably suspects there is, in contravention of this Act, any prohibited substance; or
- (b) any vehicle in which he reasonably suspects there is any prohibited substance which is, in contravention of this Act,
10 in the possession or under the control of any person.

(11) Sections 45AC, 45AD—

After section 45AB, insert:—

Orders for forfeiture of vehicles, vessels, equipment and proceeds.

45AC. (1) This section applies to the following offences:—

- 15 (a) the offence of supplying any restricted substance prescribed for the purposes of section 16 that arises under section 18A (1);
- (b) the offence of supplying prepared opium or Indian hemp that arises under section 21 (1);
- 20 (c) the offence of supplying any drug of addiction other than prepared opium or Indian hemp that arises under section 21 (2A);
- (d) the offence of supplying any prohibited drug that arises under section 32 (1); and
- 25 (e) any offence arising under section 33A.

(2) Where a court has convicted a person of an offence to which this section applies, it may, in addition to any penalty it may impose, make either or both of the following orders:—

- 30 (a) an order that any specified vehicle, vessel or equipment used in the commission of the offence be forfeited to Her Majesty;

*Poisons (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- 5 (b) an order that the person pay to Her Majesty an amount, as assessed by the court, equal to the proceeds derived by him from the commission of the offence or of any other offence to which this section applies and which the court has taken into account in imposing any such penalty.
- 10 (3) Before making an order under this section, the court may require notice to be given to, and may hear, such persons as the court thinks fit.
- (4) For the purpose of making an order against any person under subsection (2) (b), the court may—
- 15 (a) take into account such matters as the court thinks fit;
- (b) to the extent specified by the court—treat any interest in real or personal property acquired by that person by means of proceeds derived by him from the commission of an offence as proceeds derived by that person from the commission of the offence; and
- 20 (c) treat the equivalent, in money terms, of any interest in real or personal property derived by him from the commission of an offence as proceeds derived by that person from the commission of the offence.
- 25 (5) Without affecting any other right of appeal, an order under subsection (2) (a) in relation to any vehicle, vessel or equipment is appellable by any person who has an interest in the vehicle, vessel or equipment—
- 30 (a) in the case of a person convicted of the offence—in the same manner as if the order were, or were part of, a sentence imposed in respect of the offence; or
- (b) in any other case—in the same manner as if the person had been convicted of an offence to which this section applies and the order were, or were part of, a sentence imposed in respect of the offence.

Poisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (6) Without affecting any other right of appeal, an order under subsection (2) (b) is appealable in the same manner as if it were, or were part of, a sentence imposed in respect of the offence.

(7) The court to which an appeal is made in respect of an order under subsection (2) (a) may, pending the hearing and determination of the appeal, make such orders as it thinks fit for the custody of the vehicle, vessel or equipment the subject of the order.

10 (8) On appeal, an order under this section may be confirmed, revoked or varied.

15 (9) An order under subsection (2) (b) may, by leave of the court by which it was made, be enforced, irrespective of the amount ordered to be paid, as if it were a judgment in a civil matter given by that court.

(10) In this section—

“court” includes a stipendiary magistrate and any 2 justices in petty sessions;

“sentence” includes any order imposing a penalty;

20 “vehicle” includes aircraft.

Temporary restraint on disposition of property.

45AD. (1) Where—

- 25 (a) proceedings are being taken against a person for an offence to which section 45AC applies; or
- (b) an order has been made under section 45AC (2) (b) against a person,

*Poisons (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

the court before which those proceedings are being taken or by which the order has been made may, by order, prohibit—

5 (c) the person from disposing of or otherwise dealing with any interest in specified property; and

(d) any other specified person from disposing of or otherwise dealing with any interest in specified property—

10 (i) which belongs to the person referred to in paragraph (c) and in respect of which he has a power of attorney from that person or any other power of disposition; or

(ii) which he holds for or on behalf of the person referred to in paragraph (c),

15 otherwise than in such manner as may be specified in the order.

(2) Without affecting any power conferred on it by subsection (1), the Supreme Court may at any time make an order of the kind referred to in that subsection against a person—

20 (a) in respect of whom any other court may make such an order; or

(b) whom any other court has committed for trial or for sentence.

25 (3) Before making an order under this section, a court may require notice to be given to, and may hear, such persons as it thinks fit.

(4) An order under this section may be given or served in such manner as the court directs or as may be prescribed by rules of court.

30 (5) Any person who holds an interest in property the subject of an order under this section may apply for the revocation or variation of the order.

Poisons (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (6) An order under this section may be revoked or varied by the Supreme Court (subject to rules of that Court restricting the making of applications thereto) or—

- (a) where proceedings in respect of the offence are being taken—by the court before which those proceedings are being taken; or
- 10 (b) in any other case—by the court before which proceedings in respect of the offence were last taken.

15 (7) Any person to or upon whom an order made under subsection (1) or (2) is given or served in accordance with this section and who, while it is in force, acts in contravention of or fails to comply with the order shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding \$2,000, or to imprisonment for a term not exceeding 2 years, or to both such penalty and imprisonment.

(8) In this section—

20 “court” includes a stipendiary magistrate and any 2 justices in petty sessions;

“property” includes real and personal property and money.

(12) Section 45B—

Before “commission”, insert “alleged”.

Poisons (Amendment).

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

(1) Section 2—

5 From the matter relating to Division 1 of Part III, omit "18", insert instead "18A".

(2) (a) Section 4 (1), definition of "Justice"—

After the definition of "Indian hemp", insert:—

"Justice" means justice of the peace.

10 (b) Section 4 (1), definition of "Pharmacy trainee"—

From paragraph (b), omit "three", insert instead "3".

(c) Section 4 (2) (a)—

Omit "one", insert instead "1".

(3) (a) Section 6 (1)—

15 Omit "fifteen", insert instead "15".

(b) Section 6 (2) (c)—

Omit "Industry", insert instead "Health".

(c) Section 6 (2) (f)—

Omit "Police Force", insert instead "police force".

20 (d) Section 6 (2) (g)—

Omit "nine", insert instead "9".

(e) Section 6 (2) (g)—

Omit "one" wherever occurring, insert instead "1".

Poisons (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION
—*continued.*

- (f) Section 6 (4)—
5 Omit “one”, insert instead “1”.
- (g) Section 6 (8)—
Omit “three”, insert instead “3”.
- (h) Section 6 (10) (c)—
Omit the paragraph, insert instead:—
10 (c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (i) Section 6 (10) (d)—
15 Omit “four”, insert instead “4”.
- (j) Section 6 (11)—
After “or a member”, insert “or servant”.
- (k) Section 6 (13)—
Omit “1902”, insert instead “1979”.
- 20 (4) Section 8 (2)—
Omit “eight”, insert instead “8”.
- (5) (a) Section 10 (3) (b) (i)—
Omit “the thirty-first day of”, insert instead “31st”.

Poisons (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION
—*continued.*

- (b) Section 10 (3) (b) (ii)—
5 Omit “twelve”, insert instead “12”.
- (6) Sections 11 (4), 12 (1), 13 (1), 14 (2) (e)—
Omit “five” wherever occurring, insert instead “5”.
- (7) Section 14 (3)—
Omit “twenty-four”, insert instead “24”.
- 10 (8) Section 15 (a)—
Omit “eighteen”, insert instead “18”.
- (9) Section 17 (2) (a)—
Omit “so specified;”, insert instead “so specified; and”.
- (10) Section 18—
15 Omit “six”, insert instead “6”.
- (11) Section 18A (1)—
Omit “two”, insert instead “2”.
- (12) Section 21 (2) (c)—
Omit “one”, insert instead “1”.

Poisons (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION
—*continued.*

- (13) (a) Section 24 (2) (a) (i)—
5 Omit “his shop”, insert instead “their respective shops”.
- (b) Section 24 (2) (a) (i)—
Omit “his retail business”, insert instead “their respective retail businesses”.
- (c) Section 24 (2) (a) (ii)—
10 Omit “his shop”, insert instead “their respective shops”.
- (d) Section 24 (2) (f)—
Omit “a District Court”, insert instead “the District Court”.
- (14) Sections 26 (1), 28 (a)—
Omit “two” wherever occurring, insert instead “2”.
- 15 (15) (a) Section 30 (3)—
Omit “paragraph (a) or (b) of subsection (2)”, insert instead
“subsection (2) (a) or (b)”.
- (b) Section 30 (3)—
20 Omit “the said paragraph (a) or (b)”, insert instead “subsection
(2) (a) or (b)”.
- (c) Section 30 (5)—
After “or a member”, insert “or servant”.
- (16) Section 33 (1)—
Omit “two”, insert instead “2”.

Poisons (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION
—*continued.*

- (17) Section 35 (1)—
5 Omit “fourteen”, insert instead “14”.
- (18) Section 36 (2)—
Omit “six”, insert instead “6”.
- (19) (a) Section 38—
Omit “one per centum”, insert instead “1 per cent”.
- 10 (b) Section 38 (a), (b)—
Omit “one” wherever occurring, insert instead “1”.
- (c) Section 38—
Omit “one hundred”, insert instead “100”.
- (20) (a) Section 41 (a)—
15 Omit “or” where lastly occurring.
- (b) Section 41 (b)—
Omit “or” where lastly occurring.
- (c) Section 41—
Omit “(i)”, insert instead “(e)”.
- 20 (d) Section 41—
Omit “(ii)”, insert instead “(f)”.
- (e) Section 41—
Omit “is so required;”, insert instead “is so required; and”.

Poisons (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION
—*continued.*

- (f) Section 41—
5 Omit “(iii)”, insert instead “(g)”.
- (21) (a) Section 43 (2)—
Omit “one”, insert instead “1”.
- (b) Section 43 (3) (b)—
10 Omit “paragraph (b) of subsection (2)”, insert instead “subsection (2) (b)”.
- (c) Section 43 (3A)—
Omit “(2)”, insert instead “(3)”.
- (22) Section 45—
Omit “two”, insert instead “2”.
- 15 (23) Section 45A (3A) (a)—
Omit “centum”, insert instead “cent”.
- (24) Section 45AB (4)—
Omit “of the peace”.
- (25) Section 45B—
20 Omit “two”, insert instead “2”.
- (26) (a) Section 46 (1) (c)—
Omit “fourteen” wherever occurring, insert instead “14”.

Poisons (Amendment).

SCHEDULE 2—continued.

**AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION
—continued.**

(b) Section 46 (2)—

5 Omit “fifteen”, insert instead “15”.

SCHEDULE 3.

(Sec. 6.)

SAVINGS AND TRANSITIONAL PROVISIONS.

Search warrants.

10 1. Any search warrant granted under section 43 (2) of the Principal Act and in force immediately before the commencement of Schedule 1 (9) shall be deemed to be a search warrant granted under section 43 (2) of that Act as amended by Schedule 1 (9).

Certain proceedings.

15 2. An amendment made to the Principal Act by this Act does not affect any proceedings which are being or which may be taken for an offence against the Principal Act which is alleged to have been committed before the commencement of the amendment.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALLS—1981

POISONS (AMENDMENT) ACT, 1981, No. 88

New South Wales



ANNO TRICESIMO

ELIZABETHÆ II REGINÆ

Act No. 88, 1981.

An Act to amend the Poisons Act, 1966, to provide for the granting of search warrants by telephone to members of the police force, to confer on members of the police force certain powers in relation to the search of vehicles, vessels and persons, to confer certain powers on courts in relation to the forfeiture of vehicles, vessels and equipment used in the commission of certain offences and the recovery of proceeds unlawfully derived by persons convicted of certain offences, and for other purposes. [Assented to, 9th June, 1981.]

Poisons (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Poisons (Amendment) Act, 1981".

Commencement.

2. (1) This section, section 1, section 5 in its application to Schedule 2 and Schedule 2 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

3. The Poisons Act, 1966, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

SCHEDULE 3.—SAVINGS AND TRANSITIONAL PROVISIONS.

Poisons (Amendment).

Amendment of Act No. 31, 1966.

5. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

Savings and transitional provisions.

6. Schedule 3 has effect.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 4 (1), definition of "Drug of addiction"—

Omit the definition, insert instead:—

"Drug of addiction" means—

- (a) prepared opium;
- (b) Indian hemp; or
- (c) any substance specified in Schedule Eight of the Poisons List.

(b) Section 4 (1), definition of "Premises"—

Omit the definition, insert instead:—

"Premises" includes any structure, building, aircraft, vehicle, vessel or place (whether built upon or not), and any part thereof.

(c) Section 4 (1), definition of "Supply"—

Omit "sell, or", insert instead "sell and distribute, and also includes".

Poisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) Section 16 (1) (a)—

After “surgeon”, insert “, and he obtains possession or attempts to obtain possession of it in the lawful practice of his profession as such”.

(3) (a) Section 17 (1) (c)—

Omit “distributed,”.

(b) Section 17 (1) (g)—

Omit “or distribution”.

(c) Section 17 (1) (i)—

Omit “distribution without consideration”, insert instead “free distribution”.

(4) Section 18A (3)—

After section 18A (2), insert:—

(3) Any substance (not being a restricted substance prescribed for the purposes of section 16) which, for the purpose of its being supplied, is represented (whether verbally, in writing or by conduct) as being a particular restricted substance prescribed for the purposes of section 16 shall, for the purposes of subsection (1), be deemed to be that particular restricted substance.

(5) (a) Section 21 (1) (a)—

Omit “, supplies or otherwise deals in”, insert instead “or supplies”.

(b) Section 21 (1) (c)—

Omit “, distribution,”.

Poisons (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 21 (1D)—

After section 21 (1C), insert:—

(1D) Any substance (not being prepared opium or Indian hemp) which, for the purpose of its being supplied, is represented (whether verbally, in writing or by conduct) as being prepared opium or Indian hemp shall, for the purposes of subsection (1), be deemed to be prepared opium or Indian hemp, as the case may require.

(d) Section 21 (2) (a)—

Omit “, distribute”.

(e) Section 21 (2A) (b)—

Omit “course of the practice of his profession”, insert instead “lawful practice of his profession as such”.

(f) Section 21 (5)—

After section 21 (4), insert:—

(5) Any substance (not being a drug of addiction other than prepared opium or Indian hemp) which, for the purpose of its being supplied, is represented (whether verbally, in writing or by conduct) as being a particular drug of addiction other than prepared opium or Indian hemp shall, for the purposes of subsection (2A), be deemed to be that particular drug of addiction.

(6) (a) Section 24 (1) (b), (e)—

Omit “, distribution, ” wherever occurring.

(b) Section 24 (1) (h)—

Omit “infamous conduct”, insert instead “misconduct”.

Poisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (c) Section 24 (1) (i)—
Omit “, distribution”.
- (7) (a) Section 32 (1) (a)—
Omit “, distributes, supplies, or otherwise deals in”, insert instead
“or supplies”.
- (b) Section 32 (4)—
After section 32 (3), insert:—
(4) Any substance (not being a prohibited drug) which, for the purpose of its being supplied, is represented (whether verbally, in writing or by conduct) as being a particular prohibited drug shall, for the purposes of subsection (1), be deemed to be that particular prohibited drug.
- (8) (a) Section 33A (1) (b)—
Omit “or otherwise deals in”.
- (b) Section 33A (1) (d)—
Omit “, or the dealing in”.
- (c) Section 33A (5)—
After section 33A (4), insert:—
(5) Any growing plant (not being a prohibited plant) which, for the purpose of its being supplied, is represented (whether verbally, in writing or by conduct) as being a particular prohibited plant shall, for the purposes of subsection (1), be deemed to be that particular prohibited plant.

Poisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(9) (a) Section 43 (2)—

Omit “named in the warrant” where firstly occurring.

(b) Section 43 (2)—

After “times”, insert “(whether by day or by night)”.

(c) Section 43 (4)—

Omit “this section” wherever occurring, insert instead “subsection (1)”.

(d) Section 43 (5)—

After section 43 (4), insert:—

(5) Any person who wilfully delays or obstructs any member of the police force in the exercise of his powers under subsection (2) or (3) shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding \$2,000, or to imprisonment for a term not exceeding 2 years, or to both such penalty and imprisonment.

(10) Sections 43A, 43B—

After section 43, insert:—

Telephone search warrants.

43A. (1) Upon complaint made by telephone by a member of the police force to a stipendiary magistrate that the member of the police force suspects or believes that—

(a) there is, in any premises—

- (i) a restricted substance prescribed for the purposes of section 16 in a quantity in excess of that prescribed for the purposes of section 18A (2) in respect thereof;

Poisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(ii) a drug of addiction or a prohibited drug in a quantity in excess of that prescribed for the purposes of section 45A (4) in respect thereof; or

(iii) a prohibited plant,

that is, in contravention of this Act, in the possession or under the control of any person; and

(b) the restricted substance, drug of addiction, prohibited drug or prohibited plant, or any quantity thereof, will be destroyed or otherwise disposed of before the expiration of the period of time within which it is, having regard to all of the circumstances, reasonably practicable for him to obtain a warrant under section 43 (2) in respect of those premises and exercise any powers conferred on him thereunder,

the stipendiary magistrate may, if he is satisfied that there are reasonable grounds for that suspicion or belief, grant by telephone a search warrant to the member of the police force, authorising him, together with any other member of the police force and at any time or times (whether by day or by night) within 24 hours from the time the warrant is granted to enter, if need be by force, the premises named in the warrant and to search the premises and any person found therein.

(2) A stipendiary magistrate grants a search warrant under subsection (1) by stating the terms of the warrant by telephone to a member of the police force.

(3) Where a stipendiary magistrate grants a search warrant under subsection (1), he shall cause a record to be made in writing of—

(a) the name of the complainant;

(b) the details of the complaint;

(c) the terms of the warrant; and

(d) the date and time when the warrant was granted.

Poisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) A member of the police force perfects a search warrant granted to him under subsection (1)—

- (a) by causing a record to be made in writing of the terms of the warrant; and
- (b) by endorsing the record with the name of the stipendiary magistrate by whom, and the date and time when, the warrant was granted.

(5) A search warrant granted under subsection (1) and perfected in accordance with subsection (4) is not invalidated by any defect, other than a defect which affects the substance of the warrant in a material particular.

(6) Where a member of the police force searching any premises or person pursuant to a warrant granted and perfected under this section has reasonable ground for suspecting that an offence against this Act has been committed in relation to any restricted substance prescribed for the purposes of section 16, any drug of addiction, any prohibited drug or any prohibited plant which he finds in those premises or in the possession of any persons found therein, he may seize and detain that substance, drug or plant and remove it from those premises.

(7) Any person who wilfully delays or obstructs any member of the police force in the exercise of his powers under this section shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding \$2,000, or to imprisonment for a term not exceeding 2 years, or to both such penalty and imprisonment.

(8) Within 7 days after having been granted a search warrant under subsection (1), a member of the police force shall—

- (a) where he has perfected the warrant in accordance with subsection (4)—furnish the warrant to the stipendiary magistrate by whom it was granted; or

Poisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) in any other case—furnish to the stipendiary magistrate by whom the warrant was granted a statement in writing to the effect that the warrant was not perfected.

Powers of detention and search.

43B. (1) In this section—

“police vessel” means a vessel ordinarily used by members of the police force in the execution of their duty;

“prohibited substance” means—

- (a) a restricted substance prescribed for the purposes of section 16;
- (b) a drug of addiction;
- (c) a prohibited drug; or
- (d) a prohibited plant.

(2) A member of the police force of or above the rank of sergeant, or in charge of a police station or police vessel, may at any time with as many members of the police force as he thinks necessary—

- (a) enter into any part of any vessel or aircraft; and
- (b) search and inspect the vessel or aircraft.

(3) A member of the police force of or above the rank of sergeant, or in charge of a police station or police vessel, may, for the purpose of enabling the powers conferred on members of the police force by subsection (2) to be exercised, stop and detain any vessel or aircraft in which he reasonably suspects there is any prohibited substance which is, in contravention of this Act, in the possession or under the control of any person.

Poisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) A member of the police force may stop, search and detain—

- (a) any person in whose possession or under whose control he reasonably suspects there is, in contravention of this Act, any prohibited substance; or
- (b) any vehicle in which he reasonably suspects there is any prohibited substance which is, in contravention of this Act, in the possession or under the control of any person.

(11) Sections 45AC, 45AD—

After section 45AB, insert:—

Orders for forfeiture of vehicles, vessels, equipment and proceeds.

45AC. (1) This section applies to the following offences:—

- (a) the offence of supplying any restricted substance prescribed for the purposes of section 16 that arises under section 18A (1);
- (b) the offence of supplying prepared opium or Indian hemp that arises under section 21 (1);
- (c) the offence of supplying any drug of addiction other than prepared opium or Indian hemp that arises under section 21 (2A);
- (d) the offence of supplying any prohibited drug that arises under section 32 (1); and
- (e) any offence arising under section 33A.

(2) Where a court has convicted a person of an offence to which this section applies, it may, in addition to any penalty it may impose, make either or both of the following orders:—

- (a) an order that any specified vehicle, vessel or equipment used in the commission of the offence be forfeited to Her Majesty;

Poisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) an order that the person pay to Her Majesty an amount, as assessed by the court, equal to the proceeds derived by him from the commission of the offence or of any other offence to which this section applies and which the court has taken into account in imposing any such penalty.
- (3) Before making an order under this section, the court may require notice to be given to, and may hear, such persons as the court thinks fit.
- (4) For the purpose of making an order against any person under subsection (2) (b), the court may—
- (a) take into account such matters as the court thinks fit;
 - (b) to the extent specified by the court—treat any interest in real or personal property acquired by that person by means of proceeds derived by him from the commission of an offence as proceeds derived by that person from the commission of the offence; and
 - (c) treat the equivalent, in money terms, of any interest in real or personal property derived by him from the commission of an offence as proceeds derived by that person from the commission of the offence.
- (5) Without affecting any other right of appeal, an order under subsection (2) (a) in relation to any vehicle, vessel or equipment is appellable by any person who has an interest in the vehicle, vessel or equipment—
- (a) in the case of a person convicted of the offence—in the same manner as if the order were, or were part of, a sentence imposed in respect of the offence; or
 - (b) in any other case—in the same manner as if the person had been convicted of an offence to which this section applies and the order were, or were part of, a sentence imposed in respect of the offence.

Poisons (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Without affecting any other right of appeal, an order under subsection (2) (b) is appellable in the same manner as if it were, or were part of, a sentence imposed in respect of the offence.

(7) The court to which an appeal is made in respect of an order under subsection (2) (a) may, pending the hearing and determination of the appeal, make such orders as it thinks fit for the custody of the vehicle, vessel or equipment the subject of the order.

(8) On appeal, an order under this section may be confirmed, revoked or varied.

(9) An order under subsection (2) (b) may, by leave of the court by which it was made, be enforced, irrespective of the amount ordered to be paid, as if it were a judgment in a civil matter given by that court.

(10) In this section—

“court” includes a stipendiary magistrate and any 2 justices in petty sessions;

“sentence” includes any order imposing a penalty;

“vehicle” includes aircraft.

Temporary restraint on disposition of property.

45AD. (1) Where—

(a) proceedings are being taken against a person for an offence to which section 45AC applies; or

(b) an order has been made under section 45AC (2) (b) against a person,

Poisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

the court before which those proceedings are being taken or by which the order has been made may, by order, prohibit—

- (c) the person from disposing of or otherwise dealing with any interest in specified property; and
- (d) any other specified person from disposing of or otherwise dealing with any interest in specified property—
 - (i) which belongs to the person referred to in paragraph (c) and in respect of which he has a power of attorney from that person or any other power of disposition; or
 - (ii) which he holds for or on behalf of the person referred to in paragraph (c),

otherwise than in such manner as may be specified in the order.

(2) Without affecting any power conferred on it by subsection (1), the Supreme Court may at any time make an order of the kind referred to in that subsection against a person—

- (a) in respect of whom any other court may make such an order; or
- (b) whom any other court has committed for trial or for sentence.

(3) Before making an order under this section, a court may require notice to be given to, and may hear, such persons as it thinks fit.

(4) An order under this section may be given or served in such manner as the court directs or as may be prescribed by rules of court.

(5) Any person who holds an interest in property the subject of an order under this section may apply for the revocation or variation of the order.

Poisons (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) An order under this section may be revoked or varied by the Supreme Court (subject to rules of that Court restricting the making of applications thereto) or—

- (a) where proceedings in respect of the offence are being taken—by the court before which those proceedings are being taken; or
- (b) in any other case—by the court before which proceedings in respect of the offence were last taken.

(7) Any person to or upon whom an order made under subsection (1) or (2) is given or served in accordance with this section and who, while it is in force, acts in contravention of or fails to comply with the order shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding \$2,000, or to imprisonment for a term not exceeding 2 years, or to both such penalty and imprisonment.

(8) In this section—

“court” includes a stipendiary magistrate and any 2 justices in petty sessions;

“property” includes real and personal property and money.

(12) Section 45B—

Before “commission”, insert “alleged”.

Poisons (Amendment).

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

(1) Section 2—

From the matter relating to Division 1 of Part III, omit “18”, insert instead “18A”.

(2) (a) Section 4 (1), definition of “Justice”—

After the definition of “Indian hemp”, insert:—

“Justice” means justice of the peace.

(b) Section 4 (1), definition of “Pharmacy trainee”—

From paragraph (b), omit “three”, insert instead “3”.

(c) Section 4 (2) (a)—

Omit “one”, insert instead “1”.

(3) (a) Section 6 (1)—

Omit “fifteen”, insert instead “15”.

(b) Section 6 (2) (c)—

Omit “Industry”, insert instead “Health”.

(c) Section 6 (2) (f)—

Omit “Police Force”, insert instead “police force”.

(d) Section 6 (2) (g)—

Omit “nine”, insert instead “9”.

(e) Section 6 (2) (g)—

Omit “one” wherever occurring, insert instead “1”.

Poisons (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION
—*continued.*

(f) Section 6 (4)—

Omit “one”, insert instead “1”.

(g) Section 6 (8)—

Omit “three”, insert instead “3”.

(h) Section 6 (10) (c)—

Omit the paragraph, insert instead:—

(c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;

(i) Section 6 (10) (d)—

Omit “four”, insert instead “4”.

(j) Section 6 (11)—

After “or a member”, insert “or servant”.

(k) Section 6 (13)—

Omit “1902”, insert instead “1979”.

(4) Section 8 (2)—

Omit “eight”, insert instead “8”.

(5) (a) Section 10 (3) (b) (i)—

Omit “the thirty-first day of”, insert instead “31st”.

Poisons (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION
—*continued.*

(b) Section 10 (3) (b) (ii)—

Omit “twelve”, insert instead “12”.

(6) Sections 11 (4), 12 (1), 13 (1), 14 (2) (e)—

Omit “five” wherever occurring, insert instead “5”.

(7) Section 14 (3)—

Omit “twenty-four”, insert instead “24”.

(8) Section 15 (a)—

Omit “eighteen”, insert instead “18”.

(9) Section 17 (2) (a)—

Omit “so specified;”, insert instead “so specified; and”.

(10) Section 18—

Omit “six”, insert instead “6”.

(11) Section 18A (1)—

Omit “two”, insert instead “2”.

(12) Section 21 (2) (c)—

Omit “one”, insert instead “1”.

Poisons (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION
—*continued.*

(13) (a) Section 24 (2) (a) (i)—

Omit “his shop”, insert instead “their respective shops”.

(b) Section 24 (2) (a) (i)—

Omit “his retail business”, insert instead “their respective retail businesses”.

(c) Section 24 (2) (a) (ii)—

Omit “his shop”, insert instead “their respective shops”.

(d) Section 24 (2) (f)—

Omit “a District Court”, insert instead “the District Court”.

(14) Sections 26 (1), 28 (a)—

Omit “two” wherever occurring, insert instead “2”.

(15) (a) Section 30 (3)—

Omit “paragraph (a) or (b) of subsection (2)”, insert instead “subsection (2) (a) or (b)”.

(b) Section 30 (3)—

Omit “the said paragraph (a) or (b)”, insert instead “subsection (2) (a) or (b)”.

(c) Section 30 (5)—

After “or a member”, insert “or servant”.

(16) Section 33 (1)—

Omit “two”, insert instead “2”.

Poisons (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION
—*continued.*

(17) Section 35 (1)—

Omit “fourteen”, insert instead “14”.

(18) Section 36 (2)—

Omit “six”, insert instead “6”.

(19) (a) Section 38—

Omit “one per centum”, insert instead “1 per cent”.

(b) Section 38 (a), (b)—

Omit “one” wherever occurring, insert instead “1”.

(c) Section 38—

Omit “one hundred”, insert instead “100”.

(20) (a) Section 41 (a)—

Omit “or” where lastly occurring.

(b) Section 41 (b)—

Omit “or” where lastly occurring.

(c) Section 41—

Omit “(i)”, insert instead “(e)”.

(d) Section 41—

Omit “(ii)”, insert instead “(f)”.

(e) Section 41—

Omit “is so required;”, insert instead “is so required; and”.

Poisons (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION
—*continued.*

- (f) Section 41—
 - Omit “(iii)”, insert instead “(g)”.

- (21) (a) Section 43 (2)—
 - Omit “one”, insert instead “1”.
- (b) Section 43 (3) (b)—
 - Omit “paragraph (b) of subsection (2)”, insert instead “subsection (2) (b)”.
- (c) Section 43 (3A)—
 - Omit “(2)”, insert instead “(3)”.

- (22) Section 45—
 - Omit “two”, insert instead “2”.

- (23) Section 45A (3A) (a)—
 - Omit “centum”, insert instead “cent”.

- (24) Section 45AB (4)—
 - Omit “of the peace”.

- (25) Section 45B—
 - Omit “two”, insert instead “2”.

- (26) (a) Section 46 (1) (c)—
 - Omit “fourteen” wherever occurring, insert instead “14”.

Poisons (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION
—*continued.*

(b) Section 46 (2)—

Omit “fifteen”, insert instead “15”.

SCHEDULE 3.

(Sec. 6.)

SAVINGS AND TRANSITIONAL PROVISIONS.

Search warrants.

1. Any search warrant granted under section 43 (2) of the Principal Act and in force immediately before the commencement of Schedule 1 (9) shall be deemed to be a search warrant granted under section 43 (2) of that Act as amended by Schedule 1 (9).

Certain proceedings.

2. An amendment made to the Principal Act by this Act does not affect any proceedings which are being or which may be taken for an offence against the Principal Act which is alleged to have been committed before the commencement of the amendment.

In the name and on behalf of Her Majesty I assent to this Act.

L. W. STREET,
By Deputation from
His Excellency the Governor.

Government House,
Sydney, 9th June, 1981.



