FIRST PRINT

DRUG MISUSE AND TRAFFICKING BILL 1985

EXPLANATORY NOTE

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

The Miscellaneous Acts (Drug Misuse and Trafficking) Amendment Bill 1985 is cognate with this Bill.

The objects of this Bill are—

(a) to prohibit the cultivation, supply and possession of certain narcotic plants, such as cannabis and opium plants, which are referred to in the Bill as "prohibited plants";

(b) to prohibit the manufacture, supply, possession and use of certain drugs of addiction, which are referred to in the Bill as "prohibited drugs";

(c) to distinguish between offences which are to be prosecuted summarily and offences which are to be prosecuted on indictment;

(d) to provide for graduated penalties related to the number of prohibited plants or the quantity of prohibited drug involved in the commission of the offence; and

(e) to enact other related provisions.

PART I—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day appointed by the Governor-in-Council.

Clause 3 consists of an interpretation provision for the purposes of the proposed Act.

Clause 4 is an interpretation provision which extends the meaning of prohibited drug so as to include a preparation or admixture which contains any proportion of the prohibited drug.

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Clause 5 is an interpretation provision which extends the meanings of "use" and "administer" in relation to prohibited drugs.

Clause 6 defines the meaning of the expression "take part in" when used in relation to the cultivation or supply of a prohibited drug.

Clause 7 provides that a prohibited plant or prohibited drug in the order or disposition of a person shall be deemed to be in the possession of the person.

Clause 8 provides that nothing in the proposed Act affects the Poisons Act 1966 or anything done under that Act.

PART II—OFFENCES

DIVISION 1—*Summary offences*

Clause 9 provides that an offence under the proposed Division shall be prosecuted summarily before a Local Court.

Clause 10 makes it an offence, subject to certain exceptions, to have possession of a prohibited drug.

Clause 11 makes it an offence, subject to certain exceptions, to have possession of an item of equipment for use in the administration of a prohibited drug.

Clause 12 makes it an offence, subject to an exception, to use a prohibited drug.

Clause 13 makes it an offence, subject to certain exceptions, to administer a prohibited drug to another person.

Clause 14 makes it an offence, subject to an exception, for a person to allow another person to administer a prohibited drug to him or her.

Clause 15 makes it an offence to forge a prescription for a prohibited drug.

Clause 16 makes it an offence to fraudulently obtain a prescription for a prohibited drug from a doctor or veterinary surgeon, to induce a chemist to dispense a forged or fraudulently altered prescription for a prohibited drug or to have possession of any such prescription.

Clause 17 makes it an offence to obtain a prohibited drug from a doctor, chemist or veterinary surgeon by means of a wilfully false representation.

Clause 18 makes it an offence to obtain a prohibited drug from a doctor without first informing the doctor of the quantity of prohibited drugs obtained from other doctors during the previous 2 months where the failure to inform the doctor occurs with intent to deceive.

Clause 19 makes it an offence to aid or abet the commission of an offence under the proposed Division.

Clause 20 makes it an offence to aid or abet in New South Wales the commission of an offence at a place outside New South Wales, being an offence punishable under a law in force in that place which corresponds to an offence under the proposed Division.

Clause 21 specifies the penalties for offences under the proposed Division.

DIVISION 2—*Indictable offences*

Clause 22 provides that an offence under the proposed Division shall be prosecuted on indictment.

Clause 23 (1) makes it an offence to cultivate or supply, or to knowingly take part in the cultivation or supply of, or to have possession of, a prohibited plant. Clause 23 (2) makes it an offence to cultivate or supply, or to knowingly take part in the cultivation or supply of, or to have possession of, a number of prohibited plants which is not less than the number prescribed by the proposed Act to be the commercial quantity. Clause 23 (3) enables the conviction, under clause 23 (1), of a person charged with an offence under clause 23 (2) where the jury are not satisfied that the number of prohibited plants involved is equal to or more than the commercial quantity. Clause 23 (4) and (5) specify defences to a prosecution under clause 23.

Clause 24 (1) makes it an offence to manufacture or produce, or to knowingly take part in the manufacture or production of, a prohibited drug. Clause 24 (2) makes it an offence to manufacture or produce, or to knowingly take part in the manufacture or production of an amount of a prohibited drug which is not less than the amount prescribed by the proposed Act to be the commercial quantity. Clause 24 (3) enables the conviction, under clause 24 (1), of a person charged with an offence under clause 24 (2) where the jury are not satisfied that the amount of the prohibited drug involved is equal to or more than the commercial quantity. Clause 24 (4) specifies defences to a prosecution under clause 24.

Clause 25 (1) makes it an offence to supply, or to knowingly take part in the supply of, a prohibited drug. Clause 25 (2) makes it an offence to supply, or to knowingly take part in the supply of an amount of a prohibited drug which is not less than the amount prescribed by the proposed Act to be the commercial quantity. Clause 25 (3) enables the conviction, under clause 25 (1), of a person charged with an offence under clause 25 (2) where the jury are not satisfied that the amount of the prohibited drug involved is equal to or more than the commercial quantity. Clause 25 (4) specifies defences to a prosecution under clause 25.

Clause 26 makes it an offence to conspire to commit an offence under the proposed Division.

Clause 27 makes it an offence to aid or abet the commission of an offence under the proposed Division.

Clause 28 makes it an offence to conspire to commit in New South Wales, or to aid or abet in New South Wales, the commission of an offence at a place outside New South Wales, being an offence punishable under a law in force in that place which corresponds to an offence under the proposed Division.

Clause 29 provides that a person who has possession of an amount of a prohibited drug which is not less than the amount prescribed by the proposed Act to be the traffickable quantity shall, for the purposes of the proposed Division, be deemed to have possession of the prohibted drug for the purpose of supply, subject to certain defences.

Clause 30 specifies those indictable offences which are punishable summarily without the consent of the accused and also specifies the penalties for offences so dealt with.

Clause 31 specifies those indictable offences which are punishable summarily with the consent of the accused and also specifies the penalties for offences so dealt with.

Clause 32 specifies the penalties for offences dealt with on indictment where the number of the prohibited plants or the amount of the prohibited drug involved is less than the commercial quantity.

Clause 33 specifies the penalties for offences where the number of the prohibited plants or the amount of the prohibited drug involved is not less than the commercial quantity.

DIVISION 3—*Supplementary*

Clause 34 enables a court of summary jurisdiction to order that a term of imprisonment for non-payment of a fine for an offence may commence at the expiration of any term of imprisonment imposed on the defendant for the same offence in addition to the fine.

Clause 35 enables a court to order the forfeiture of prohibited plants, prohibited drugs and certain other articles.

Clause 36 provides for the liability of directors of corporations where the corporation commits an offence under the proposed Act.

PART III—ENFORCEMENT

Clause 37 enables certain senior members of the police force to detain and search vessels and aircraft and any member of the police force to stop, search and detain persons reasonably suspected of being in possession of prohibited plants or prohibited drugs.

Clause 38 enables the Director-General of Agriculture, on a warrant issued by a Magistrate, to enter land or buildings for the purpose of destroying prohibited plants.

Clause 39 provides for the seizure by a member of the police force and forfeiture to the Crown of heroin.

PART IV—MISCELLANEOUS

Clause 40 provides that a substance, not being a prohibited drug, or a plant, not being a prohibited plant, which is represented to be a prohibited drug or a prohibited plant shall, for the purposes of the proposed Act, be deemed to be a prohibited drug or prohibited plant, as the case requires.

Clause 41 makes provision with respect to the granting of authorisations under the proposed Act by the Secretary of the Department of Health.

Clause 42 provides for the admissibility and evidentiary value of certificates of the Secretary of the Department of Health as to the existence or otherwise of certain authorisations under the Poisons Act 1966.

Clause 43 provides for the admissibility and evidentiary value of certificates of analysts as to the identity and result of analysis of substances.

Clause 44 enables the amendment, by regulation, of Schedule 1 to the proposed Act, being a Schedule which lists prohibited plants and prohibited drugs and specifies certain numbers or amounts in relation to those prohibited plants and prohibited drugs for the purposes of the proposed Act.

Clause 45 enables the Governor-in-Council to make regulations for the purposes of the proposed Act.

DRUG MISUSE AND TRAFFICKING BILL 1985

NEW SOUTH WALES

TABLE OF PROVISIONS

306468 477—

DRUG MISUSE AND TRAFFICKING BILL 1985

No. , 1985

A BILL FOR

An Act to prohibit the manufacture, supply, possession and use of certain drugs, and for related purposes.

See also Miscellaneous Acts (Drug Misuse and Trafficking) Amendment Bill 1985.

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:

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PART I

PRELIMINARY

Short title

1. This Act may be cited as the "Drug Misuse and Trafficking Act 1985".

10 **Commencement**

2. **(1)** Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation
15 published in the Gazette, being a day that is not earlier than the day appointed and notified under section 2 (2) of the Search Warrants Act 1985.

Interpretation

3. **(1)** In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

20 "cannabis leaf" means any plant or part of a plant of the genus Cannabis by whatever name that plant or part may be called, and includes the achene and seed of any such plant, being a plant or part which does not contain more than 3 per cent by weight, determined in the prescribed manner, of tetrahydrocannabinol,
25 but does not include—

(a) cannabis resin;

(b) cannabis oil;

(c) any fibre of any such plant or part from which the resin has been extracted; or

30 (d) cannabis plant;

"cannabis oil" means any substance obtained from cannabis leaf or cannabis resin by means of solvent extraction;

"cannabis plant" means any growing plant of the genus Cannabis;

"cannabis resin" means—

(a) the separated resin, whether crude or purified, obtained from cannabis leaf; or

(b) any plant or part of a plant of the genus Cannabis by whatever name that plant or part may be called, and includes the achene and seed of any such plant, being a plant or part which contains more than 3 per cent by weight, determined in the prescribed manner, of tetrahydrocannabinol,

but does not include cannabis oil;

"commercial quantity", in relation to a prohibited plant or a prohibited drug, means a number or amount, if any, specified opposite the prohibited plant or prohibited drug in Column 4 of Schedule 1;

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

(a) sow or scatter the seed produced by the prohibited plant; and

(b) plant, grow, tend, nurture or harvest the prohibited plant;

"dentist" means a person registered, or deemed to be registered, as a dentist under the Dentists Act 1934;

"discrete dosage unit", in relation to a prohibited drug, means an amount of the prohibited drug, not greater than the amount, if any, specified opposite the prohibited drug in Column 5 of Schedule 1, which is prepared or apparently prepared for the purpose of being administered as a single dose;

"heroin" means diamorphine and includes the salts of diamorphine;

"indictable quantity", in relation to a prohibited plant or a prohibited drug, means the number or amount, if any, specified opposite the prohibited plant or prohibited drug in Column 3 of Schedule 1;

"manufacture", in relation to a prohibited drug, includes the process of extracting or refining the prohibited drug;

"nurse" means a registered nurse within the meaning of the Nurses Registration Act 1953;

"owner", in relation to any premises, includes the person entitled to receive the rent of the premises and the person to whom the rent of the premises is paid;

"pharmacist" means a pharmacist within the meaning of the Pharmacy Act 1964;

"Poisons List" means the list proclaimed under section 8 of the Poisons Act 1966, being that list as in force for the time being;

"premises" includes any structure, building, aircraft, vehicle, vessel or place (whether built upon or not), and any part of any such structure, building, aircraft, vehicle, vessel or place;

"prepared opium" means any preparation of opium in a form capable of being used for the purpose of smoking, and includes dross and any other residues remaining after opium has been smoked;

"profession" includes business, trade and industry;

"prohibited drug" means any substance, other than a prohibited plant, specified in Schedule 1;

"prohibited plant" means—

(a) cannabis plant;

(b) any growing plant of the genus Erythroxylon or of the species Papaver Somniferum or Papaver orientale, also known as Papaver bracteatum; or

(c) any growing plant of a description specified in an order in force under subsection (2),

but does not include any growing plant, referred to in paragraph (a) or (b), of a description prescribed for the purposes of this definition;

"regulations" means regulations made under this Act;

"sell" includes sell whether by wholesale or retail and barter and exchange, and also includes dealing in, agreeing to sell, or offering or exposing for sale, or keeping or having in possession for sale, or sending, forwarding, delivering or receiving for sale or on sale, or authorising, directing, causing, suffering, permitting or attempting any of those acts or things;

"small quantity", in relation to a prohibited plant or a prohibited drug, means the number or amount, if any, specified opposite the prohibited plant or prohibited drug in Column 2 of Schedule 1;

"substance" includes preparation and admixture and all salts, isomers, esters or ethers of any substance and all salts of those isomers, esters and ethers;

"supply" includes sell and distribute, and also includes agreeing to supply, or offering to supply, or keeping or having in possession for supply, or sending, forwarding, delivering or receiving for supply, or authorising, directing, causing, suffering, permitting or attempting any of those acts or things;

"trafficable quantity", in relation to a prohibited plant or a prohibited drug, means the number or amount, if any, specified opposite the prohibited plant or prohibited drug in Column 1 of Schedule 1;

"veterinary surgeon" means a person registered as a veterinary surgeon under the Veterinary Surgeons Act 1923;

"wholesale" means supply for the purposes of resale.

(2) For the purposes of paragraph (c) of the definition of "prohibited plant" in subsection (1), the Minister may, by order published in the Gazette, declare any description of any plant that in the opinion of the Minister is capable of being used for the purpose of producing a prohibited drug to be a prohibited plant.

Admixtures

4. In this Act, a reference to a prohibited drug includes a reference to any preparation, admixture, extract or other substance containing any proportion of the prohibited drug.

Meaning of "use" and "administer"

5. In this Act, a reference to the use or administration of a prohibited drug includes a reference to the ingestion, injection and inhalation of a prohibited drug, the smoking of a prohibited drug, the inhalation of fumes caused by the heating or burning of a prohibited drug and any other means of introducing a prohibited drug into any part of the body of a person.

Meaning of "take part in"

6. For the purposes of this Act and the regulations, a person takes part in the cultivation or supply of a prohibited plant or the manufacture, production or supply of a prohibited drug if—

(a) the person takes, or participates in, any step, or causes any step to be taken, in the process of that cultivation, manufacture, production or supply;

(b) the person provides or arranges finance for any such step in that process; or

(c) the person provides the premises in which any such step in that process is taken, or suffers or permits any such step in that process to be taken in premises of which the person is the owner, lessee or occupier or in the management of which the person participates.

Deemed possession of prohibited drug, etc.

7. For the purposes of this Act and the regulations, a prohibited drug or prohibited plant in the order or disposition of a person shall be deemed to be in the possession of the person.

Relationship with Poisons Act 1966

8. Nothing in this Act affects any provision made by or under the Poisons Act 1966 or renders unlawful anything done in accordance with any such provision.

PART II

OFFENCES

DIVISION 1—*Summary offences*

Summary prosecution

9. An offence under this Division shall be prosecuted summarily before a Local Court constituted by a Magistrate sitting alone.

Possession of prohibited drugs

10. (1) A person who has a prohibited drug in his or her possession is guilty of an offence.

(2) Nothing in this section renders unlawful the possession of a prohibited drug by—

(a) a medical practitioner, dentist, veterinary surgeon, pharmacist or nurse acting in the ordinary course of his or her profession;

(b) a member of any other prescribed profession acting in the course of his or her profession;

(c) a person licensed or authorised to have possession of the prohibited drug under the Poisons Act 1966;

(d) a person acting in accordance with an authority granted by the Secretary of the Department of Health where the Secretary is satisfied that the possession of the prohibited drug is for the purpose of scientific research, instruction, analysis or study; or

(e) a person for or to whom the prohibited drug has been lawfully prescribed or supplied.

Possession of equipment for administration of prohibited drugs

11. (1) A person who has in his or her possession any item of equipment for use in the administration of a prohibited drug is guilty of an offence.

(2) Nothing in this section renders unlawful the possession of an item of equipment by—

(a) a medical practitioner, dentist, veterinary surgeon, pharmacist or nurse acting in the ordinary course of his or her profession;

(b) a member of any other prescribed profession acting in the ordinary course of that profession;

(c) a person licensed or authorised to have possession of the item of equipment under the Poisons Act 1966;

(d) a person authorised to have possession of the item of equipment by the Secretary of the Department of Health; or

(e) a person to whom the item of equipment has been lawfully supplied.

Self-administration of prohibited drugs

12. (1) A person who administers or attempts to administer a prohibited drug to himself or herself is guilty of an offence.

(2) Nothing in this section renders unlawful the administration or attempted administration by a person to himself or herself of a prohibited drug which has been lawfully prescribed for or supplied to the person.

Administration of prohibited drugs to others

13. (1) A person who administers or attempts to administer a prohibited drug to another person is guilty of an offence.

(2) Nothing in this section renders unlawful the administration or attempted administration of a prohibited drug to another person by—

(a) a medical practitioner, dentist, pharmacist or nurse acting in the ordinary course of his or her profession;

5 (b) a member of any other prescribed profession acting in the ordinary course of that profession; or

(c) a person authorised to do so by the Secretary of the Department of Health.

(3) Nothing in this section renders unlawful the administration or 10 attempted administration of a prohibited drug to a person for or to whom the prohibited drug has been lawfully prescribed or supplied.

Permitting another to administer prohibited drugs

14. (1) A person who permits another person to administer or attempt to administer to him or her a prohibited drug is guilty of an offence.

15 **(2)** Nothing in this section renders unlawful the giving of permission for the administration or attempted administration of a prohibited drug by a person for whom or to whom the prohibited drug has been lawfully prescribed or supplied.

Forging, etc., prescriptions

20 **15.** A person who forges or fraudulently alters or utters, knowing it to be forged or fraudulently altered, a prescription of a medical practitioner or veterinary surgeon including a prohibited drug is guilty of an offence.

Obtaining, etc., prescription by false representation

16. A person—

25 (a) who knowingly by any false representation (whether verbal, or in writing, or by conduct)—

(i) obtains from a medical practitioner or veterinary surgeon a prescription including a prohibited drug; or

(ii) induces a pharmacist to dispense a forged or fraudulently 30 altered prescription obtained in contravention of this paragraph knowing it to be forged or so altered or obtained; or

(b) who is in actual possession of a forged or fraudulently altered prescription including a prohibited drug or a prescription obtained in contravention of paragraph (a), knowing it to be forged or so altered or so obtained,

5 is guilty of an offence.

Obtaining prohibited drug by false representation

17. A person who knowingly by any false representation (whether verbal, or in writing, or by conduct) obtains or attempts to obtain a prohibited drug from a medical practitioner, pharmacist or veterinary surgeon is guilty of 10 an offence.

Obtaining prohibited drugs from medical practitioners

18. A person who, by any representation (whether verbal, or in writing, or by conduct), obtains or attempts to obtain—

(a) a prohibited drug; or

15 (b) a prescription that includes a prohibited drug, from a medical practitioner without previously informing the medical practitioner of the quantity of that or any other prohibited drug or prohibited drugs for which the person has obtained prescriptions from medical practitioners within the period of 2 months immediately 20 preceding the time of the representation, where the failure or refusal to inform the medical practitioner is made with intent to deceive the medical practitioner,

is guilty of an offence.

Aiding, abetting, etc., commission of offence in New South Wales

25 **19.** A person who aids, abets, counsels, procures, solicits or incites the commission of an offence under this Division is guilty of an offence and liable to the same punishment, pecuniary penalties and forfeiture as the person would be if the person had committed the firstmentioned offence.

Aiding, abetting, etc., commission of offence outside New South Wales

20. A person who, in New South Wales, aids, abets, counsels or procures the commission of an offence in any place outside New South Wales, being an offence punishable under the provisions of a law in force in that place which corresponds to a provision of this Division, is guilty of an offence and liable to the same punishment, pecuniary penalties and forfeiture as the person would be if the person had committed the firstmentioned offence in New South Wales.

Penalties

21. The penalty for an offence under this Division is a fine of $2,000 or imprisonment for a term of 2 years, or both.

DIVISION 2—*Indictable offences*

Indictable prosecution

22. (1) An offence under this Division shall be prosecuted on indictment.

(2) The provisions of section 56 of the Justices Act 1902 shall not apply to any indictable offences dealt with summarily in accordance with the provisions of this Division.

Offences with respect to prohibited plants

23. (1) A person who—

(a) cultivates, or knowingly takes part in the cultivation of, a prohibited plant;

(b) supplies, or knowingly takes part in the supply of, a prohibited plant; or

(c) has a prohibited plant in his or her possession,

is guilty of an offence.

(2) A person who—

(a) cultivates, or knowingly takes part in the cultivation of, a number of prohibited plants in his or her possession which is not less than the commercial quantity applicable to prohibited plants;

(b) supplies, or knowingly takes part in the supply of, a number of prohibited plants which is not less than the commercial quantity applicable to prohibited plants; or

(c) has a number of prohibited plants in his or her possession which is not less than the commercial quantity applicable to prohibited plants,

is guilty of an offence.

5 **(3)** Where, on the trial of a person for an offence under subsection (2), the jury are not satisfied that the number of prohibited plants involved is equal to or more than the commercial quantity applicable to prohibited plants, they may acquit the person of the offence charged and find the person guilty of an offence under subsection (1), and the person shall be liable to 10 punishment accordingly.

(4) Nothing in this section renders unlawful any act relating to the cultivation, supply or possession of a prohibited plant by—

(a) a person—

(i) who informs the court before which the person is 15 prosecuted that the person proposes to adduce evidence as referred to in subparagraph (ii); and

(ii) who adduces evidence which satisfies the court that, having regard to all the circumstances, including the person's conduct, in which the act constituting the offence was done 20 or preparatory to the doing of the act, the person did not know or suspect and could not reasonably be expected to have known or suspected that the prohibited plant was a prohibited plant; or

(b) a person acting in accordance with an authority granted by the 25 Secretary of the Department of Health where the Secretary is satisfied that the cultivation, supply or possession of the prohibited plant is for the purpose of scientific research, instruction, analysis or study.

(5) Where a person informs a court as referred to in subsection (4) (a) 30 (i), evidence of any previous conviction of the person for any offence, being evidence which may intend to rebut the evidence referred to in subsection (4) (a) (ii), may, with the leave of the court, be adduced by the prosecutor.

Manufacture and production of prohibited drugs

24. (1) A person who manufactures or produces, or who knowingly takes 35 part in the manufacture or production of, a prohibited drug is guilty of an offence.

(2) A person who manufactures or produces, or who knowingly takes part in the manufacture or production of, an amount of a prohibited drug which is not less than the commercial quantity applicable to the prohibited drug is guilty of an offence.

(3) Where, on the trial of a person for an offence under subsection (2), the jury are not satisfied that the amount of prohibited drug involved is equal to or more than the commercial quantity applicable to the prohibited drug, they may acquit the person of the offence charged and find the person guilty of an offence under subsection (1), and the person shall be liable to punishment accordingly.

(4) Nothing in this section renders unlawful the manufacture or production of a prohibited drug by—

(a) a medical practitioner, dentist, veterinary surgeon, pharmacist or nurse acting in the ordinary course of his or her profession;

(b) a member of any other prescribed profession acting in the course of his or her profession; or

(c) a person licensed or authorised to do so under the Poisons Act 1966,

or renders unlawful the taking part by any other person in the manufacture or production of a prohibited drug by a person to whom paragraph (a), (b) or (c) applies.

Supply of prohibited drugs

25. (1) A person who supplies, or who knowingly takes part in the supply of, a prohibited drug is guilty of an offence.

(2) A person who supplies, or who knowingly takes part in the supply of, an amount of a prohibited drug which is not less than the commercial quantity applicable to the prohibited drug is guilty of an offence.

(3) Where, on the trial of a person for an offence under subsection (2), the jury are not satisfied that the amount of prohibited drug involved is equal to or more than the commercial quantity applicable to the prohibited drug, they may acquit the person of the offence charged and find the person guilty of an offence under subsection (1), and the person shall be liable to punishment accordingly.

(4) Nothing in this section renders unlawful the supply of a prohibited drug by—

(a) a medical practitioner, dentist, veterinary surgeon, pharmacist or nurse acting in the ordinary course of his or her profession;

(b) a member of any other prescribed profession acting in the course of his or her profession; or

(c) a person licensed or authorised to do so under the Poisons Act 1966,

or renders unlawful the taking part by any other person in the supply of a prohibited drug by a person to whom paragraph (a), (b) or (c) applies.

Conspiring

26. A person who conspires with another person or other persons to commit an offence under this Division is guilty of an offence and liable to the same punishment, pecuniary penalties and forfeiture as the person would be if the person had committed the firstmentioned offence.

Aiding, abetting, etc., commission of offence in New South Wales

27. A person who aids, abets, counsels, procures, solicits or incites the commission of an offence under this Division is guilty of an offence and liable to the same punishment, pecuniary penalties and forfeiture as if the person had committed the firstmentioned offence.

Conspiring to commit and aiding, etc., commission of offence outside New South Wales

28. A person who, in New South Wales—

(a) conspires with another person or persons to commit an offence in any place outside New South Wales, being an offence punishable under the provisions of a law in force in that place which corresponds to a provision of this Division; or

(b) aids, abets, counsels or procures the commission of an offence in any place outside New South Wales, being an offence punishable under the provisions of a law in force in that place which corresponds to a provision of this Division,

is guilty of an offence and liable to the same punishment, pecuniary penalties and forfeiture as the person would be if the person had committed the offence which was committed outside New South Wales.

Traffickable quantity—possession deemed to be for supply

29. A person who has in his or her possession an amount of a prohibited drug which is not less than the traffickable quantity of the prohibited drug shall, for the purposes of this Division, be deemed to have the prohibited drug in his or her possession for supply, unless—

(a) the person proves that he or she had the prohibited drug in his or her possession otherwise than for supply; or

(b) except where the prohibited drug is prepared opium, cannabis leaf, cannabis oil, cannabis resin, heroin or 6-monoacetylmorphine or any other acetylated derivatives of morphine, the person proves that he or she obtained possession of the prohibited drug on and in accordance with the prescription of a medical practitioner, dentist or veterinary surgeon.

Indictable offences punishable summarily without consent of accused

30. (1) This section applies to the following offences:

(a) an offence under section 23 (1);

(b) an offence under section 24 (1);

(c) an offence under section 25 (1);

(d) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a), (b) or (c); and

(e) an offence under section 28 of aiding, abetting, counselling or procuring the commission of an offence under a law in force outside New South Wales which corresponds to section 23 (1), 24 (1) or 25 (1),

where the court is satisfied on the balance of probabilities that the number or amount of the prohibited plant or prohibited drug concerned in the commission of the offence is not more than the small quantity applicable to the prohibited plant or prohibited drug.

(2) An offence to which this section applies may, without the consent of the accused being obtained, be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(3) The penalty for an offence dealt with under this section is a fine of $2,000 or imprisonment for a term of 2 years, or both.

Indictable offences punishable summarily with consent of accused

31. (1) This section applies to the following offences:

(a) an offence under section 23 (1);

(b) an offence under section 24 (1);

(c) an offence under section 25 (1);

(d) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a), (b) or (c); and

(e) an offence under section 28 of aiding, abetting, counselling or procuring the commission of an offence under a law in force outside New South Wales which corresponds to section 23 (1), 24 (1) or 25 (1),

where the court is satisfied on the balance of probabilities that the number or amount of the prohibited plant or prohibited drug concerned in the commission of the offence is not more than the indictable quantity applicable to the prohibited plant or prohibited drug.

(2) Section 476 (subsection (7) excepted) of the Crimes Act 1900 applies to and in respect of an offence specified in subsection (1) in the same way as that section applies to and in respect of an offence mentioned in subsection (6) of that section.

(3) The penalty for an offence dealt with under this section is a fine of $5,000 or imprisonment for a term of 2 years, or both.

Penalty for offences dealt with on indictment not involving commercial quantities

32. Except as provided by sections 30 and 31, the penalty for—

(a) an offence under section 23 (1);

(b) an offence under section 24 (1);

(c) an offence under section 25 (1);

(d) an offence under section 26 of conspiring to commit an offence referred to in paragraph (a), (b) or (c);

(e) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a), (b) or (c); or

(f) an offence under section 28 of conspiring to commit, or of aiding, abetting, counselling or procuring the commission of, an offence under a law in force outside New South Wales which corresponds to section 23 (1), 24 (1) or 25 (1),

5 is—

(g) except as provided by paragraph (h), a fine of $200,000 or imprisonment for a term of 15 years, or both; or

(h) where the offence relates to cannabis plant or cannabis leaf, a fine of $200,000 or imprisonment for a term of 10 years, or both.

10 **Penalty for offences involving commercial quantities**

33. The penalty for—

(a) an offence under section 23 (2);

(b) an offence under section 24 (2);

(c) an offence under section 25 (2);

15 (d) an offence under section 26 of conspiring to commit an offence referred to in paragraph (a), (b) or (c);

(e) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a), (b) or (c); or

20 (f) an offence under section 28 of conspiring to commit, or of aiding, abetting, counselling or procuring the commission of, an offence under a law in force outside New South Wales which corresponds to section 23 (2), 24 (2) or 25 (2),

is—

25 (g) except as provided by paragraph (h), a fine of $500,000 or imprisonment for life, or both; or

(h) where the offence relates to cannabis plant or cannabis leaf, a fine of $500,000 or imprisonment for a term of 20 years, or both.

DIVISION 3—*Supplementary*

Commencement of term of imprisonment

34. A term of imprisonment imposed on a person by a court of summary jurisdiction in respect of the non-payment of a fine for an offence against any of the provisions of this Act may be ordered to commence at the expiration of any term of imprisonment imposed on that person for the same offence in addition to the fine.

Order for forfeiture

35. A court which convicts a person of an offence against any of the provisions of this Act or the regulations may order—

(a) that any prohibited plant, prohibited drug or article in respect of which the offence was committed shall be forfeited to Her Majesty; and

(b) that any prohibited plant, prohibited drug or article so forfeited shall be destroyed or otherwise disposed of as the court thinks fit.

Contravention of Act, etc., by corporations

36. **(1)** Where a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person, being a director of the corporation or an officer concerned in the management of the corporation, shall be deemed to have contravened the same provision and to be liable to the same extent as the corporation in respect of the contravention unless the person satisfies the court that—

(a) the corporation contravened the provision without the person's knowledge;

(b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or

(c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

(2) A person may be proceeded against and an order or conviction may be made in respect of the person pursuant to subsection (1) whether or not the corporation has been proceeded against or an order or conviction has been made in respect of the corporation.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which a contravention to which that subsection applies is actually committed.

PART III

ENFORCEMENT

Powers of search and detention

37. (1) In this section—

"police vessel" means a vessel ordinarily used by members of the police force in the execution of their duty.

(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 the member 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 the member reasonably suspects there is any prohibited plant or prohibited drug which is, in contravention of this Act, in the possession or under the control of any person.

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

(a) any person in whose possession or under whose control the member reasonably suspects there is, in contravention of this Act, any prohibited plant or prohibited drug; or

(b) any vehicle in which the member reasonably suspects there is any prohibited plant or prohibited drug which is, in contravention of this Act, in the possession or under the control of any person.

Destruction of prohibited plants by Director-General of Agriculture

38. (1) In this section—

"Director-General" means the Director-General of Agriculture.

(2) Upon information on oath by a member of the police force that the member suspects or believes that any prohibited plants are on any premises, a Magistrate may, upon reasonable ground being shown in the information for the member of the police force so suspecting or believing, issue a warrant authorising the Director-General to exercise the powers of the Director-General under subsection (3) with respect to those premises.

(3) After the issue of any such warrant, the Director-General may personally or by any persons authorised by the Director-General enter any premises specified in the warrant and take such steps as the Director-General thinks necessary for the purpose of destroying any prohibited plants on those premises and preventing any regrowth of those plants and may subsequently from time to time again enter those premises and take steps for those purposes until the Director-General is satisfied that the prohibited plants have been completely destroyed and their regrowth effectively prevented.

(4) The powers conferred on the Director-General under subsection (3) extend not only in respect of prohibited plants on any premises specified in any such warrant but also in respect of any other plants on those premises the destruction of which cannot, in the opinion of the Director-General, be avoided in the exercise of those powers.

(5) The Director-General or any other person is not liable in respect of any thing done in good faith in the exercise of powers conferred under subsection (3).

(6) Any costs or expenses incurred by the Director-General in the exercise of the powers conferred under subsection (3) may be recovered by the Director-General, in any court of competent jurisdiction, as a debt from any person convicted of an offence under section 23 in relation to the premises in respect of which the Director-General exercises those powers.

Seizure and forfeiture of heroin, etc.

39. Any heroin or 6-monoacetylmorphine or any other acetylated derivatives of morphine in the possession of any person may be seized by any member of the police force and any prohibited drug so seized shall be forfeited to Her Majesty.

PART IV

MISCELLANEOUS

Effect of certain representations

40. **(1)** A 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 prohibited drug or a specified prohibited drug shall, for the purposes of this Act and the regulations, be deemed to be a prohibited drug or the specified prohibited drug, as the case requires.

(2) A 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 prohibited plant or a specified prohibited plant shall, for the purposes of this Act and the regulations, be deemed to be a prohibited plant or the specified prohibited plant, as the case requires.

Authorisation of Secretary of Department of Health

41. An authorisation under this Act of the Secretary of the Department of Health—

(a) shall be in writing;

(b) may be granted subject to such conditions as the Secretary thinks fit; and

(c) may be revoked at any time by notice served on the person to whom it was granted or, if the Secretary thinks fit, by notice published in the Gazette.

Certificate of Secretary of Department of Health prima facie evidence

42. In any legal proceedings under this Act, a certificate purporting to be signed by the Secretary of the Department of Health or by an officer of the Department of Health authorised generally or specially by the Secretary in that behalf to do so and to certify that any person is or is not a person who holds a license, permit or authority under the Poisons Act 1966 shall, without proof of the signature or of the official character or authority of the person purporting to have signed the certificate, be prima facie evidence of the fact stated in the certificate.

Proof of certificate of analyst

43. **(1)** Any analyst analysing any substance submitted to the analyst may give a certificate of the result of the analysis.

(2) In any legal proceedings under this Act, the production of a certificate, purporting to be signed by an analyst, shall be prima facie evidence of the identity of the substance analysed, and of the result of the analysis, without proof of the signature, employment or appointment of the person appearing to have signed the certificate.

(3) For the purposes of the section—

"analyst" means any person employed by the Government of New South Wales as an analyst or any person who is an analyst within the meaning of the Therapeutic Goods and Cosmetics Act 1972.

Amendment of Schedule 1

44. The Governor may, from time to time, by regulation—

(a) amend Schedule 1—

(i) by adding to the Schedule the name or description of or relating to a prohibited plant or a substance and numbers and amounts relating to the prohibited plant or substance;

(ii) by amending or by removing from the Schedule a name or description of or relating to a prohibited plant or prohibited drug; or

(iii) by amending or by adding to or removing from the Schedule a number or amount relating to a prohibited plant or prohibited drug; or

(b) omit Schedule 1 and insert instead a Schedule containing names or descriptions of or relating to prohibited plants and substances and numbers and amounts, if any, relating to those names or descriptions.

Regulations

45. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may, in relation to such prohibited plants or prohibited drugs as may be specified in the regulations, exempt any person or any class or description of persons from such of the provisions of this Act or the regulations as may be so specified in such circumstances, if any, as may be so specified.

(3) A regulation may impose a penalty not exceeding $1,000 for any contravention of the regulation.

(4) An offence under the regulations may be prosecuted summarily before a Local Court constituted by a Magistrate sitting alone.

5 **(5)** A provision of a regulation may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors;

(b) apply differently according to different factors of a specified kind; or

10 (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

SCHEDULE 1

(Secs. 3 (1), 44)

Prohibited plant or prohibited drug	Column 1	Column 2	Column 3	Column 4	Column 5
	Traffickable quantity	Small quantity	Indictable quantity	Commercial quantity	Discrete dosage unit
Acetorphine	2.0g	0.2g	4.0g	2kg	—
Acetyldihydrocodeine	2.0g	0.2g	4.0g	2kg	—
Acetylmethadol	2.0g	0.2g	4.0g	2kg	—
Allylprodine	2.0g	0.2g	4.0g	2kg	—
Alphacetylmethadol	10.0g	1.0g	20.0g	10kg	—
Alphameprodine	0.2g	0.02g	0.4g	0.2kg	—
Alphamethadol	0.2g	0.02g	0.4g	0.2kg	—
Alphaprodine	25.0g	2.5g	50.0g	25kg	—
Amphetamine	2.0g	0.2g	4.0g	2kg	—
Benzethidine	10.0g	1.0g	20.0g	10kg	—
Benzylmorphine (3-benzylmorphine)	5.0g	0.5g	10.0g	5kg	—
Betacetylmethadol	5.0g	0.5g	10.0g	5kg	—
Betameprodine	5.0g	0.5g	10.0g	5kg	—
Betamethadol	5.0g	0.5g	10.0g	5kg	—
Betaprodine	5.0g	0.5g	10.0g	5kg	—
Bezitramide	5.0g	0.5g	10.0g	5kg	—
4-Bromo-2,5-dimethoxyamphetamine	10 discrete dosage units or 0.05g	2 discrete dosage units or 0.01g	20 discrete dosage units or 0.1g	0.05kg	0.005g
Bufotenine and its derivatives having hallucinogenic properties	10 discrete dosage units or 2.0g	2 discrete dosage units or 0.4g	20 discrete dosage units or 4.0g	2kg	0.2g

Prohibited plant or prohibited drug	Column 1 Traffickable quantity	Column 2 Small quantity	Column 3 Indictable quantity	Column 4 Commercial quantity	Column 5 Discrete dosage unit
Cannabis plant	—	5	20	1,000	—
Cannabis leaf	200.0g	25.0g	750.0g	100kg	—
Cannabis resin	20.0g	2.0g	40.0g	10kg	—
Cannabis oil	2.0g	0.2g	4.0g	2kg	—
Clonitazene	5.0g	0.5g	10.0g	5kg	—
Cocaine	2.0g	0.2g	4.0g	2kg	—
Codeine except where Schedule Two or Four of the Poisons List applies	10.0g	1.0g	20.0g	10kg	—
Codeine-N-oxide	10.0g	1.0g	20.0g	10kg	—
Codoxime	10.0g	1.0g	20.0g	10kg	—
Desomorphine	2.0g	0.2g	4.0g	2kg	—
Dextromoramide	2.0g	0.2g	4.0g	2kg	—
Diamorphine—see heroin					
Diampromide	5.0g	0.5g	10.0g	5kg	—
Diethylthiambutene	5.0g	0.5g	10.0g	5kg	—
N:N-Diethyltryptamine	2.0g	0.2g	4.0g	2kg	—
Difenoxin except where Schedule Four of the Poisons List applies	0.4g	0.04g	0.8g	0.4kg	—
Dihydrocodeine except where Schedule Two or Four of the Poisons List applies	10.0g	1.0g	20.0g	10kg	—
Dihydromorphine	10.0g	1.0g	20.0g	10kg	—
Dimenoxadol	10.0g	1.0g	20.0g	10kg	—
Dimepheptanol	10.0g	1.0g	20.0g	10kg	—

Prohibited plant or prohibited drug	Column 1	Column 2	Column 3	Column 4	Column 5
	Traffickable quantity	Small quantity	Indictable quantity	Commercial quantity	Discrete dosage unit
2,5-Dimethoxy-4-methylamphetamine and other substances structurally derived from methoxyphenylethylamine having hallucinogenic properties	10 discrete dosage units or 2.0g	2 discrete dosage units or 0.4g	20 discrete dosage units or 4.0g	2kg	0.2g
Dimethylthiambutene	20.0g	2.0g	40.0g	20kg	—
N:N-Dimethyltryptamine and its derivatives having hallucinogenic properties	10 discrete dosage units or 2.0g	2 discrete dosage units or 0.4g	20 discrete dosage units or 4.0g	2kg	0.2g
Dioxaphetyl butyrate	2.0g	0.2g	4.0g	2kg	—
Diphenoxylate except where Schedule Four of the Poisons List applies	2.0g	0.2g	4.0g	2kg	—
Dipipanone	10.0g	1.0g	20.0g	10kg	—
Ecgonine, its esters and derivatives which are convertible to ecgonine and cocaine	10.0g	1.0g	20.0g	10kg	—
Ethylmethylthiambutene	10.0g	1.0g	20.0g	10kg	—
Ethylmorphine except where Schedule Two or Four of the Poisons List applies	2.0g	0.2g	4.0g	2kg	—
Etonitazene	5.0g	0.5g	10.0g	5kg	—
Etorphine	5.0g	0.5g	10.0g	5kg	—
Etoxeridine	5.0g	0.5g	10.0g	5kg	—

Prohibited plant or prohibited drug	Column 1 Traffickable quantity	Column 2 Small quantity	Column 3 Indictable quantity	Column 4 Commercial quantity	Column 5 Discrete dosage unit
Fentanyl	0.005g	0.0005g	0.01g	0.005kg	—
Furethidine	1.0g	0.1g	2.0g	1kg	—
Heroin	2.0g	0.2g	4.0g	1kg	—
Hydrocodone	2.0g	0.2g	4.0g	2kg	—
Hydromorphinol	2.0g	0.2g	4.0g	2kg	—
Hydromorphone	2.0g	0.2g	4.0g	2kg	—
Hydroxypethidine	5.0g	0.5g	10.0g	5kg	—
Ketobemidone	2.0g	0.2g	4.0g	2kg	—
Levorphanol	1.0g	0.1g	2.0g	1kg	—
Lysergic acid and its derivatives having hallucinogenic properties	10 discrete dosage units or 0.002g	2 discrete dosage units or 0.0004g	20 discrete dosage units or 0.004g	0.002kg	0.0002g
Lysergide and its derivatives having hallucinogenic properties	10 discrete dosage units or 0.002g	2 discrete dosage units or 0.0004g	20 discrete dosage units or 0.004g	0.002kg	0.0002g

Prohibited plant or prohibited drug	Column 1 Traffickable quantity	Column 2 Small quantity	Column 3 Indictable quantity	Column 4 Commercial quantity	Column 5 Discrete dosage unit
Mescaline and other substances structurally derived from methoxyphenylethylamine having hallucinogenic properties	10 discrete dosage units or 7.5g	2 discrete dosage units or 1.5g	20 discrete dosage units or 15.0g	7.5kg	0.75g
Metazocine	7.0g	0.7g	14.0g	7kg	—
Methadone	2.0g	0.2g	4.0g	2kg	—
Methylamphetamine	2.0g	0.2g	4.0g	2kg	—
Methyldesorphine	2.0g	0.2g	4.0g	2kg	—
Methyldihydromorphine	2.0g	0.2g	4.0g	2kg	—
3,4-Methylenedioxyamphetamine	0.5g	0.05g	1.0g	0.5kg	—
Methylphenidate	2.0g	0.2g	4.0g	2kg	—
Metopon	2.0g	0.2g	4.0g	2kg	—
Monoacetylmorphine	2.0g	0.2g	4.0g	2kg	—
6-Monoacetylemorphine and other acetylated derivatives of morphine	2.0g	0.2g	4.0g	2kg	—
Morpheridine	2.0g	0.2g	4.0g	2kg	—
Morphine	2.0g	0.2g	4.0g	2kg	—
Morphine-N-oxide	2.0g	0.2g	4.0g	2kg	—
Myrophine	20.0g	2.0g	40.0g	20kg	—
Nicocodine except where Schedule Two or Four of the Poisons List applies	2.0g	0.2g	4.0g	2kg	—
Nicodicodine except where Schedule Two or Four of the Poisons List applies	2.0g	0.2g	4.0g	2kg	—

Prohibited plant or prohibited drug	Column 1	Column 2	Column 3	Column 4	Column 5
	Traffickable quantity	Small quantity	Indictable quantity	Commercial quantity	Discrete dosage unit
Nicomorphine	2.0g	0.2g	4.0g	2kg	—
Noracylmethadol	2.0g	0.2g	4.0g	2kg	—
Norcodeine except where Schedule Two or Four of the Poisons List applies	2.0g	0.2g	4.0g	2kg	—
Norlevorphanol	2.0g	0.2g	4.0g	2kg	—
Normethadone	5.0g	0.5g	10.0g	5kg	—
Normorphine	20.0g	2.0g	40.0g	20kg	—
Norpipanone	10.0g	1.0g	20.0g	10kg	—
Opium	20.0g	2.0g	40.0g	20kg	—
Opium, prepared	20.0g	2.0g	40.0g	20kg	—
Oxycodone	5.0g	0.5g	10.0g	5kg	—
Oxymorphone	2.0g	0.2g	4.0g	2kg	—
Pethidine	10.0g	1.0g	20.0g	10kg	—
Phenadoxone	10.0g	1.0g	20.0g	10kg	—
Phenampromide	10.0g	1.0g	20.0g	10kg	—
Phenazocine	1.0g	0.1g	2.0g	1kg	—
Phencyclidine	2.0g	0.2g	4.0g	2kg	—
Phendimetrazine	5.0g	0.5g	10.0g	5kg	—
Phenmetrazine	5.0g	0.5g	10.0g	5kg	—
Phenomorphan	5.0g	0.5g	10.0g	5kg	—
Phenoperidine	1.0g	0.1g	2.0g	1kg	—
Pholcodine except where Schedule Two or Four of the Poisons List applies	5.0g	0.5g	10.0g	5kg	—
Piminodine	10.0g	1.0g	20.0g	10kg	—

Prohibited plant or prohibited drug	Column 1	Column 2	Column 3	Column 4	Column 5
	Traffickable quantity	Small quantity	Indictable quantity	Commercial quantity	Discrete dosage unit
Piritramide	1.0g	0.1g	2.0g	1kg	—
Proheptazine	1.0g	0.1g	2.0g	1kg	—
Prohibited plant, other than cannabis plant	—	5	20	1 000	—
Properidine	25.0g	2.5g	50.0g	25kg	—
Psilocin and its derivatives having hallucinogenic properties	10 discrete dosage units or 0.1g	2 discrete dosage units or 0.02g	20 discrete dosage units or 0.2g	0.1kg	0.01g
Psilocybin and its derivatives having hallucinogenic properties	10 discrete dosage units or 0.1g	2 discrete dosage units or 0.02g	20 discrete dosage units or 0.2g	0.1kg	0.01g
Tetrahydrocannabinol	2.0g	0.2g	4.0g	2kg	—
Thebacon	2.0g	0.2g	4.0g	2kg	—
Thebaine	2.0g	0.2g	4.0g	2kg	—
Trimeperidine	10.0g	1.0g	20.0g	10kg	—

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DRUG MISUSE AND TRAFFICKING ACT 1985 No. 226

NEW SOUTH WALES

TABLE OF PROVISIONS

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51126-11158 ($1.50)

New South Wales

ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* *

Act No. 226, 1985

An Act to prohibit the manufacture, supply, possession and use of certain drugs, and for related purposes. [Assented to, 18th December, 1985.]

See also Miscellaneous Acts (Drug Misuse and Trafficking) Amendment Act 1985.

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:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the "Drug Misuse and Trafficking Act 1985".

Commencement

2. **(1)** Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette, being a day that is not earlier than the day appointed and notified under section 2 (2) of the Search Warrants Act 1985.

Interpretation

3. **(1)** In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"cannabis leaf" means any plant or part of a plant of the genus Cannabis by whatever name that plant or part may be called, and includes the achene and seed of any such plant, being a plant or part which does not contain more than 3 per cent by weight, determined in the prescribed manner, of tetrahydrocannabinol, but does not include—

(a) cannabis resin;

(b) cannabis oil;

(c) any fibre of any such plant or part from which the resin has been extracted; or

(d) cannabis plant;

"cannabis oil" means any substance obtained from cannabis leaf or cannabis resin by means of solvent extraction;

"cannabis plant" means any growing plant of the genus Cannabis;

"cannabis resin" means—

(a) the separated resin, whether crude or purified, obtained from cannabis leaf; or

(b) any plant or part of a plant of the genus Cannabis by whatever name that plant or part may be called, and includes the achene and seed of any such plant, being a plant or part which contains more than 3 per cent by weight, determined in the prescribed manner, of tetrahydrocannabinol,

but does not include cannabis oil;

"commercial quantity", in relation to a prohibited plant or a prohibited drug, means a number or amount, if any, specified opposite the prohibited plant or prohibited drug in Column 4 of Schedule 1;

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

(a) sow or scatter the seed produced by the prohibited plant; and

(b) plant, grow, tend, nurture or harvest the prohibited plant;

"dentist" means a person registered, or deemed to be registered, as a dentist under the Dentists Act 1934;

"discrete dosage unit", in relation to a prohibited drug, means an amount of the prohibited drug, not greater than the amount, if any, specified opposite the prohibited drug in Column 5 of Schedule 1, which is prepared or apparently prepared for the purpose of being administered as a single dose;

"heroin" means diamorphine and includes the salts of diamorphine;

"indictable quantity", in relation to a prohibited plant or a prohibited drug, means the number or amount, if any, specified opposite the prohibited plant or prohibited drug in Column 3 of Schedule 1;

"manufacture", in relation to a prohibited drug, includes the process of extracting or refining the prohibited drug;

"nurse" means a registered nurse within the meaning of the Nurses Registration Act 1953;

"owner", in relation to any premises, includes the person entitled to receive the rent of the premises and the person to whom the rent of the premises is paid;

"pharmacist" means a pharmacist within the meaning of the Pharmacy Act 1964;

"Poisons List" means the list proclaimed under section 8 of the Poisons Act 1966, being that list as in force for the time being;

"premises" includes any structure, building, aircraft, vehicle, vessel or place (whether built upon or not), and any part of any such structure, building, aircraft, vehicle, vessel or place;

"prepared opium" means any preparation of opium in a form capable of being used for the purpose of smoking, and includes dross and any other residues remaining after opium has been smoked;

"profession" includes business, trade and industry;

"prohibited drug" means any substance, other than a prohibited plant, specified in Schedule 1;

"prohibited plant" means—

(a) cannabis plant;

(b) any growing plant of the genus Erythroxylon or of the species Papaver Somniferum or Papaver orientale, also known as Papaver bracteatum; or

(c) any growing plant of a description specified in an order in force under subsection (2),

but does not include any growing plant, referred to in paragraph (a) or (b), of a description prescribed for the purposes of this definition;

"regulations" means regulations made under this Act;

"sell" includes sell whether by wholesale or retail and barter and exchange, and also includes dealing in, agreeing to sell, or offering or exposing for sale, or keeping or having in possession for sale, or sending, forwarding, delivering or receiving for sale or on sale, or authorising, directing, causing, suffering, permitting or attempting any of those acts or things;

"small quantity", in relation to a prohibited plant or a prohibited drug, means the number or amount, if any, specified opposite the prohibited plant or prohibited drug in Column 2 of Schedule 1;

"substance" includes preparation and admixture and all salts, isomers, esters or ethers of any substance and all salts of those isomers, esters and ethers;

"supply" includes sell and distribute, and also includes agreeing to supply, or offering to supply, or keeping or having in possession for supply, or sending, forwarding, delivering or receiving for supply, or authorising, directing, causing, suffering, permitting or attempting any of those acts or things;

"traffickable quantity", in relation to a prohibited plant or a prohibited drug, means the number or amount, if any, specified opposite the prohibited plant or prohibited drug in Column 1 of Schedule 1;

"veterinary surgeon" means a person registered as a veterinary surgeon under the Veterinary Surgeons Act 1923;

"wholesale" means supply for the purposes of resale.

(2) For the purposes of paragraph (c) of the definition of "prohibited plant" in subsection (1), the Minister may, by order published in the Gazette, declare any description of any plant that in the opinion of the Minister is capable of being used for the purpose of producing a prohibited drug to be a prohibited plant.

Admixtures

4. In this Act, a reference to a prohibited drug includes a reference to any preparation, admixture, extract or other substance containing any proportion of the prohibited drug.

Meaning of "use" and "administer"

5. In this Act, a reference to the use or administration of a prohibited drug includes a reference to the ingestion, injection and inhalation of a prohibited drug, the smoking of a prohibited drug, the inhalation of fumes caused by the heating or burning of a prohibited drug and any other means of introducing a prohibited drug into any part of the body of a person.

Meaning of "take part in"

6. For the purposes of this Act and the regulations, a person takes part in the cultivation or supply of a prohibited plant or the manufacture, production or supply of a prohibited drug if—

(a) the person takes, or participates in, any step, or causes any step to be taken, in the process of that cultivation, manufacture, production or supply;

(b) the person provides or arranges finance for any such step in that process; or

(c) the person provides the premises in which any such step in that process is taken, or suffers or permits any such step in that process to be taken in premises of which the person is the owner, lessee or occupier or in the management of which the person participates.

Deemed possession of prohibited drug, etc.

7. For the purposes of this Act and the regulations, a prohibited drug or prohibited plant in the order or disposition of a person shall be deemed to be in the possession of the person.

Relationship with Poisons Act 1966

8. Nothing in this Act affects any provision made by or under the Poisons Act 1966 or renders unlawful anything done in accordance with any such provision.

PART II

OFFENCES

DIVISION 1—*Summary offences*

Summary prosecution

9. An offence under this Division shall be prosecuted summarily before a Local Court constituted by a Magistrate sitting alone.

Possession of prohibited drugs

10. (1) A person who has a prohibited drug in his or her possession is guilty of an offence.

(2) Nothing in this section renders unlawful the possession of a prohibited drug by—

(a) a medical practitioner, dentist, veterinary surgeon, pharmacist or nurse acting in the ordinary course of his or her profession;

(b) a member of any other prescribed profession acting in the course of his or her profession;

(c) a person licensed or authorised to have possession of the prohibited drug under the Poisons Act 1966;

(d) a person acting in accordance with an authority granted by the Secretary of the Department of Health where the Secretary is satisfied that the possession of the prohibited drug is for the purpose of scientific research, instruction, analysis or study; or

(e) a person for or to whom the prohibited drug has been lawfully prescribed or supplied.

Possession of equipment for administration of prohibited drugs

11. (1) A person who has in his or her possession any item of equipment for use in the administration of a prohibited drug is guilty of an offence.

(2) Nothing in this section renders unlawful the possession of an item of equipment by—

(a) a medical practitioner, dentist, veterinary surgeon, pharmacist or nurse acting in the ordinary course of his or her profession;

(b) a member of any other prescribed profession acting in the ordinary course of that profession;

(c) a person licensed or authorised to have possession of the item of equipment under the Poisons Act 1966;

(d) a person authorised to have possession of the item of equipment by the Secretary of the Department of Health; or

(e) a person to whom the item of equipment has been lawfully supplied.

Self-administration of prohibited drugs

12. (1) A person who administers or attempts to administer a prohibited drug to himself or herself is guilty of an offence.

(2) Nothing in this section renders unlawful the administration or attempted administration by a person to himself or herself of a prohibited drug which has been lawfully prescribed for or supplied to the person.

Administration of prohibited drugs to others

13. (1) A person who administers or attempts to administer a prohibited drug to another person is guilty of an offence.

(2) Nothing in this section renders unlawful the administration or attempted administration of a prohibited drug to another person by—

(a) a medical practitioner, dentist, pharmacist or nurse acting in the ordinary course of his or her profession;

(b) a member of any other prescribed profession acting in the ordinary course of that profession; or

(c) a person authorised to do so by the Secretary of the Department of Health.

(3) Nothing in this section renders unlawful the administration or attempted administration of a prohibited drug to a person for or to whom the prohibited drug has been lawfully prescribed or supplied.

Permitting another to administer prohibited drugs

14. (1) A person who permits another person to administer or attempt to administer to him or her a prohibited drug is guilty of an offence.

(2) Nothing in this section renders unlawful the giving of permission for the administration or attempted administration of a prohibited drug by a person for whom or to whom the prohibited drug has been lawfully prescribed or supplied.

Forging, etc., prescriptions

15. A person who forges or fraudulently alters or utters, knowing it to be forged or fraudulently altered, a prescription of a medical practitioner or veterinary surgeon including a prohibited drug is guilty of an offence.

Obtaining, etc., prescription by false representation

16. A person—

(a) who knowingly by any false representation (whether verbal, or in writing, or by conduct)—

(i) obtains from a medical practitioner or veterinary surgeon a prescription including a prohibited drug; or

(ii) induces a pharmacist to dispense a forged or fraudulently altered prescription obtained in contravention of this paragraph knowing it to be forged or so altered or obtained; or

(b) who is in actual possession of a forged or fraudulently altered prescription including a prohibited drug or a prescription obtained in contravention of paragraph (a), knowing it to be forged or so altered or so obtained,

is guilty of an offence.

Obtaining prohibited drug by false representation

17. A person who knowingly by any false representation (whether verbal, or in writing, or by conduct) obtains or attempts to obtain a prohibited drug from a medical practitioner, pharmacist or veterinary surgeon is guilty of an offence.

Obtaining prohibited drugs from medical practitioners

18. A person who, by any representation (whether verbal, or in writing, or by conduct), obtains or attempts to obtain—

(a) a prohibited drug; or

(b) a prescription that includes a prohibited drug, from a medical practitioner without previously informing the medical practitioner of the quantity of that or any other prohibited drug or prohibited drugs for which the person has obtained prescriptions from medical practitioners within the period of 2 months immediately preceding the time of the representation, where the failure or refusal to inform the medical practitioner is made with intent to deceive the medical practitioner,

is guilty of an offence.

Aiding, abetting, etc., commission of offence in New South Wales

19. A person who aids, abets, counsels, procures, solicits or incites the commission of an offence under this Division is guilty of an offence and liable to the same punishment, pecuniary penalties and forfeiture as the person would be if the person had committed the firstmentioned offence.

Aiding, abetting, etc., commission of offence outside New South Wales

20. A person who, in New South Wales, aids, abets, counsels or procures the commission of an offence in any place outside New South Wales, being an offence punishable under the provisions of a law in force in that place which corresponds to a provision of this Division, is guilty of an offence and liable to the same punishment, pecuniary penalties and forfeiture as the person would be if the person had committed the firstmentioned offence in New South Wales.

Penalties

21. The penalty for an offence under this Division is a fine of $2,000 or imprisonment for a term of 2 years, or both.

DIVISION 2—*Indictable offences*

Indictable prosecution

22. (1) An offence under this Division shall be prosecuted on indictment.

(2) The provisions of section 56 of the Justices Act 1902 shall not apply to any indictable offences dealt with summarily in accordance with the provisions of this Division.

Offences with respect to prohibited plants

23. (1) A person who—

(a) cultivates, or knowingly takes part in the cultivation of, a prohibited plant;

(b) supplies, or knowingly takes part in the supply of, a prohibited plant; or

(c) has a prohibited plant in his or her possession,

is guilty of an offence.

(2) A person who—

(a) cultivates, or knowingly takes part in the cultivation of, a number of prohibited plants in his or her possession which is not less than the commercial quantity applicable to prohibited plants;

(b) supplies, or knowingly takes part in the supply of, a number of prohibited plants which is not less than the commercial quantity applicable to prohibited plants; or

(c) has a number of prohibited plants in his or her possession which is not less than the commercial quantity applicable to prohibited plants,

is guilty of an offence.

(3) Where, on the trial of a person for an offence under subsection (2), the jury are not satisfied that the number of prohibited plants involved is equal to or more than the commercial quantity applicable to prohibited plants, they may acquit the person of the offence charged and find the person guilty of an offence under subsection (1), and the person shall be liable to punishment accordingly.

(4) Nothing in this section renders unlawful any act relating to the cultivation, supply or possession of a prohibited plant by—

(a) a person—

(i) who informs the court before which the person is prosecuted that the person proposes to adduce evidence as referred to in subparagraph (ii); and

(ii) who adduces evidence which satisfies the court that, having regard to all the circumstances, including the person's conduct, in which the act constituting the offence was done or preparatory to the doing of the act, the person did not know or suspect and could not reasonably be expected to have known or suspected that the prohibited plant was a prohibited plant; or

(b) a person acting in accordance with an authority granted by the Secretary of the Department of Health where the Secretary is satisfied that the cultivation, supply or possession of the prohibited plant is for the purpose of scientific research, instruction, analysis or study.

(5) Where a person informs a court as referred to in subsection (4) (a) (i), evidence of any previous conviction of the person for any offence, being evidence which may intend to rebut the evidence referred to in subsection (4) (a) (ii), may, with the leave of the court, be adduced by the prosecutor.

Manufacture and production of prohibited drugs

24. (1) A person who manufactures or produces, or who knowingly takes part in the manufacture or production of, a prohibited drug is guilty of an offence.

(2) A person who manufactures or produces, or who knowingly takes part in the manufacture or production of, an amount of a prohibited drug which is not less than the commercial quantity applicable to the prohibited drug is guilty of an offence.

(3) Where, on the trial of a person for an offence under subsection (2), the jury are not satisfied that the amount of prohibited drug involved is equal to or more than the commercial quantity applicable to the prohibited drug, they may acquit the person of the offence charged and find the person guilty of an offence under subsection (1), and the person shall be liable to punishment accordingly.

(4) Nothing in this section renders unlawful the manufacture or production of a prohibited drug by—

(a) a medical practitioner, dentist, veterinary surgeon, pharmacist or nurse acting in the ordinary course of his or her profession;

(b) a member of any other prescribed profession acting in the course of his or her profession; or

(c) a person licensed or authorised to do so under the Poisons Act 1966,

or renders unlawful the taking part by any other person in the manufacture or production of a prohibited drug by a person to whom paragraph (a), (b) or (c) applies.

Supply of prohibited drugs

25. (1) A person who supplies, or who knowingly takes part in the supply of, a prohibited drug is guilty of an offence.

(2) A person who supplies, or who knowingly takes part in the supply of, an amount of a prohibited drug which is not less than the commercial quantity applicable to the prohibited drug is guilty of an offence.

(3) Where, on the trial of a person for an offence under subsection (2), the jury are not satisfied that the amount of prohibited drug involved is equal to or more than the commercial quantity applicable to the prohibited drug, they may acquit the person of the offence charged and find the person guilty of an offence under subsection (1), and the person shall be liable to punishment accordingly.

(4) Nothing in this section renders unlawful the supply of a prohibited drug by—

(a) a medical practitioner, dentist, veterinary surgeon, pharmacist or nurse acting in the ordinary course of his or her profession;

(b) a member of any other prescribed profession acting in the course of his or her profession; or

(c) a person licensed or authorised to do so under the Poisons Act 1966,

or renders unlawful the taking part by any other person in the supply of a prohibited drug by a person to whom paragraph (a), (b) or (c) applies.

Conspiring

26. A person who conspires with another person or other persons to commit an offence under this Division is guilty of an offence and liable to the same punishment, pecuniary penalties and forfeiture as the person would be if the person had committed the firstmentioned offence.

Aiding, abetting, etc., commission of offence in New South Wales

27. A person who aids, abets, counsels, procures, solicits or incites the commission of an offence under this Division is guilty of an offence and liable to the same punishment, pecuniary penalties and forfeiture as if the person had committed the firstmentioned offence.

Conspiring to commit and aiding, etc., commission of offence outside New South Wales

28. A person who, in New South Wales—

(a) conspires with another person or persons to commit an offence in any place outside New South Wales, being an offence punishable under the provisions of a law in force in that place which corresponds to a provision of this Division; or

(b) aids, abets, counsels or procures the commission of an offence in any place outside New South Wales, being an offence punishable under the provisions of a law in force in that place which corresponds to a provision of this Division,

is guilty of an offence and liable to the same punishment, pecuniary penalties and forfeiture as the person would be if the person had committed the offence which was committed outside New South Wales.

Traffickable quantity—possession deemed to be for supply

29. A person who has in his or her possession an amount of a prohibited drug which is not less than the traffickable quantity of the prohibited drug shall, for the purposes of this Division, be deemed to have the prohibited drug in his or her possession for supply, unless—

(a) the person proves that he or she had the prohibited drug in his or her possession otherwise than for supply; or

(b) except where the prohibited drug is prepared opium, cannabis leaf, cannabis oil, cannabis resin, heroin or 6-monoacetylmorphine or any other acetylated derivatives of morphine, the person proves that he or she obtained possession of the prohibited drug on and in accordance with the prescription of a medical practitioner, dentist or veterinary surgeon.

Indictable offences punishable summarily without consent of accused

30. (1) This section applies to the following offences:

(a) an offence under section 23 (1);

(b) an offence under section 24 (1);

(c) an offence under section 25 (1);

(d) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a), (b) or (c); and

(e) an offence under section 28 of aiding, abetting, counselling or procuring the commission of an offence under a law in force outside New South Wales which corresponds to section 23 (1), 24 (1) or 25 (1),

where the court is satisfied on the balance of probabilities that the number or amount of the prohibited plant or prohibited drug concerned in the commission of the offence is not more than the small quantity applicable to the prohibited plant or prohibited drug.

(2) An offence to which this section applies may, without the consent of the accused being obtained, be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(3) The penalty for an offence dealt with under this section is a fine of $2,000 or imprisonment for a term of 2 years, or both.

Indictable offences punishable summarily with consent of accused

31. (1) This section applies to the following offences:

(a) an offence under section 23 (1);

(b) an offence under section 24 (1);

(c) an offence under section 25 (1);

(d) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a), (b) or (c); and

(e) an offence under section 28 of aiding, abetting, counselling or procuring the commission of an offence under a law in force outside New South Wales which corresponds to section 23 (1), 24 (1) or 25 (1),

where the court is satisfied on the balance of probabilities that the number or amount of the prohibited plant or prohibited drug concerned in the commission of the offence is not more than the indictable quantity applicable to the prohibited plant or prohibited drug.

(2) Section 476 (subsection (7) excepted) of the Crimes Act 1900 applies to and in respect of an offence specified in subsection (1) in the same way as that section applies to and in respect of an offence mentioned in subsection (6) of that section.

(3) The penalty for an offence dealt with under this section is a fine of $5,000 or imprisonment for a term of 2 years, or both.

Penalty for offences dealt with on indictment not involving commercial quantities

32. Except as provided by sections 30 and 31, the penalty for—

(a) an offence under section 23 (1);

(b) an offence under section 24 (1);

(c) an offence under section 25 (1);

(d) an offence under section 26 of conspiring to commit an offence referred to in paragraph (a), (b) or (c);

(e) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a), (b) or (c); or

(f) an offence under section 28 of conspiring to commit, or of aiding, abetting, counselling or procuring the commission of, an offence under a law in force outside New South Wales which corresponds to section 23 (1), 24 (1) or 25 (1),

is—

(g) except as provided by paragraph (h), a fine of $200,000 or imprisonment for a term of 15 years, or both; or

(h) where the offence relates to cannabis plant or cannabis leaf, a fine of $200,000 or imprisonment for a term of 10 years, or both.

Penalty for offences involving commercial quantities

33. The penalty for—

(a) an offence under section 23 (2);

(b) an offence under section 24 (2);

(c) an offence under section 25 (2);

(d) an offence under section 26 of conspiring to commit an offence referred to in paragraph (a), (b) or (c);

(e) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a), (b) or (c); or

(f) an offence under section 28 of conspiring to commit, or of aiding, abetting, counselling or procuring the commission of, an offence under a law in force outside New South Wales which corresponds to section 23 (2), 24 (2) or 25 (2),

is—

(g) except as provided by paragraph (h), a fine of $500,000 or imprisonment for life, or both; or

(h) where the offence relates to cannabis plant or cannabis leaf, a fine of $500,000 or imprisonment for a term of 20 years, or both.

DIVISION 3—*Supplementary*

Commencement of term of imprisonment

34. A term of imprisonment imposed on a person by a court of summary jurisdiction in respect of the non-payment of a fine for an offence against any of the provisions of this Act may be ordered to commence at the expiration of any term of imprisonment imposed on that person for the same offence in addition to the fine.

Order for forfeiture

35. A court which convicts a person of an offence against any of the provisions of this Act or the regulations may order—

(a) that any prohibited plant, prohibited drug or article in respect of which the offence was committed shall be forfeited to Her Majesty; and

(b) that any prohibited plant, prohibited drug or article so forfeited shall be destroyed or otherwise disposed of as the court thinks fit.

Contravention of Act, etc., by corporations

36. (1) Where a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person, being a director of the corporation or an officer concerned in the management of the corporation, shall be deemed to have contravened the same provision and to be liable to the same extent as the corporation in respect of the contravention unless the person satisfies the court that—

(a) the corporation contravened the provision without the person's knowledge;

(b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or

(c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

(2) A person may be proceeded against and an order or conviction may be made in respect of the person pursuant to subsection (1) whether or not the corporation has been proceeded against or an order or conviction has been made in respect of the corporation.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which a contravention to which that subsection applies is actually committed.

PART III

ENFORCEMENT

Powers of search and detention

37. (1) In this section—

"police vessel" means a vessel ordinarily used by members of the police force in the execution of their duty.

(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 the member 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 the member reasonably suspects there is any prohibited plant or prohibited drug which is, in contravention of this Act, in the possession or under the control of any person.

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

(a) any person in whose possession or under whose control the member reasonably suspects there is, in contravention of this Act, any prohibited plant or prohibited drug; or

(b) any vehicle in which the member reasonably suspects there is any prohibited plant or prohibited drug which is, in contravention of this Act, in the possession or under the control of any person.

Destruction of prohibited plants by Director-General of Agriculture

38. (1) In this section—

"Director-General" means the Director-General of Agriculture.

(2) Upon information on oath by a member of the police force that the member suspects or believes that any prohibited plants are on any premises, a Magistrate may, upon reasonable ground being shown in the information for the member of the police force so suspecting or believing, issue a warrant authorising the Director-General to exercise the powers of the Director-General under subsection (3) with respect to those premises.

(3) After the issue of any such warrant, the Director-General may personally or by any persons authorised by the Director-General enter any premises specified in the warrant and take such steps as the Director-General thinks necessary for the purpose of destroying any prohibited plants on those premises and preventing any regrowth of those plants and may subsequently from time to time again enter those premises and take steps for those purposes until the Director-General is satisfied that the prohibited plants have been completely destroyed and their regrowth effectively prevented.

(4) The powers conferred on the Director-General under subsection (3) extend not only in respect of prohibited plants on any premises specified in any such warrant but also in respect of any other plants on those premises the destruction of which cannot, in the opinion of the Director-General, be avoided in the exercise of those powers.

(5) The Director-General or any other person is not liable in respect of any thing done in good faith in the exercise of powers conferred under subsection (3).

(6) Any costs or expenses incurred by the Director-General in the exercise of the powers conferred under subsection (3) may be recovered by the Director-General, in any court of competent jurisdiction, as a debt from any person convicted of an offence under section 23 in relation to the premises in respect of which the Director-General exercises those powers.

Seizure and forfeiture of heroin, etc.

39. Any heroin or 6-monoacetylmorphine or any other acetylated derivatives of morphine in the possession of any person may be seized by any member of the police force and any prohibited drug so seized shall be forfeited to Her Majesty.

PART IV

MISCELLANEOUS

Effect of certain representations

40. **(1)** A 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 prohibited drug or a specified prohibited drug shall, for the purposes of this Act and the regulations, be deemed to be a prohibited drug or the specified prohibited drug, as the case requires.

(2) A 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 prohibited plant or a specified prohibited plant shall, for the purposes of this Act and the regulations, be deemed to be a prohibited plant or the specified prohibited plant, as the case requires.

Authorisation of Secretary of Department of Health

41. An authorisation under this Act of the Secretary of the Department of Health—

(a) shall be in writing;

(b) may be granted subject to such conditions as the Secretary thinks fit; and

(c) may be revoked at any time by notice served on the person to whom it was granted or, if the Secretary thinks fit, by notice published in the Gazette.

Certificate of Secretary of Department of Health prima facie evidence

42. In any legal proceedings under this Act, a certificate purporting to be signed by the Secretary of the Department of Health or by an officer of the Department of Health authorised generally or specially by the Secretary in that behalf to do so and to certify that any person is or is not a person who holds a license, permit or authority under the Poisons Act 1966 shall, without proof of the signature or of the official character or authority of the person purporting to have signed the certificate, be prima facie evidence of the fact stated in the certificate.

Proof of certificate of analyst

43. **(1)** Any analyst analysing any substance submitted to the analyst may give a certificate of the result of the analysis.

(2) In any legal proceedings under this Act, the production of a certificate, purporting to be signed by an analyst, shall be prima facie evidence of the identity of the substance analysed, and of the result of the analysis, without proof of the signature, employment or appointment of the person appearing to have signed the certificate.

(3) For the purposes of the section—

"analyst" means any person employed by the Government of New South Wales as an analyst or any person who is an analyst within the meaning of the Therapeutic Goods and Cosmetics Act 1972.

Amendment of Schedule 1

44. The Governor may, from time to time, by regulation—

(a) amend Schedule 1—

(i) by adding to the Schedule the name or description of or relating to a prohibited plant or a substance and numbers and amounts relating to the prohibited plant or substance;

(ii) by amending or by removing from the Schedule a name or description of or relating to a prohibited plant or prohibited drug; or

(iii) by amending or by adding to or removing from the Schedule a number or amount relating to a prohibited plant or prohibited drug; or

(b) omit Schedule 1 and insert instead a Schedule containing names or descriptions of or relating to prohibited plants and substances and numbers and amounts, if any, relating to those names or descriptions.

Regulations

45. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may, in relation to such prohibited plants or prohibited drugs as may be specified in the regulations, exempt any person or any class or description of persons from such of the provisions of this Act or the regulations as may be so specified in such circumstances, if any, as may be so specified.

(3) A regulation may impose a penalty not exceeding $1,000 for any contravention of the regulation.

(4) An offence under the regulations may be prosecuted summarily before a Local Court constituted by a Magistrate sitting alone.

(5) A provision of a regulation may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors;

(b) apply differently according to different factors of a specified kind; or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

SCHEDULE 1

(Secs. 3 (1), 44)

Prohibited plant or prohibited drug	Column 1 Traffickable quantity	Column 2 Small quantity	Column 3 Indictable quantity	Column 4 Commercial quantity	Column 5 Discrete dosage unit
Acetorphine	2.0g	0.2g	4.0g	2kg	—
Acetyldihydrocodeine	2.0g	0.2g	4.0g	2kg	—
Acetylmethadol	2.0g	0.2g	4.0g	2kg	—
Allylprodine	2.0g	0.2g	4.0g	2kg	—
Alphacetylmethadol	10.0g	1.0g	20.0g	10kg	—
Alphameprodine	0.2g	0.02g	0.4g	0.2kg	—
Alphamethadol	0.2g	0.02g	0.4g	0.2kg	—
Alphaprodine	25.0g	2.5g	50.0g	25kg	—
Amphetamine	2.0g	0.2g	4.0g	2kg	—
Benzethidine	10.0g	1.0g	20.0g	10kg	—
Benzylmorphine (3-benzylmorphine)	5.0g	0.5g	10.0g	5kg	—
Betacetylmethadol	5.0g	0.5g	10.0g	5kg	—
Betameprodine	5.0g	0.5g	10.0g	5kg	—
Betamethadol	5.0g	0.5g	10.0g	5kg	—
Betaprodine	5.0g	0.5g	10.0g	5kg	—
Bezitramide	5.0g	0.5g	10.0g	5kg	—
4-Bromo-2,5-dimethoxyamphetamine	10 discrete dosage units or 0.05g	2 discrete dosage units or 0.01g	20 discrete dosage units or 0.1g	0.05kg	0.005g
Bufotenine and its derivatives having hallucinogenic properties	10 discrete dosage units or 2.0g	2 discrete dosage units or 0.4g	20 discrete dosage units or 4.0g	2kg	0.2g

Prohibited plant or prohibited drug	Column 1 Traffickable quantity	Column 2 Small quantity	Column 3 Indictable quantity	Column 4 Commercial quantity	Column 5 Discrete dosage unit
Cannabis plant	—	5	20	1,000	—
Cannabis leaf	200.0g	25.0g	750.0g	100kg	—
Cannabis resin	20.0g	2.0g	40.0g	10kg	—
Cannabis oil	2.0g	0.2g	4.0g	2kg	—
Clonitazene	5.0g	0.5g	10.0g	5kg	—
Cocaine	2.0g	0.2g	4.0g	2kg	—
Codeine except where Schedule Two or Four of the Poisons List applies	10.0g	1.0g	20.0g	10kg	—
Codeine-N-oxide	10.0g	1.0g	20.0g	10kg	—
Codoxime	10.0g	1.0g	20.0g	10kg	—
Desomorphine	2.0g	0.2g	4.0g	2kg	—
Dextromoramide	2.0g	0.2g	4.0g	2kg	—
Diamorphine—see heroin					
Diampromide	5.0g	0.5g	10.0g	5kg	—
Diethylthiambutene	5.0g	0.5g	10.0g	5kg	—
N:N-Diethyltryptamine	2.0g	0.2g	4.0g	2kg	—
Difenoxin except where Schedule Four of the Poisons List applies	0.4g	0.04g	0.8g	0.4kg	—
Dihydrocodeine except where Schedule Two or Four of the Poisons List applies	10.0g	1.0g	20.0g	10kg	—
Dihydromorphine	10.0g	1.0g	20.0g	10kg	—
Dimenoxadol	10.0g	1.0g	20.0g	10kg	—
Dimepheptanol	10.0g	1.0g	20.0g	10kg	—

Prohibited plant or prohibited drug	Column 1	Column 2	Column 3	Column 4	Column 5
	Traffickable quantity	Small quantity	Indictable quantity	Commercial quantity	Discrete dosage unit
2,5-Dimethoxy-4-methylamphetamine and other substances structurally derived from methoxyphenylethylamine having hallucinogenic properties	10 discrete dosage units or 2.0g	2 discrete dosage units or 0.4g	20 discrete dosage units or 4.0g	2kg	0.2g
Dimethylthiambutene	20.0g	2.0g	40.0g	20kg	—
N:N-Dimethyltryptamine and its derivatives having hallucinogenic properties	10 discrete dosage units or 2.0g	2 discrete dosage units or 0.4g	20 discrete dosage units or 4.0g	2kg	0.2g
Dioxaphetyl butyrate	2.0g	0.2g	4.0g	2kg	—
Diphenoxylate except where Schedule Four of the Poisons List applies	2.0g	0.2g	4.0g	2kg	—
Dipipanone	10.0g	1.0g	20.0g	10kg	—
Ecgonine, its esters and derivatives which are convertible to ecgonine and cocaine	10.0g	1.0g	20.0g	10kg	—
Ethylmethylthiambutene	10.0g	1.0g	20.0g	10kg	—
Ethylmorphine except where Schedule Two or Four of the Poisons List applies	2.0g	0.2g	4.0g	2kg	—
Etonitazene	5.0g	0.5g	10.0g	5kg	—
Etorphine	5.0g	0.5g	10.0g	5kg	—
Etoxeridine	5.0g	0.5g	10.0g	5kg	—

Prohibited plant or prohibited drug	Column 1 Traffickable quantity	Column 2 Small quantity	Column 3 Indictable quantity	Column 4 Commercial quantity	Column 5 Discrete dosage unit
Fentanyl	0.005g	0.0005g	0.01g	0.005kg	—
Furethidine	1.0g	0.1g	2.0g	1kg	—
Heroin	2.0g	0.2g	4.0g	1kg	—
Hydrocodone	2.0g	0.2g	4.0g	2kg	—
Hydromorphinol	2.0g	0.2g	4.0g	2kg	—
Hydromorphone	2.0g	0.2g	4.0g	2kg	—
Hydroxypethidine	5.0g	0.5g	10.0g	5kg	—
Ketobemidone	2.0g	0.2g	4.0g	2kg	—
Levorphanol	1.0g	0.1g	2.0g	1kg	—
Lysergic acid and its derivatives having hallucinogenic properties	10 discrete dosage units or 0.002g	2 discrete dosage units or 0.0004g	20 discrete dosage units or 0.004g	0.002kg	0.0002g
Lysergide and its derivatives having hallucinogenic properties	10 discrete dosage units or 0.002g	2 discrete dosage units or 0.0004g	20 discrete dosage units or 0.004g	0.002kg	0.0002g

Prohibited plant or prohibited drug	Column 1 Traffickable quantity	Column 2 Small quantity	Column 3 Indictable quantity	Column 4 Commercial quantity	Column 5 Discrete dosage unit
Mescaline and other substances structurally derived from methoxyphenylethylamine having hallucinogenic properties	10 discrete dosage units or 7.5g	2 discrete dosage units or 1.5g	20 discrete dosage units or 15.0g	7.5kg	0.75g
Metazocine	7.0g	0.7g	14.0g	7kg	—
Methadone	2.0g	0.2g	4.0g	2kg	—
Methylamphetamine	2.0g	0.2g	4.0g	2kg	—
Methyldesorphine	2.0g	0.2g	4.0g	2kg	—
Methyldihydromorphine	2.0g	0.2g	4.0g	2kg	—
3,4-Methylenedioxyamphetamine	0.5g	0.05g	1.0g	0.5kg	—
Methylphenidate	2.0g	0.2g	4.0g	2kg	—
Metopon	2.0g	0.2g	4.0g	2kg	—
Monoacetylmorphine	2.0g	0.2g	4.0g	2kg	—
6-Monoacetylemorphine and other acetylated derivatives of morphine	2.0g	0.2g	4.0g	2kg	—
Morpheridine	2.0g	0.2g	4.0g	2kg	—
Morphine	2.0g	0.2g	4.0g	2kg	—
Morphine-N-oxide	2.0g	0.2g	4.0g	2kg	—
Myrophine	20.0g	2.0g	40.0g	20kg	—
Nicocodine except where Schedule Two or Four of the Poisons List applies	2.0g	0.2g	4.0g	2kg	—
Nicodicodine except where Schedule Two or Four of the Poisons List applies	2.0g	0.2g	4.0g	2kg	—

Prohibited plant or prohibited drug	Column 1 Traffickable quantity	Column 2 Small quantity	Column 3 Indictable quantity	Column 4 Commercial quantity	Column 5 Discrete dosage unit
Nicomorphine	2.0g	0.2g	4.0g	2kg	—
Noracylmethadol	2.0g	0.2g	4.0g	2kg	—
Norcodeine except where Schedule Two or Four of the Poisons List applies	2.0g	0.2g	4.0g	2kg	—
Norlevorphanol	2.0g	0.2g	4.0g	2kg	—
Normethadone	5.0g	0.5g	10.0g	5kg	—
Normorphine	20.0g	2.0g	40.0g	20kg	—
Norpipanone	10.0g	1.0g	20.0g	10kg	—
Opium	20.0g	2.0g	40.0g	20kg	—
Opium, prepared	20.0g	2.0g	40.0g	20kg	—
Oxycodone	5.0g	0.5g	10.0g	5kg	—
Oxymorphone	2.0g	0.2g	4.0g	2kg	—
Pethidine	10.0g	1.0g	20.0g	10kg	—
Phenadoxone	10.0g	1.0g	20.0g	10kg	—
Phenampromide	10.0g	1.0g	20.0g	10kg	—
Phenazocine	1.0g	0.1g	2.0g	1kg	—
Phencyclidine	2.0g	0.2g	4.0g	2kg	—
Phendimetrazine	5.0g	0.5g	10.0g	5kg	—
Phenmetrazine	5.0g	0.5g	10.0g	5kg	—
Phenomorphan	5.0g	0.5g	10.0g	5kg	—
Phenoperidine	1.0g	0.1g	2.0g	1kg	—
Pholcodine except where Schedule Two or Four of the Poisons List applies	5.0g	0.5g	10.0g	5kg	—
Piminodine	10.0g	1.0g	20.0g	10kg	—

Prohibited plant or prohibited drug	Column 1	Column 2	Column 3	Column 4	Column 5
	Traffickable quantity	Small quantity	Indictable quantity	Commercial quantity	Discrete dosage unit
Piritramide	1.0g	0.1g	2.0g	1kg	—
Proheptazine	1.0g	0.1g	2.0g	1kg	—
Prohibited plant, other than cannabis plant	—	5	20	1 000	—
Properidine	25.0g	2.5g	50.0g	25kg	—
Psilocin and its derivatives having hallucinogenic properties	10 discrete dosage units or 0.1g	2 discrete dosage units or 0.02g	20 discrete dosage units or 0.2g	0.1kg	0.01g
Psilocybin and its derivatives having hallucinogenic properties	10 discrete dosage units or 0.1g	2 discrete dosage units or 0.02g	20 discrete dosage units or 0.2g	0.1kg	0.01g
Tetrahydrocannabinol	2.0g	0.2g	4.0g	2kg	—
Thebacon	2.0g	0.2g	4.0g	2kg	—
Thebaine	2.0g	0.2g	4.0g	2kg	—
Trimeperidine	10.0g	1.0g	20.0g	10kg	—

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