

# EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

## Medicines and Poisons Bill 2006

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## EXPOSURE DRAFT

# EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

## Medicines and Poisons Bill 2006

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### A Bill for

An Act to consolidate and reform the law relating to regulated substances, to give effect to the *Standard for the Uniform Scheduling of Drugs and Poisons*, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Chapter 1 Preliminary

### 1 Name of Act

This Act is the *Medicines and Poisons Act 2006*.

### 2 Commencement

This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*prescription only medicine*—see section 13.' means that the term 'prescription only medicine' is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

## 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

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## **Chapter 2                      Important concepts**

### **Part 2.1                      Operation of Act**

#### **6                      Objects**

- (1) The main object of this Act is to promote and protect public health and safety by minimising—
  - (a) accidental or deliberate poisonings by regulated substances; and
  - (b) medicinal misadventures related to regulated substances; and
  - (c) the diversion of regulated substances for abuse; and
  - (d) the manufacture of regulated substances that are subject to abuse.
- (2) The objects of this Act also include ensuring that—
  - (a) consumers of prescription medicines have adequate information and the understanding necessary to allow them to use the medicines safely and effectively; and
  - (b) consumers of non-prescription medicines have adequate information and the understanding to allow them to select the most appropriate medicines for their condition and to use the medicines safely and effectively, taking into account the condition of their health.

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## **7 Obligations under other territory laws**

The obligations under this Act are additional to the obligations under any other territory law unless this Act, or the other law, provides otherwise.

### **Example**

If there is an obligation under the *Dangerous Substances Act 2004* and under this Act in relation to a particular substance, both obligations must be complied with in relation to the substance unless either Act provides otherwise.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **8 Inconsistency between Act and medicines and poisons standard**

This Act prevails if there is an inconsistency between this Act and the medicines and poisons standard.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

## Part 2.2 Medicines and poisons standard

### 9 Meaning of *medicines and poisons standard*

In this Act:

*medicines and poisons standard* means the *Standard for the Uniform Scheduling of Drugs and Poisons* published by the Commonwealth, as modified by regulation (if any).

*Note* The medicines and poisons standard is made under the *Therapeutic Goods Act 1989* (Cwlth). For the public availability and inspection of a copy of the standard, see s 11.

### 10 Interpretation provisions in medicines and poisons standard—application to Act

- (1) A term defined in the medicines and poisons standard has the same meaning in this Act.
- (2) A provision relating to the interpretation of the medicines and poisons standard applies in the interpretation of this Act.

#### **Example**

The medicines and poisons standard, part 1, paragraph 1 (2) provides that, subject to the stated exceptions, a reference to a substance in a schedule or appendix to the standard includes the following:

- every salt, active principle or derivative of the substance
- every alkaloid of the substance and every salt of such an alkaloid

- every stereoisomer of the substance and every salt of such a stereoisomer
- a preparation or admixture containing any proportion of the substance.

*Note 1* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) However, subsection (1) does not apply to the definition ***poison*** in the medicines and poisons standard.

*Note* The medicines and poisons standard uses the term ***poison*** for any substance or preparation (whether it is a medicine, poison or prohibited substance) included in a schedule to the standard (see medicines and poisons standard, pt 1, def ***poison***).

- (4) Despite subsection (3), the interpretation provisions in the medicines and poisons standard that apply to the definition ***poison*** apply to medicines, poisons, prohibited substances and appendix C substances as defined by this Act.

#### Examples

- 1 The medicines and poisons standard, paragraph 1 (2) states that, unless a contrary intention appears, a reference to a poison in a schedule includes a number of other things, including, for example, every salt, active principle or derivative of the poison and every salt of such an active principle or derivative.
- 2 The medicines and poisons standard, paragraph 1 (2) (g), (h), (i) and (j) provides that a reference in a schedule to a poison does not include certain poisons, including, for example, a poison in a product in appendix A of the standard.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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**11            Inspection of medicines and poisons standard**

The chief health officer must ensure that a copy of the medicines and poisons standard (including any amendments of the standard) is made available for inspection free of charge to the public on business days at reasonable times at the office of an administrative unit administered by the chief executive.

## Part 2.3 Substances to which Act applies

### 12 Meaning of *regulated substance*

In this Act:

***regulated substance*** means a medicine, poison, prohibited substance or appendix C substance.

### 13 Medicine-related definitions

(1) In this Act:

***medicine*** means—

- (a) a pharmacy medicine; or
- (b) a pharmacist only medicine; or
- (c) a prescription only medicine; or
- (d) a controlled medicine.

(2) In this Act:

***controlled medicine*** means a medicine to which the medicines and poisons standard, schedule 8 applies.

*Note* Schedule 8 medicines are prescription only medicines that have additional restrictions to reduce misuse or dependence. The schedule includes some derivatives of the scheduled medicines (see s 10 (2)).

***pharmacist only medicine*** means a medicine to which the medicines and poisons standard, schedule 3 applies.

*Note* Schedule 3 medicines are medicines that require advice from a pharmacist to be used safely. The schedule includes some derivatives of the scheduled medicines (see s 10 (2)).

***pharmacy medicine*** means a medicine to which the medicines and poisons standard, schedule 2 applies.

*Note* Schedule 2 medicines are medicines that may require advice from a pharmacist to be used safely. The schedule includes some derivatives of the scheduled medicines (see s 10 (2)).

***prescription only medicine*** means a medicine to which the medicines and poisons standard, schedule 4 applies.

*Note* Schedule 4 medicines are medicines (including prescription animal remedies) that are available from a pharmacy on prescription. The schedule includes some derivatives of the scheduled medicines (see s 10 (2)).

## 14 Poison-related definitions

(1) In this Act:

***poison*** means—

- (a) a low harm poison; or
- (b) a moderate harm poison; or
- (c) a dangerous poison.

(2) In this Act:

***dangerous poison*** means a substance to which the medicines and poisons standard, schedule 7 applies.

*Note* Schedule 7 applies to substances with a high potential for causing harm. The schedule include some derivatives of the scheduled substances (see s 10 (2)).

***low harm poison*** means a substance to which the medicines and poisons standard, schedule 5 applies.

*Note* Schedule 5 applies to substances with a low potential for causing harm. The schedule includes some derivatives of the scheduled substances (see s 10 (2)).

***moderate harm poison*** means a substance to which the medicines and poisons standard, schedule 6 applies.

*Note* Schedule 6 applies to substances with a moderate potential for causing harm. The schedule includes some derivatives of the scheduled substances (see s 10 (2)).

## 15 **Meaning of *appendix C substance* and *prohibited substance***

In this Act:

***appendix C substance*** means a substance to which the medicines and poisons standard, appendix C applies.

*Note* Appendix C substances are substances, other than those in schedule 9, the sale, supply and use of which is prohibited because of the degree of danger to health they represent. The appendix includes some derivatives of the substances to which the appendix applies (see s 10 (2)).

***prohibited substance*** means a substance to which the medicines and poisons standard, schedule 9 applies.

*Note* Schedule 9 substances are generally illegal substances that are subject to abuse. They include some derivatives of the scheduled substances (see s 10 (2)).

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## Part 2.4 Other important concepts

### 16 Meaning of *deals* with a regulated substance

- (1) For this Act, a person *deals* with a regulated substance if the person does 1 or more of the following:
- (a) manufactures the substance;
  - (b) obtains the substance;
  - (c) possesses the substance;
  - (d) supplies the substance;
  - (e) administers the substance;
  - (f) disposes of the substance;
  - (g) issues a purchase order for the substance;
  - (h) if the substance is a medicine—
    - (i) prescribes the medicine; or
    - (ii) issues a requisition or standing order for the medicine.
- (2) For this Act, a person also *deals* with a regulated substance if the regulated substance otherwise comes into, or goes out of, the person's possession, including, for example, if the person loses or finds the regulated substance or the substance is stolen from the person.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).



## 17      **Meaning of *authorised***

- (1) For this Act, a person is ***authorised*** to deal with a medicine or poison (other than a dangerous poison) if—
- (a) the person has a licence or permit under a Commonwealth Act, this Act or another territory law that authorises the dealing; or
  - (b) the person may or must deal with the medicine or poison under a Commonwealth Act, this Act or another territory law; or
  - (c) the chief executive approves the dealing under a regulation; or
  - (d) the dealing is otherwise authorised by regulation.

### **Examples of Commonwealth Acts (including regulations)—par (a) and (b)**

*Customs (Prohibited Imports) Regulations 1956, Narcotic Drugs Act 1967 and Therapeutic Goods Act 1989*

### **Examples of when person may or must deal with a medicine or poison—par (b)**

- 1 the person is a dentist and a territory law allows dentists to administer the medicine
- 2 the person is an analyst and a territory law requires an analyst to manufacture the poison

*Note 1* For the supply of a regulated substance by wholesale, see s (4).

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) For this Act, a person is ***authorised*** to deal with a dangerous poison, prohibited substance or appendix C substance if—
- (a) the person may or must deal with the poison or substance under a Commonwealth Act, this Act or another territory law; or

- (b) the person has a licence under this Act that authorises the dealing.
- (3) However, for subsection (2), a person is **authorised** to prescribe, supply for administration, or administer, a dangerous poison, prohibited substance or appendix C substance only if—
  - (a) the supply or administration of the poison or substance is authorised by a licence for the purposes of research at a recognised body; and
  - (b) the research is approved by a human research ethics committee that is constituted in accordance with, and acting in compliance with, the NHMRC *National Statement on Ethical Conduct in Research Involving Humans* (1999), as in force from time to time.
- (4) Also, for this Act, a person is **authorised** to supply a regulated substance by wholesale if—
  - (a) the person is authorised (however described) under a corresponding law to supply the substance by wholesale; and
  - (b) if a condition or restriction applies to the person under the corresponding law or is prescribed by regulation—the person supplies the substance in accordance with each condition or restriction; and
  - (c) the chief health officer has not, under part 6.1 (Authorisations—disciplinary action), prohibited the person from supplying the substance by wholesale in the ACT.

*Note* A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

(5) In this section:

*NHMRC* means the National Health and Medical Research Council established by the *National Health and Medical Research Council Act 1992* (Cwlth).

## 18 **Meaning of *possess*, *sell* and *supply***

In this Act:

*possess*, for a regulated substance, includes the following:

- (a) receive or obtain possession of the substance;
- (b) have control over the disposition of the substance (whether with or without custody of the substance);
- (c) have joint possession of the substance.

*sell* includes each of the following:

- (a) offer or expose for sale;
- (b) dispose of by any method for value (or offer or expose for disposal by any method for value);
- (c) dispose of by any method for free (or offer or expose for disposal by any method for free);
- (d) possess for sale.

*supply*—

- (a) includes each of the following:
  - (i) sell (or offer or expose for sale);
  - (ii) dispense on a prescription;

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- (iii) supply under a requisition or standing order; but
- (b) does not include administer.

## 19      **Meaning of *manufacture* and *manufactures***

- (1) In this Act:

*manufacture*, for a regulated substance, means do 1 or more of the following in relation to the substance:

- (a) carry out a process to produce the substance;
- (b) refine the substance;
- (c) convert the substance into another regulated substance;
- (d) make or prepare an ampoule, capsule, tablet, vial or other dosage form that consists of, or contains, the substance;
- (e) mix, compound or formulate the substance with another regulated substance or any other substance;
- (f) pack or repack the substance for sale by wholesale or for use in connection with a business, industry, profession or trade.

- (2) However, *manufacture*, for a regulated substance, does not include—

- (a) an act mentioned in subsection (1) (d), (e) or (f) done by a pharmacist to prepare a medicine in the ordinary course of the practice of pharmacy; or
- (b) an act mentioned in subsection (1) (e) if prescribed by regulation.

## **Chapter 3                      Offences relating to regulated substances**

### **Part 3.1                      Preliminary**

#### **20                      Evidence—authorisations under Commonwealth and State laws**

- (1) This section applies to the prosecution of a person for an offence against this chapter if, to prove the offence, it is necessary to prove that at a particular time the person was not authorised to deal with a regulated substance in a particular way.
- (2) In the absence of evidence to the contrary, the person is taken not to have been authorised under a Commonwealth or State law to deal with the regulated substance in that way at the particular time.

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## Part 3.2                      Substances other than low and moderate harm poisons—offences

### Division 3.2.1              Preliminary

#### 21                      Meaning of *part 3.2 substance* and *supply authority*

In this Act:

*part 3.2 substance*—each of the following is a *part 3.2 substance*:

- (a) a medicine;
- (b) a dangerous poison;
- (c) a prohibited substance;
- (d) an appendix C substance.

*supply authority*—each of the following is a *supply authority*:

- (a) a written prescription;
- (b) a written requisition;
- (c) a purchase order;
- (d) a standing order;
- (e) a document that purports to be a document mentioned in paragraph (a), (b), (c) or (d).

*Note*                      A purchase order and standing order must be in writing (see the definitions of each term in the dictionary).

**22            Meaning of *written*—pt 3.2**

In this part:

*written* includes a document in electronic form.

**Division 3.2.2            Supply of part 3.2 substances**

**23            Supply of part 3.2 substances**

A person commits an offence if—

- (a) the person supplies a part 3.2 substance to someone else; and
- (b) the person is not authorised to supply the substance.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

**24            Supply of part 3.2 substances on invalid supply  
authorities—strict liability offences**

(1) A person commits an offence if—

- (a) the person supplies a part 3.2 substance on a supply authority;  
and
- (b) 1 or more of the following apply in relation to the supply  
authority:
  - (i) all or part of the authority is illegible;
  - (ii) all or part of the authority has been defaced or obliterated;
  - (iii) the authority has been cancelled;
  - (iv) for a supply authority for a controlled medicine—the  
authority was issued more than 6 months before the date  
the medicine is supplied;

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- (v) for a supply authority for a part 3.2 substance other than a controlled medicine—the authority was issued more than 1 year before the date the substance is supplied.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) (b) (i) and (ii) do not apply to the supply of a part 3.2 substance by a person if—
  - (a) before supplying the substance, the person checks the content of the supply authority with the issuer; and
  - (b) the supply is in accordance with the authority as confirmed by the issuer.
- (3) An offence against subsection (1) is a strict liability offence.

## **25 Reckless supply of part 3.2 substances on invalid supply authorities**

A person commits an offence if—

- (a) the person supplies a part 3.2 substance on a supply authority; and
- (b) the supply authority was issued by a person who was not authorised to issue it; and
- (c) the person is reckless about whether the supply authority was issued by someone not authorised to issue it.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.



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**26 Supply of part 3.2 substances on invalid supply  
authorities—other offences**

- (1) A person commits an offence if—
- (a) the person supplies a part 3.2 substance on a supply authority;  
and
  - (b) 1 or more of the following apply in relation to the supply  
authority:
    - (i) the person knows the authority was obtained because of  
false information given to the person (the *issuer*) who  
issued the authority;
    - (ii) it appears to the person that the authority has been  
changed by someone other than the issuer;
    - (iii) it appears to the person that the authority is false in a  
material particular.

Maximum penalty: 100 penalty units, imprisonment for 1 year or  
both.

- (2) However, subsection (1) (b) (ii) does not apply to the supply of a  
part 3.2 substance by a person if—
- (a) before supplying the substance, the person checks whether the  
change to the supply authority was made by the issuer; and
  - (b) the issuer confirms the change.
- (3) Further, subsection (1) (b) (ii) does not apply to the supply of a  
part 3.2 substance on a prescription or requisition if—
- (a) before the substance is supplied by the person, the prescription  
or requisition is changed at the oral direction of the issuer; and

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- (b) the person notes the change on the prescription or requisition as prescribed by regulation.

## **27 Cancellation etc of invalid supply authorities for part 3.2 substances**

- (1) In this section:

*relevant circumstance*, in relation to a supply authority given to a person to supply a part 3.2 substance on the authority, means—

- (a) all or part of the authority is illegible; or
- (b) all or part of the authority has been defaced or obliterated; or
- (c) 1 or more of the following apply in relation to the supply authority:
  - (i) the supply authority was issued by someone who was not authorised to issue it;
  - (ii) the person knows the authority was obtained because of false information given to the person (the *issuer*) who issued the authority;
  - (iii) it appears to the person that the authority has been changed by someone other than the issuer;
  - (iv) it appears to the person that the authority is false in a material particular;
  - (v) the supply authority is a forgery.

- (2) A person commits an offence if—

- (a) the person does not supply a part 3.2 substance on a supply authority because of a relevant circumstance; and

- (b) immediately after the relevant circumstance happens, the person fails to cancel the authority as prescribed by regulation.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) A person commits an offence if—

- (a) the person does not supply a part 3.2 substance on a supply authority for a reason mentioned in subsection (1), definition of *relevant circumstance*, paragraph (c); and
- (b) the person cancels the supply authority; and
- (c) immediately after cancelling the authority, the person fails to orally tell the chief health officer and a police officer about the relevant circumstance; and
- (d) no later than 24 hours after the relevant circumstance happens, the person fails to—
  - (i) tell the chief health officer, in writing, about the circumstance; and
  - (ii) give the chief health officer a copy of the cancelled authority.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (4) A person commits an offence if—

- (a) the person cancels a supply authority because of a relevant circumstance; and
- (b) neither the chief health officer nor a police officer requires the person to give the authority to the chief health officer or police officer; and

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- (c) the person fails to ensure that the cancelled supply authority is kept for at least 2 years after the day the person cancels the supply authority.

Maximum penalty: 50 penalty units.

- (5) An offence against subsection (4) is a strict liability offence.

## **28 Recording supply of part 3.2 substances**

A person commits an offence if—

- (a) the person is required by regulation to record the supply of a part 3.2 substance; and
- (b) the person supplies the substance; and
- (c) the person does not record the supply of the substance as required.

Maximum penalty: 50 penalty units.

## **29 Keeping part 3.2 substances supply records**

- (1) A person commits an offence if—

- (a) the person supplies a part 3.2 substance prescribed by regulation; and
- (b) the person is required by regulation to ensure that a document prescribed by regulation in relation to the supply of the substance is kept; and

- (c) the person fails to ensure that the document is kept for at least 2 years after the day the person becomes liable to keep the document.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

*Note* See also—

- pt 3.2.4 (Registers for part 3.2 substances)
- s 52 (Keeping filled purchase orders for part 3.2 substances)
- s 58 (Keeping completed prescriptions)
- s 63 (Keeping filled requisitions).

### **30 Information about supplied part 3.2 substances for chief health officer**

- (1) A person commits an offence if—
- (a) the person supplies a part 3.2 substance prescribed by regulation on a supply authority; and
  - (b) the person does not send the chief health officer the required information as prescribed by regulation.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if—
- (a) the person supplies a part 3.2 substance prescribed by regulation otherwise than on a supply authority; and

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- (b) the person does not send the chief health officer the required information as prescribed by regulation.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

**Example of supply without supply authority**

a doctor gives a patient a sample package of a prescription only medicine

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) In this section:

*required information* means the information prescribed by regulation.

## **Division 3.2.3 Other dealings with part 3.2 substances**

### **31 Manufacturing part 3.2 substances**

A person commits an offence if—

- (a) the person manufactures a part 3.2 substance; and
- (b) the person is not authorised to manufacture the substance.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

### **32 Obtaining certain part 3.2 substances**

A person commits an offence if—

- (a) the person obtains a part 3.2 substance (other than a pharmacy medicine or a pharmacist only medicine); and

- (b) the person was not, at the time the person obtained it, authorised to obtain the substance.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

**33 Possession of certain part 3.2 substances**

A person commits an offence if—

- (a) the person possesses a part 3.2 substance (other than a pharmacy medicine or a pharmacist only medicine); and  
(b) the person is not authorised to possess the substance.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

**34 Administration of part 3.2 substances**

A person commits an offence if—

- (a) the person administers a part 3.2 substance to themselves or someone else; and  
(b) the person is not authorised to administer the substance.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

**35 Disposal of part 3.2 substances**

- (1) A person commits an offence if—

- (a) a regulation prescribes how a part 3.2 substance must be disposed of; and  
(b) the person disposes of the substance; and

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(c) the person does not dispose of the substance as prescribed.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(2) A person commits an offence if—

- (a) the person possesses a part 3.2 substance; and
- (b) the chief health officer gives the person a direction under section 176 (Directions by chief health officer about dealings with regulated substances) in relation to the disposal of the substance; and

(c) the person does not dispose of the substance as directed.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(3) A person commits an offence if—

- (a) no regulation prescribes how a part 3.2 substance must be disposed of; and
- (b) the chief health officer has not given the person a direction under section 176 in relation to the disposal of the substance; and
- (c) the person disposes of the substance in a way that—
  - (i) is a risk to the health or safety of people; or
  - (ii) is likely to cause damage to property or the environment.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

*Note* The *Dangerous Substances Act 2004* and *Environment Protection Act 1997* may also apply to the disposal of a part 3.2 substance.

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**36 Issuing purchase orders for part 3.2 substances**

A person commits an offence if—

- (a) the person issues a purchase order for a part 3.2 substance; and
- (b) the person is not authorised to issue a purchase order for the substance.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

**37 Reporting loss and theft of certain part 3.2 substances**

(1) A person commits an offence if—

- (a) the person is authorised to possess a prescribed substance; and
- (b) the person possesses the substance; and
- (c) the substance is lost or the person suspects that the substance has been lost; and
- (d) the person fails to tell the chief health officer, in writing, as soon as practicable (but not later than 7 days) after the day the person becomes aware of the loss or suspected loss, about the loss or suspected loss and how it happened.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if—

- (a) the person is authorised to possess a prescribed substance; and
- (b) the person possesses the substance; and
- (c) the substance is stolen or the person suspects that the substance has been stolen; and

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- (d) the person fails to tell the chief health officer and a police officer about the theft or suspected theft—
  - (i) orally immediately the person becomes aware of the theft or suspected theft; and
  - (ii) in writing no later than 24 hours after the person becomes aware of the theft or suspected theft.

Maximum penalty: 50 penalty units.

- (3) In this section:

*prescribed substance* means—

- (a) a dangerous poison; or
- (b) a controlled medicine; or
- (c) a prohibited substance; or
- (d) an appendix C substance.

## **Division 3.2.4      Registers for part 3.2 substances**

### **38      Meaning of *must keep* a register—div 3.2.4**

For this division, a person *must keep* a register for a part 3.2 substance if the person is prescribed by regulation for the substance.

### **39      Registers—not keeping**

A person commits an offence if—

- (a) the person must keep a register for a part 3.2 substance; and

- (b) the person does not keep a register as prescribed by regulation.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

**40 Registers—where must be kept**

A person commits an offence if—

- (a) the person must keep a register for a part 3.2 substance; and
- (b) a regulation prescribes a place to keep the register; and
- (c) the person fails to keep the register at the place prescribed by regulation.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

**41 Registers—making entries**

- (1) A person who must keep a register for a part 3.2 substance commits an offence if—
  - (a) the person, or someone under the person's supervision or control, deals with a part 3.2 substance to which the register relates; and
  - (b) the person fails to ensure that the details prescribed by regulation for the dealing are entered in the register prescribed by regulation as soon as practicable (but not later than 24 hours) after the dealing happens.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

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## **42 Registers—signing entries**

- (1) A person commits an offence if—
- (a) the person makes an entry in a register for a part 3.2 substance; and
  - (b) the person fails to sign the entry as soon as practicable (but not later than 24 hours) after the entry is made.

Maximum penalty: 50 penalty units.

*Note* **Signs**—see the dictionary.

- (2) An offence against this section is a strict liability offence.

## **43 Registers—witnessing administration of medicines**

A person commits an offence if—

- (a) the person is prescribed by regulation as a witness in relation to the administration of a medicine; and
- (b) the medicine is prescribed by regulation; and
- (c) the person witnesses the administration of the medicine; and
- (d) the administration of the medicine is entered in a register for a part 3.2 substance; and
- (e) the person fails to sign the entry in the register as witness as soon as practicable (but not later than 24 hours) after the entry is made.

Maximum penalty: 100 penalty units.

*Note* **Signs**—see the dictionary.

**44 Registers—witnessing disposal**

A person commits an offence if—

- (a) the person is prescribed by regulation as a witness in relation to a part 3.2 substance; and
- (b) the substance is prescribed by regulation; and
- (c) the person witnesses the disposal of the substance; and
- (d) the disposal of the substance is entered in a register; and
- (e) the person fails to sign the entry in the register as a witness as soon as practicable (but not later than 24 hours) after the entry is made.

Maximum penalty: 100 penalty units.

*Note* **Signs**—see the dictionary.

**45 Registers—changes etc to entries**

- (1) A person commits an offence if the person cancels, changes, deletes or obliterates an entry in a register for a part 3.2 substance.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) However, subsection (1) does not apply to a person if—
  - (a) the person made the entry in the register; and
  - (b) the person amended the entry as prescribed by regulation.

*Note* It is an offence to produce a document in compliance with a territory law if the document is false or misleading in a material particular (see Criminal Code, s 339).

## **46 Registers—period to be kept**

- (1) A person commits an offence if—
- (a) the person must keep a register for a part 3.2 substance; and
  - (b) the person fails to ensure that the register is kept for at least 2 years after the day when the last entry is made in the register.

Maximum penalty: 50 penalty units.

*Note* For how long a register for a part 3.2 substance kept electronically must be kept, see the *Electronic Transactions Act 2001*, s 11 and this Act, s 173.

- (2) An offence against this section is a strict liability offence.

## **47 Registers—damage or loss**

- (1) A person commits an offence if—
- (a) the person must keep a register for a part 3.2 substance; and
  - (b) the register is damaged in a material respect or is stolen, lost or destroyed; and
  - (c) the person fails to tell the chief health officer, in writing, about the damage, theft, loss or destruction as soon as practicable (but not later than 7 days) after the day it happens.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if—
- (a) the person must keep a register for a part 3.2 substance; and
  - (b) the register is damaged in a material respect or is stolen, lost or destroyed; and

- (c) the person does not take an inventory as prescribed by regulation of each part 3.2 substance in the person's possession to which the register related.

*Note* **Possess** includes have control over disposition (see s 18).

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) This section does not apply to a register for a part 3.2 substance if the most recent entry in the register was made more than 2 years before the day the register is damaged, stolen, lost or destroyed.
- (4) In this section:

**material respect**—a register for a part 3.2 substance is damaged in a **material respect** if anything required to be entered into the register is missing or cannot be easily read.

#### **48 Transferring control of community pharmacies— stocktake etc of controlled medicines**

- (1) A pharmacist in charge of a dispensary in a community pharmacy (the **departing pharmacist**) commits an offence if—
- (a) the pharmacist proposes to stop being in charge of the pharmacy for a continuous period longer than 14 days; and
- (b) before the pharmacist stops being in charge of the dispensary, the pharmacist fails to—
- (i) take a written inventory of each quantity of each form and strength of a controlled medicine held in the dispensary; and

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(ii) enter each of the quantities in the controlled medicines register for the dispensary; and

(iii) sign and date each entry in the register.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

*Note* **Signs**—see the dictionary.

(2) A pharmacist commits an offence if—

(a) the pharmacist intends to take charge of a dispensary in a community pharmacy for a continuous period of more than 14 days; and

(b) before taking charge of the dispensary, the pharmacist fails to—

(i) check the entries made in the controlled medicines register for the dispensary under subsection (1) (b) (ii); and

(ii) for each of the entries in the register, indicate in writing whether the pharmacist agrees that the entry is a correct record of the quantity of the form and strength of the controlled medicine held in the dispensary; and

(iii) sign and date each of the entries in the register.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(3) A departing pharmacist commits an offence if—

(a) the pharmacist takes an inventory of controlled medicines held in a dispensary; and



- (b) the quantity of a form and strength of a controlled medicine held at the dispensary is not the quantity shown for the form and strength of the medicine in the controlled medicines register for the dispensary; and
- (c) the pharmacist fails to take reasonable steps to resolve the discrepancy between the quantity of the form and strength of the controlled medicine held at the dispensary and the quantity shown in the register.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (4) A departing pharmacist commits an offence if—
  - (a) the pharmacist takes an inventory of controlled medicines held in a dispensary; and
  - (b) the quantity of a form and strength of a controlled medicine held at the dispensary is not the quantity shown for the form and strength of the medicine in the controlled medicines register for the dispensary; and
  - (c) the pharmacist does not tell the chief health officer about the discrepancy—
    - (i) orally immediately after checking the entries in the controlled medicines register; and
    - (ii) in writing not later than 24 hours after finishing the check.

Maximum penalty: 50 penalty units.

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- (5) In this section:

*community pharmacy* means a pharmacy at a place other than an institution.

*controlled medicines register*, for a dispensary, means a register for controlled medicines that a person must keep.

## **Division 3.2.5 Other provisions about part 3.2 substances**

### **49 Packaging of supplied part 3.2 substances**

- (1) A person commits an offence if—
- (a) the person supplies a part 3.2 substance to someone else; and
  - (b) the substance is not packaged as prescribed by regulation.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

### **50 Labelling of supplied part 3.2 substances**

- (1) A person commits an offence if—
- (a) the person supplies a part 3.2 substance to someone else; and
  - (b) the substance is not labelled as prescribed by regulation.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

**51 Storage of part 3.2 substances**

A person commits an offence if—

- (a) the person is authorised to possess a part 3.2 substance; and
- (b) the person is prescribed by regulation in relation to the substance; and
- (c) the person fails to store the substance as prescribed by regulation.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

**52 Keeping filled purchase orders for part 3.2 substances**

(1) A person commits an offence if—

- (a) the person supplies a part 3.2 substance prescribed by regulation on a purchase order; and
- (b) the person fails to ensure that the purchase order is kept by the person at the person's business premises.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(2) A person commits an offence if—

- (a) the person supplies a part 3.2 substance prescribed by regulation on a purchase order; and
- (b) the person fails to ensure that the purchase order is kept for at least 2 years after the day the order is filled.

Maximum penalty: 50 penalty units.

(3) An offence against subsection (2) is a strict liability offence.

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## **53 False statements to obtain certain part 3.2 substances**

- (1) A person commits an offence if—
- (a) the person makes a statement to a person (the *other person*) who is authorised to administer, dispense, prescribe or supply a prescribed substance; and
  - (b) the person knows the statement is false or misleading; and
  - (c) the person makes the statement for the purpose of obtaining a prescribed substance from the other person.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if—
- (a) the person makes a statement to a person (the *other person*) about a prescription, requisition or purchase order for a prescribed substance; and
  - (b) the person knows the statement is false or misleading.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) A person commits an offence if—
- (a) the person states a name or residential address to—
    - (i) a person (an *authorised person*) authorised to administer, dispense, prescribe or supply a prescribed substance; or
    - (ii) an employee or agent of an authorised person in the course of the employee's or agent's employment or agency; and

(b) the person knows the statement is false or misleading.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(4) Subsection (1) (b), (2) (b) or (3) (b) does not apply if the statement is not false or misleading in a material particular.

(5) In this section:

*prescribed substance*—see section 37 (3).

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## **Part 3.3 Medicines—additional offences**

### **Division 3.3.1 Prescribing and dispensing medicines**

#### **54 Prescribing medicines**

- (1) A person commits an offence if—
- (a) the person prescribes a medicine for themselves or someone else (whether orally or in writing); and
  - (b) the person is not authorised to prescribe the medicine.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if—
- (a) the person is authorised to prescribe a medicine; and
  - (b) the person prescribes the medicine (whether orally or in writing); and
  - (c) the prescription does not comply with the requirements prescribed by regulation.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

#### **55 Oral prescriptions for medicines**

- (1) A person commits an offence if—
- (a) the person issues an oral prescription for a medicine; and

- (b) the person is not authorised to issue an oral prescription for the medicine.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if—

- (a) the person is authorised to prescribe a medicine; and
- (b) the person issues an oral prescription for the medicine; and
- (c) the person does not write a prescription for the medicine and give the prescription to the person to whom the prescription was issued not later than 24 hours after issuing the oral prescription.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) A person commits an offence if—

- (a) the person is issued with an oral prescription for a medicine by a person (the *prescriber*) authorised to prescribe the medicine; and
- (b) the person does not receive a written prescription for the medicine from the prescriber not later than 72 hours after being issued with the oral prescription; and

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- (c) immediately after the end of the 72-hour period, the pharmacist fails to tell the chief health officer, in writing, that the pharmacist has not received the written prescription.

Maximum penalty: 50 penalty units.

## **56 Labelling dispensed medicines**

A person commits an offence if—

- (a) the person is authorised to dispense a medicine; and
- (b) the person dispenses the medicine; and
- (c) the dispensed package for the medicine is not labelled as prescribed by regulation.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

## **57 Marking dispensed prescriptions**

- (1) A person commits an offence if—

- (a) the person dispenses a medicine on a written prescription; and
- (b) the person does not mark the dispensed prescription as prescribed by regulation.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if—

- (a) the person dispenses a medicine on an oral prescription; and
- (b) the person receives a written prescription for the medicine dispensed on the oral prescription; and



- (c) the person does not mark the prescription as prescribed by regulation.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) In this section:

*prescription* includes the duplicate of a prescription issued under the *National Health Act 1953* (Cwlth) or *Veteran's Entitlements Act 1986* (Cwlth).

## **58 Keeping completed prescriptions**

- (1) The pharmacist in charge of a dispensary commits an offence if the pharmacist fails to ensure that each completed written prescription for a medicine dispensed from the dispensary is kept at the dispensary.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) The pharmacist in charge of a dispensary commits an offence if the pharmacist fails to ensure that each completed written prescription for a medicine dispensed from the dispensary is kept for at least 2 years after the day the prescription is dispensed.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

- (4) In this section:

*completed* means—

- (a) for a repeat prescription—when the prescription is dispensed for the last of the number of times authorised by the repeat direction for the prescription; and

## **EXPOSURE DRAFT**

(b) for any other prescription—when the prescription is dispensed.

*prescription* includes the duplicate of a prescription issued under the *National Health Act 1953* (Cwlth) or *Veteran's Entitlements Act 1986* (Cwlth).

## **Division 3.3.2 Requisitioning medicines**

### **59 Issuing requisitions for medicines**

- (1) A person commits an offence if—
- (a) the person issues a requisition for a medicine (whether orally or in writing); and
  - (b) the person is not authorised to issue a requisition for the medicine.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if—
- (a) the person is authorised to issue a requisition for a medicine; and
  - (b) the person issues a requisition for the medicine (whether orally or in writing); and
  - (c) the requisition does not comply with the requirements prescribed by regulation.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

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**60 Oral requisitions for medicines**

- (1) A person commits an offence if—
- (a) the person issues to a pharmacist an oral requisition for a medicine; and
  - (b) the person is not authorised to issue an oral requisition for the medicine.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if—
- (a) the person is authorised to issue an oral requisition for a medicine; and
  - (b) the person issues to a pharmacist an oral requisition for the medicine; and
  - (c) the person does not write a requisition for the medicine and give the requisition to the pharmacist not later than 24 hours after issuing the oral requisition to the pharmacist.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) A pharmacist commits an offence if—
- (a) the pharmacist is issued with an oral requisition for a medicine by a person authorised to issue a requisition for the medicine; and
  - (b) the pharmacist does not receive a written requisition for the medicine from the person not later than 72 hours after being issued with the oral requisition; and

- (c) immediately after the end of the 72-hour period, the pharmacist fails to tell the chief health officer, in writing, that the pharmacist has not received the written requisition.

Maximum penalty: 50 penalty units.

## **61 Labelling medicines supplied on requisition**

A person commits an offence if—

- (a) the person is authorised to supply a medicine on a requisition; and
- (b) the person supplies the medicine on a requisition; and
- (c) the package for the medicine is not labelled as prescribed by regulation.

Maximum penalty: 50 penalty units.

## **62 Marking filled requisitions**

- (1) A person commits an offence if—

- (a) the person supplies a prescription only medicine or controlled medicine on a written requisition; and
- (b) the person does not mark the filled requisition as prescribed by regulation.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if—

- (a) the person supplies a prescription only medicine or controlled medicine on an oral requisition; and

- (b) the person receives a written requisition for the medicine supplied on the oral requisition; and
- (c) the person does not mark the requisition as prescribed by regulation.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

### **63 Keeping filled requisitions**

- (1) The pharmacist in charge of a dispensary in an institution commits an offence if—
  - (a) a medicine is supplied on a written requisition from the dispensary; and
  - (b) the pharmacist fails to ensure that the requisition is kept at the dispensary.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) The chief pharmacist for an institution with a dispensary commits an offence if—
  - (a) a medicine is supplied on a written requisition—
    - (i) to a dispensary in the institution from a ward in the institution; or
    - (ii) to a ward in the institution from another ward in the institution; and

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- (b) the chief pharmacist fails to ensure that the requisition is kept at the ward or a dispensary in the institution.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) The chief pharmacist for an institution with a dispensary commits an offence if the pharmacist fails to ensure that each filled written requisition for a medicine supplied from the dispensary is kept for at least 2 years after the day the requisition is filled.

Maximum penalty: 50 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.

### **Division 3.3.3 Standing orders for medicines**

#### **64 Issuing standing orders for medicines**

A person commits an offence if—

- (a) the person issues a standing order for a medicine; and  
(b) the person is not authorised to issue a standing order for the medicine.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

#### **65 Labelling medicines supplied on standing orders**

A person commits an offence if—

- (a) the person is authorised to supply a medicine on a standing order; and  
(b) the person supplies the medicine on a standing order; and

- (c) the package for the medicine is not labelled as prescribed by regulation.

Maximum penalty: 50 penalty units.

### **Division 3.3.4 Medicines—other offences**

*Note to div 3.3.4*

The administration of medicines may need to be recorded, see s 67 and div 3.2.4 (Registers for part 3.2 substances).

#### **66 Removal of medicines at institutions from storage receptacles for administration**

A person at an institution commits an offence if—

- (a) a medicine is prescribed by regulation; and
- (b) the person removes the medicine from a storage receptacle for administration to a patient at the institution; and
- (c) the medicine is not immediately required for administration to the patient.

Maximum penalty: 50 penalty units.

#### **67 Recording and witnessing administration of medicines**

(1) A person commits an offence if—

- (a) the person is required by regulation to record the administration of a medicine; and
- (b) the person administers the medicine; and

- (c) the person does not record the administration of the medicine as required.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
  - (a) the administration of a medicine is required by regulation to be witnessed; and
  - (b) the person is prescribed by regulation as a witness for the administration of the medicine; and
  - (c) the person witnesses the administration of the medicine; and
  - (d) the administration of a medicine is required by regulation to be recorded; and
  - (e) the person does not sign the record of the administration of the medicine as witness.

Maximum penalty: 100 penalty units.

- (3) To remove any doubt, subsection (2) is in addition to division 3.2.4 (Registers for part 3.2 substances).

**Example**

The administration of a medicine in a hospital may be required by regulations to be recorded in a person's clinical records and a register for the medicine. The witness would need to sign as witness both the clinical records and the register.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).



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**68 Medicines for animals not to be prescribed or supplied for human use**

- (1) A person commits an offence if—
- (a) the person prescribes or supplies a medicine for human use; and
  - (b) the medicine is manufactured, packed, labelled or prepared for use for animal treatment; and
  - (c) the person is not authorised to prescribe or supply the medicine for human use.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

*Note* **Supply** includes dispense (see s 18).

- (2) A person commits an offence if—
- (a) the person administers a medicine to themselves or someone else; and
  - (b) the medicine is manufactured, packed, labelled or prepared for use for animal treatment; and
  - (c) the person is not authorised to administer the medicine for human use.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

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## **Part 3.4                      Low and moderate harm    poisons—offences**

### **69                      Manufacturing low and moderate harm poisons**

A person commits an offence if—

- (a) the person manufactures a low harm poison or moderate harm poison; and
- (b) the person is not authorised to manufacture the poison.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

### **70                      Packaging of supplied low and moderate harm poisons**

(1) A person commits an offence if—

- (a) the person supplies a low harm poison or moderate harm poison to someone else; and
- (b) the poison is not packaged as prescribed by regulation.

Maximum penalty: 50 penalty units.

(2) A person also commits an offence if—

- (a) the person supplies camphor or naphthalene for domestic use; and
- (b) the camphor or naphthalene is not packaged in a way that, in normal use, prevents—

(i) removal of the camphor or naphthalene from the packaging; or

(ii) ingestion of the camphor or naphthalene.

Maximum penalty: 50 penalty units.

(3) An offence against this section is a strict liability offence.

## **71 Labelling of supplied low and moderate harm poisons**

(1) A person commits an offence if—

(a) the person supplies a low harm poison or moderate harm poison to someone else; and

(b) the substance is not labelled as prescribed by regulation.

Maximum penalty: 50 penalty units.

(2) An offence against this section is a strict liability offence.

## **72 Disposal of low and moderate harm poisons**

A person commits an offence if the person disposes of a low harm poison or moderate harm poison in a way that—

(a) is a risk to the health or safety of people; or

(b) is likely to cause damage to property or the environment.

Maximum penalty: 50 penalty units.

*Note* The *Dangerous Substances Act 2004* and *Environment Protection Act 1997* may also apply to the disposal of low and moderate harm poisons.

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## **Part 3.5 Regulated substances—other offences**

### **Division 3.5.1 Authorisations—other offences**

#### **73 Pretending to be authorised**

- (1) A person commits an offence if the person pretends to be authorised to deal with a regulated substance.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if the person pretends to be authorised to do something in relation to a regulated substance.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

### **Division 3.5.2 Containers—other offences**

#### **74 Permanently named containers—use for other regulated substances**

A person commits an offence if—

- (a) the person uses a container for a regulated substance; and

- (b) the container is permanently marked with the name of a different regulated substance.

Maximum penalty: 50 penalty units.

**75      Certain containers not to be used for human use substances**

- (1) A person commits an offence if—
  - (a) the person supplies a human use substance in a container; and
  - (b) the container is of a kind prescribed by regulation.

Maximum penalty: 50 penalty units.

- (2) For this section, each of the following substances is a *human use substance*:
  - (a) food;
  - (b) a drink;
  - (c) a condiment.

**Division 3.5.3      Representations and advertisements—other offences**

**76      False representation that substance is regulated substance**

A person (the *supplier*) commits an offence if—

- (a) the supplier supplies a regulated substance as a particular kind of regulated substance (the *purported substance*) to someone else; and

- (b) the supplier knows that the regulated substance is not the purported substance.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

**77 Advertising controlled medicines and prohibited substances**

- (1) A person commits an offence if the person publishes an advertisement that promotes or encourages the use of a controlled medicine or prohibited substance in contravention of a law in force in the ACT.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) In this section:

*advertisement* means writing, sound or a picture, symbol, light or other visible device, object or sign (or a combination of 2 or more of these) that a reasonable person would consider publicises, or otherwise promotes the purchase or use of a controlled medicine or prohibited substance.

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## Division 3.5.4      Paints

*Note to div 3.5.4*

**Paint**—see the medicines and poisons standard, pt 1, par 1 (1).

### 78      **Manufacture, supply and use of paints containing white lead**

- (1) A person commits an offence if the person manufactures, supplies or uses a paint containing basic lead carbonate (white lead).

Maximum penalty: 100 penalty units.

- (2) Subsection (1) does not apply if the paint is manufactured, supplied or used as prescribed by regulation.

### 79      **Manufacture, supply and use of paints for certain purposes**

- (1) A person commits an offence if the person manufactures, supplies or uses a first schedule paint as prescribed by regulation.

Maximum penalty: 40 penalty units.

*Note*      **First schedule paint**—see the medicines and poisons standard, pt 1, par 1 (1).

- (2) A person commits an offence if the person manufactures, supplies or uses a second schedule paint as prescribed by regulation.

Maximum penalty: 50 penalty units.

*Note*      **Second schedule paint**—see the medicines and poisons standard, pt 1, par 1 (1).

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- (3) A person commits an offence if the person manufactures, supplies or uses a third schedule paint as prescribed by regulation.

Maximum penalty: 100 penalty units.

*Note* **Third schedule paint**—see the medicines and poisons standard, pt 1, par 1 (1).

## **80 Manufacture, supply and use of paints for toys**

- (1) A person must not manufacture, supply or use a paint for application to toys.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) does not apply in relation to a paint prescribed by regulation.

## **81 Manufacture, supply and use of paints containing pesticides**

- (1) A person commits an offence if the person manufactures, supplies or uses a paint containing a pesticide.

Maximum penalty: 100 penalty units.

*Note* **Pesticide**—see the medicines and poisons standard, pt 1, par 1 (1).

- (2) Subsection (1) does not apply to a pesticide prescribed by regulation.



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## Division 3.5.5      Other offences—vending machines

### 82      **Meaning of *vending machine*—div 3.5.5**

In this division:

*vending machine* means a machine or mechanical device used or able to be used to supply a substance without being operated or supervised by the supplier, or the supplier's employee or agent, at the time of the supply.

### 83      **Vending machines—use for supply of regulated substances prohibited**

- (1) A person commits an offence if—
- (a) the person places a vending machine for the supply of a regulated substance on premises; and
  - (b) the vending machine is used, or available for use, by members of the public.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if—
- (a) the person occupies premises where there is a vending machine for the supply of a regulated substance; and
  - (b) the vending machine is used, or available for use, by members of the public.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) Subsection (2) does not apply if the vending machine was placed on the premises without the consent of the occupier.

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## **84 Vending machines—use for supply of unscheduled medicines prohibited**

- (1) In this section:

*unscheduled medicine* means a medicine mentioned in the medicines and poisons standard, schedules 2, 3, 4 or 8 if none of the schedules apply to the medicine because of an exception in the standard.

### **Example**

Aspirin is mentioned in several schedules but in small packages is an unscheduled medicine.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A person commits an offence if—
- (a) the person places a vending machine for the supply of an unscheduled medicine on premises; and
  - (b) the vending machine is used, or is available for use, by members of the public.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) A person commits an offence if—
- (a) the person occupies premises where there is a vending machine for the supply of an unscheduled medicine; and

- (b) the vending machine is used, or is available for use, by members of the public.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (4) Subsection (3) does not apply if the vending machine was placed on the premises without the consent of the occupier.
- (5) Also, this section does not apply if—
- (a) the unscheduled medicine is supplied in a primary pack containing no more than 2 adult doses of the medicine; and
  - (b) the medicine was packed in the primary pack by the manufacturer of the medicine; and
  - (c) the vending machine is presented and located in a way that makes unsupervised access by children unlikely.

*Note*     **Primary pack** means the pack in which medicine and its immediate container or immediate wrapper or measure pack are presented for sale or supply (see the medicines and poisons standard).

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## **Chapter 4 Licences for regulated substances**

### **Part 4.1 Licences—important concepts**

#### **85 Meaning of *licence*—ch 4**

- (1) In this chapter:

*licence* means a licence that authorises the licence-holder to deal with a regulated substance.

- (2) A regulation may prescribe the kinds of licences that may be issued under this Act.
- (3) To remove any doubt, the chief executive may issue a licence to a person to deal with a regulated substance even if the licence is not a kind prescribed by regulation for subsection (2).

#### **86 Meaning of *close associate*—ch 4**

- (1) In this chapter:

*close associate*—a person is a *close associate* of someone (the *related person*) if—

- (a) the person holds or will hold an executive position (however described) in the related person's business; or

- (b) the chief executive is satisfied that the person is or will be able to exercise a significant influence in relation to the conduct of the related person's business because the person holds or will hold a financial interest, or is entitled to exercise a relevant power, in the business.

*Note* For the meaning of **business**, see the dictionary.

- (2) In this section:

**executive position**—a position (however described) in the related person's business is an **executive position** if the holder of the position is concerned with, or takes part in, the management of the business.

**exercise** a power includes exercise the power on behalf of someone else.

**financial interest**, in a business, means—

- (a) a share in the capital of the business; or  
(b) an entitlement to receive income derived from the business, however the entitlement arises.

**hold** a position includes hold the position on behalf of someone else.

**power** means a power exercisable—

- (a) by voting or otherwise; and  
(b) alone or with others.

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***relevant power***, in a business, means a power—

- (a) to take part in a directorial, managerial or executive decision for the business; or
- (b) to elect or appoint a person to an executive office in the business.

**87      Meaning of *influential person* for a corporation—ch 4**

- (1) In this chapter:

***influential person***, for a corporation, means any of the following:

- (a) an executive officer of the corporation;
- (b) a person who may exercise a relevant power in relation to the corporation;
- (c) a related corporation;
- (d) an executive officer of a related corporation.

- (2) In this section:

***related corporation*** means a related body corporate under the Corporations Act.

***relevant power***, for a corporation, means a power—

- (a) to take part in a directorial, managerial or executive decision for the corporation; or
- (b) to elect or appoint a person to an executive office in the corporation; or
- (c) to exercise a significant influence in relation to the conduct of the corporation.

## 88 Suitability of individuals for licences

- (1) In deciding whether an individual is a *suitable person* to hold a licence, the chief executive must have regard to the following:
- (a) the knowledge, experience and training of the individual in relation to the kinds of regulated substances to which the licence relates;
  - (b) the dealings to which the licence relates;
  - (c) whether the individual or a close associate of the individual, or a corporation of which the individual was at the relevant time an executive officer, has—
    - (i) supplied information or a document that is false or misleading in a material particular in relation to this Act; or
    - (ii) contravened this Act or a corresponding law, whether or not the individual, associate or corporation has been convicted or found guilty of an offence for the contravention; or
    - (iii) failed to comply with a condition of a licence under this Act or a licence (however described) under a corresponding law, whether or not the individual, associate or corporation has been convicted or found guilty of an offence for the failure;
  - (d) anything prescribed by regulation.

*Note* A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

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- (2) However, an individual is not a *suitable person* to hold a licence if—
- (a) the individual, a close associate of the individual, or a corporation of which the individual was at the relevant time an executive officer, has been convicted or found guilty within the last 5 years of any of the following offences:
    - (i) an offence against this Act;
    - (ii) an offence in Australia or elsewhere in relation to a regulated substance;
    - (iii) an offence in Australia punishable by imprisonment for at least 1 year;
    - (iv) an offence outside Australia against a law of a place outside Australia that, if it had been committed in the ACT, would have been punishable by imprisonment for at least 1 year; or
  - (b) the individual or a close associate of the individual is an undischarged bankrupt or, at any time in the last 5 years—
    - (i) was an undischarged bankrupt; or
    - (ii) executed a personal insolvency agreement; or
  - (c) at any time in the last 5 years, the individual or a close associate of the individual was involved in the management of a corporation when—
    - (i) the corporation became the subject of a winding-up order; or
    - (ii) a controller or administrator was appointed for the corporation; or

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- (d) a circumstance prescribed by regulation applies in relation to the individual or a close associate of the individual.
- (3) Despite subsection (2), the chief executive may decide that an individual is a *suitable person* to hold a licence if satisfied that—
  - (a) the dealings with regulated substances authorised, or to be authorised, by the licence would not be inconsistent with the objects of this Act if the chief executive decided that the individual is a suitable person; and
  - (b) it is otherwise in the public interest that the individual be treated as a suitable person.

## 89 Suitability of corporations for licences

- (1) For this Act, a corporation is a *suitable person* for a licence if—
  - (a) each influential person of the corporation is a suitable person to hold a licence; and
  - (b) the corporation is not the subject of a winding-up order, and has not been the subject of a winding-up order in the last 3 years; and
  - (c) a controller or administrator has not been appointed for the corporation in the last 5 years.
- (2) However, if a corporation is not a suitable person for a licence under subsection (1), the chief executive may decide that the corporation is a *suitable person* to hold a licence if satisfied that—
  - (a) the dealings with regulated substances authorised, or to be authorised, by the licence would not be inconsistent with the objects of this Act if the chief executive decided that the corporation is a suitable person; and

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- (b) it is otherwise in the public interest that the corporation be treated as a suitable person.

**90 Power to ask for information etc from applicants and others**

- (1) In this section:

*application* means—

- (a) an application for a licence; or
- (b) an application to amend a licence.

*designated person*, in relation to an applicant or licence means—

- (a) the applicant or licence-holder; or
- (b) a close associate of, or influential person for, the applicant or licence-holder.

- (2) The chief executive may, in writing, ask a designated person in relation to an application or licence to do 1 or more of the following:

- (a) give the chief executive stated information relevant to the application or licence;
- (b) produce for the chief executive's inspection a stated document or documents of a stated kind, relevant to the application or licence;
- (c) allow the chief executive to examine, copy or take extracts from a stated document, or documents of a stated kind, relevant to the application or licence (including documents produced for the chief executive's inspection under paragraph (b));
- (d) verify, by statutory declaration or otherwise, information given or a document produced to the chief executive;

- (e) authorise a stated person to do anything mentioned in paragraphs (a) to (d);
- (f) give the chief executive the authorities and consents that the chief executive asks for to allow the chief executive to obtain from other people information (including financial and other confidential information) that is—
  - (i) about the designated person; and
  - (ii) relevant to—
    - (A) the consideration of the application; or
    - (B) a consideration of whether the licence-holder continues to be a suitable person for a licence.

**Examples—par (a)**

- 1 the notice may ask the designated person to give information by preparing a document in a stated way (including as a statutory declaration) or by completing a document provided by the chief executive
- 2 the notice may ask the designated person to give the chief executive information about a close associate because of a change of the kind to which section 100 (Change of licence particulars affecting suitability to hold licence) applies

**Example—par (b)**

a statement supplied by a police officer about the applicant's criminal history (if any)

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**Example—par (c)**

The notice may ask the applicant to authorise the applicant's accountant, or a former close associate, to give the chief executive stated information or documents about the applicant.

*Note 1* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) A request under subsection (2) must state a reasonable time within which the request must be complied with.

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## Part 4.2 Issue and amendment of licences

### 91 Applications for licences

- (1) A person may apply to the chief executive for a licence.

*Note 1* A fee may be determined under s 183 for this section.

*Note 2* If a form is approved under s 184 for this provision, the form must be used.

- (2) The applicant must give the chief executive a written statement (a ***change statement***) if, before the application is decided, a change happens in relation to—

- (a) something mentioned in the application; or
- (b) a document, or something mentioned in a document, that accompanied the application.

*Note* Failure to comply with this subsection contravenes a condition of the licence (see s 96 (1) (b)).

- (3) A change statement must—

- (a) set out the details of the change; and
- (b) ask the chief executive to amend the application to include the change; and
- (c) be signed by the applicant.

**92            Decision on applications for licences**

- (1) On application under section 91, the chief executive must issue the licence to the applicant if satisfied that—
  - (a) no restriction on the issue of the licence prescribed by regulation applies in relation to the applicant; and
  - (b) the applicant is a suitable person to hold the licence; and
  - (c) the applicant can comply with this Act in relation to the regulated substance to which the application relates.
- (2) The chief executive must refuse to issue the licence if not satisfied about the matters mentioned in subsection (1).
- (3) However, the chief executive need not decide the application if—
  - (a) the application does not include the information and any documents required by the application form; or
  - (b) the chief executive has asked for something under section 90 (Power to ask for information etc from applicants and others) and the request has not been complied with.

**93            Term of licences**

- (1) A licence is issued for the period stated in the licence.
- (2) A licence must not be issued for longer than 3 years, or any shorter period prescribed by regulation.

**94            Licences not transferable**

A licence is not transferable.

**95 Form of licences**

- (1) A licence must include the following information:
- (a) what kind of licence it is or the kinds of dealings authorised by the licence;
  - (b) the regulated substances to which the licence relates;
  - (c) the full name of the licence-holder;
  - (d) the licence-holder's ABN (if any);
  - (e) if the licence-holder is a corporation—the corporation's ACN;
  - (f) if appropriate, the location of the premises where the licence-holder is authorised to deal with a regulated substance under the licence;
  - (g) if applicable, the name of each individual who is to supervise the dealings authorised under the licence;
  - (h) any conditions included in the licence by the chief executive;  
*Note* See s 97 to s 99 for conditions included in a licence by the chief executive.
  - (i) a unique identifying number;
  - (j) when the term of the licence ends;
  - (k) any other information prescribed by regulation.
- (2) For this Act, the conditions mentioned in subsection (1) (h) may be included in a separate document that forms part of the licence.

**96 Statutory licence conditions**

A licence is subject to the following conditions:

- (a) the licence-holder must comply with any written request by the chief executive under section 90 (Power to ask for information etc from applicants and others);
- (b) if section 91 (2) (Applications for licences) applied in relation to the application for the licence, the licence-holder complied with the subsection;
- (c) if section 100 (Change of licence particulars affecting suitability to hold licence) applies in relation to the licence-holder, the licence-holder must comply with the section;
- (d) a condition prescribed by regulation.

**97 Chief executive—other licence conditions**

- (1) A licence is subject to any condition the chief executive includes in the licence when giving the licence or at any other time.
- (2) For subsection (1), the chief executive may include conditions in a licence to ensure that regulated substances are properly dealt with under the licence, including, for example—
  - (a) conditions about—
    - (i) the supervision of dealings; and
    - (ii) the security of regulated substances and of premises where regulated substances are stored; and
    - (iii) the keeping of records about dealings; and



- (b) conditions recommended by the medicines and poisons standard for dealing with the regulated substance.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**98 Amendment of licence conditions on chief executive's initiative**

- (1) The chief executive may, by written notice given to a licence-holder, amend the licence to change the licence conditions.
- (2) However, the chief executive may amend the licence to change the licence conditions only if—
  - (a) the chief executive has given the licence-holder written notice of the proposed amendment; and
  - (b) the notice states that written comments on the proposal may be made to the chief executive before the end of a stated period of at least 14 days after the day the notice is given to the licence-holder; and
  - (c) after the end of the stated period, the chief executive has considered any comments made in accordance with the notice.
- (3) The amendment takes effect on the day notice of the change is given to the licence-holder or any later day stated in the notice.
- (4) In this section:  
*change*, for licence conditions, means—
  - (a) amend an existing licence condition; or
  - (b) impose a new licence condition; or
  - (c) remove an existing licence condition.

## EXPOSURE DRAFT

*condition* does not include a condition mentioned in section 96 (Statutory licence conditions).

**99 Amendment of licence on application by licence-holder**

- (1) A licence-holder may apply to the chief executive to amend the licence (including by changing the licence conditions).

*Note* A fee may be determined under s 183 for this section.

- (2) In deciding whether to amend the licence, the chief executive may consider anything the chief executive may consider under section 92 (Decision on applications for licences) in relation to an application for a licence.
- (3) If the chief executive receives an application under subsection (1), the chief executive must—
- (a) amend the licence in accordance with the application; or
  - (b) amend the licence in terms different to the application; or
  - (c) refuse to amend the licence.
- (4) However, the chief executive need not decide the application if the chief executive has asked for something under section 90 (Power to ask for information etc from applicants and others) and the request has not been complied with.
- (5) In this section:
- change*, for licence conditions—see section 98 (4).
- condition*—see section 98 (4).

**100 Change of licence particulars affecting suitability to hold licence**

- (1) This section applies if a licence-holder believes that there will be a change (the *anticipated change*) to anything stated in—
- (a) the licence; or
  - (b) an application to amend the licence.

*Note* Failure to comply with this section contravenes a condition of the licence (see s 96 (1) (c)).

- (2) The licence-holder must—
- (a) give the chief executive written notice of the anticipated change no later than 7 days before the day the change is expected to happen; and
  - (b) if the change affects a particular shown on the licence—apply under section 99 to amend the licence to take account of the change.

**Examples of changes**

- 1 to change the person who, under a licence that authorises the supply by wholesale of a controlled medicine, must supervise the supply of the medicine
- 2 a change in a close associate of, or influential person for, a licence-holder
- 3 a structural change in premises relevant to dealing with a regulated substance

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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## **101 Return of licences for amendment**

- (1) A licence-holder commits an offence if—
- (a) the licence-holder's licence is amended under section 98 (Amendment of licence conditions on chief executive's initiative) or section 99 (Amendment of licence on application by licence-holder); and
  - (b) the licence-holder fails to return the licence to the chief executive as soon as practicable (but not later than 7 days) after the day the licence-holder is told about the chief executive's action or decision.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

## **102 Replacement licences**

- (1) The chief executive may issue a replacement licence to a licence-holder if satisfied that the licence-holder's original licence has been lost, stolen or destroyed.
- (2) For subsection (1), the chief executive may require the licence-holder to give the chief executive a statement, verified by a statutory declaration signed by the licence-holder, that the original licence has been lost, stolen or destroyed.

*Note 1* A fee may be determined under s 183 for this section.

*Note 2* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

## **Part 4.3                      Other provisions about licences**

### **103                      Contravention of licence conditions**

- (1) A licence-holder commits an offence if the licence-holder contravenes a condition of the licence.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

### **104                      Surrender of licences**

- (1) A licence-holder may surrender the licence by giving written notice of the surrender to the chief executive.

- (2) The licence-holder must, with the notice—

- (a) return the licence to the chief executive; or
- (b) if the licence has been lost, stolen or destroyed—give the chief executive a statement, verified by a statutory declaration signed by the licence-holder, that the licence has been lost, stolen or destroyed.

*Note*            The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

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## Chapter 5      Enforcement

### Part 5.1      Inspection and seizure powers

#### Division 5.1.1      Preliminary

#### 105      Definitions—pt 5.1

(1) In this part:

*connected*—a thing is *connected* with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

*occupier*, of premises, includes—

- (a) a person believed, on reasonable grounds, to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

*offence* includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

**106      *Meaning of medicines and poisons inspector***

In this Act:

*medicines and poisons inspector* means—

- (a) a police officer; or
- (b) a person appointed under section 107.

**Division 5.1.2      Medicines and poisons inspectors**

**107      Appointment of medicines and poisons inspectors**

The chief executive may appoint a public servant to be a medicines and poisons inspector for this Act.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

**108      Identity cards**

- (1) The chief executive must give a medicines and poisons inspector appointed under section 107 an identity card stating the person's name and that the person is a medicines and poisons inspector.
- (2) The identity card must show—
  - (a) a recent photograph of the person; and
  - (b) the card's date of issue and expiry; and
  - (c) anything else prescribed by regulation.

- (3) A person commits an offence if—
- (a) the person stops being a medicines and poisons inspector; and
  - (b) the person does not return the person's identity card to the chief executive as soon as practicable (but no later than 7 days) after the day the person stops being a medicines and poisons inspector.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.

### **Division 5.1.3            Powers of medicines and poisons inspectors**

#### **109            Power to enter premises**

- (1) For this Act, a medicines and poisons inspector may—
- (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
  - (b) at any time, enter premises with the occupier's consent; or
  - (c) at any time, enter premises if the inspector believes, on reasonable grounds, that the circumstances are so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary.

*Note*            A police officer may obtain a search warrant under the *Crimes (Medicines, Poisons and Drugs Enforcement) Act 1989*, pt 11.

- (2) However, subsection (1) (a) does not authorise entry into a part of premises that is being used only for residential purposes.

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- (3) A medicines and poisons inspector may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, a medicines and poisons inspector may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) In this section:

*at any reasonable time* includes at any time when the public is entitled to use the premises, or when the premises are open to or used by the public (whether or not on payment of money).

#### **110 Production of identity card**

A medicines and poisons inspector must not remain at premises entered under this part if the inspector does not produce his or her identity card when asked by the occupier.

#### **111 Consent to entry**

- (1) When seeking the consent of an occupier of premises to enter premises under section 109 (1) (b), a medicines and poisons inspector must—
  - (a) produce his or her identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and
    - (iii) that consent may be refused.

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- (2) If the occupier consents, the medicines and poisons inspector must ask the occupier to sign a written acknowledgment (an *acknowledgement of consent*)—
  - (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and
    - (iii) that consent may be refused; and
  - (b) that the occupier consented to the entry; and
  - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the medicines and poisons inspector must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the medicines and poisons inspector under this part if—
  - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
  - (b) an acknowledgment of consent is not produced in evidence; and
  - (c) it is not proved that the occupier consented to the entry.

## **112      General powers on entry to premises**

- (1) A medicines and poisons inspector who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything on the premises:
  - (a) inspect or examine;

# **EXPOSURE DRAFT**

- (b) take measurements or conduct tests;
- (c) take samples;
- (d) take photographs, films, or audio, video or other recordings;
- (e) require the occupier to give the inspector reasonable help to exercise a power under this part.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against self incrimination and client legal privilege.

- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 50 penalty units.

## **113 Power to seize things**

- (1) A medicines and poisons inspector who enters premises under this part with the occupier's consent may seize anything at the premises if—
  - (a) the inspector is satisfied, on reasonable grounds, that the thing is connected with an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) A medicines and poisons inspector who enters premises under this part (whether with the occupier's consent or otherwise) may seize anything at the premises if satisfied, on reasonable grounds, that—
  - (a) the thing is connected with an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing from being—
    - (i) concealed, lost or destroyed; or
    - (ii) used to commit, continue or repeat the offence.

## **EXPOSURE DRAFT**

- (3) Also, a medicines and poisons inspector who enters premises under this part (whether with the consent of a person in charge of the premises or otherwise) may seize anything at the premises if satisfied, on reasonable grounds, that the thing—
  - (a) is a risk to the health or safety of people; or
  - (b) may cause damage to property or the environment.
- (4) The powers of a medicines and poisons inspector under subsections (2) and (3) are additional to any powers of the inspector under subsection (1) or any other territory law.
- (5) Having seized a thing, a medicines and poisons inspector may—
  - (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
  - (b) leave the thing at the place of seizure but restrict access to it.
- (6) A person commits an offence if—
  - (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (5); and
  - (b) the person does not have a medicines and poisons inspector's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

- (7) An offence against this section is a strict liability offence.

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## **Division 5.1.4      Authorised people—other provisions**

### **114      Damage etc to be minimised**

- (1) In the exercise, or purported exercise, of a function under this part, a medicines and poisons inspector must take all reasonable steps to ensure that the inspector, and any person assisting the inspector, causes as little inconvenience, detriment and damage as practicable.
- (2) If a medicines and poisons inspector, or a person assisting a medicines and poisons inspector, damages anything in the exercise or purported exercise of a function under this part, the inspector must give written notice of the particulars of the damage to the person the inspector believes, on reasonable grounds, is the owner of the thing.
- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

### **115      Compensation for exercise of enforcement powers**

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by a medicines and poisons inspector or a person assisting a medicines and poisons inspector.
- (2) Compensation may be claimed and ordered in a proceeding for—
  - (a) compensation brought in a court of competent jurisdiction; or
  - (b) an offence against this Act brought against the person making the claim for compensation.

- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.
- (5) To remove any doubt, this section does not authorise a court to order the payment of compensation for regulated substances seized by a medicines and poisons inspector if the substance was recalled under the *Therapeutic Goods Act 1989* (Cwlth).

## Part 5.2 Taking and analysis of samples

### 116 Medicines and poisons inspector may buy samples without complying with pt 5.2

This part does not stop a medicines and poisons inspector from buying a sample of a substance for analysis for the routine monitoring of compliance with this Act without complying with the requirements of this part.

*Note* For the admissibility of the analysis of a sample of a substance taken by a medicines and poisons inspector, see s 168.

### 117 Person in charge etc to be told sample to be analysed

- (1) This section applies if a medicines and poisons inspector proposes to take, or takes, a sample of a substance for analysis from premises where a regulated substance is dealt with.
- (2) Before or as soon as practicable after taking the sample, the medicines and poisons inspector must tell a person in charge of the premises of the inspector's intention to have the sample analysed.
- (3) If a person in charge is not present or readily available, the medicines and poisons inspector must instead tell the person from whom the sample was obtained of the inspector's intention to have the sample analysed.

### 118 Payment for samples

- (1) This section applies if a medicines and poisons inspector takes a sample of a substance for analysis from premises where a regulated substance is dealt with.

- (2) The medicines and poisons inspector must pay, or offer to pay, the person from whom the sample is taken—
  - (a) the amount (if any) prescribed by regulation as the amount payable for the sample; or
  - (b) if no amount is prescribed—the current market value of the sample.

**119 Samples from packaged substances**

If a package of a substance contains 2 or more smaller packages of the same substance, the medicines and poisons inspector may take 1 of the smaller packages for analysis.

**120 Procedures for dividing samples**

- (1) This section—
  - (a) applies to a sample of a substance being taken by a medicines and poisons inspector for analysis; and
  - (b) is subject to section 121.
- (2) The medicines and poisons inspector must—
  - (a) divide the sample into 3 parts, and mark and seal or fasten each part; and
  - (b) leave 1 part with the person told under section 117 (Person in charge etc to be told sample to be analysed) of the inspector's intention to have the sample analysed; and
  - (c) keep 1 of the parts for analysis; and
  - (d) keep 1 part for future comparison with the other parts.



- (3) If a sample of a substance taken by a medicines and poisons inspector is in the form of separate or severable objects, the inspector—
- (a) may take a number of the objects; and
  - (b) divide them into 3 parts each consisting of 1 or more of the objects, or of the severable parts of the objects, and mark and seal or fasten each part; and
  - (c) deal with the sample under subsection (2) (b) to (d).

## **121      Exception to s 120**

- (1) This section applies to a sample of a substance being taken by a medicines and poisons inspector for analysis if dividing the substance into 3 parts would, in the inspector's opinion—
- (a) so affect or impair the composition or quality of the sample as to make the parts unsuitable for accurate analysis; or
  - (b) result in the parts being too small for accurate analysis; or
  - (c) otherwise make the sample unsuitable for analysis (including a method of analysis prescribed by regulation for the substance in relation to which the sample was taken).
- (2) The medicines and poisons inspector may take as many samples as the inspector considers necessary to allow an accurate analysis to be made, and may deal with each sample in any way that is appropriate in the circumstances, instead of complying with section 120.

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## 122 Certificates of analysis by authorised analysts

- (1) The analysis of a sample of a substance for the chief executive must be carried out by, or under the supervision of, an authorised analyst.
- (2) An authorised analyst who analyses the sample must give to the chief executive a certificate of analysis that—
  - (a) is signed and dated by the analyst; and
  - (b) contains a written report of the analysis that sets out the findings; and
  - (c) identifies the method of analysis.

*Note 1* If a form is approved under s 184 for the certificate, the form must be used.

*Note 2* For the evidentiary status of a certificate under this section, see s 167.

- (3) In this section:

***authorised analyst*** means an analyst mentioned in the *Public Health Act 1997*, section 15A (2) (Functions of analysts) who is authorised to exercise a function under this Act.

## Chapter 6                      Restrictions on dealing with regulated substances

### Part 6.1                      Authorisations—disciplinary action

#### 123                      Application—pt 6.1

This part does not apply in relation to a dealing by a person with a regulated substance if the dealing is authorised by a licence or permit under a Commonwealth Act or the dealing is otherwise in accordance with a Commonwealth Act.

#### 124                      Definitions—pt 6.1

In this part:

***authorisation-holder*** means a person who is, or has been, authorised to deal with a regulated substance.

***disciplinary action***—see section 126.

***disciplinary notice***—see section 127 (1).

***ground for disciplinary action***, against an authorisation-holder—see section 125.

***interstate wholesaler*** means a person who is or has been authorised (however described) under a corresponding law to supply a regulated substance by wholesale.

*Note*                      For the authorisation of interstate wholesalers, see s 17 (4).

**125      Grounds for disciplinary action against  
authorisation-holders**

- (1) Each of the following is a *ground for disciplinary action* against an authorisation-holder:
- (a) the authorisation-holder has given information to the chief executive that was false or misleading in a material particular;
  - (b) the authorisation-holder has failed to give information required to be given under this Act;
  - (c) the authorisation-holder has contravened a condition of the authorisation;
  - (d) the authorisation-holder, or an agent or employee of the authorisation-holder, has contravened this Act (whether or not the authorisation-holder, or employee is convicted, or found guilty, of an offence against chapter 3 (Offences relating to regulated substances));
- Note*      A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).
- (e) if the authorisation-holder is or has been a licence-holder—
- (i) when the chief executive issued the licence, grounds existed to refuse the application for the licence but the chief executive was not aware of them; or
  - (ii) the licence-holder is not, or is no longer, a suitable person for a licence; or
  - (iii) the licence-holder no longer carries out the dealing to which the licence relates; or

- (iv) a ground mentioned in paragraph (a), (b), (c) or (d) applies in relation to a close associate of, or influential person for, the licence-holder; or
  - (v) a close associate of, or influential person for, the licence-holder is not, or is no longer, a suitable person for the licence;
  - (f) if the person is or was an interstate wholesaler—
    - (i) the person, or an agent or employee of the person, supplied a regulated substance to someone not authorised to obtain it at the time of supply; or
    - (ii) the person, or an agent or employee of the person, contravened a condition or restriction that applies or applied to the person under a corresponding law or a regulation.
- (2) In subsection (1) (d), a reference to a contravention of this Act includes a reference to the following:
- (a) a contravention of the Criminal Code, part 2.4 (Extensions of criminal responsibility) in relation to an offence against this Act or otherwise in relation to this Act;
  - (b) a contravention of the Criminal Code in relation to a document completed, kept or given, or required to be completed, kept or given, under or in relation to this Act;
  - (c) a contravention of the Criminal Code in relation to anything else done, or not done, under or in relation to this Act.

## **EXPOSURE DRAFT**

## 126 Disciplinary action against authorisation-holders

- (1) Each of the following is *disciplinary action* when taken against an authorisation-holder (other than a former authorisation-holder):
- (a) reprimanding the authorisation-holder;
  - (b) requiring the authorisation-holder, or an employee of the authorisation-holder, to complete a stated course of training to the satisfaction of the chief executive or another stated person;
  - (c) imposing a condition on the authorisation-holder's authority to deal with a regulated substance;
  - (d) varying the authorisation-holder's authority to deal with a regulated substance;
  - (e) suspending the authorisation-holder's authority to deal with a regulated substance, or a particular authorised dealing under the authorisation—
    - (i) for a stated period; or
    - (ii) until the authorisation-holder, or an employee of the authorisation-holder, completes a stated course of training to the satisfaction of the chief executive or someone else; or
    - (iii) until a stated event happens;
  - (f) cancelling the authorisation-holder's authority to deal with a regulated substance;
  - (g) if the authorisation-holder is an interstate wholesaler—prohibiting the authorisation-holder from supplying a regulated substance by wholesale in the ACT.

- (2) Each of the following is ***disciplinary action*** when taken against a former authorisation-holder:
- (a) reprimanding the former authorisation-holder;
  - (b) disqualifying the former authorisation-holder from being authorised, or authorised in a particular way, to deal with a regulated substance—
    - (i) for a stated period; or
    - (ii) until the former authorisation-holder, or an employee of the former authorisation-holder, completes a stated course of training to the satisfaction of the chief executive or someone else; or
    - (iii) until a stated event happens;
  - (c) if the former authorisation-holder was an interstate wholesaler—prohibiting the authorisation-holder from supplying a regulated substance by wholesale in the ACT.

## **127 Taking disciplinary action against authorisation-holders**

- (1) If the chief executive is satisfied that a ground for disciplinary action exists, or may exist, in relation to an authorisation-holder, the chief executive may give the authorisation-holder a notice (a ***disciplinary notice***).
- (2) The disciplinary notice must—
- (a) state the ground for disciplinary action; and
  - (b) tell the authorisation-holder that he or she may, not later than 3 weeks after the day the authorisation-holder is given the notice, give a written response to the chief executive about the notice.

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- (3) If, after considering any responses given not later than the end of the 3-week period, the chief executive is satisfied that a ground for disciplinary action exists in relation to the authorisation-holder, the chief executive may take disciplinary action against the authorisation-holder.
- (4) To remove any doubt, the disciplinary action may consist of 2 or more of the actions mentioned in section 126.
- (5) The disciplinary action takes effect when the authorisation-holder receives written notice of the action or, if the notice provides for a later time of effect, that time.

## **128 Immediate suspension of authorisations and dealings**

- (1) This section applies if the chief executive has given, or is considering whether to give, a disciplinary notice to an authorisation-holder.
- (2) The chief executive may give the authorisation-holder a written notice (an *immediate suspension notice*) suspending—
  - (a) the authorisation-holder's authority to deal with a regulated substance; or
  - (b) a particular authorised dealing under the authorisation.
- (3) However, the chief executive may suspend the authorisation under subsection (2) only if—
  - (a) the chief executive has taken into account the circumstances leading to the decision to give or consider giving the disciplinary notice and the grounds stated, or that may be stated, in the disciplinary notice; and



- (b) the chief executive believes, on reasonable grounds, that it is in the public interest that the authorisation be suspended as soon as practicable before a decision is made whether or not to take action against the authorisation-holder under section 127.
- (4) If an immediate suspension notice is given to the authorisation-holder, the authorisation-holder's authority to deal with a regulated substance is suspended when the notice is given to the authorisation-holder.
  - Note* If the authorisation is a licence or approval, the licence or approval must be returned to the chief executive, see s 130.
- (5) If the authorisation-holder is given an immediate suspension notice because the chief executive is considering whether to give a disciplinary notice to the authorisation-holder, the chief executive must, as soon as practicable, give a disciplinary notice to the authorisation-holder or tell the authorisation-holder in writing that a disciplinary notice will not be given to the authorisation-holder.
- (6) An immediate suspension notice ends—
  - (a) if the chief executive decides not to give a disciplinary notice to the authorisation-holder—when the authorisation-holder is given written notice of the chief executive's decision; or
  - (b) if a disciplinary notice is given to the authorisation-holder—when any disciplinary action takes effect or the authorisation-holder is given written notice by the chief executive that no disciplinary action will be taken.

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**129 Effect of suspension of authorisations and dealings**

- (1) If an authorisation to deal with a regulated substance is suspended, the authorisation does not authorise the authorisation-holder to carry on any dealing with regulated substances under the authorisation during the suspension.
- (2) If an authorised dealing with a regulated substance under an authorisation is suspended, the authorisation—
  - (a) does not authorise the authorisation-holder to carry out that dealing under the authorisation during the suspension; and
  - (b) is taken to be varied under this part to the extent necessary to give effect to the suspension.

**130 Return of varied, suspended and cancelled licences and approvals**

- (1) A person commits an offence if—
  - (a) the person is the holder of a licence or of an approval under section 17 (1) (c) (Meaning of *authorised*); and
  - (b) the person's authorisation to deal with a regulated substance is varied, suspended or cancelled under this part; and
  - (c) the person fails to return the licence or approval to the chief executive as soon as practicable (but not later than 7 days) after the day the person is told about the variation, suspension or cancellation.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

**131 Action by chief executive in relation to varied, suspended or cancelled licence or approval**

- (1) If a licence or approval varied under this part is returned to the chief executive, the chief executive must—
- (a) vary the licence or approval and return it to the authorisation-holder; or
  - (b) give the authorisation-holder a replacement licence or approval that includes the variation.

*Note* A licence or approval is taken to be varied if an authorised dealing under the licence or approval is suspended (see s 129 (2)).

- (2) If a licence or approval is suspended under this part and the suspension ends before the end of the term of the licence or approval, the chief executive must—
- (a) return the licence or approval to the authorisation-holder; or
  - (b) give the authorisation-holder a replacement licence or approval for the remainder of the term of the licence or approval.

- (3) In this section:

***approval*** means an approval under section 17 (1) (c) (Meaning of *authorised*).

## Part 6.2                      Controlled medicines and prohibited substances— disqualification by courts

### 132            Definitions—pt 6.2

In this part:

*drug offence* means an offence against—

- (a) chapter 3 (Offences relating to regulated substances) in relation to a controlled medicine or prohibited substance; or
- (b) the Criminal Code, chapter 6 (Serious drug offences); or
- (c) the *Crimes (Medicines, Poisons and Drugs Enforcement) Act 1989*, part 10 (Simple cannabis offences).

*relevant person* means—

- (a) a person who is authorised to deal with a regulated substance; or
- (b) a person who is authorised under this Act or another territory law to possess a controlled medicine or prohibited substance.

### 133            Drug offences—disqualification from dealing with controlled medicines and prohibited substances

- (1) This section applies if a relevant person is convicted, or found guilty, of a drug offence.
- (2) The convicting court may direct that the relevant person must not, during a stated period, deal with a controlled medicine or prohibited substance (or both) in the ways stated in the direction.

- (3) However, the court must not give the direction unless satisfied that giving the direction is in the interests of the person or the public.
- (4) The *Magistrates Court Act 1930*, section 208 (which is about appeals in criminal matters) applies in relation to the direction as if the direction were a penalty imposed by the court in relation to the conviction of a person of an offence.

#### **134 Notice of disqualification from dealing with controlled medicines and prohibited substances**

- (1) If a court gives a direction under section 133 (2), the court's registrar must give a copy of the direction to—
  - (a) the relevant person; and
  - (b) the chief executive.
- (2) The chief executive must give a copy of the direction to—
  - (a) the relevant person's employer (if any); and
  - (b) if the relevant person is a health professional—the relevant health profession board for the relevant person.
- (3) In this section:  
*relevant health profession board*—see the *Health Professionals Act 2004*, section 19.

#### **135 Effect of disqualification from dealing with controlled medicines and prohibited substances**

- (1) This section applies if a direction is given under section 133 (2) (Drug offences—disqualification from dealing with controlled medicines and prohibited substances) in relation to a relevant person.

- (2) The relevant person's authorisation to deal with a controlled medicine or prohibited substance is taken, to the extent necessary to give effect to the court's direction, not to be in force for the period stated in the direction.

## **EXPOSURE DRAFT**

## Part 6.3                      Surrender of prescribed authorisations

### 136              Application—pt 6.3

This part applies to a person who is authorised under a regulation to deal with a regulated substance, other than—

- (a) a licence-holder; or

*Note*              For the surrender of a licence, see s 104.

- (b) a person who is dealing with a medicine or poison in accordance with an approval by the chief executive under a regulation; or

*Note*              The approval may be revoked by the chief executive (see Legislation Act, s 46 (1)).

- (c) a medicines and poisons inspector; or
- (d) a person prescribed by regulation.

### 137              Surrender of authorisation under regulation

- (1) A person to whom this part applies may, by written notice (a ***surrender notice***) given to the chief executive, declare that the person does not wish to be authorised under a regulation—

- (a) to deal with a stated regulated substance; or
  - (b) for stated dealings with a stated regulated substance.

- (2) A surrender notice—

- (a) may state a period during which the declaration is to apply or an event on which the declaration ends; and

- (b) may be revoked by giving the chief executive written notice of the revocation at least 7 days before the revocation takes effect.
- (3) If the chief executive receives from a person a surrender notice or notice revoking a surrender notice, the chief executive must give a copy of the notice to—
  - (a) the person's employer (if any); and
  - (b) if the person is a health professional—the relevant health profession board for the person.
- (4) In this section:  
*relevant health profession board*—see the *Health Professionals Act 2004*, section 19.

### **138 Effect of surrender of authorisation under regulation**

- (1) This section applies while a surrender notice under section 137 relating to a regulated substance is in force in relation to a person.
- (2) The person's authorisation to deal with the regulated substance is taken, to the extent necessary to give effect to the surrender notice, not to be in force while the notice is in force.



## Chapter 7      Review of decisions

### 139      Decisions reviewable by AAT

A person mentioned in schedule 1, column 3 may apply to the administrative appeals tribunal for review of a decision by the chief executive mentioned in column 2 for the person.

### 140      Notice of reviewable decisions

- (1) The chief executive must give written notice of a decision mentioned in schedule 1, column 2 to the affected person mentioned in column 3 for the decision.
- (2) A notice under subsection (1) must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

## EXPOSURE DRAFT

## Chapter 8                      Incorporation of Commonwealth therapeutic goods laws

### Part 8.1                      Preliminary

#### 141                      Definitions—ch 8

In this chapter:

***applied provisions*** means the Commonwealth therapeutic goods laws that apply as a law of the Territory under section 142.

***Commonwealth administrative laws*** means—

- (a) the *Administrative Appeals Tribunal Act 1975* (Cwlth); and
- (b) the *Freedom of Information Act 1982* (Cwlth); and
- (c) the *Ombudsman Act 1976* (Cwlth); and
- (d) the *Privacy Act 1988* (Cwlth).

***Note***                      A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

***Commonwealth Minister*** means the Minister responsible for administering the Commonwealth therapeutic goods laws.

***Commonwealth Secretary*** means the Secretary of the Commonwealth department that—

- (a) is administered by the Commonwealth Minister; and

(b) is responsible for the Commonwealth therapeutic goods laws.

***Commonwealth therapeutic goods laws*** means the *Therapeutic Goods Act 1989* (Cwlth) (including the statutory instruments under the Act) as modified by this Act.

*Note 1* Commonwealth legislation is available at [www.comlaw.gov.au](http://www.comlaw.gov.au).

*Note 2* A reference to a law includes a reference to the law as originally made and as in force from time to time (see Legislation Act, s 102).

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## **Part 8.2**                      **Application in ACT of Commonwealth therapeutic goods laws**

### **Division 8.2.1**            **The applied provisions**

#### **142**            **Application of Commonwealth therapeutic goods laws to ACT**

- (1) The Commonwealth therapeutic goods laws apply as a law of the Territory.

*Note 1*    *Commonwealth therapeutic goods laws*—see s 141.

*Note 2*    See s 180 (Disapplication of Legislation Act, s 47 (6)).

- (2) This Act (including regulations) may modify the applied provisions.

*Note*       A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

#### **143**            **Interpretation of Commonwealth therapeutic goods laws**

- (1) The *Acts Interpretation Act 1901* (Cwlth) applies as a law of the Territory in relation to the interpretation of the applied provisions as if the applied provisions were Commonwealth laws.

*Note 1*    The *Acts Interpretation Act 1901* (Cwlth) is available at [www.comlaw.gov.au](http://www.comlaw.gov.au). (See also s 180 (Disapplication of Legislation Act, s 47 (6))).

*Note 2*    A reference to a law includes a reference to the law as originally made and as in force from time to time (see Legislation Act, s 102).

- (2) The Legislation Act does not apply to the applied provisions.

## Division 8.2.2      Functions under applied provisions

### 144      Functions of Commonwealth Minister

The Commonwealth Minister has the same functions under the applied provisions as the Commonwealth Minister has under the Commonwealth therapeutic goods laws as those laws apply to the Commonwealth.

*Note*      **Function** includes power and duty (see Legislation Act, dict, pt 1).

### 145      Functions of Commonwealth Secretary

The Commonwealth Secretary has the same functions under the applied provisions as the Commonwealth Secretary has under the Commonwealth therapeutic goods laws as those laws apply to the Commonwealth.

### 146      Functions of other people

A medicines and poisons inspector or Commonwealth officer under the Commonwealth therapeutic goods laws has the same functions under the applied provisions as the inspector or officer has under the Commonwealth therapeutic goods laws as the laws apply to the Commonwealth.

### 147      Delegations by the Commonwealth Minister or Secretary

A delegation by the Commonwealth Minister or the Commonwealth Secretary under the *Therapeutic Goods Act 1989* (Cwlth), section 57 is taken to extend to, and have effect for the purposes of, the corresponding provision of the applied provisions.

**148 Appointments under Commonwealth therapeutic goods laws**

The appointment of a person to a position under a provision of the Commonwealth therapeutic goods laws is taken to extend to, and have effect for the purposes of, the applied provisions.

**Division 8.2.3 Applied provisions—administrative law matters**

**149 Application of Commonwealth administrative laws to applied provisions**

- (1) The Commonwealth administrative laws apply as laws of the Territory to any matter arising in relation to the applied provisions as if those provisions were a law of the Commonwealth and not a Territory law.

*Note* Subsection (4) contains an exception to s (1).

- (2) For the purposes of a Territory law, a matter arising in relation to the applied provisions—
- (a) is taken to be a matter arising in relation to the laws of the Commonwealth in the same way as it would if the applied provisions were a law of the Commonwealth; and
  - (b) is taken not to be a matter arising in relation to the laws of the Territory.
- (3) However, a regulation may modify the operation of subsection (2).
- (4) A provision of a Commonwealth administrative law applied under subsection (1) that purports to give jurisdiction to a federal court is taken not to have that effect.

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**150 Functions given to Commonwealth officers and authorities**

- (1) A Commonwealth administrative law applying as a Territory law under section 149 that gives a Commonwealth officer or Commonwealth authority a function also gives the officer or authority the same function in relation to a matter arising in relation to the applied provisions.

*Note* **Function** includes power and duty (see Legislation Act, dict, pt 1).

- (2) In exercising a function given by this section, the Commonwealth officer or Commonwealth authority must act as nearly as is practicable as the officer or authority would act in exercising the same function under the Commonwealth administrative law.
- (3) A function given to a Commonwealth officer or Commonwealth authority because of this section cannot be exercised by a territory officer or territory authority.

**Division 8.2.4 Applied provisions—offences**

**151 Object—div 8.2.4**

- (1) The object of this division is to further the object of this chapter by providing for an offence against the applied provisions to be treated as if it were an offence against a law of the Commonwealth.
- (2) For subsection (1), the purposes for which an offence is to be treated as if it were an offence against a law of the Commonwealth include, for example—
- (a) the investigation and prosecution of offences; and
  - (b) the arrest, custody, bail, trial and conviction of offenders or people charged with offences; and

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- (c) proceedings relating to matters mentioned in paragraph (a) or (b); and
- (d) appeals and review relating to criminal proceedings and to proceedings of the kind mentioned in paragraph (c); and
- (e) the sentencing, punishment and release of people convicted of offences; and
- (f) fines, penalties and forfeitures; and
- (g) liability to make reparation in connection with offences; and
- (h) proceeds of crime; and
- (i) spent convictions.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **152 Application of Commonwealth criminal laws to offences against applied provisions**

- (1) The relevant Commonwealth laws apply as laws of the Territory in relation to an offence against the applied provisions as if the applied provisions were a law of the Commonwealth and not a law of the Territory.
- (2) For the purposes of a Territory law, an offence against the applied provisions—
  - (a) is taken to be an offence against the laws of the Commonwealth in the same way as it would be if the applied provisions were a law of the Commonwealth; and
  - (b) is taken not to be an offence against the laws of the Territory.
- (3) However, a regulation may modify the operation of subsection (2).



- (4) In this section:

*relevant Commonwealth laws* means—

- (a) the Commonwealth laws that would apply in relation to an offence against the applied provisions if it were an offence against a law of the Commonwealth; and
- (b) includes any Commonwealth law in relation to a matter mentioned in section 151 (2) (a) to (i).

**153 Functions of Commonwealth officers and authorities relating to offences**

- (1) A provision of a Commonwealth law applying under section 152 that gives a Commonwealth officer or Commonwealth authority a function in relation to an offence against the Commonwealth therapeutic goods laws also gives the officer or authority the same function in relation to an offence against the corresponding provision of the applied provisions.

*Note* **Function** includes power and duty (see Legislation Act, dict, pt 1).

- (2) In exercising a function given by subsection (1), the Commonwealth officer or Commonwealth authority must act as nearly as practicable as the officer or authority would act in exercising the same function in relation to an offence against the corresponding provision of the Commonwealth therapeutic goods laws.

**154 No double jeopardy for offences against applied provisions**

- (1) This section applies if—
- (a) an act or omission is an offence against both the applied provisions and the Commonwealth therapeutic goods laws; and

- (b) the offender has been punished for the offence under the Commonwealth laws.
- (2) The offender is not liable to be punished for the offence under the applied provisions.

### **Division 8.2.5      Applied provisions—other provisions**

#### **155      Commonwealth may keep fees paid to Commonwealth Secretary**

The Commonwealth may keep fees paid to, or recovered by, the Commonwealth Secretary in relation to the exercise of functions given to the Secretary by the applied provisions.

## Chapter 9                      Procedural and evidentiary provisions

### Part 9.1                      General provisions about offences against Act

#### 156                      Acts and omissions of representatives

- (1) In this section:

*person* means an individual.

*representative*, of a person, means an employee or agent of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for an offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.

- (4) An act done or omitted to be done on behalf of a person by the person's representative within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **157 Criminal liability of corporation officers**

- (1) This section applies to the following provisions:
  - (a) a provision of chapter 3 (Offences relating to regulated substances);
  - (b) section 101 (Return of licences for amendment);
  - (c) section 103 (Contravention of licence conditions);
  - (d) section 130 (Return of varied, suspended and cancelled licences and approvals).
- (2) An executive officer of a corporation commits an offence if—
  - (a) the corporation contravenes a provision to which this section applies; and
  - (b) the contravention is an offence against this Act (the *relevant offence*); and
  - (c) the officer was reckless about whether the contravention would happen; and

- (d) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and
- (e) the officer failed to take all reasonable steps to prevent the contravention.

**Maximum penalty:** The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (3) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (4) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must have regard to the following:
  - (a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
    - (i) that the corporation arranged regular professional assessments of the corporation's compliance with the contravened provision;
    - (ii) that the corporation implemented any appropriate recommendation arising from such an assessment;
    - (iii) that the corporation's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the contravened provision;
  - (b) any action the officer took when the officer became aware that the contravention was, or might be, about to happen.
- (5) Subsection (4) does not limit the matters to which the court may have regard.

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- (6) This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.

**158 No defence to claim deterioration of sample**

It is not a defence in a proceeding for an offence against this Act for a defendant to claim that any part of a sample kept for future comparison with a sample that has been analysed has, from natural causes, deteriorated, perished or undergone material change.

**159 Remedial orders by courts for offences**

- (1) This section applies if—
- (a) a person is convicted, or found guilty, of an offence against this Act; and
  - (b) the prosecutor asks the court to make an order under this section; and
  - (c) it appears to the court that the person could partly or completely rectify a state of affairs that arose as a direct or indirect result of the conduct that was the subject of the offence.

*Note* For the meaning of *found guilty*, see the Legislation Act, dict, pt 1.

- (2) The court may order the person to take any steps that it considers are necessary and appropriate to rectify the state of affairs and that are within the person's power to take.
- (3) If a court makes an order under this section, it may also make any other consequential orders (including orders about costs) that it considers appropriate.

**160 Court-directed publicity for offences**

If a person is convicted or found guilty of an offence against this Act, the court may direct the person to publish a statement in accordance with the directions of the court in relation to the offence.

*Note* A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

**161 Publication by chief executive of convictions etc**

- (1) This section applies if a person, or a representative of the person, is convicted or found guilty of an offence against this Act in relation to a regulated substance and—
  - (a) the time for making an appeal against the conviction, or finding of guilt, ends without an application for an appeal being made; or
  - (b) if an appeal is made against the conviction or finding of guilt—
    - (i) the conviction or finding is confirmed on appeal, and the time for making any further appeal in relation to the conviction or finding ends without an application for an appeal being made; or
    - (ii) the appeal is withdrawn, struck out or discontinued or lapses; or
  - (c) if a retrial has been ordered—the time for making an appeal on the retrial ends in accordance with paragraph (a) or (b).

- (2) The chief executive may publish the following information in relation to the conviction or finding of guilt in a way that the chief executive considers appropriate:
- (a) particulars that allow the public to identify the person;
  - (b) details of the offence;
  - (c) the decision of the court and the penalty imposed on the person or a representative of the person (including the forfeiture of anything under this Act).

**Examples of publication**

- 1 a press release
- 2 an article in a document published by the Territory or a territory authority
- 3 an advertisement in a newspaper circulating in the ACT

**Examples—par (a)**

- 1 the licensee-holder's name and ACN (if any)
- 2 any name (and, if relevant, ACN) used in the past by a licensee-holder
- 3 the licensee-holder's current and previous business addresses

*Note 1* For the meaning of ***found guilty***, see the Legislation Act, dict, pt 1.

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) If the conviction or finding of guilt is quashed or set aside on appeal, the information must not be published.
- (4) If the penalty is changed on appeal, this section applies in relation to the penalty as changed.



- (5) In this section:

*representative of the person* means—

- (a) if the person is an individual—an employee or agent of the person; or
- (b) if the person is a corporation—an employee, agent or executive officer of the person.

**162 Court may order costs and expenses**

- (1) A court that hears a proceeding for an offence against this Act may make any order it considers appropriate in relation to costs and expenses in relation to the examination, seizure, detention, storage, analysis (including further analysis), destruction or other disposition of anything the subject of the proceeding.
- (2) This section does not affect any other power of the court to award costs.

**163 Court may order forfeiture**

A court that convicts a person, or finds a person guilty, of an offence against this Act may order the forfeiture to the Territory of anything that was used in the commission of the offence.

## 164 Notices of noncompliance by territory entities

- (1) This section applies if a territory entity (other than a territory-owned corporation) commits an offence against this Act and the offence is an infringement notice offence.

*Note 1* For the meaning of **territory-owned corporation**, see the Legislation Act, dict, pt 1.

*Note 2* A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

- (2) An authorised person for the infringement notice offence may serve a notice of noncompliance on the responsible chief executive for the territory entity.

*Note* For how documents may be served, see the Legislation Act, pt 19.5.

- (3) The responsible chief executive must include in the chief executive's annual report a statement of the number of notices of noncompliance serviced on the chief executive and matter to which each notice related.

- (4) In this section:

**annual report** means a report under the *Annual Reports (Government Agencies) Act 2004*.

**authorised person**, for an infringement notice offence, means an authorised person for the infringement notice offence under the *Magistrates Court Act 1930*, section 134A.

**responsible chief executive**—see the *Auditor-General Act 1996*, dictionary.

*territory entity* means—

- (a) an administrative unit; or
- (b) a territory entity under the *Auditor-General Act 1996*.

## **EXPOSURE DRAFT**

## **Part 9.2                      Evidentiary provisions**

### **165                      Presumptions**

In a proceeding for an offence against this Act, it is presumed until the contrary is proved, on the balance of probabilities, that—

- (a) a regulated substance that is part of a batch, lot or consignment of the substance of the same kind or description is representative of all the substance in the batch, lot or consignment; and
- (b) each part of a sample of a regulated substance divided for analysis for this Act is of uniform composition with every other part of the sample; and
- (c) a person who appears from any marking or label on an article, container or package containing a regulated substance for sale to have manufactured, packed or supplied the substance is a person in control of the manufacture, packing or supply of the substance; and
- (d) a thing that is labelled with the name of the regulated substance is the regulated substance.

### **166                      Certificate evidence etc**

- (1) This section applies in relation to a proceeding for an offence against this Act.
- (2) A document that appears to be a copy of a licence, authorisation or approval under this Act is evidence of the issue or giving of a licence, authorisation or approval.

- (3) A certificate that appears to be signed by or on behalf of the chief executive, and that states any of the following matters, is evidence of the matters:
- (a) that there was, or was not, in force a licence, authorisation or approval in relation to a stated person or people or premises;
  - (b) that a licence, authorisation or approval authorised or required or did not authorise or require a stated dealing at a particular time and place;
  - (c) that a licence, authorisation or approval was or was not subject to stated conditions;
  - (d) that a substance is or is not a regulated substance;
  - (e) that a regulated substance belongs to or does not belong to a particular class or category of regulated substances;
  - (f) the receipt or otherwise of a notice, application or payment;
  - (g) that an amount of fees or another amount is payable under this Act by a stated person.
- (4) A certificate that appears to be signed by or on behalf of the chief executive, and states anything prescribed by regulation for this section, is evidence of the thing.
- (5) A certificate mentioned in subsection (3) or (4) may state anything by reference to a date or period.
- (6) A court must accept a certificate or other document mentioned in this section as proof of the matters stated in it if there is no evidence to the contrary.

## **EXPOSURE DRAFT**

**167 Evidence of analysts**

- (1) A certificate of the results of an analysis is admissible in a proceeding for an offence against this Act, and is evidence of the facts stated in it, if a copy of the certificate is served by the party who obtained the analysis on the other party to the proceeding at least 14 days before the day of the hearing.
- (2) However, a court may order, at the request of a party to the proceeding or on its own initiative, that the period mentioned in subsection (1) be shortened to the period stated in the court's order.
- (3) An analyst who carried out an analysis in relation to which a certificate is produced as evidence in a proceeding for an offence against this Act need not be called as a witness in the proceeding by the party producing the certificate unless the court hearing the proceeding orders otherwise, whether on its own initiative or on application by a party to the proceeding.

**168 Admissibility of analysis of sample taken by medicines and poisons inspector**

The analysis of a sample of a substance taken by a medicines and poisons inspector is admissible in evidence in a proceeding for an offence against this Act only if the sample was taken as required or allowed under part 5.2 (Taking and analysis of samples).

**169 Power of court to order further analysis**

- (1) This section applies if the court before which a person is being prosecuted for an offence against this Act is satisfied that there is a disagreement between the evidence of the analysts for the parties to the proceeding.

- (2) The court may order that the part of a sample kept for comparison under section 120 (Procedures for dividing samples) be sent by the chief executive to an independent analyst.
- (3) For subsection (2), the order may require the sample to be sent to a particular analyst or to an analyst agreed to by the parties.
- (4) An analyst who is sent part of a sample for analysis under this section must make the analysis for the information of the court.
- (5) Subject to section 162 (Court may order costs and expenses), the cost of an analysis under this section is payable by the Territory.

## **EXPOSURE DRAFT**

## **Chapter 10 Regulations about regulated substances**

### **170 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may prescribe offences for contraventions of a regulation and prescribe maximum penalties of no more than 30 penalty units for offences against a regulation.

### **171 Regulations—regulated substances**

- (1) A regulation may make provision in relation to regulated substances, including, for example—
- (a) the methods and equipment for examining and testing a substance to decide whether the substance is a regulated substance; and
  - (b) the methods and equipment for classifying regulated substances; and
  - (c) the storage and display, including requirements about security and accessibility, of regulated substances; and
  - (d) the advertising and supply of regulated substances; and
  - (e) the safe dealing with regulated substances; and
  - (f) the use of regulated substances; and



- (g) the authorisation, control, notification and prohibition of dealing with regulated substances; and
- (h) the plant, premises and systems for dealing with regulated substances; and
- (i) the security requirements for premises used to deal with regulated substances; and
- (j) the packing, marking, labelling and packaging of regulated substances, including the maximum sizes and packages of regulated substances; and
- (k) the making and keeping of records in relation to regulated substances (including plant and premises for dealing with regulated substances) and their inspection and auditing.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A regulation may also make provision in relation to regulated substances, and other substances, that can be used to manufacture regulated substances.

## **172 Regulations—authorisations**

- (1) A regulation may make provision in relation to authorisations for dealing with regulated substances, including, for example—
  - (a) prescribing the circumstances in which an authorisation is required for dealing with, or doing something else in relation to, regulated substances, including the kind of regulated substance, the kind of dealings, the circumstances of the dealings and the amount that may be dealt with; and

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- (b) the suitability of a person to hold an authorisation to deal with regulated substances, including—
  - (i) the knowledge, experience and training of the person; and
  - (ii) the testing or examination of a person to decide whether the person is, or continues to be, a suitable person to hold an authorisation; and
- (c) the circumstances in which an authorisation may or must not be given; and
- (d) the suitability of premises (including vehicles) in relation to an authorisation; and
- (e) the supervision of dealings; and
- (f) the kinds of authorisations that may be issued and the authority given to a person by a particular kind of authorisation; and
- (g) the conditions of an authorisation; and
- (h) the creation and publication of registers in relation to authorisations; and
- (i) authorising a person to deal with a regulated substance for research, education or any other purpose.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A regulation may also make provision in relation to the recognition of authorisations (however described) under corresponding laws and the circumstances in which an authorisation to deal with a regulated substance under a corresponding law authorises a person to deal with the regulated substance in the ACT.

**173 Regulations—records kept electronically**

- (1) If a document required to be kept under this Act is kept in electronic form, a regulation may require that the electronic form of the document be recorded or retained on a particular kind of data storage device.
- (2) Subsection (1) applies despite the *Electronic Transactions Act 2001*, section 11 (1) (c) and (2) (d) (Retention of information and documents).

*Note* Section 11 (2) (d) provides for regulations under the *Electronic Transactions Act 2001* to prescribe data storage devices.

- (3) For the purposes of the *Electronic Transactions Act 2001*, a regulation under subsection (1) is taken to be a regulation under that Act.
- (4) In this section:

***data storage device***—see the *Electronic Transactions Act 2001*, dictionary.

**174 Regulations—application etc of instruments**

- (1) A regulation may apply, adopt or incorporate a law of another jurisdiction or an instrument, or a provision of a law of another jurisdiction or instrument, as in force from time to time.

*Note 1* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

*Note 2* A notifiable instrument must be notified under the Legislation Act.

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- (2) In this section:

*law of another jurisdiction*—see the Legislation Act, section 47 (10).

**175 Regulations—exemption of people, substances and things from Act**

- (1) A regulation may—
- (a) exempt a person, regulated substance or premises, or anything else, prescribed by regulation from this Act; or
  - (b) authorise the Minister to exempt a person, regulated substance or premises, or anything else, prescribed by regulation from this Act.

*Note* A reference to an Act includes a reference to a provision of an Act (see Legislation Act, s 7 (3)).

- (2) An exemption under subsection (1) may be conditional.
- (3) A regulation may provide for the Minister to—
- (a) suspend the operation of a regulation mentioned in subsection (1) (a) in the way and circumstances prescribed by regulation; or
  - (b) suspend the operation of an exemption given under subsection (1) (a) in the way and circumstances prescribed by regulation.
- (4) An exemption under subsection (1) (a) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## **Chapter 11      Miscellaneous**

### **176      Directions by chief health officer about dealings with regulated substances**

- (1) For this Act, the chief health officer may give a direction about dealing with a regulated substance to a person who is authorised to deal with the substance.
- (2) Without limiting subsection (1), the chief health officer may give a direction that the chief health officer considers necessary for any of the following:
  - (a) the disposal of a regulated substance;
  - (b) the safe dealing with a regulated substance;
  - (c) ensuring compliance with any requirement under this Act or any other territory law in relation to a regulated substance.
- (3) A direction may be given orally or in writing.
- (4) A direction under subsection (2) (a)—
  - (a) must state a reasonable period within which the regulated substance must be disposed of; and
  - (b) may include requirements for the storage of the substance until disposed of.

### **177      Guidelines by chief health officer about dealings with regulated substances**

- (1) The chief health officer may issue guidelines about dealings with regulated substances.

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- (2) Without limiting subsection (1), a guideline may make provision about the circumstances in which a regulated substance may be dealt with.

- (3) A guideline is a notifiable instrument.

*Note*      A notifiable instrument must be notified under the Legislation Act.

**178      Approval of non-standard packaging and labelling by chief health officer**

- (1) The chief health officer may approve—

- (a) the packaging of a regulated substance that does not comply with the medicines and poisons standard if satisfied that the use of the packaging is as safe as using the packaging allowed under the standard for the substance; or
- (b) the labelling of a regulated substance that does not comply with the medicines and poisons standard.

- (2) An approval may be conditional.

- (3) An approval is a disallowable instrument.

*Note*      A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**179      Establishment of medicines advisory committee**

- (1) The Medicines Advisory Committee is established.

*Note*      The Legislation Act, dict, pt 1 defines *establish* as including continue in existence.

- (2) A regulation may make provision in relation to the medicines advisory committee.

**180 Disapplication of Legislation Act, s 47 (6)**

- (1) The Legislation Act, section 47 (6) does not apply to the following laws and instruments so far as they are applied under this Act:
- (a) *Acts Interpretation Act 1901* (Cwlth);
  - (b) Commonwealth administrative laws within the meaning of section 141;
  - (c) Commonwealth therapeutic goods laws within the meaning of section 141;
  - (d) *Health Insurance Act 1973* (Cwlth);
  - (e) medicines and poisons standard;
  - (g) a document mentioned in the medicines and poisons standard;
  - (f) *NHMRC National Statement on Ethical Conduct in Research Involving Humans* (1999);
  - (h) a law of another jurisdiction or an instrument, or a provision of an instrument, prescribed by regulation.

*Note 1* The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

*Note 2* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) In this section:

*law of another jurisdiction*—see the Legislation Act, section 47 (10).

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**NHMRC** means the National Health and Medical Research Council established by the *National Health and Medical Research Council Act 1992* (Cwlth).

## **181      Secrecy**

- (1) In this section:

**court** includes any tribunal or other entity having power to require the production of documents or the answering of questions.

**produce** includes permit access to.

**protected information** means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act

- (2) This section applies to—

- (a) a person who is or has been a medicines and poisons inspector or member of the medicines advisory committee; or
- (b) anyone else who has exercised a function under this Act.

- (3) A person to whom this section applies commits an offence if the person—

- (a) makes a record of protected information; or
- (b) directly or indirectly discloses or communicates to a person protected information about someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (4) Subsection (3) does not apply if the record is made, or the information is disclosed or communicated—

- (a) under this or any other Act; or

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- (b) in relation to the exercise of a function of the person to whom this section applies under this or any other Act; or
  - (c) about a person if the giving of the information is necessary to remove a threat to the life or health of the person; or
  - (d) to a person administering or enforcing a corresponding law; or
  - (e) to a law enforcement authority; or
  - (f) to a health profession board under the *Health Professionals Act 2004*; or
  - (g) to a court under a summons or subpoena.
- (5) Subsection (3) does not prevent a person to whom this section applies from communicating protected information to a person about someone else with the consent of the other person.

## **182 Protection of officials from liability**

- (1) In this section:
- official* means—
- (a) a member of the medicines advisory committee; or
  - (b) anyone else who exercises a function under this Act.
- (2) An official, or anyone engaging in conduct under the direction of an official, is not personally liable for anything done or omitted to be done honestly and without recklessness—
- (a) in the exercise of a function under this Act; or
  - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.

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- (3) Any civil liability that would, apart from subsection (2), attach to an official attaches instead to the Territory.

### **183      Determination of fees**

- (1) The Minister may determine fees for this Act.

*Note*      The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note*      A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

### **184      Approved forms**

- (1) The Minister may approve forms for this Act.

- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note*      For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note*      A notifiable instrument must be notified under the Legislation Act.

### **185      Legislation amended—sch 2**

This Act amends the legislation mentioned in schedule 2.

### **186      Legislation repealed**

- (1) The following Acts (the *repealed Acts*) are repealed:

- *Poisons Act 1933* A1933-37
- *Poisons and Drugs Act 1978* A1978-38
- *Public Health (Prohibited Drugs) Act 1957* A1957-9.

- (2) The following regulations are repealed:
- *Drugs of Dependence Regulation 2005* SL2005-3
  - *Poisons Regulation 1933*
  - *Poisons and Drugs Regulation 1993* SL1993-15.
- (3) All other legislative instruments under the repealed Acts are repealed.
- (4) The following legislative instruments under the *Drugs of Dependence Act 1989* are repealed:
- *Drugs of Dependence Authorisation* NI1997-153
  - *Drugs of Dependence Authorisation* NI1999-176
  - *Drugs of Dependence Appointment* NI1997-206
  - *Drugs of Dependence Appointment* NI1997-207
  - *Drugs of Dependence Appointment* NI1997-208
  - *Drugs of Dependence Appointment* NI1997-209
  - *Drugs of Dependence Delegation 2001* NI2001-77
  - *Drugs of Dependence Delegations 2001* DI2001-82
  - *Drugs of Dependence Revocation of Appointment* NI1997-204
  - *Drugs of Dependence Revocation of Appointment* NI1997-205
  - *Drugs of Dependence (Treatment Assessment Panel) Appointment 2006 (No 1)* DI2006-49
  - *Poisons and Drugs of Dependence (Fees) Determination 1991* DI1991-9
- (5) All approved forms under the *Drugs of Dependence Act 1989* are repealed.

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## Schedule 1      Chief executive decisions reviewable by AAT

(see s 139)

column 1 item	column 2 decision	column 3 affected person
1	section 92—issue licence for less than maximum period allowed	applicant for licence
2	section 92 (2)—refuse to issue licence	applicant for licence
3	section 97 (1)—issue licence subject to condition included by chief executive	applicant for licence
4	section 98—amend licence to change conditions	licence-holder
5	section 99—amend licence in terms different to application or refuse to amend licence	licence-holder
6	section 127 (3)— <ul style="list-style-type: none"> <li>• reprimand authorisation-holder or former authorisation-holder</li> <li>• require authorisation-holder or employee to undertake training</li> <li>• impose condition on authorisation-holder's authority to deal with regulated substance</li> <li>• vary conditions of authorisation-holder's authority to deal with regulated substance</li> <li>• suspend authorisation-holder's authority to deal with regulated substance or deal with regulated substance in particular way</li> <li>• period of suspension; course of training; stated event for suspension of authorisation-holder's authority to deal with regulated substance</li> <li>• cancel authorisation-holder's authority to deal with regulated substance</li> </ul>	authorisation-holder

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column 1 item	column 2 decision	column 3 affected person
	<ul style="list-style-type: none"><li>prohibit interstate wholesaler or former interstate wholesaler from supplying a regulated substance by wholesale in the ACT.</li></ul>	
7	section 176—giving of direction	person to whom direction is given

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## Schedule 2 Consequential amendments

(see s 185)

### Part 2.1 Animal Diseases Act 2005

#### [2.1] Section 54 (a)

*substitute*

- (a) the government analyst under the *Crimes (Medicines, Poisons and Drugs Enforcement) Act 1989*, section 183A (2);

### Part 2.2 Bail Act 1992

#### [2.2] Schedule 1, part 1.3

*substitute*

### Part 1.3 Offences against Medicines and Poisons Act 2006

column 1 item	column 2 provision	column 3 description of offence
1	23	supply of controlled medicine or prohibited substance
2	31	manufacture of controlled medicine or prohibited substance

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## Part 2.3 Children and Young People Act 1999

### [2.3] Section 2, note 1

*substitute*

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*controlled drug*—see the Criminal Code, section 600.’ means that the term ‘controlled drug’ is defined in that section and the definition applies to this Act.

### [2.4] Sections 47 (2) (a) (ii), 332 (1) (a) (ii) and 333 (1) (c)

*omit*

drug of dependence or

### [2.5] Dictionary, definition of *drug of dependence*

*omit*

## Part 2.4 Court Procedures Rules 2006

### [2.6] Rule 4700, definition of *sentence*, example 3

*omit*

### [2.7] Rule 5000, definition of *sentence*, example 3

*omit*

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## Part 2.5 Crimes (Sentence Administration) Regulation 2006

### [2.8] Section 2, note 1

*substitute*

*Note 1* The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*medicine*—see the *Medicines and Poisons Act 2006*, section 13.' means that the term '*medicine*' is defined in that section and the definition applies to this regulation.

### [2.9] Section 4 (c)

*omit*

prescribed substance

*substitute*

medicine

### [2.10] Dictionary, definitions of *drug of dependence* and *drugs and poisons standard*

*omit*

### [2.11] Dictionary, new definition of *medicine*

*insert*

*medicine*—see the *Medicines and Poisons Act 2006*, section 13.

### [2.12] Dictionary, definition of *prescribed substance*

*omit*



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**[2.13] Dictionary, definition of *prohibited substance***

*substitute*

*prohibited substance*—see the *Medicines and Poisons Act 2006*, section 15.

## **Part 2.6 Crimes (Sentencing) Act 2005**

**[2.14] Section 13 (3), notes 1 and 2**

*substitute*

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**[2.15] Section 29 (1) (i)**

*omit*

## **Part 2.7 Criminal Code 2002**

**[2.16] Sections 605, note and 614, note**

*substitute*

*Note* For additional offences relating to possessing controlled drugs, see the *Medicines and Poisons Act 2006*, pt 3.2.

**[2.17] Section 618 (2), note**

*omit*

*Drugs of Dependence Act 1989*

*substitute*

*Crimes (Medicines, Poisons and Drugs Enforcement) Act 1989*

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**[2.18]      Section 633 (1) (b)**

*omit*

an offence against this chapter or the *Drugs of Dependence Act 1989*, part 10

*substitute*

a relevant offence

**[2.19]      New section 633 (4)**

*insert*

(4) In this section:

***relevant offence*** means an offence against—

(a) this chapter; or

(b) the *Medicines and Poisons Act 2006*, part 3.2 (Substances other than low and moderate harm poisons—offences) in relation to a controlled medicine or prohibited substance.

**[2.20]      Section 634 (1) (b)**

*omit*

an offence against this chapter or the *Drugs of Dependence Act 1989*, part 10

*substitute*

a relevant offence

**[2.21] New section 634 (4)**

*insert*

(4) In this section:

*relevant offence*—see section 633 (4).

**[2.22] Section 635 (1) (b)**

*omit*

an offence against this chapter or the *Drugs of Dependence Act 1989*, part 10

*substitute*

a relevant offence

**[2.23] New section 635 (3)**

*insert*

(3) In this section:

*relevant offence*—see section 633 (4).

**[2.24] Section 641 (1)**

*omit*

an offence against this chapter or the *Drugs of Dependence Act 1989*, part 10

*substitute*

a relevant offence

**[2.25]        Section 641 (3)**

*substitute*

(3) In this section:

*relevant offence*—see section 633 (4).

(4) This section expires 6 March 2010.

## **Part 2.8                      Criminal Code Regulation 2005**

**[2.26]        Schedule 1 heading, note**

*substitute*

*Note*        This schedule is divided into part 1.1 (Controlled medicines) and part 1.2 (Prohibited substances). These terms are not relevant for the Criminal Code but are terms used in the *Medicines and Poisons Act 2006*.

**[2.27]        Schedule 1, part 1.1 heading**

*substitute*

## **Part 1.1                      Controlled medicines**

## **Part 2.9                      Dangerous Substances Act 2005**

**[2.28]        Section 8 (1), note 2**

*omit*

- *Occupational Health and Safety Act 1989*
- *Poisons Act 1933*
- *Poisons and Drugs Act 1978*

*substitute*

- *Medicines and Poisons Act 2006*
- *Occupational Health and Safety Act 1989*

## **Part 2.10                      Drugs of Dependence Act 1989**

### **[2.29]      Long title**

*substitute*

An Act for the enforcement of offences in relation to medicines, poisons and drugs, and for related purposes

### **[2.30]      Part 1**

*substitute*

#### **1                      Name of Act**

This Act is the *Crimes (Medicines, Poisons and Drugs Enforcement) Act 1989*.

#### **2                      Dictionary**

The dictionary at the end of this Act is part of this Act.

*Note 1*    The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*offence*, for part 11 (Enforcement)—see section 174.’ means that the term ‘offence’ is defined in that section for part 11.

*Note 2*    A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

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### 3 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

### 4 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

#### [2.31] Parts 2 to 6

*omit*

#### [2.32] Sections 86 to 92

*relocate to Public Health Act 1997, division 3A.1, as sections 66C to 66I*

#### [2.33] Section 93 (1) (b) (i)

*omit*

a drug of dependence or prohibited substance

*substitute*

a controlled drug under the Criminal Code, section 600

---

**[2.34] Section 93 (as amended)**

*relocate to Public Health Act 1997, division 3A.1, as section 66J*

**[2.35] Section 94**

*relocate to Public Health Act 1997, division 3A.1, as section 66K*

**[2.36] Sections 94B to 94I**

*relocate to Public Health Act 1997, division 3A.2, as sections 66M to 66T*

**[2.37] Part 7, remainder**

*omit*

**[2.38] Parts 8 and 9**

*omit*

**[2.39] Part 10 heading**

*substitute*

## **Part 10 Simple cannabis offences**

**[2.40] Sections 160 and 161**

*omit*

**[2.41] Sections 164 to 170**

*omit*

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**[2.42]      Section 171**

*substitute*

**171          Possession and administration of cannabis**

- (6) A person must not possess cannabis.

Maximum penalty:

- (a) if the offence relates to a quantity of cannabis not exceeding 25g in mass—1 penalty unit; or
- (b) in any other case—50 penalty units, imprisonment for 2 years or both.

- (7) A person must not administer cannabis to themselves.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

**[2.43]      Section 171B (2)**

*omit*

*Drugs of Dependence Act 1989*

*substitute*

*Crimes (Medicines, Poisons and Drugs Enforcement) Act 1989*

**[2.44]      Sections 173 and 173A**

*omit*



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**[2.45] Section 174 (1)**

*substitute*

(1) In this part:

***offence*** means an offence against this Act, the Criminal Code, chapter 6 (Serious drug offences) or the *Medicines and Poisons Act 2006*.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

**[2.46] Division 11.2**

*omit*

**[2.47] Section 190 (1) and (2)**

*omit*

or drug inspector

**[2.48] Section 190 (1) and (2)**

*omit*

drug of dependence, prohibited substance or

**[2.49] Sections 190 (3) and 192 (4)**

*omit*

commissioner of police

*substitute*

chief police officer

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**[2.50]      Section 194 (2)**

*omit*

drug of dependence, prohibited substance or

**[2.51]      Section 195**

*omit*

drug of dependence, prohibited substance or

**[2.52]      Section 197 (1) (a)**

*omit*

commissioner of police

*substitute*

chief police officer

**[2.53]      Section 197 (2)**

*omit*

drug of dependence, prohibited substance or

**[2.54]      Part 12**

*omit*

**[2.55]      Sections 200 to 203**

*omit*

**[2.56]      Schedule 2**

*omit*

**[2.57] New dictionary**

*insert*

## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- chief police officer
- intersex person (see s 169B)
- police officer.

***analyst*** means a person appointed as an analyst under section 183.

***cannabis*** means a cannabis plant, whether living or dead, and includes any flowering or fruiting top, leaf, seed, stalk or any other part of a cannabis plant and any mixture of parts of a cannabis plant or cannabis plants, but does not include cannabis resin or cannabis fibre.

***cannabis fibre*** means a substance consisting wholly or substantially of fibre from a cannabis plant but not containing any other material from a cannabis plant.

***cannabis oil*** means cannabis resin in a purified form.

***cannabis plant*** means a plant of the Genus Cannabis.

***cannabis resin*** means a substance consisting wholly or substantially of resin, whether crude, purified or in any other form, from a cannabis plant.

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***chapter 6 substance***—

- (a) for division 11.3 (Search, seizure and analysis)—see section 182; and
- (b) for division 11.4 (Disposal of seized substances, compensation and recovery)—see section 193A.

***connected***, for part 11 (Enforcement)—see section 174.

***government analyst*** means the government analyst under section 183A.

***occupier***, for part 11 (Enforcement)—see section 174.

***offence***, for part 11 (Enforcement)—see section 174.

***place***, for division 11.3 (Search, seizure and analysis)—see section 182.

***protocol***, for division 11.4 (Disposal of seized substances, compensation and recovery)—see section 193A.

***seized cannabis plant***, for division 11.4 (Disposal of seized substances, compensation and recovery)—see section 193A.

***seized cannabis plants protocol***, for division 11.4 (Disposal of seized substances, compensation and recovery)—see section 193A.

***seized cannabis product***, for division 11.4 (Disposal of seized substances, compensation and recovery)—see section 193A.

***seized cannabis product protocol***, for division 11.4 (Disposal of seized substances, compensation and recovery)—see section 193A.

***seized substance***, for division 11.4 (Disposal of seized substances, compensation and recovery)—see section 193A.

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## Part 2.11 Environment Protection Act 1997

### [2.58] Section 15 (2)

*omit*

*Drugs of Dependence Act 1989*

*substitute*

*Crimes (Medicines, Poisons and Drugs Enforcement) Act 1989*

## Part 2.12 Health Professionals Regulation 2004

### [2.59] Section 3, note 1

*substitute*

*Note 1* The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*prohibited substance*—see the *Medicines and Poisons Act 2006*, section 15.' means that the term 'prohibited substance' is defined in that section and the definition applies to this regulation.

### [2.60] Section 143 (3), definition of *drug-dependent person*

*substitute*

*drug-dependent person*—see the *Medicines and Poisons Act 2006*, dictionary.

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**[2.61]      Section 143 (3), definition of *prohibited substance***

*substitute*

*prohibited substance*—see the *Medicines and Poisons Act 2006*, section 15.

**[2.62]      Schedule 2, section 2.12 (2) (b) (i)**

*omit*

drug of dependence

*substitute*

controlled medicine

**[2.63]      Dictionary, new definition of *controlled medicine***

*insert*

*controlled medicine*—see the *Medicines and Poisons Act 2006*, section 13.

**[2.64]      Dictionary, definition of *drug of dependence***

*omit*

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## **Part 2.13                      Health Professionals (Special Events Exemptions) Act 2000**

### **[2.65]      Section 2, note 1**

*substitute*

*Note 1*    The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*supply*—see the *Medicines and Poisons Act 2006*, section 18.’ means that the term ‘supply’ is defined in that section and the definition applies to this Act.

### **[2.66]      Section 8 (3)**

*substitute*

- (3) This section does not authorise a visiting health professional to possess, or supply to a visitor, a prohibited substance within the meaning of the *Medicines and Poisons Act 2006*.

### **[2.67]      Sections 10 and 11**

*substitute*

#### **10            Issue of prescriptions and supply of prescription medicines**

- (1) A visiting health professional may be authorised under this section to issue a written prescription for a prescription medicine.
- (2) An authorisation under this section does not authorise a visiting health professional to issue a prescription that could not be issued by a person who is authorised to prescribe a prescription medicine under the *Medicines and Poisons Act 2006*.

- (3) The Minister may, in a special event declaration—
- (a) authorise a visiting health professional, whom the Minister is satisfied should be regarded as qualified to issue prescriptions, to issue written prescriptions for a prescription medicine in the course of providing health care services in accordance with this Act; and
  - (b) authorise a supplier to supply a prescription medicine on the prescription.

*Note* A power given under an Act to make a statutory instrument about particular matters includes power to make a statutory instrument about any 1 or more of the matters or a particular class of the matters (see Legislation Act, s 48 (2)).

- (4) The Minister must not make a special event declaration containing an authorisation under subsection (3) unless satisfied that adequate arrangements are in place to ensure that prescription medicines will be prescribed only for, and supplied only to, visitors to whom visiting health professionals are authorised to provide health care services under this Act.
- (5) A special event declaration may impose conditions on an authorisation under subsection (3), including a visiting health professional's authority to issue prescriptions.
- (6) In this section:
- supplier**, of a prescription medicine, means a person who is authorised under the *Medicines and Poisons Act 2006* to supply the medicine to a doctor.

## **11 Exemptions relating to offences**

- (1) A visiting health professional does not commit an offence against the *Health Professionals Act 2004*, the *Medicines and Poisons Act 2006* or the *Skin Penetration Procedures Act 1994* by—



- (a) providing health care services authorised under this Act; or
  - (b) possessing or supplying a prescription medicine in the course of providing the health care services; or
  - (c) prescribing a prescription medicine in accordance with this Act; or
  - (d) holding himself or herself out as being able to provide the health care services; or
  - (e) using any name, initials, description, word, symbol, addition or title that the health professional ordinarily uses.
- (2) A visitor does not commit an offence against the *Medicines and Poisons Act 2006* by doing anything, or possessing a prescription medicine, because of being provided with health care services in accordance with this Act.
- (3) A person does not commit an offence against the *Medicines and Poisons Act 2006* by supplying a prescription medicine in accordance with a written prescription issued by a visiting health professional if—
- (a) the health professional is authorised under this Act to issue the prescription; and
  - (b) the person is authorised under this Act to supply the medicine on the prescription.
- (4) A regulation may prescribe other offences to which exemptions under this section apply.

*Note* A visiting health professional who provides health care services otherwise than in accordance with this Act loses the exemption.

## EXPOSURE DRAFT

**[2.68]      Section 12**

*substitute*

**12              Complaints about visiting health professionals**

- (1) A complaint may not be made about a visiting health professional, and no disciplinary action may be taken against the health professional, under the *Community and Health Services Complaints Act 1993* or *Health Professionals Act 2004* in relation to anything done by the health professional in—
  - (a) providing health care services authorised under this Act; or
  - (b) possessing or supplying a prescription medicine in the course of providing the health care services; or
  - (c) prescribing a prescription medicine in accordance with this Act; or
  - (d) holding himself or herself out as being able to provide the health care services; or
  - (e) using any name, initials, description, word, symbol, addition or title that the health professional ordinarily uses.
- (2) This section does not prevent the bringing of proceedings for an offence against the *Community and Health Services Complaints Act 1993* or the *Health Professionals Act 2004*.
- (3) This section does not apply to a complaint about a person who is registered under the *Health Professionals Act 2004*.

**[2.69]      Dictionary, definitions of *Drug Regulation Act*, *drugs and poisons standard* and *Health Professionals Act***

*omit*

**EXPOSURE DRAFT**

**[2.70] Dictionary, new definition of *prescription medicine***

*insert*

*prescription medicine* means a controlled medicine or prescription only medicine within the meaning of the *Medicines and Poisons Act 2006*.

**[2.71] Dictionary, definition of *restricted substance***

*omit*

**[2.72] Dictionary, definition of *supply***

*substitute*

*supply*—see the *Medicines and Poisons Act 2006*, section 18.

## **Part 2.14 Hemp Fibre Industry Facilitation Act 2004**

**[2.73] Section 17 (d) (ii)**

*substitute*

- (ii) whether the person has been convicted or found guilty of a relevant offence or an offence that, if committed in the ACT, would be a relevant offence; and

**[2.74] Section 17 (e) (ii)**

*substitute*

- (ii) whether an executive officer of the corporation has been convicted or found guilty of a relevant offence or an offence that, if committed in the ACT, would be a relevant offence; and

## **EXPOSURE DRAFT**

**[2.75]      New section 17 (2)**

*insert*

(2) In this section:

***relevant offence*** means—

- (a) an offence against this Act; or
- (b) an offence against the *Crimes (Medicines, Poisons and Drugs Enforcement) Act 1989*; or
- (c) an offence against the *Medicines and Poisons Act 2006*, part 3.2 (Substances other than low and moderate harm poisons—offences) in relation to a controlled medicine or prohibited substance.

**[2.76]      Section 49 (4) (a)**

*substitute*

- (a) there is a particular thing or activity connected with a relevant offence; and

**[2.77]      New section 49 (6)**

*insert*

(6) In this section:

***relevant offence***—see section 17 (2).

**[2.78]      Section 52 (1)**

*substitute*

- (1) An inspector may require a person to state the person's name and address if the inspector—
  - (a) finds the person committing a relevant offence; or

- (b) has reasonable grounds for believing that the person has just committed a relevant offence.

**[2.79] New section 52 (6)**

*insert*

- (6) In this section:  
*relevant offence*—see section 17 (2).

**[2.80] Dictionary, definition of *Drugs of Dependence Act***

*omit*

## **Part 2.15 Intoxicated People (Care and Protection) Act 1994**

**[2.81] Section 2, notes**

*substitute*

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act.

*Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

**[2.82] Section 6A (c)**

*substitute*

- (c) is found to be in possession of a prohibited substance within the meaning of the *Medicines and Poisons Act 2006*.

**[2.83] Dictionary, definition of *prohibited substance***

*omit*

## **EXPOSURE DRAFT**

## Part 2.16                      Listening Devices Act 1992

### [2.84]                      Section 2, definition of *defined offence*, paragraph (c)

*substitute*

- (c) an offence against the *Medicines and Poisons Act 2006*, section 23 (Supply of part 3.2 substances) in relation to a controlled medicine or prohibited substance.

## Part 2.17                      Prostitution Act 1992

### [2.85]                      Section 2, note 1

*substitute*

*Note 1*    The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*nurse practitioner position*—see the *Health Act 1993*, section 37B (2).' means that the term 'nurse practitioner position' is defined in that section and the definition applies to this Act.

### [2.86]                      Section 17 (1) (b) and (2) (b)

*omit*

drug of dependence

*substitute*

controlled medicine or prohibited substance

## EXPOSURE DRAFT

**[2.87] New section 17 (3)**

*insert*

(3) In this section:

*controlled medicine*—see the *Medicines and Poisons Act 2006*, section 13.

*prohibited substance*—see the *Medicines and Poisons Act 2006*, section 15.

**[2.88] Dictionary, definition of *drug of dependence***

*omit*

## **Part 2.18 Public Health Act 1997**

**[2.89] Section 15A**

*substitute*

### **15A Functions of analysts**

- (1) The chief health officer may, in writing, authorise an analyst appointed under section 15 to be an analyst for this Act or a provision of this Act.
- (2) The chief health officer may, in writing, authorise an analyst appointed under section 15 to be an authorised analyst for any of the following:
  - (a) the *Crimes (Medicines, Poisons and Drugs Enforcement) Act 1989* or a provision of that Act;
  - (b) the *Food Act 2001* or a provision of that Act;
  - (c) the *Medicines and Poisons Act 2006* or a provision of that Act.

## **EXPOSURE DRAFT**

- (3) An analyst appointed under section 15 may also exercise any other function given to an analyst by this Act or another Territory law.

**[2.90]      New part 3A**

*insert*

## **Part 3A                      Supply of syringes**

### **Division 3A.1              Supply of syringes to approved people**

#### **66A              Definitions for div 3A.1**

In this division:

*approval* means an approval under section 66C.

*approved person* means a person who holds a current approval.

*course of instruction* means a course approved under section 66B.

*health worker* means a person who has completed a course of instruction.

#### **66B              Courses of instruction**

- (1) The Minister may approve a course about appropriate health counselling and the hygienic distribution, use, collection and disposal of syringes.

*Note*      *Syringe* includes the needle section or the plunger section of a syringe (see the dict).

- (2) An approval under subsection (1) is a notifiable instrument.

*Note*      A notifiable instrument must be notified under the Legislation Act.

## **EXPOSURE DRAFT**



## **Division 3A.2      Supply of syringes by vending machine**

### **66L      Definitions for div 3A.2**

In this division:

*approved person* means a person who holds a current vending machine approval.

*vending machine* means any machine or mechanical device used or able to be used for selling or supplying syringes without being operated or supervised by the seller or supplier, or the seller's or supplier's employee or agent, at the time of the sale or supply.

*vending machine approval* means an approval under section 66O.

### **[2.91]      Sections 130 and 131**

*substitute*

### **130      Decisions reviewable by AAT**

- (1) Application may be made to the administrative appeals tribunal for review of a decision by the chief health officer mentioned in table 130.1, column 2.

**Table 130.1      Reviewable decisions—chief health officer**

<b>column 1 item</b>	<b>column 2 decision</b>	<b>column 3 affected person</b>
1	section 15B (1) (a)—the conditions imposed on the appointment	the analyst

## **EXPOSURE DRAFT**

**Schedule 2** Consequential amendments  
**Part 2.18** Public Health Act 1997

Amendment [2.91]

column 1 item	column 2 decision	column 3 affected person
2	section 15B (1) (b)—the amendment of the appointment to impose, amend or revoke a condition	the analyst
3	section 15D—the suspension or cancellation of the appointment	the analyst
4	section 66C—refusing to grant an approval to supply syringes	the applicant for approval and anyone else whose interests are affected by the decision
5	section 66C—granting an approval to supply syringes subject to conditions	the applicant for approval
6	section 66E—cancelling an approval to supply syringes	the holder of the approval
7	section 66O—refusing to grant a vending machine approval	the applicant for approval
8	section 66R—cancelling a vending machine approval	the holder of the approval

- (2) Application may be made to the administrative appeals tribunal for review of a decision by the Minister mentioned in table 130.2, column 2.

**Table 130.2 Reviewable decisions—Minister**

column 1 item	column 2 decision	column 3 affected person
1	section 30 (1)—refusal to grant an activity licence	the applicant for the licence
2	section 34 (1)—refusal to vary an activity licence	the licensee

## EXPOSURE DRAFT

column 1 item	column 2 decision	column 3 affected person
3	section 37 (1)—refusal to approve the transfer of an activity licence	the licensee and the proposed transferee
4	section 45 (1)—refusal to grant a procedure licence	the applicant for the licence
5	section 49 (1)—refusal to vary a procedure licence	the licensee
6	section 56G—refusal to register an applicant for registration	the applicant for registration
7	section 56N—refusal to approve the transfer of registration	the registered person and the proposed transferee
8	section 56N—refusal to vary the registration period in association with the transfer of registration	the transferee
9	section 56P (4)—suspending the registration of a registered person	the registered person
10	section 56P (4) (a)—cancelling the registration of a registered person	the registered person

### **131 Notice of reviewable decisions**

- (1) The chief health officer must give written notice of a decision mentioned in table 130.1, column 2 to the affected person mentioned in column 3 for the decision.
- (2) The Minister must give written notice of a decision mentioned in table 130.2, column 2 to the affected person mentioned in column 3 for the decision.

## **EXPOSURE DRAFT**

- (3) A notice under subsection (1) or (2) must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

**[2.92]      Dictionary, new definitions**

*insert*

***approval***, for division 3A.1 (Supply of syringes to approved people)—see section 66A.

***approved person*** means—

- (a) for division 3A.1 (Supply of syringes to approved people)—see section 66A; and
- (b) for division 3A.2 (Supply of syringes by vending machine)—see section 66L.

***course of instruction***, for division 3A.1 (Supply of syringes to approved people)—see section 66A.

***health worker***, for division 3A.1 (Supply of syringes to approved people)—see section 66A.

***syringe*** includes the needle section or the plunger section of a syringe.

***vending machine***, for division 3A.2 (Supply of syringes by vending machine)—see section 66L.

***vending machine approval***, for division 3A.2 (Supply of syringes by vending machine)—see section 66L.

## EXPOSURE DRAFT

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## **Part 2.19                      Public Health Regulation 2000**

### **[2.93]           Sections 51 (7) and 54 (1) and (2)**

*omit*

### **[2.94]           Sections 59 and 60**

*omit*

### **[2.95]           Division 5.5**

*omit*

## **Part 2.20                      Road Transport (Alcohol and Drugs) Act 1977**

### **[2.96]           Section 29 (6)**

*substitute*

(6) In this section:

***approved rehabilitation program*** means a program approved by the Minister under section 44 (1).

## **Part 2.21                      Supervised Injecting Place Trial Act 1999**

### **[2.97]           Title**

*substitute*

An Act to allow for a trial of a supervised injecting place for drug-dependent people

## **EXPOSURE DRAFT**

**[2.98] Section 2, notes**

*substitute*

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act.

*Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

**[2.99] Section 9 (3) (d)**

*omit*

Drugs of Dependence Act, part 7

*substitute*

*Public Health Act 1997*, part 3A (Supply of syringes)

**[2.100] Section 13 (2)**

*omit*

Drugs of Dependence Act, section 169 or 171

*substitute*

*Medicines and Poisons Act 2006*, section 34 (Administration of part 3.2 substances)

**[2.101] Section 14**

*omit*

drug dependent person

*substitute*

drug-dependent person

**[2.102] Dictionary, definitions of *drug dependent person*, *drug of dependence* and *Drugs of Dependence Act***

*substitute*

*drug-dependent person*—see the *Medicines and Poisons Act 2006*, dictionary.

**[2.103] Dictionary, definition of *prohibited substance***

*omit*

**[2.104] Dictionary, definition of *substance***

*substitute*

*substance* means a controlled medicine or prohibited substance within the meaning of the *Medicines and Poisons Act 2006*.

**[2.105] Further amendments, references to *drug dependant persons***

*omit*

drug dependent persons

*substitute*

drug-dependent people

*in*

- section 5 (2) (a) (i)
- section 10 (5), definition of *criteria*
- section 13 (1)
- section 30 (c)
- dictionary, definition of *supervised injecting place*, paragraph (a)

## EXPOSURE DRAFT

## Part 2.22                      Victims of Crime (Financial Assistance) Act 1983

### [2.106]    Section 37 (3)

*substitute*

- (3) In this section:

***intoxicated*** means intoxicated as a result of the voluntary consumption of alcohol or the voluntary administration of a controlled medicine or prohibited substance within the meaning of the *Medicines and Poisons Act 2006*.

### [2.107]    Section 66 (3)

*substitute*

- (3) In this section:

***infringement notice*** includes an offence notice under the *Crimes (Medicines, Poisons and Drugs Enforcement) Act 1989*.



## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- contravene
- corporation
- dentist
- doctor
- function
- midwife
- Minister (see s 162)
- nurse
- nurse practitioner
- optometrist
- pharmacist
- under.

***appendix C substance***—see section 15.

***applied provisions***, for chapter 8 (Incorporation of Commonwealth therapeutic goods laws)—see section 141.

***authorisation-holder***, for part 6.1 (Authorisations—disciplinary action)—see section 124.

***authorised***, to deal with a regulated substance—see section 17.

***business*** includes—

- (a) a business not carried on for profit; and
- (b) a trade or profession.

## EXPOSURE DRAFT

**chief pharmacist**, for an institution with a dispensary, means the pharmacist having the supervision of all other pharmacists employed at the institution.

**close associate**, of someone, for chapter 4 (Licences for regulated substances)—see section 86.

**Commonwealth administrative laws**, for chapter 8 (Incorporation of Commonwealth therapeutic goods laws)—see section 141.

**Commonwealth Minister**, for chapter 8 (Incorporation of Commonwealth therapeutic goods laws)—see section 141.

**Commonwealth Secretary**, for chapter 8 (Incorporation of Commonwealth therapeutic goods laws)—see section 141.

**Commonwealth therapeutic goods laws**, for chapter 8 (Incorporation of Commonwealth therapeutic goods laws)—see section 141.

**connected**, with an offence, for part 5.1 (Inspection and seizure powers)—see section 105.

**controlled medicine**—see section 13.

**corresponding law** means—

- (a) a law of a State corresponding, or substantially corresponding, to this Act; or
- (b) a law of the Commonwealth, a State or New Zealand that is declared by regulation to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this Act.

*Note* **State** includes a territory (see Legislation Act, dict, pt 1).

**dangerous poison**—see section 14.

## EXPOSURE DRAFT

**day hospital** means a facility where a person is admitted for surgical or medical treatment and discharged on the same day.

**deals**, with a regulated substance—see section 16.

**disciplinary action**, for part 6.1 (Authorisations—disciplinary action)—see section 126.

**disciplinary notice**, for part 6.1 (Authorisations—disciplinary action)—see section 127 (1).

**dispensary** means any place from which medicines are supplied by a pharmacist.

**dispense** means supply on prescription.

**dosage unit** means an individual dose of a medicine or poison for therapeutic use and includes a tablet, capsule, cachet, single-dose powders or single-dose sachet or powders or granules.

**drug-dependent person**, in relation to a controlled medicine or prohibited substance, means a person with a condition such that—

- (a) as a result of the administration to him or her of the medicine or substance, the person demonstrates—
  - (i) impaired control; or
  - (ii) drug-seeking behaviour that suggests impaired control;in relation to the person's use of the medicine or substance; and
- (b) the cessation of the administration of the medicine or substance is likely to cause the person to experience symptoms of mental or physical distress or disorder.

**drug offence**, for part 6.2 (Controlled medicines and prohibited substances—disqualification by courts)—see section 132.

## EXPOSURE DRAFT

***executive officer***, of a corporation, means a person, however described and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

***ground for disciplinary action***, against an authorisation-holder, for part 6.1 (Authorisations—disciplinary action)—see section 125 (1).

***health professional***—see the *Health Professionals Act 2004*, section 14.

***hospital*** means a public hospital, private hospital or day hospital.

***immediate container***—

- (a) means a container in which a medicine or poison is directly packed; but
- (b) does not include—
  - (i) a container intended for consumption; or
  - (ii) metal foil, plastic foil, waxed paper or any similar material not intended for consumption if used as the first wrapper for a dosage unit.

***influential person***, for a corporation, for chapter 4 (Licences for regulated substances)—see section 87.

***institution***—

- (a) means a hospital, residential aged care facility or other institution used for the accommodation, treatment and care of people suffering from mental or physical conditions; and

*Note* ***Hospital*** and ***residential aged care facility*** are defined in this dictionary.

- (b) includes a body prescribed by regulation as an institution.

## EXPOSURE DRAFT

***interstate wholesaler***, for part 6.1 (Authorisations—disciplinary action)—see section 124.

***licence***, for chapter 4 (Licences for regulated substances)—see section 85.

***low harm poison***—see section 14.

***manufacture***, for a regulated substance—see section 19.

***medicine***—see section 13.

***medicines advisory committee*** means the Medicines Advisory Committee established by section 179.

***medicines and poisons inspector***—see section 106.

***medicines and poisons standard***—see section 9.

***moderate harm poison***—see section 14.

***must keep***, a register for a part 3.2 substance, for division 3.2.4 (Registers for part 3.2 substances)—see section 38.

***occupier***, of premises, for part 5.1 (Inspection and seizure powers)—see section 105.

***offence***, for part 5.1 (Inspection and seizure powers)—see section 105.

***opioid dependency treatment centre*** means a facility conducted by the Territory where treatment, including the supply and administration of controlled medicines, is provided to drug-dependent people for their drug dependency.

***part 3.2 substance***—see section 21.

***pharmacist only medicine***—see section 13.

***pharmacy medicine***—see section 13.

***poison***—see section 14.

## EXPOSURE DRAFT

***possess***, for a regulated substance—see section 18.

***premises*** includes land or a structure or vehicle and any part of an area of land or a structure or vehicle.

***prescribe*** means issue a written or oral direction (other than a purchase order or requisition) authorising a person—

- (a) who is authorised to dispense a stated medicine to dispense the medicine; or
- (b) who is authorised to administer a stated medicine to administer the medicine.

***prescriber*** means a person who is authorised to prescribe a medicine.

***prescription*** means a prescriber's oral or written direction (other than a purchase order, requisition or standing order) to dispense or administer a stated medicine.

***prescription only medicine***—see section 13.

***prohibited substance***—see section 15.

***purchase order*** means a written order for the supply of a regulated substance.

***recognised body*** means any of the following:

- (a) the Australian Catholic University;
- (b) the Canberra Hospital;
- (c) the Canberra Institute of Technology;

## EXPOSURE DRAFT

- (d) the Commonwealth Scientific and Industrial Research Organisation;
- (e) the Australian National University;
- (f) the University College within the Australian Defence Force Academy;
- (g) the University of Canberra;
- (h) any other entity prescribed by regulation.

**register**, for a part 3.2 substance, means a register that a person is required to keep under section 38 for the substance.

**regulated substance**—see section 12.

**relevant person**, for part 6.2 (Controlled medicines and prohibited substances—disqualification by courts)—see section 132.

**repeat prescription** means a prescription on which there is a direction to repeat the supply of a stated regulated substance a stated number of times.

**requisition** means an oral or written request for the supply of a medicine—

- (a) from a dispensary in an institution to a ward or another dispensary in the institution; or
- (b) to a dispensary in an institution from a ward in the institution; or
- (c) to a ward in an institution from another ward in the institution; or
- (d) from a dispensary in an institution to a dispensary in another institution.

**residential aged care facility** means a residential facility that provides residential care to residents at the facility.

## EXPOSURE DRAFT

***residential care***—see the *Aged Care Act 1997* (Cwlth), section 41-3 (Meaning of *residential care*).

***sell***—see section 18.

***sell***, by wholesale, means—

- (a) sell for the purpose of retail sale; or
- (b) sell for the purpose of use in connection with a profession, trade, business or industry.

***signs***—a person ***signs*** something if the person signs with the person's usual signature, whether electronically or otherwise.

***standing order*** means a written order authorising the supply or administration of medicines as stated in the order, in stated clinical circumstances.

***suitable person***—

- (a) for an individual—see section 88; and
- (b) for a corporation—see section 89.

***supply***—see section 18.

***supply authority***—see section 21.

***supply by retail*** means supply to the public.

***vending machine***, for division 3.5.5 (Other offences—vending machines)—see section 82.

***ward*** means an area of an institution used to accommodate or treat people, including an operating theatre and an opioid dependency treatment centre.

## EXPOSURE DRAFT



***wholesale*** means—

- (a) supply for retail sale; or
- (b) supply for use in connection with a business, industry, profession or trade.

***written***, for part 3.2 (Meaning of *written*—pt 3.2)—see section 22.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2006.

**2 Notification**

Notified under the Legislation Act on 2006.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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## EXPOSURE DRAFT