



AUSTRALIAN CAPITAL TERRITORY

# Health and Community Care Legislation Amendment Act 2000

No 28 of 2000

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AUSTRALIAN CAPITAL TERRITORY

# Health and Community Care Legislation Amendment Act 2000

No 28 of 2000

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## **An Act to amend the law relating to health and community care, and for other purposes**

*[Notified in ACT Gazette S30: 30 June 2000]*

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

### **PART 1—PRELIMINARY**

#### **1 Name of Act**

This Act is the *Health and Community Care Legislation Amendment Act 2000*.

#### **2 Commencement**

This Act commences on 1 July 2000.

**PART 2—AMENDMENTS OF POISONS ACT 1933**

**3 Act amended in pt 2 and sch 1**

This Part and Schedule 1 amend the *Poisons Act 1933*.

**4 Interpretation**

Section 5 is amended by inserting in subsection (1) the following definition:

“*drugs and poisons standard*—see the *Poisons and Drugs Act 1978*, section 2.”.

**5 Declaration of substances by Minister**

Section 12 is amended—

(a) by omitting from subsection (1) “, by notice in the *Gazette*,”; and

(b) by adding at the end the following subsections:

“(2) Without limiting subsection (1), a substance may be declared by applying, with or without modification, provisions of the drugs and poisons standard.

“(3) A declaration under subsection (1) is a disallowable instrument.”.

### PART 3—AMENDMENTS OF POISONS AND DRUGS ACT 1978

#### 6 Act amended in pt 3 and sch 2

This Part and Schedule 2 amend the *Poisons and Drugs Act 1978*.

#### 7 Interpretation

Section 3 is amended—

- (a) by omitting from subsection (1) the definition of *Drugs and Poisons Standard* and substituting the following definition:

“*drugs and poisons standard* means the current poisons standard, and includes any modification by the Minister under section 53A.”; and

- (b) by inserting in subsection (1) the following definitions:

“*current poisons standard* means the document last prepared under paragraph 52D (2) (b) of the *Therapeutic Goods Act 1989* (Cwlth) that has come into effect, and includes any amendment of that document under paragraph 52D (2) (a) of that Act that has come into effect.

*scheduled substance*—see subsection 3 (1).”; and

- (c) by omitting subsections (2) to (4).

*Note* Existing section 3 (as amended by this Act) is renumbered as section 2 by Schedule 2.

#### 8 Insertion

After section 3 the following section is inserted:

##### “3 Scheduled substances

“(1) A *scheduled substance* is a substance mentioned in a schedule to the drugs and poisons standard.

“(2) For this Act, a scheduled substance that is defined in Part 1 of the drugs and poisons standard has the meaning given in that Part.

“(3) In this Act, a reference that consists of a reference to a schedule followed immediately by the word ‘substance’ is a reference to a substance mentioned in that schedule to the drugs and poisons standard.”.

*Note* Existing section 3 (as amended by this Act) is renumbered as section 2 by Schedule 2.

## **9 Substitution**

Sections 29, 30 and 47 are repealed and the following sections substituted:

### **“29 Labels and containers**

A person must not supply a substance to which Part 2 of the drugs and poisons standard applies except in accordance with the requirements of that Part.

Maximum penalty: 50 penalty units.

### **“30 Standard and warning statements etc**

“(1) If a person supplies a substance mentioned in Appendix E to the drugs and poisons standard at a concentration above the level specified in the appendix for the substance, the label on the container or device containing the substance must include the standard statement (if any) applying to the substance under the appendix.

Maximum penalty: 50 penalty units.

“(2) A person must not supply a substance mentioned in Appendix F to the drugs and poisons standard unless the label on the container or device containing the substance includes the warning statement or safety direction (if any) applying to the substance under the appendix.

Maximum penalty: 50 penalty units.

“(3) A person must not supply a substance mentioned in Appendix K to the drugs and poisons standard, or in paragraph 45 of Part 3 of the standard, unless the label on the container or device containing the substance includes the warning statement (if any) applying to the substance under the appendix.

Maximum penalty: 50 penalty units.

“(4) This section does not apply to a substance if—

- (a) the substance is mentioned in Appendix G to the drugs and poisons standard; and
- (b) the substance is at a concentration not more than the concentration specified in the appendix for the substance.”.

## **10 Insertion**

After section 53 the following section is inserted:

**“53A Modification of drugs and poisons standard**

**“(1)** For this Act, the Minister may modify the drugs and poisons standard.

**“(2)** A modification under subsection (1) is a disallowable instrument.”.

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**PART 4—MINOR AMENDMENTS OF REGULATIONS**

**11 Minor amendments of Poisons Regulations**

Schedule 3 amends the *Poisons Regulations*.

**12 Minor amendments of Poisons and Drugs Regulations**

Schedule 4 amends the *Poisons and Drugs Regulations*.

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**SCHEDULE 1**

(See s 3)

**MINOR AMENDMENTS OF POISONS ACT 1933**

**Sections 1 to 3—**

Repeal the sections, substitute the following section:

**“1 Name of Act**

This Act is the *Poisons Act 1933*.”.

**Subsection 5 (1)—**

Omit “(1) In this Act, unless the contrary intention appears—”, substitute:

“In this Act:

“*Note* A definition applies except so far as the contrary intention appears (see *Interpretation Act 1967*, s 11G).”.

**Subsection 5 (1) (definitions of *authorised person*, *poison* and *poisonous substance*)—**

Omit the definitions, substitute the following definitions:

“*authorised person*, for a provision of this Act, means a public employee appointed under section 53B for this Act or the provision.

*poison* means a substance the introduction of which into the body of a person by any route involves the risk of death to the person, and includes a substance declared under section 12 to be a poison, but does not include a substance that is a poison within the meaning of the *Poisons and Drugs Act 1978*.

*poisonous substance* means a substance the introduction of which into the body of a person by any route involves the risk of material departure from the normal health of the person, and includes a substance declared under section 12 to be a poisonous substance, but does not include a substance that is a poison within the meaning of the *Poisons and Drugs Act 1978*.”.

**Subsection 5 (1) (definitions of *Chief Health Officer*, *registered dentist*, *registered medical practitioner*, *registered pharmacist*, *registered Veterinary Surgeon* and *sells*)—**

Omit the definitions.



**SCHEDULE 1**—continued

**Subsection 5 (1)**—

Insert the following definition:

“*sell* includes—

- (a) offer for sale; and
- (b) expose for sale; and
- (c) barter (or offer or expose for barter); and
- (d) exchange (or offer or expose for exchange); and
- (e) supply for value (or offer or expose to supply for value); and
- (f) supply for free (or offer or expose to supply for free) to gain or maintain custom, or otherwise for commercial gain; and
- (g) have in possession for sale.”.

**Subsection 5 (1)**—

Renumber as section 2 and substitute the following heading:

**“2 Definitions”.**

**Subsection 5 (2)**—

Renumber as section 3 and insert the following heading:

**“3 Meaning of *possession*”.**

**Subsections 9 (2) and (3)**—

Omit “Government Service”, substitute “public service”.

**Section 11**—

Repeal the section, substitute the following section:

**“11 Calculation of percentages**

For this Act, percentages of liquid preparations are to be calculated on the basis that a preparation containing 1% of any preparation is a preparation in which—

- (a) if the substance is a solid—1g of the substance is contained in every 100ml of the preparation; and
- (b) if the substance is a liquid—1ml of the substance is contained in every 100ml of the preparation.”.

**SCHEDULE 1**—continued

**Paragraphs 13 (a) to (c)—**

Omit the paragraphs, substitute the following paragraphs:

- “(a) a doctor; or
- (b) a pharmacist; or
- (c) a veterinary surgeon; or”.

**Section 13—**

Omit the penalty, substitute the following penalty:

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

**Section 14—**

Repeal the section, substitute the following section:

**“14 Hawking poisons and poisonous substances an offence**

A person must not in any street or public place or from house-to-house—

- (a) sell a poison or poisonous substance; or
- (b) hawk or peddle a poison or poisonous substance; or
- (c) distribute a poison or poisonous substance as samples or cause a poison or poisonous substance to be distributed as samples.”.

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

**Section 16—**

Omit “any registered pharmacist”, substitute “a pharmacist”.

**Paragraph 16 (c)—**

Omit the paragraph, substitute the following paragraph:

- “(c) supply a poison or poisonous substance to a doctor, dentist or veterinary surgeon.”.

**Section 17—**

Omit the penalty, substitute the following penalty:

“Maximum penalty: 50 penalty units.”.

**Section 19—**

Repeal the section, substitute the following section:

**SCHEDULE 1**—continued

**“19 Automatic machines prohibited**

A person must not—

- (a) install an automatic machine for the sale or supply of a poison or poisonous substance; or
- (b) sell or supply a poison or poisonous substance using an automatic machine.

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

**Paragraphs 40 (1) (a) to (d)—**

Omit the paragraphs, substitute the following paragraphs:

- “(a) a doctor; or
- (b) a dentist; or
- (c) a pharmacist; or
- (d) a veterinary surgeon; or”.

**Paragraphs 40 (1) (e)—**

Add at the end “or”.

**Paragraph 40 (1) (g)—**

Omit “a registered medical practitioner, a registered dentist or a registered veterinary surgeon”, substitute “a doctor, dentist or veterinary surgeon”.

**Paragraphs 40 (2) (a) to (c)—**

Omit the paragraphs, substitute the following paragraphs:

- “(a) a doctor; or
- (b) a pharmacist; or
- (c) a veterinary surgeon; or”.

**Subsection 40 (2)—**

Omit the penalty, substitute the following penalty:

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

**Section 43—**

Repeal the section, substitute the following section:

**SCHEDULE 1**—continued

**“43 Offences in relation to the sale of poisons etc**

“(1) A person must not sell a poison or poisonous substance, or a preparation containing a poison or poisonous substance, in contravention of a provision of this Act.

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

“(2) A person must not sell a poison or poisonous substance without having made the entries required by this Act.

Maximum penalty: 10 penalty units.

“(3) A person must not sell a poison or poisonous substance without having obtained the signatures required by this Act.

Maximum penalty: 5 penalty units.

“(4) A person must not buy a poison or poisonous substance and give false information to the seller about the matters the seller is entitled or required by this Act to inquire into.

Maximum penalty: 10 penalty units.

“(5) A person must not sign his or her name as a witness to the sale of poison to a person unknown to him or her.

Maximum penalty: 10 penalty units.

“(6) A person must not, without reasonable excuse, fail to produce a book, document or material in stock if required so to do by an authorised person under this Act.

Maximum penalty: 50 penalty units.

“(7) A person must not, without reasonable excuse, hinder or obstruct an authorised person in the exercise of his or her functions under this Act.

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

**Paragraph 45 (b)—**

Omit “registered medical practitioners”, substitute “doctors”.

**Sections 48 to 51—**

Repeal the sections.

**Section 53A—**

Omit “, by notice in writing published in the *Gazette*,”.

**SCHEDULE 1**—continued

**Section 53A—**

Add at the end the following subsection:

“(2) A determination under this section is a disallowable instrument.”.

**New section 53B—**

After section 53A insert the following section:

**“53B Authorised persons**

The Minister may appoint a public employee to be an authorised person for this Act or a provision of this Act.”.

**Heading to section 54—**

Omit the heading, substitute the following heading:

**“54 Regulation-making power”.**

**Section 54—**

Omit all the words before paragraph (a), substitute the following:

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

“(2) The regulations may make provision with respect to the following matters:”.

**Paragraph 54 (e)—**

Omit “other”.

**Paragraph 54 (g)—**

Omit “registered pharmacists”, substitute “pharmacists”.

**Paragraph 54 (h)—**

Omit the paragraph, substitute the following paragraph:

“(h) the prohibition of the manufacture or distribution of any poison or poisonous substance except by doctors, pharmacists, veterinary surgeons, persons holding licences for that purpose or persons authorised under section 40.”.

**Paragraph 54 (i)—**

Omit “medical practitioners”, substitute “doctors”.

**Paragraph 54 (j)—**

Omit “books”, substitute “records”.

**SCHEDULE 1**—continued

**Paragraph 54 (l)—**

Omit “and”.

**Paragraph 54 (n)—**

Omit the paragraph, substitute the following paragraph:

“(n) creating offences for contraventions of the regulations and prescribing maximum penalties for offences against the regulations of 10 penalty units.”.

**Renumbering—**

In the next republication of the *Poisons Act 1933* under the *Legislation (Republication) Act 1996*, the *Poisons Act 1933* must be renumbered as permitted under section 13 of that Act.

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**SCHEDULE 2**

(See s 6)

**MINOR AMENDMENTS OF POISONS AND DRUGS ACT 1978**

**Sections 1 and 2—**

Repeal the sections, substitute the following section:

**“1 Name of Act**

This Act is the *Poisons and Drugs Act 1978*.”.

**Subsection 3 (1)—**

Omit “(1) In this Act, unless the contrary intention appears—”, substitute:

“In this Act:

“*Note* A definition applies except so far as the contrary intention appears (see *Interpretation Act 1967*, s 11G).”.

**Subsection 3 (1) (definitions of *Chief Health Officer, dentist, medical practitioner, pharmacist and veterinary surgeon*)—**

Omit the definitions.

**Subsection 3 (1)—**

Renumber as section 2 and substitute the following heading:

**“2 Definitions”.**

**Heading to section 27A—**

Omit the heading, substitute the following heading:

**“27A Meaning of *specialist* in pt 2”.**

**Sections 27A and 27C—**

Omit “medical practitioner”, substitute “doctor”.

**Paragraph 27D (2) (a)—**

Omit “medical practitioner”, substitute “specialist”.

**Section 28—**

Repeal the section, substitute the following section:

**SCHEDULE 2**—continued

**“28 Words and expressions used in drugs and poisons standard**

A word or expression used in this Part (other than a word or expression defined by this Act), and in the drugs and poisons standard, has in this Part the same meaning as in the drugs and poisons standard.”.

**Section 47—**

Repeal the section.

**Section 47F (4)—**

Omit the subsection, substitute the following subsection:

**“(4)** A person must not, without reasonable excuse, contravene subsection (3).

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

**Section 47G—**

Omit the penalty, substitute the following penalty:

“Maximum penalty: 5 penalty units.”.

**Subsections 47K (1) and (3)—**

Add at the end of each subsection the following penalty:

“Maximum penalty: 20 penalty units.”.

**Subsection 47K (7)—**

Omit the penalty, substitute the following penalty:

“Maximum penalty: 20 penalty units.”.

**Section 47L—**

Omit the penalty, substitute the following penalty:

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

**Subsection 47M (1)—**

Add at the end the following penalty:

“Maximum penalty: 100 penalty units.”.

**Subsection 47M (2)—**

Omit the penalty, substitute the following penalty:

“Maximum penalty: 100 penalty units.”.



**SCHEDULE 2**—continued

**Section 47S (4)**—

Omit the subsection, substitute the following subsection:

“(4) A person must not, without reasonable excuse, contravene subsection (3).

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

**Subsection 47W (1)**—

Omit the penalty, substitute the following penalty:

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

**Subsections 47X (1) and 47Y (1)**—

Omit the penalty, substitute the following penalty:

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

**Subsections 47Z (2) and 47ZA (1)**—

Omit the penalty, substitute the following penalty:

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

**Paragraph 47ZA (2) (b)**—

Omit “registered medical practitioner, registered dentist or registered veterinary surgeon”, substitute “doctor, dentist or veterinary surgeon”.

**Paragraph 47ZA (2) (c)**—

Omit “registered pharmacist”, substitute “pharmacist”.

**Paragraph 47ZA (2) (d)**—

Omit “a registered medical practitioner, a registered dentist or a registered veterinary surgeon”, substitute “a doctor, dentist or veterinary surgeon”.

**Subsection 47ZB (1)**—

Omit the penalty, substitute the following penalty:

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

**Subsection 48A (1)**—

Omit the penalty, substitute the following penalty:

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

**SCHEDULE 2**—continued

**Subsection 48A (2)**—

Omit “medical practitioners”, substitute “doctors”.

**Subsection 52 (1)**—

Omit “member of the Police Force”, substitute “police officer”.

**Section 54**—

Omit “, by notice in writing published in the *Gazette*,”.

**Section 54**—

Add at the end the following subsection:

“(2) A determination under this section is a disallowable instrument.”.

**Section 55**—

Repeal the section, substitute the following section:

**“55 Regulation-making power**

The Executive may make regulations for this Act.”.

**SCHEDULE 2**—continued

**Renumbering—**

In the next republication of the *Poisons and Drugs Act 1978* under the *Legislation (Republication) Act 1996*, the *Poisons and Drugs Act 1978* must be renumbered as permitted under section 13 of that Act.

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### SCHEDULE 3

(See s 11)

#### MINOR AMENDMENTS OF POISONS REGULATIONS

##### **Regulations 1 to 4—**

Repeal the regulations, substitute the following regulations:

##### **“1 Name of regulations**

These regulations are the *Poisons Regulations 1933*.

##### **“2 Definitions**

In these regulations:

***prescriber***, for a prescription, means a person authorised to give the prescription.

***recipient***, for a prescription, means the person for whom the prescription is given and, for a prescription given for the treatment of an animal, means an owner of the animal or a person who has the care of the animal.

***the Act*** means the *Poisons Act 1933*.

##### **“3 Licences**

A licence issued by the chief health officer must be in the form approved by the chief health officer.”.

##### **Regulation 12—**

Omit “cases of emergency a registered pharmacist shall”, substitute “an emergency, a pharmacist must”.

##### **Paragraph 12 (a)—**

Omit the paragraph, substitute the following paragraph:

“(a) the prescription must—

- (i) be in writing; and
- (ii) be dated; and
- (iii) state the prescriber’s name, address and telephone number; and
- (iv) state the name and address of the recipient; and
- (v) be written in terms and symbols used in ordinary professional practice; and

**SCHEDULE 3—continued**

- (vi) if the prescription is to be dispensed more than once—state the number of times it is to be dispensed and the period that must elapse between each dispensing; and
- (vii) if it provides for an unusual or dangerous dose—indicate that the dose is intentionally prescribed; and
- (viii) be signed with the usual signature of the prescriber;”.

**Paragraph 12 (b)—**

Omit “when given by a registered dentist for the purpose of dental treatment,”, substitute “if given by a dentist for the purpose of dental treatment—”.

**Paragraph 12 (c)—**

Omit “when given by a registered veterinary surgeon,”, substitute “if given by a veterinary surgeon—”.

**Paragraphs 12 (d) to (h)—**

Omit the paragraphs.

**Regulation 12—**

Add at the end the following subregulations:

“(2) A person must not contravene subregulation (1).

Maximum penalty: 5 penalty units.

“(3) In an emergency—

- (a) the pharmacist must comply with as many conditions under subregulation (1) as are practicable; and
- (b) if the prescription is communicated orally to the pharmacist—the person communicating it must write out the prescription promptly and ensure that it is given to the pharmacist without delay.

Maximum penalty: 5 penalty units.”.

**Subregulation 13 (1)—**

Omit the subregulation, substitute the following subregulation:

“(1) A biological preparation or a restricted substance must not be dispensed by a person who is not—

- (a) a doctor, pharmacist or veterinary surgeon; or

**SCHEDULE 3**—continued

- (b) a person acting under the direct supervision of a doctor, pharmacist or veterinary surgeon.

Maximum penalty: 5 penalty units.”.

**Paragraph 13 (3) (b)—**

Omit the paragraph, substitute the following paragraphs:

- “(b) a biological preparation or restricted substance must not be dispensed more than once on the same prescription unless the prescription indicates that it is to be dispensed a stated number of times;
- (ba) if the prescription indicates that a biological preparation or restricted substance is to be dispensed a stated number of times—the preparation or substance must not be dispensed on the prescription more than the stated number of times or more frequently than the period stated in the prescription as the period that must elapse between each dispensing;”.

**Paragraph 13 (3) (g)—**

Omit the paragraph, substitute the following paragraph:

- “(g) the label on the bottle or package containing a biological preparation or restricted substance must—
  - (i) state the name of the recipient and, for a preparation or substance dispensed for an animal, the species of the animal; and
  - (ii) state the date when it was dispensed; and
  - (iii) state the name, business address and telephone number of the person who dispenses the preparation or substance; and
  - (iv) if a pharmacist is dispensing the preparation or substance and more than 1 pharmacist is dispensing at the same place at that time—include the initials or other identification of the pharmacist who dispenses the preparation or substance; and
  - (v) state the prescription reference or identifying number that appears in the record of prescriptions kept where the preparation or substance is dispensed; and
  - (vi) describe the contents of the preparation or substance using the name given by the manufacturer or its generic name; and
  - (vii) state the form, strength and quantity of the contents; and

**SCHEDULE 3**—continued

*Example—*

Prozac Capsules 20mg 28.

- (viii) contain adequate directions for the safe and proper use of the preparation or substance; and
- (ix) contain any warning statement in Appendix K to the drugs and poisons standard, or in paragraph 45 of Part 3 of the standard, applying to the preparation or substance; and
- (x) contain words to the effect ‘Keep out of the reach of children’;”.

**Paragraph 13 (3) (h)—**

Omit “prescription book” substitute “record of prescriptions”.

**Paragraph 13 (3) (j)—**

- (a) Omit “registered pharmacist”, substitute “pharmacist”.
- (b) Omit “a registered medical practitioner”, substitute “a doctor, dentist or veterinary surgeon”.

**Regulation 13—**

Add at the end the following subregulation:

“(4) A person must not contravene subregulation (3).

Maximum penalty: 5 penalty units.”.

**Regulation 24—**

Repeal the regulation.

**Schedule—**

Repeal the Schedule.

**Renumbering—**

In the next republication of the *Poisons Regulations* under the *Legislation (Republication) Act 1996*, the regulations must be renumbered as permitted under section 13 of that Act.

**SCHEDULE 4**

(See s 12)

**MINOR AMENDMENTS OF POISONS AND DRUGS REGULATIONS**

**Regulations 1 and 2—**

Repeal the regulations, substitute the following regulation:

**“1 Name of regulations**

These regulations are the *Poisons and Drugs Regulations 1993*.”.

**Regulation 3—**

(a) Omit the regulation heading, substitute the following heading:

**“3 Definition”.**

(b) Omit “, unless the contrary intention appears”.

**Schedule 3—**

Omit “Department of Human Services and Health of the Commonwealth” from column 2 of the item named ‘Dronabinol’, substitute “Commonwealth Department of Health and Aged Care”.

**Renumbering—**

In the next republication of the *Poisons and Drugs Regulations* under the *Legislation (Republication) Act 1996*, the regulations must be renumbered as permitted under section 13 of that Act.



## **Endnotes**

### **Act amended in pt 2 and sch 1**

- 1 Republished as in force on 1 March 1999.

### **Act amended in pt 3 and sch 2**

- 2 Republished as in force on 28 February 1995. See also Acts 1997 Nos 70 and 126; 1998 No 54; 1999 No 27.

### **Penalty units**

Section 33AA of the *Interpretation Act 1967* deals with the meaning of offence penalties that are expressed in penalty units.

### **Regulations amended**

- 1 *Poisons Regulations*. Republished as in force on 31 July 1999.
- 2 *Poisons and Drugs Regulations*. Republished as in force on 31 January 1998.

### **Penalty units**

See section 33AA of the *Interpretation Act 1967* and section 9 of the *Subordinate Laws Act 1989*.

*[Presentation speech made in Assembly on 11 May 2000]*