

2009

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

MEDICINES, POISONS AND THERAPEUTIC GOODS AMENDMENT  
REGULATION 2009 (No 1)

SUBORDINATE LAW NO SL2009-27

EXPLANATORY STATEMENT

Circulated by the authority  
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## Overview

On commencement the *Medicines, Poisons and Therapeutic Goods Act 2008* (the MPTG Act) repealed the *Poisons and Drugs Act 1978* and inserted the offences for anabolic steroids into the *Crimes Act 1900* (the Crimes Act). However, the definition of an anabolic steroid that was in the *Poisons and Drugs Act 1978*, which was linked to a schedule of substances, was not inserted into the Crimes Act. The definition that was included in the Crimes Act has since been identified to be inadequate and unclear.

In addition to the power to make Regulations generally, the MPTG Act enables transitional Regulations to be made under section 501. Under section 501 of the MPTG Act a Regulation may modify Chapter 14 of the MPTG Act to make provision for anything that is not dealt with in the Chapter, or anything not adequately or appropriately dealt with.

Using the transitional powers in the MPTG Act, sections 6 and 7 of this Regulation operate to change the definition of an anabolic steroid in the Crimes Act to that which was in the repealed *Poisons and Drugs Act 1978*. As transitional matters expire two years after the commencement of the MPTG Act the amended definition of an anabolic steroid will be an interim measure, and a permanent amendment will need to be drafted in the near future.

The ACT Civil & Administrative Tribunal (ACAT) commenced on 2 February 2009, replacing a number of ACT tribunals, including the Administrative Appeals Tribunal (AAT). However, three sections of the Medicines, Poisons and Therapeutic Goods Regulation 2008 (the MPTG Regulation) still contain references to the AAT, and the 1989 Act which established it. This Regulation also contains provisions to correct these references.

## Clauses

### **Section 1 – Name of regulation**

This section sets out the name of the Regulation as the Medicines, Poisons and Therapeutic Goods Amendment Regulation 2009 (No 1).

### **Section 2 – Commencement**

Pursuant to this provision, the Regulation is to commence on the day after notification.

### **Section 3 - Legislation amended**

This section expressly states that the legislation amended is the Medicines, Poisons and Therapeutic Goods Regulation 2008.

### **Section 4 – Table 850, note**

The ACAT commenced on 2 February 2009, consolidating 16 former jurisdictions and tribunals of the ACT including the AAT. The role of the ACAT is to determine and resolve disputes and has wide reaching powers conferred under the *ACT Civil and Administrative Tribunal Act 2008*.

The *Administrative Appeals Tribunal Act 1989* was repealed by the *ACT Civil and Administrative Tribunal Act 2008* upon commencement.

This section replaces a reference to the AAT in a note connected to Table 850 in section 850 of the MPTG Regulation with a reference to the ACAT.

### **Section 5 – Sections 851 and 852**

This provision replaces two sections in the MPTG Regulation, sections 851 and 852, which erroneously refer to the AAT, and the legislation which established it, the *Administrative Appeals Tribunal Act 1989*. Both sections are amended to refer to the *ACT Civil and Administrative Tribunal Act 2008*, which established the ACAT.

The redrafted section 851 operates to require a person, when making a reviewable decision, to give a written notice of the decision to each entity listed in column 4 of Table 850. Notes under the section alert the reader to the operation of the *ACT Civil and Administrative Tribunal Act 2008*, in particular the requirements for reviewable decision notices, and the operation of section 67A of the *ACT Civil and Administrative Tribunal Act 2008*.

Section 852 makes it expressly clear that in addition to the entities listed in column 4 of Table 850, any other person whose interests are affected by the decision may apply to the ACT for a review of a reviewable decision.

### **Section 6 – New Chapter 31**

Section 6 of this Regulation inserts a new Chapter 31 into the MPTG Regulation.

The new Chapter 31 contains two sections. The first, section 1100, expressly states that Chapter 14 the MPTG Act is to apply as if a section 552 appeared in Chapter 14 of the MPTG Act.

Section 552 of the MPTG Act will provide that the *Crimes Act 1900* is modified as set out in Schedule 10 of the MPTG Reg, and that section 552 will expire on the day that Part 31 of the MPTG Reg expires.

The other section, section 1110, provides that Chapter 31 of the MPTG Regulation and Schedule 10 of the MPTG Act will expire on the day that Chapter 14 of the MPTG Act expires. This confirms that Part 31 of the MPTG Reg and Schedule 10 of the MPTG Act are transitional and therefore temporary in nature.

### **Section 7 – New schedule 10**

Section 5 of this Regulation inserts the new Schedule 10 into the MPTG Reg. The new schedule modifies the Crimes Act using the power for Regulation to modify Chapter 14 of the MPTG Act, as contained in section 501 of the MPTG Act.

Schedule 10 to be inserted into the MPTG Reg will contain two provisions. The effect of the first provision is to substitute the current section 170 in the *Crimes Act 1900* with a new section 170.

Section 170 of the *Crimes Act 1900*, prior to the commencement of this Regulation, defined an anabolic steroid as an *anabolic steroidal agent*. The substituted version of section 170 still provides a definition of anabolic steroid, but does so in a more comprehensive and detailed form.

The amended section 170 will establish that a substance mentioned in Schedule 1 of the *Crimes Act 1900* is an anabolic steroid. The Schedule 1 to be inserted lists 68 specific substances that are anabolic steroids for the purposes of the *Crimes Act 1900*, as well as a

listing that captures any other anabolic or androgenic steroids not mentioned elsewhere in the schedule.

Section 170 further broadens the meaning of an anabolic steroid by ensuring such things as salts, stereoisomer and admixtures of a substance listed in Schedule 1 are captured by the definition, and therefore by the offences in Part 8 of the *Crimes Act 1900*.