

# NORTHERN TERRITORY OF AUSTRALIA

## MISUSE OF DRUGS ACT

As in force at 13 October 2010

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 13 October 2010. Any amendments that commence after that date are not included.

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## MISUSE OF DRUGS ACT

An Act to consolidate and amend the law relating to the misuse of drugs, to make further provision for the prevention of the misuse of drugs, and for other purposes

### Part I Preliminary

#### 1 Short title

This Act may be cited as the *Misuse of Drugs Act*.

#### 2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### 3 Interpretation

(1) In this Act:

*adult* means a person who has attained the age of 18 years.

*analyst* means a person appointed under subsection (8) to be an analyst and includes a person who is authorised under a law of the Commonwealth or of a State or another Territory of the Commonwealth to issue a certificate or other document relating to a dangerous drug or other substance that is prima facie evidence of the facts alleged in the document.

*child* means a person who has not attained the age of 18 years.

*commercial quantity*, in relation to a dangerous drug, means a quantity or amount equal to or exceeding the quantity or amount of that dangerous drug specified in column 3 of Schedule 1 or 2 opposite to the name of that dangerous drug specified in column 1 of that Schedule.

*cultivate*, in relation to a prohibited plant, includes grow, sow or scatter the seed produced by and plant, nurture, tend or harvest the prohibited plant.

**Chief Health Officer** means the person appointed as the Chief Health Officer under section 5 of the *Public Health Act*.

**dangerous drug** means a substance or thing specified in Schedule 1 or 2 or, where the substance or thing so specified is a prohibited plant, any part of the plant, being a part not specified in Schedule 1 or 2, from which a substance or thing referred to in Schedule 1 or 2 can be extracted or obtained.

**dentist** means a person registered under the Health Practitioner Regulation National Law:

- (a) to practise in the dental profession as a dentist (other than as a student); and
- (b) in the dentists division of that profession.

**Indigenous community**, see section 4B.

**magistrate** does not include a Special Magistrate within the meaning of the *Magistrates Act*.

**manufacture**, in relation to a dangerous drug, includes the process of extracting and refining the dangerous drug.

**optometrist** means a person registered under the Health Practitioner Regulation National Law to practise in the optometry profession (other than as a student).\

**pharmacist** means a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession (other than as a student).

**place** includes a vehicle.

**possession**, in relation to a person, includes being subject to the person's control notwithstanding that the thing possessed is in the custody of another person.

**precursor** means a substance prescribed by the Regulations as a precursor.

**premises** includes a structure, building or place (whether built on or not) and any part of a structure, building or place.

**produce** means:

- (a) prepare, package or produce;
- (b) offering to prepare, package or produce; or

- (c) doing or offering to do an act preparatory to, in furtherance of, or for the purpose of, preparing, packaging or producing.

***prohibited plant*** means a plant, any part of or extract from which is specified in Schedule 1 or 2.

***public place*** includes any highway, premises or place (including water) to which at the material time the public have or are permitted to have access, whether on payment or otherwise, and any vehicle on or in a public place.

***steals*** has the same meaning as in section 209 of the Criminal Code.

***supply*** means:

- (a) give, distribute, sell, administer, transport or supply, whether or not for fee, reward or consideration or in expectation of fee, reward or consideration;
- (b) offering to do an act referred to in paragraph (a); or
- (c) doing or offering to do an act preparatory to, in furtherance of, or for the purpose of, an act referred to in paragraph (a),

and includes barter and exchange.

***traffickable quantity***, in relation to a dangerous drug, means a quantity or amount equal to or exceeding the quantity or amount of that dangerous drug specified in column 2 of Schedule 1 or 2 opposite to the name of the dangerous drug specified in column 1 of that Schedule.

***unlawful*** means without authorization, justification or excuse.

***vehicle*** includes any means of transport whatsoever by land, water or through the air.

***veterinarian*** means a registered veterinarian within the meaning of the *Veterinarians Act*.

- (2) In this Act, a reference to a dangerous drug includes a reference to:
- (a) a substance which is, in relation to a dangerous drug:
- (i) an active principal of that dangerous drug;
- (ii) a preparation or mixture of that dangerous drug (which may include a substance that is not a dangerous drug) that contains any proportion of that dangerous drug; or

- (iii) a salt of that dangerous drug or active principal,  
except where the substance is separately specified in Schedule 1 or 2; and
- (b) a substance (*drug analogue*) which is, in relation to another substance (being a dangerous drug specified in Schedule 1 or 2, or a stereoisomer, a structural isomer (with the same constituent groups) or an alkaloid of such a drug or substance):
  - (i) a stereoisomer;
  - (ii) a structural isomer having the same constituent groups;
  - (iii) an alkaloid;
  - (iv) a structural modification notionally obtained in one or more of the following ways:
    - (A) by the replacement of up to 2 carbocyclic or heterocyclic ring structures with different carbocyclic or heterocyclic ring structures;
    - (B) by the addition of hydrogen atoms to one or more unsaturated bonds;
    - (C) by the addition of one or more of the following groups:
      - (1) alkoxy, cyclic diether, acyl, acyloxy, mono-amino and dialkylamino groups with up to 6 carbon atoms in any alkyl residue;
      - (2) alkyl, alkenyl and alkynyl groups with up to 6 carbon atoms in the group, where the group is attached to oxygen (for example, an ester or an ether group), nitrogen, sulphur or carbon; and
      - (3) halogen, hydroxy, nitro and amino groups;
    - (D) by the replacement of one or more of the groups specified in subparagraph (C) with another such group or groups; or
    - (E) by the conversion of a carboxyl or an ester group into an amide group; or



- (v) otherwise an homologue, analogue, chemical derivative or substance substantially similar in chemical structure, however manufactured or actually obtained, except where the drug analogue:
  - (vi) is a dangerous drug; or
  - (vii) is specified in a Schedule to the *Poisons and Dangerous Drugs Act*.
- (3) Subject to subsection (3A), for the purposes of determining under this Act whether an amount of a preparation or mixture of substances that contains a dangerous drug is equal to or more than the traffickable quantity or commercial quantity of the dangerous drug, the amount is to be determined as if all of the preparation or mixture were comprised of the dangerous drug.
- (3A) If the preparation or mixture contains more than one dangerous drug, subsection (3B) applies.
- (3B) If:
  - (a) all dangerous drugs found in the preparation or mixture are specified in Schedule 1:
    - (i) the amount for a traffickable quantity is to be determined as if all of the preparation or mixture were comprised of the dangerous drug that, of all the dangerous drugs found, has the least quantity specified opposite it in column 2 of Schedule 1; and
    - (ii) the amount for a commercial quantity is to be determined as if all of the preparation or mixture were comprised of the dangerous drug that, of all the dangerous drugs found, has the least quantity specified opposite it in column 3 of Schedule 1;
  - (b) all dangerous drugs found in the preparation or mixture are specified in Schedule 2:
    - (i) the amount for a traffickable quantity is to be determined as if all of the preparation or mixture were comprised of the dangerous drug that, of all the dangerous drugs found, has the least quantity specified opposite it in column 2 of Schedule 2; and
    - (ii) the amount for a commercial quantity is to be determined as if all of the preparation or mixture were comprised of the dangerous drug that, of all the

dangerous drugs found, has the least quantity specified opposite it, in column 3 of Schedule 2; or

- (c) one or more of the dangerous drugs found in the preparation or mixture is specified in Schedule 1 and one or more of the other dangerous drugs found in the preparation or mixture are specified in Schedule 2:
  - (i) the amount for a traffickable quantity is to be determined as if all of the preparation or mixture were comprised of the dangerous drug that, of all the dangerous drugs found, has the least quantity specified opposite it in column 2 of Schedule 1; and
  - (ii) the amount for a commercial quantity is to be determined as if all of the preparation or mixture were comprised of the dangerous drug that, of all the dangerous drugs found, has the least quantity specified opposite it in column 3 of Schedule 1.
- (4) For the purposes of this Act, the traffickable quantity or commercial quantity, respectively, of a substance which is a drug analogue, within the meaning of subsection (2)(b), is the traffickable quantity and commercial quantity of the dangerous drug in respect of which the drug analogue is a drug analogue.
- (5) In this Act, a reference to the use or administration of a dangerous drug includes a reference to the ingestion, injection, inhalation and smoking of a dangerous drug, the inhalation of fumes caused by the heating or burning of a dangerous drug and any other means of introducing a dangerous drug into any part of the body of a person.
- (6) For the purposes of this Act and the Regulations, a person takes part in the supply, cultivation, manufacture or production of a dangerous drug if the person:
  - (a) takes, or participates in, a step, or causes a step to be taken, in the process of that supply, cultivation, manufacture or production;
  - (b) provides or arranges finance for such a step in that process; or
  - (c) provides the premises in or on which such a step in that process is taken, or suffers or permits such a step in that process to be taken in or on premises of which the person is the owner, lessee or occupier or in the management of which the person participates.

- (7) In this Act a reference to an offence against this Act or a particular provision of this Act shall be read and construed as including an attempt or a conspiracy to commit such an offence.
- (8) The Minister may, by notice in the *Gazette*, appoint a person to be an analyst for the purposes of this Act.

#### **4 Act to bind Crown and application**

- (1) This Act binds the Crown not only in right of the Territory but, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.
- (2) The provisions of this Act are in addition to, and, except to the extent so provided by this Act, do not derogate from, the provisions of any other Act.

#### **4A Act does not apply to certain processed products**

- (1) This Act does not apply to:
- (a) a processed fibre product made from cannabis if the product:
- (i) does not contain more than 0.005% of tetrahydrocannabinols;
  - (ii) does not contain whole cannabis seeds; and
  - (iii) is in a form not suitable for ingestion, smoking or inhaling purposes; or
- (b) a processed product made from cannabis seeds if the product:
- (i) does not contain more than 0.005% of tetrahydrocannabinols; and
  - (ii) does not contain whole cannabis seeds.
- (2) In this section:

***cannabis*** means a plant or any part of a plant of the genus *Cannabis*, whether fresh or dried.

***processed*** means treated by mechanical, chemical or other artificial means but does not include:

- (a) harvesting; or
- (b) the natural process of decay.

**4B            Indigenous community**

- (1) An *indigenous community* is:
- (a) a prescribed area; or
  - (b) an area prescribed by regulation.
- (2) However, a regulation may declare a prescribed area is not an indigenous community.
- (3) In this section:

*prescribed area*, see section 4 of the *Northern Territory National Emergency Response Act 2007* (Cth).

**Part II            Offences**

**Division 1        Supply, cultivation, possession, &c.**

**5                Supplying dangerous drug**

- (1) A person who unlawfully supplies, or takes part in the supply of, a dangerous drug to another person, whether or not:
- (a) that other person is in the Territory; and
  - (b) where the dangerous drug is supplied to a person at a place outside the Territory, the supply of that dangerous drug to the person constitutes an offence in that place,
- is guilty of a crime.
- (2) A person guilty of a crime under subsection (1) is, subject to section 22, punishable on being found guilty by a maximum penalty of:
- (a) Where the amount of the dangerous drug supplied is not a commercial quantity:
    - (i) where the dangerous drug is a dangerous drug specified in Schedule 1, the offender is an adult and the person to whom it is supplied is a child – imprisonment for life;
    - (ii) where the dangerous drug is a dangerous drug specified in Schedule 1 and subparagraph (i) does not apply – imprisonment for 14 years;

- (iii) where the dangerous drug is a dangerous drug specified in Schedule 2, the offender is an adult and the person to whom it is supplied is a child – imprisonment for 14 years; and
    - (iv) where the dangerous drug is a dangerous drug specified in Schedule 2 and subparagraph (iii) does not apply – 85 penalty units or imprisonment for 5 years, or if the drug is supplied to a person in an indigenous community, 9 years.
  - (b) Where the amount of the dangerous drug supplied is a commercial quantity:
    - (i) where the dangerous drug is a dangerous drug specified in Schedule 1, the offender is an adult and the person to whom it is supplied is a child – imprisonment for life;
    - (iA) where the dangerous drug is a dangerous drug specified in Schedule 1 and subparagraph (i) does not apply – imprisonment for 25 years;
    - (ii) where the dangerous drug is a dangerous drug specified in Schedule 2, the offender is an adult and the person to whom it is supplied is a child – imprisonment for 25 years; and
    - (iii) in any other case where the dangerous drug is a dangerous drug specified in Schedule 2 – imprisonment for 14 years.
- (3) In a prosecution for an offence against subsection (2), a statement in the complaint or information that a person was in an indigenous community when the alleged offence was committed is evidence of the matters stated.

## **6            Receiving or possessing tainted property**

- (1) A person who receives or possesses property (other than a dangerous drug) obtained directly or indirectly from the commission of:
  - (a) an offence against section 5; or
  - (b) an act done at a place outside the Territory which if it had been done in the Territory would have constituted an offence against section 5 and which is an offence under the law in force in the place where it was done,

knowing or believing the property to have been so obtained, is guilty of a crime.

Maximum penalty:        Imprisonment for 25 years.

(2) Where the property so obtained has been:

- (a) mortgaged, pledged or exchanged for other property; or
- (b) converted into other property in any manner,

a person who, knowing or believing that:

- (c) the other property is wholly or in part the property for which the property so obtained has been mortgaged, pledged or exchanged or into which it has been converted; and
- (d) the property so obtained was obtained under such circumstances as to constitute a crime under subsection (1),

receives or possesses the whole or any part of the other property for which the property so obtained has been mortgaged, pledged or exchanged or into which it has been converted, is guilty of a crime.

Maximum penalty:        Imprisonment for 25 years.

(3) For the purpose of proving the receiving of property, it is sufficient to show that the accused person has, either alone or jointly with some other person, aided in concealing the property or disposing of it.

## **7            Cultivation**

(1) A person who unlawfully cultivates, or takes part in the cultivation of, a prohibited plant is guilty of a crime.

(2) A person guilty of a crime under subsection (1) is, subject to section 22, punishable on being found guilty by a maximum penalty of:

- (a) Where the number of prohibited plants in respect of which the person is found guilty is a commercial quantity of the plant – imprisonment for 25 years.
- (b) Where the number of prohibited plants in respect of which the person is found guilty is a traffickable quantity of the plant – imprisonment for 7 years.
- (c) In any other case – 40 penalty units or imprisonment for 2 years.

## **8            Manufacture and production**

- (1) A person who unlawfully manufactures or produces a dangerous drug or takes part in the manufacture or production of a dangerous drug is guilty of a crime.
- (2) A person guilty of a crime under subsection (1) is, subject to section 22, punishable on being found guilty by a maximum penalty of:
  - (a) Where the dangerous drug is a dangerous drug specified in Schedule 1 and the amount of the dangerous drug is a commercial quantity – imprisonment for life.
  - (b) Where the dangerous drug is a dangerous drug specified in Schedule 1 and the amount of the dangerous drug is not a commercial quantity – imprisonment for 25 years.
  - (c) Where the dangerous drug is a dangerous drug specified in Schedule 2 and the amount of the dangerous drug is a commercial quantity – imprisonment for 25 years.
  - (d) Where the dangerous drug is a dangerous drug specified in Schedule 2 and the amount of the dangerous drug is not a commercial quantity – imprisonment for 7 years.

## **8A          Possession of precursors of dangerous drugs**

- (1) A person must not have possession of a precursor intended by the person to be used in the manufacture or production by that person or another person of a dangerous drug.

Maximum penalty:        Imprisonment for 7 years.

- (2) It is a defence to a charge of an offence against subsection (1) if the person:
  - (a) is authorised under this Act to possess the precursor and possesses and uses the precursor in accordance with the conditions, if any, of the authorisation; or
  - (b) is registered, licensed or otherwise authorised under another Act of the Territory, the Commonwealth, or a State or another Territory of the Commonwealth, to possess the precursor and possesses and uses the precursor in accordance with the conditions, if any, of the registration, licence or authorisation.
- (3) Proof of possession of a precursor by a person is evidence that the person intended the precursor to be used in the manufacture or production by that person or another person of a dangerous drug.

- (4) The Chief Health Officer may in writing authorise a person to possess a precursor for the purposes of research.
- (5) An authorisation under subsection (4) is subject to the conditions, if any, specified in the authorisation.
- (6) The Regulations may provide for the prohibition or regulation of the cash sale of precursors.

**8B            Possession of document containing instructions for  
                 manufacture or production of dangerous drug or precursor**

- (1) A person must not have possession of a document setting out, or purporting to set out, how to manufacture or produce a dangerous drug, if the person also has possession of equipment, or an implement or other article, that has been, or may be, used in the manufacture or production of a dangerous drug.

Maximum penalty:        Imprisonment for 7 years.

- (2) It is a defence to a charge of an offence against subsection (1) if the person:
  - (a) is authorised under this Act to possess the dangerous drug to which the document relates;
  - (b) is registered, licensed or otherwise authorised under another Act of the Territory, the Commonwealth, or a State or another Territory of the Commonwealth, to manufacture or produce the dangerous drug to which the document relates; or
  - (c) proves that he or she did not have possession of the documents, or the equipment, implement or article, for the purpose of assisting in the manufacture or production of a dangerous drug.
- (3) A person must not have possession of a document setting out, or purporting to set out, how to manufacture or produce a precursor, if the person also has possession of equipment, or an implement or other article, that has been, or may be, used in the manufacture or production of a dangerous drug or precursor.

Maximum penalty:        Imprisonment for 7 years.

- (4) It is a defence to a charge of an offence against subsection (1) if the person:
  - (a) is authorised under this Act to manufacture or produce the precursor to which the document relates or the dangerous drug to which the document relates;



- (b) is registered, licensed or otherwise authorised under another Act of the Territory, the Commonwealth, or a State or another Territory of the Commonwealth, to possess a dangerous drug, or a precursor of a dangerous drug, to which the document relates or a precursor to which the document relates; or
- (c) proves that he or she did not have possession of the documents, or the equipment, implement or other article, for the purpose of assisting in the manufacture or production of a dangerous drug or a precursor.

(5) Proof of possession by a person:

- (a) of a document setting out, or purporting to set out, how to manufacture or produce a dangerous drug or precursor; and
- (b) of equipment or an implement or other article that has been, or may be, used in the manufacture or production of a dangerous drug or precursor by a person,

is evidence that the person intended the document to be used in the manufacture or production by that person or another person of a dangerous drug or precursor.

(6) In this section, a reference to a document in the possession of a person includes a reference to:

- (a) a document that is stored electronically in a computer, or other electronic device, that is in the possession of the person; and
- (b) a document that is stored electronically on a computer or other electronic device that is not in the possession of the person if the document is located on an electronic site:
  - (i) in accordance with the instructions of the person; or
  - (ii) the electronic address of which is stored on a computer in the possession of the person or on a document in the possession of the person.

**8C            Possession of articles for use in manufacture or production of dangerous drugs or precursor**

- (1) A person must not have possession of equipment, or an implement or other article (other than a document), that:
  - (a) has been used in the manufacture or production of a dangerous drug or precursor; or

- (b) may be used in the manufacture or production of a dangerous drug or precursor.

Maximum penalty:        Imprisonment for 7 years.

- (2) It is a defence to a charge of an offence against subsection (1) if the person:

- (a) is authorised under this Act to possess a precursor or a dangerous drug and the equipment, implement or article is used or intended to be used for the purpose for which the authorisation was given;
- (b) is registered, licensed or otherwise authorised under another Act of the Territory, the Commonwealth, or a State or another Territory of the Commonwealth, to possess a precursor or a dangerous drug and the equipment, implement or article is used or intended to be used for the purpose for which the registration, licence or authorisation was given; or
- (c) proves that he or she did not have possession of the equipment, implement or other article for the purpose of assisting in the manufacture or production of a dangerous drug or precursor.

**8D        Supplying precursor knowing it is intended to be used in manufacture or production of dangerous drug**

- (1) A person (*the supplier*) must not supply a precursor to a person if the supplier knows that the person intends to use the precursor in the manufacture or production of a dangerous drug.

Maximum penalty:        Imprisonment for 7 years.

- (2) It is a defence to a charge against subsection (1) if the person to whom the precursor is supplied:

- (a) is authorised under this Act to possess a precursor or a dangerous drug that may be manufactured or produced from the precursor; or
- (b) is registered, licensed or otherwise authorised under another Act of the Territory, the Commonwealth, or a State or another Territory of the Commonwealth, to possess the precursor.

**9        Possession**

- (1) A person who unlawfully possesses a dangerous drug is guilty of a crime.

- (2) A person guilty of a crime under subsection (1) is, subject to section 22, punishable on being found guilty by a maximum penalty of:
- (a) Where the dangerous drug is a dangerous drug specified in Schedule 1 and the amount of the dangerous drug is a commercial quantity – imprisonment for 25 years.
  - (b) Where the dangerous drug is a dangerous drug specified in Schedule 1 and the amount of the dangerous drug is not a commercial quantity but is a traffickable quantity:
    - (i) if the person is in possession of it in a public place – imprisonment for 14 years; and
    - (ii) in any other case – imprisonment for 7 years.
  - (c) Where the dangerous drug is a dangerous drug specified in Schedule 1 and the amount of the dangerous drug is neither a commercial quantity nor a traffickable quantity:
    - (i) if the person is in possession of it in a public place – 85 penalty units or imprisonment for 5 years; or
    - (ii) in any other case – 40 penalty units or imprisonment for 2 years.
  - (d) Where the dangerous drug is a dangerous drug specified in Schedule 2 and the amount of the dangerous drug is a commercial quantity – imprisonment for 14 years.
  - (e) Where the dangerous drug is a dangerous drug specified in Schedule 2 and the dangerous drug is not a commercial quantity but is a traffickable quantity – 85 penalty units or imprisonment for 5 years.
  - (f) Where the dangerous drug is a dangerous drug specified in Schedule 2 and the amount of the dangerous drug is neither a commercial quantity nor a traffickable quantity:
    - (i) if the person is in possession of it in a public place – 40 penalty units or imprisonment for 2 years; or
    - (ii) in any other case – 17 penalty units.

## 10            **Alternative verdicts**

Where on the trial of a person for an offence against section 5, 7, 8 or 9 the court or jury is not satisfied that the amount of the dangerous drug involved is a commercial quantity or a traffickable

quantity as charged, it may find the person guilty of the offence under the relevant section in respect of a lesser amount, and the person is liable to be found guilty and punished accordingly.

## 11            Theft of dangerous drugs

- (1) A person who steals a dangerous drug is guilty of a crime.
- (2) A person guilty of a crime under subsection (1) is, subject to section 22, punishable on being found guilty by a maximum penalty of:
  - (a) Where the dangerous drug is a dangerous drug specified in Schedule 1 – imprisonment for 14 years.
  - (b) Where the dangerous drug is a dangerous drug specified in Schedule 2 – imprisonment for 7 years.

## Division 1A      Drug premises orders

### Subdivision 1   Preliminary

#### 11A           Definitions

In this Division:

***commercial premises*** means any land (other than Crown land) on which are situated premises that are not residential premises or liquor licence premises, but does not include premises that are:

- (a) used for the purposes of a statutory corporation or a hospital, school or educational facility; or
- (b) excluded from this definition by the Regulations.

***court*** means the Local Court.

***drug premises*** means premises in relation to which a drug premises order is in force.

***drug premises order*** means an order made under section 11K or 11L.

***landlord:***

- (a) in relation to residential premises to which the *Residential Tenancies Act* applies – has the same meaning as in the *Residential Tenancies Act*; and

- (b) in relation to commercial premises or liquor license premises – has the same meaning as in Part 13 of the *Business Tenancies (Fair Dealings) Act*,

and includes a person who is a landlord under section 88A(2) of the *Residential Tenancies Act*.

**licensee** has the same meaning as **licensee** in the *Liquor Act*.

**liquor licence premises** means premises in relation to which a licence under the *Liquor Act* is in force (including a suspended licence) and includes a carpark adjoining those premises that is owned or leased by an owner, landlord or tenant of the premises.

**resident**, in relation to residential premises, means:

- (a) a person who is a tenant in respect of the premises; or
- (b) a person who resides on the premises, whether or not intermittently, under a licence or with the permission of a tenant of the premises or another resident of the premises.

**residential premises** means premises intended or used for occupation as a place of residence and includes the following:

- (a) a house, a unit within the meaning of the *Unit Titles Acts*, a flat or apartment, or a number of units, flats or apartments, on the one lot, that is used or each of which is used for residence and any garden areas to which a resident of any such house, unit, flat or apartment has access;
- (b) a caravan or mobile home intended for occupation as a place of residence;
- (c) a houseboat or vessel intended for occupation as a place of residence;
- (d) residential premises that are owned or leased under the *Housing Act*;
- (e) premises intended or used for occupation as a place of residence that form part of premises that are not used or intended to be used as residential premises;
- (f) residential premises specified in section 6 of the *Residential Tenancies Act* as premises to which that Act does not apply and residential premises exempted from the application of that Act by regulations made under that Act;

- (g) a carpark adjoining residential premises that is owned or leased by an owner, landlord or tenant of the premises.

***tenant:***

- (a) in relation to residential premises – has the same meaning as in the *Residential Tenancies Act*, and
- (b) in relation to commercial premises or liquor licence premises – has the same meaning as in Part 13 of the *Business Tenancies (Fair Dealings) Act*,

and includes a person who is a tenant under section 88A(2) of the *Residential Tenancies Act*.

**11B      Service of notices under this Division**

- (1) A notice under this Division may be served on a person by:
- (a) handing it to the person;
- (b) posting it to the person at the person's last known postal address or place of residence or business; or
- (c) leaving it for the person at the person's last known place of residence or business with some other person apparently resident or employed there and apparently over the age of 16 years.
- (2) A notice under this Division is taken to be served on a person although it is not addressed to a named person if:
- (a) it is addressed "to the owner", "to the landlord", "to the tenant" or "to the resident";
- (b) it is posted to or left at a place of residence or business; and
- (c) the person is an owner, landlord, tenant or resident at that place of residence or business.

**11C      Indications that premises used to supply dangerous drugs**

- (1) For the purposes of this Division, the indications that a dangerous drug has been supplied at or from residential premises include the following:
- (a) that a member of the Police Force was prevented, obstructed or delayed from entering or re-entering the premises;
- (b) the presence on the premises or in sight of the premises of a person acting as a lookout;

- (c) the presence on the premises of things used in the supply, manufacture or use of a dangerous drug;
  - (d) the presence on the premises, or in the possession of a person on the premises, of a firearm within the meaning of the *Firearms Act*;
  - (e) the presence on the premises of documents or records used in connection with the supply or manufacture of a dangerous drug;
  - (f) amounts of money on the premises that cannot be satisfactorily accounted for by a resident of, or an owner or landlord of, the premises;
  - (g) the presence at the premises of a person or persons who are, or who appear to be, under the influence of a dangerous drug;
  - (h) excessive, frequent or suspicious vehicular or pedestrian traffic to or from the premises;
  - (i) the presence on the premises, or in the vicinity of the premises, of persons known to be involved in the sale or distribution of a dangerous drug;
  - (j) the presence on the premises of property reasonably suspected of being stolen or of being exchanged in return for a dangerous drug;
  - (k) that a dangerous drug has been found on the premises on one or more occasions;
  - (l) if there are other indications – the construction of the premises, or an internal or external door on the premises, involved a device for preventing, delaying or obstructing entry or for giving alarm.
- (2) For the purposes of this Division, the indications that a dangerous drug has been supplied at or from commercial or liquor licence premises include the following:
- (a) that a member of the Police Force was prevented, obstructed or delayed from entering or re-entering the premises by an owner, landlord or tenant of the premises or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises;

- (b) the presence of a thing that is used in the supply, manufacture or use of a dangerous drug and that is:
  - (i) in the possession of an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises; or
  - (ii) in a room in the premises to which only an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises, has access;
- (c) the presence of a firearm within the meaning of the *Firearms Act*:
  - (i) in the possession of an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises; or
  - (ii) in a room in the premises to which only an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises, has access;
- (d) the presence on the premises of documents or records used in connection with the supply or manufacture of a dangerous drug;
- (e) amounts of money:
  - (i) in the possession of an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises, that cannot be satisfactorily accounted for by the person; or
  - (ii) found in a room in the premises to which only an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises, has access, that cannot be satisfactorily accounted for by such a person;



- (f) property reasonably suspected of being stolen, or of being exchanged in return for a dangerous drug, being property found:
    - (i) in the possession of an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises; or
    - (ii) in a room in the premises to which only an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises, has access;
  - (g) that a dangerous drug has been found on the premises on one or more occasions:
    - (i) in the possession of an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises; or
    - (ii) in a room in the premises to which only an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises, has access;
  - (h) if there are other indications – the construction of the premises, or an internal or external door on the premises, involved a device for preventing, delaying or obstructing entry or for giving alarm.
- (3) For the purposes of Subdivision 3, in determining whether a dangerous drug has been supplied at or from residential, commercial or liquor licence premises, the court may take into account indications that do not occur on the premises but that relate to the premises.

**11D      Commissioner may apply for order if premises used to supply dangerous drugs**

- (1) The Commissioner of Police may apply to the court for a drug premises order in relation to residential premises if he or she has a reasonable belief that within the 12 month period immediately before the application there have been indications that a dangerous drug has been supplied at or from the premises.
- (2) The Commissioner of Police may apply to the court for a drug premises order in relation to commercial premises or liquor licence premises if he or she has a reasonable belief that within the

12 month period immediately before the application there have been indications that a dangerous drug has been supplied at or from the premises by:

- (a) an owner, landlord or resident of the premises; or
  - (b) a person employed by or acting for and on behalf of an owner, landlord or resident of the premises.
- (3) The Commissioner of Police may apply to the court for a drug premises order if:
- (a) a dangerous drug is found at residential premises on 2 or more separate occasions within 12 months after a record is made under section 11E(1) in relation to the premises; and
  - (b) he or she is satisfied that dangerous drugs have been supplied at or from the premises to which the application relates.
- (4) The Commissioner of Police may apply to the court for a drug premises order if:
- (a) a dangerous drug is found at commercial or liquor licence premises:
    - (i) apparently in the possession of an owner, landlord or tenant of commercial or liquor licence premises or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises; or
    - (ii) in a room in the premises to which only an owner, landlord or tenant of the premises or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises has access,on 2 or more separate occasions within 12 months after a record is made under section 11E(3) in relation to the premises; and
  - (b) he or she is satisfied that dangerous drugs have been supplied at or from the premises to which the application relates.

## **Subdivision 2   Record of finding of drugs and warning that order may be made**

### **11E            Record and warning of first finding of dangerous drugs on premises**

- (1) A member of the Police Force may make a record in the prescribed form of a dangerous drug being found by him or her at residential premises.
- (2) A member of the Police Force may serve notice in the prescribed form on each owner, landlord and tenant of residential premises in relation to which a record has been made under subsection (1) if the member has a reasonable belief that a dangerous drug has been supplied at or from the premises.
- (3) A member of the Police Force may make a record in the prescribed form of a dangerous drug being found by him or her at commercial or liquor licence premises:
  - (a) apparently in the possession of an owner, landlord or tenant of the commercial or liquor licence premises or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises; or
  - (b) in a room in the premises to which only an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises, has access.
- (4) A member of the Police Force may serve notice in the prescribed form on:
  - (a) the licensee of liquor licence premises in relation to which a record has been made under subsection (3) or a person who is taken under the *Liquor Act* to be a licensee of the premises for the purpose of that Act; and
  - (b) each owner, landlord and tenant of premises in relation to which a record has been made under subsection (3),if the member has a reasonable belief that a dangerous drug has been supplied at or from the premises.

**11F            Record and warning of second finding of dangerous drugs on premises**

- (1) A member of the Police Force may make a record in the prescribed form of a dangerous drug being found by him or her at residential premises on a separate occasion within 12 months after a record is made under section 11E(1) in relation to the premises (the second finding of a dangerous drug).
- (2) A member of the Police Force may serve notice in the prescribed form on each owner, landlord or tenant of residential premises in relation to which a record has been made under subsection (1) if the member has a reasonable belief that a dangerous drug has been supplied at or from the premises.
- (3) A member of the Police Force may make a record in the prescribed form of a dangerous drug being found by him or her at commercial or liquor licence premises on a separate occasion within 12 months after a record is made under section 11E(3) in relation to the premises (the second finding of a dangerous drug).
- (4) A member of the Police Force may serve notice in the prescribed form on:
  - (a) the licensee of liquor licence premises in relation to which a record has been made under subsection (3) or a person who is taken under the *Liquor Act* to be a licensee of the premises for the purpose of that Act; and
  - (b) each owner, landlord and tenant of commercial premises or liquor licence premises in relation to which a record has been made under subsection (3),if the member has a reasonable belief that a dangerous drug has been supplied at or from the premises.
- (5) The form prescribed for the purposes of subsection (2) or (4) is to contain a warning of the second finding of a dangerous drug on the premises to which the form relates and that if a dangerous drug is found:
  - (a) in those residential premises; or
  - (b) at those commercial or liquor licence premises:
    - (i) apparently in the possession of an owner, landlord or tenant of commercial or liquor licence premises or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises; or

- (ii) in a room in the premises to which only the owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises, has access,

for a second or subsequent time within 12 months after a record is made under section 11E(1) in relation to the premises, a drug premises order may be made under this Division in relation to the premises.

**11G      Record and warning of third finding of dangerous drug on premises**

- (1) A member of the Police Force may make a record in the prescribed form of a dangerous drug being found by him or her at residential premises on the second or any subsequent separate occasion within 12 months after a record is made under section 11E(1) in relation to the premises (the third or subsequent finding of a dangerous drug).
- (2) A member of the Police Force may serve notice in the prescribed form on each owner, landlord or tenant of residential premises in relation to which a record has been made under subsection (1) if he or she has a reasonable belief that a dangerous drug has been supplied at or from the premises.
- (3) A member of the Police Force may make a record in the prescribed form of a dangerous drug being found by him or her at commercial or liquor licence premises on the second or any subsequent separate occasion within 12 months after a record is made under section 11E(3) in relation to the premises (the third or subsequent finding of a dangerous drug).
- (4) A member of the Police Force may serve notice in the prescribed form on:
  - (a) the licensee of liquor licence premises in relation to which a record has been made under subsection (3) or a person who is taken under the *Liquor Act* to be a licensee of the premises for the purpose of that Act; and
  - (b) each owner, landlord and tenant of commercial premises, or liquor licence premises, in relation to which a record has been made under subsection (3),

if the member has a reasonable belief that a dangerous drug has been supplied at or from the premises.

- (5) The form prescribed for the purposes of subsections (2) and (4) is to contain a warning of the third or subsequent finding of a dangerous drug on the premises to which the form relates and that a drug premises order may be made under this Division in relation to the premises.

### **Subdivision 3    Making and revocation of drug premises orders**

#### **11H            No notice to be given of application for drug premises order**

- (1) No notice is to be given of an application under section 11D to an owner, landlord, tenant, licensee or resident of the premises in respect of which the application is made.
- (2) A court is to determine an application under section 11D in the absence of the owner, landlord, tenants or licensee of the premises to which the application relates.

#### **11J            Hearing of applications for orders and revocation of orders**

- (1) For the purposes of this Division, the Local Court is to be constituted by a magistrate.
- (2) Evidence in proceedings relating to an application under this Division may be given by way of affidavit.
- (3) The hearing of an application under section 11D is to be in camera.
- (4) The Commissioner of Police must, at the hearing of an application under section 11D, disclose to the court all matters that are within his or her knowledge that he or she, on reasonable grounds, believes would support an argument against the granting of the application.
- (5) A deponent of an affidavit is to be available for cross-examination at a hearing of the making or revocation of a drug premises order.
- (6) Section 16 of the *Local Court Act* does not apply in relation to an application under section 11D or 11P of this Act.
- (7) For the purposes of this Subdivision, the court may make a finding that a dangerous drug has been supplied at or from premises although there has not been a finding of guilt made by the court in relation to the possession or supply of drugs that are found on the premises.
- (8) The court may dispense with compliance with a rule of the court if it is of the opinion that it is desirable to do so to expedite the hearing of an application under this Subdivision.

**11K        Drug premises order if indications of supply at or from premises**

- (1) On receiving an application under section 11D(1) in relation to residential premises, the court may make a drug premises order declaring the premises to be drug premises if the court is satisfied that the evidence of the indications of supply is sufficient to establish on the balance of probabilities that a dangerous drug has been supplied at or from the premises.
- (2) On receiving an application under section 11D(2) in relation to commercial or liquor licence premises, the court may make a drug premises order declaring the premises to be drug premises if the court is satisfied that the evidence of the indications of supply is sufficient to establish on the balance of probabilities that a dangerous drug has been supplied at or from the premises by an owner, landlord or tenant of the premises or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises.
- (3) The court must specify in a drug premises order the area of the premises, specified in the application for the order, to which the order relates.

**11L        Order if indications of supply and 3 findings of dangerous drugs**

- (1) The court must make a drug premises order declaring residential premises to which an application under section 11D(3) relates to be drug premises if the court is satisfied that:
  - (a) a dangerous drug has been found at the premises on 2 or more separate occasions within 12 months after a record is made under section 11E(1) in relation to the premises; and
  - (b) a dangerous drug has been supplied at or from the premises.
- (2) On receiving an application under section 11D(4) in relation to commercial premises or liquor licence premises, the court must make a drug premises order declaring the premises to be drug premises if the court is satisfied that:
  - (a) a dangerous drug has been found:
    - (i) apparently in the possession of an owner, landlord or tenant of commercial or liquor licence premises or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises; or

(ii) in a room in the premises to which only an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises, has access,

on not less than 2 separate occasions within 12 months after a record is made under section 11E(3) in relation to the premises; and

(b) a dangerous drug has been supplied from the premises.

(3) An order may only be made under subsection (1) or (2) if the court is satisfied that:

(a) records have been made under sections 11E, 11F and 11G of the finding of a dangerous drug on the premises on not less than 3 separate occasions; and

(b) the notices required under those sections to be served on each owner, landlord and tenant of the premises were served on those persons.

(4) The court must specify in an order the area of the premises, specified in the application for the order, to which the order relates.

#### **11M        Duration of drug premises order**

A drug premises order remains in force for 12 months from the date on which the order is made, unless it is sooner revoked under section 11P.

#### **11N        Notice of drug premises order to be given within 7 days**

(1) A member of the Police must make all reasonable attempts to ensure that a copy of the drug premises order is served on each owner, landlord and tenant of the premises to which the order relates within 7 days after the making of an order.

(2) A drug premises order is of no effect until a member of the Police Force has served:

(a) a copy of the order; and

(b) a notice in accordance with the prescribed form,

on:

(c) each owner, landlord and tenant of the premises to which the order relates; and



- (d) if the premises are liquor licence premises – the licensee of the premises.
- (3) A notice under subsection (2)(b) is to specify that a drug premises notice under section 11Q will be affixed to the premises within 7 days after the date on which the notice under subsection (2)(b) is served, unless notice of an application is served under section 11P(2) on the Commissioner by an owner, landlord or tenant of the premises.
- (4) Sections 11V and 11W, sections 88A of the *Residential Tenancies Act* and section 126 of the *Business Tenancies (Fair Dealings) Act* do not apply in relation to drug premises until this section and section 11Q(1) have been complied with.

**11P      Owner etc. may apply for order to be revoked**

- (1) An owner, landlord or tenant of drug premises may apply to the court for the order to be revoked.
- (2) A person who applies to the court under subsection (1) must serve notice of the application on the Commissioner of Police.
- (3) The Commissioner of Police may be heard in relation to an application under subsection (1).
- (4) The court may revoke a drug premises order if it is satisfied:
  - (a) on the balance of probabilities that the premises are no longer premises at or from which dangerous drugs are being, or are likely to be, supplied; or
  - (b) that in the circumstances of the case, including circumstances arising after the making of the order, it would be unjust to keep the order in force.
- (5) In determining whether to revoke an order under subsection (4), the court is to have regard to (but is not limited to having regard to) whether or not the residents of the premises have been served with notice to quit under section 88A of the *Residential Tenancies Act* or section 126 of the *Business Tenancies (Fair Dealings) Act*.
- (6) An appeal under section 19 of the *Local Court Act* to the Supreme Court against the making of a drug premises order may not be lodged unless an application under this section in relation to the premises has been made and has been refused.

**11Q      Notice to be affixed to drug premises**

- (1) A member of the Police Force must affix a notice in the prescribed form and size to the exterior of the premises as close to each entrance to the premises as is practicable.
- (2) The notice may only be affixed under subsection (1):
  - (a) after 7 days after a drug premises order is served under section 11N(2) in relation to the premises; or
  - (b) if, within 7 days after a drug premises order is served under section 11N(2) in relation to the premises, notice of an application is served under section 11P(2) on the Commissioner by an owner, landlord or tenant of the premises – after the application is determined by the court.
- (3) A person must not tamper with, deface, remove, damage or alter a notice affixed to drug premises in accordance with subsection (1).

Maximum penalty for an offence against subsection (3):

200 penalty units or imprisonment for  
2 years.

**Subdivision 4   Effect of drug premises order**

**11R      Search of drug premises without warrant**

- (1) A member of the Police Force may, without a warrant:
  - (a) enter into or upon and search drug premises on or in which the member believes, on reasonable grounds, that any object connected with an offence against this Act is situated; and
  - (b) search the person of, the clothing that is being worn by, and property in the immediate control of, a person on drug premises who is reasonably suspected by the member to be carrying anything connected with an offence against this Act.
- (2) A member of the Police Force may seize any object found by the member on the premises or a person in the course of a search under subsection (1) if he or she believes on reasonable grounds that the object is connected with an offence against this Act and it is necessary to do so in order to prevent the loss or destruction of the object.

- (3) The power to search conferred under subsection (1) authorises a member:
- (a) to use the reasonable force necessary to break into, enter and search the drug premises;
  - (b) to use the reasonable force necessary to open any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, found on or in the drug premises; and
  - (c) to use the reasonable force necessary to carry out a search of a person under subsection (1)(b).
- (4) A search of a female person under subsection (1)(b) must be carried out only:
- (a) by a female member of the Police Force;
  - (b) by a medical practitioner authorised by a member to carry out the search; or
  - (c) if there is neither a female member nor a medical practitioner available – by a female person authorised by a member to carry out the search.
- (5) If a medical practitioner or a female person is authorised under subsection (4) to carry out a search of a female person, the medical practitioner or female person carrying out the search has, for the purposes of that search, the same powers, and is subject to the same protection, as a member of the Police Force.
- (6) The powers given by this section are in addition to, and do not derogate from, any other powers of a member of the Police Force.

### **11S      Offences in premises to which drug premises order relates**

- (1) A person must not prevent, delay or obstruct, or attempt to prevent, delay or obstruct, a member of the Police Force from entering or attempting to enter drug premises.

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

- (2) A person must not warn, advise or give an alarm to, or cause a warning, advice or alarm to be given to another person in relation to a search by a member of the Police Force that is about to begin or has begun in drug premises.

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



- (7) A person committed to gaol because he or she has failed to find a surety under subsection (6) may, in person, or by a person acting on his or her behalf, apply for an order varying the order under which he or she was committed.
- (8) The court of summary jurisdiction may, if it appears just, upon new evidence produced or upon proof of a change of circumstances having regard to all the circumstances of the case, make an order:
  - (a) reducing the amount for which it is proposed the sureties should be bound; or
  - (b) dispensing with the sureties or surety or otherwise dealing with the case as the court thinks just.

**11U      Tenants and residents may be evicted**

- (1) Section 88A of the *Residential Tenancies Act* applies to a tenancy agreement within the meaning of that Act in respect of residential premises that are drug premises.
- (2) Section 88A of the *Residential Tenancies Act* applies to an agreement to permit a person to reside on residential premises that are drug premises as if the agreement were a tenancy agreement within the meaning of that Act.
- (3) Section 126 of the *Business Tenancies (Fair Dealings) Act* applies in relation to an owner or landlord of commercial or liquor licence premises.

**11V      All residents on premises taken to have possession of drug**

Evidence that a dangerous drug was found in a room (not primarily used as a bedroom) in residential premises that are drug premises is evidence, in respect of a charge against a resident of the premises who was on the premises at the time the drug was found of having committed an offence against section 5 or 8 of this Act, that the drug was then in the resident's control.

**11W      Commissioner of Police may apply for suspension of liquor licence**

The Commissioner of Police may apply under section 49A of the *Liquor Act* for the suspension of a licence in respect of drug premises.

## **Division 2            Other offences**

### **12            Possession of things for administering dangerous drugs**

- (1) A person who unlawfully possesses a thing (other than a hypodermic syringe or needle) for use in the administration of a dangerous drug is guilty of an offence.

Maximum penalty:        17 penalty units or imprisonment for  
2 years.

- (2) A person, other than a medical practitioner, a pharmacist or a member of a class of persons authorized so to do by the Minister who supplies a hypodermic syringe or needle to another person, whether or not the other person is in the Territory, for use in the administration of a dangerous drug to that or another person is guilty of an offence.

Maximum penalty:        17 penalty units or imprisonment for  
2 years.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that he or she obtained the hypodermic syringe or needle from a medical practitioner, pharmacist or authorized person referred to in that subsection for the use of another person in the administration of a dangerous drug to that other person and the defendant supplied it to the other person, in its unused state, as soon as practicable after so obtaining it.

- (4) A person who possesses a hypodermic syringe or needle who fails to use all reasonable care and take all reasonable precautions with it so as to avoid danger to the life, safety or health of another person is guilty of an offence.

Maximum penalty:        17 penalty units or imprisonment for  
2 years.

- (5) A person who possesses a hypodermic syringe or needle that has been used in the administration of a dangerous drug who fails to dispose of the syringe or needle in the manner prescribed is guilty of an offence.

Maximum penalty:        17 penalty units or imprisonment for  
2 years.







- (b) a substance seized by a member of the Police Force that the member who orders the destruction believes on reasonable grounds to be a dangerous drug or precursor.
- (2) Subsection (1) applies whether or not a person has been or is to be charged with an offence in relation to the dangerous drug, precursor or substance.
- (3) Property that is a dangerous drug, precursor or substance may only be destroyed under subsection (1) if:
  - (a) a sample, or samples, that provide a true representation of the nature of the property have been taken by or on behalf of a member of the Police Force;
  - (b) a sample, or samples, that provide a true representation of the nature of the property are kept for the purpose of enabling at least one person who is, or is to be, charged with an offence in relation to the property to have the samples analysed or examined under section 19C; and
  - (c) a sample is kept by the Commissioner of Police or a member of the Police Force who is of or above the rank of Commander and is nominated by the Commissioner of Police.
- (4) A member of the Police Force must make all reasonable attempts to serve on each person who is, or is to be, charged with an offence in relation to the property written notice of his or her entitlement under section 19C to have a sample or samples of the property analysed or examined.
- (5) Section 19C and subsections (3) and (4) do not apply if an analyst has issued a certificate in relation to a dangerous drug, precursor or substance specifying that it may be too dangerous to the health or safety of persons to take or keep samples of it.
- (6) Section 19C and subsections (3) and (4) do not apply in relation to a dangerous drug, precursor or substance if a member of the Police Force of or above the rank of Commander is satisfied on reasonable grounds that:
  - (a) there is no lawful owner of the dangerous drug, precursor or substance; and
  - (b) it is not intended to charge any person with an offence in respect of the dangerous drug, precursor or substance.

- (7) A dangerous drug, precursor or substance may be destroyed under subsection (1) at the place at which it was seized or at any other place that a member of the Police Force who is of or above the rank of Commander thinks fit.
- (8) The Commissioner of Police must ensure that a member of the Police Force retains control of the possession of the sample or samples of the property taken under subsection (3).
- (9) This Part does not apply to the destruction of part or all of property if the destruction occurs as part of the process of analysing or examining the property.

**19C            Person from whom drug or precursor seized entitled to have sample analysed or examined**

- (1) A person who has been or is to be charged with an offence in relation to property that is, or may be, a dangerous drug or a precursor is entitled to have a sample or samples that provide a true representation of the nature of the property analysed or examined by a person if there is sufficient quantity of the property at the time an application is made by the person under subsection (2) to enable the sample or samples to be analysed or examined.
- (2) A person may apply in the prescribed form to the Commissioner of Police for the release, into the custody of a person specified in the application, of a sample or samples of property that is or may be a dangerous drug or a precursor.
- (3) The Commissioner of Police may authorise the release of a sample or samples of the property that is or may be a dangerous drug or a precursor into the custody of a person specified in an application under subsection (2) if:
  - (a) the property is sought for the purpose of conducting an analysis or examination to determine the nature of the property; and
  - (b) the Commissioner is satisfied the person is authorised under this Act, another Act of the Territory or an Act of the Commonwealth, a State or another Territory to have possession of the dangerous drug or precursor.

**19E            Determination of magistrate with respect to destruction on first mention of charge**

- (1) Where a person is charged with an offence with respect to a dangerous drug involving an amount which is not less than the minimum amount of the dangerous drug, a magistrate shall, on the

first occasion on which the charge is mentioned before the magistrate, ascertain whether the dangerous drug has been destroyed.

- (2) The magistrate shall, where the dangerous drug has not been destroyed, make a determination whether the dangerous drug should be retained.
- (3) Where the accused is legally represented and no party objects to the destruction of the dangerous drug, the magistrate shall order that the dangerous drug, if it is not otherwise required to be forfeited to the Crown, be so forfeited and destroyed.
- (4) Where the accused is not present before the magistrate, or is present but is not legally represented, or if any party objects to the destruction of the dangerous drug, the magistrate may order:
  - (a) the dangerous drug, if it is not otherwise required to be forfeited to the Crown, be so forfeited and destroyed; or
  - (b) where the magistrate is satisfied that it is in the interests of justice to do so or that there is other sufficient reason, that the dangerous drug be retained.

**19F            Matters for consideration on determination for retention of dangerous drug**

In determining whether to order that a dangerous drug be retained, a magistrate shall consider:

- (a) the amount of the dangerous drug;
- (b) whether the dangerous drug can reasonably be securely retained;
- (c) the period of retention;
- (d) the purpose of retention;
- (e) the amount of the dangerous drug required for the purpose of sampling and analysis;
- (f) a report, if any, of an analyst relating to the dangerous drug;
- (g) whether the arrest of any person in relation to the dangerous drug is imminent;
- (h) the number of persons charged with offences in relation to the dangerous drug;

- (j) when the hearing of the charge relating to the dangerous drug is likely to be concluded;
- (k) whether there is any other order under this Part relating to the dangerous drug;
- (m) any claim of a person to be lawfully entitled to the dangerous drug; and
- (n) any other matter which, in the opinion of the magistrate, is relevant.

### **19G        Adjournment**

- (1) A magistrate shall adjourn the making of a determination under section 19E whether a dangerous drug should be retained:
  - (a) where no order under this Division with respect to the dangerous drug has previously been made and a party to the proceedings requests the adjournment; or
  - (b) where, in the opinion of the magistrate, the making of the determination should be adjourned.
- (2) An adjournment under this section shall be for a reasonable period not exceeding 14 days.

### **19H        Review of determination for retention of dangerous drug**

Where a magistrate determines that a dangerous drug be retained, the magistrate shall fix a date, not more than 2 months after the date of the determination, in order to make a further determination whether the dangerous drug should be retained.

### **19J        Destruction of dangerous drugs**

- (1) A dangerous drug shall, except as provided by subsection (2) and section 19K, be destroyed as soon as practicable after the expiration of 7 days, or such longer period as a magistrate may have specified, after the date on which it was ordered to be destroyed.
- (2) A magistrate may rescind or vary an order for the destruction of a dangerous drug.

### **19K        Use of dangerous drugs for research etc.**

- (1) If, after a magistrate has ordered that a dangerous drug or precursor be destroyed and before the drug or precursor is destroyed, the Chief Executive Officer of the Agency, within the

meaning of the *Public Sector Employment and Management Act* responsible under the Minister for the administration of the *Public Health Act*, requests the Commissioner of Police, in writing, to give the dangerous drug or precursor to a person or body specified in the request for the purpose of scientific research, instruction, analysis or study, the dangerous drug or precursor shall be dealt with in accordance with the request.

- (2) The Commissioner of Police may comply with a request made in accordance with subsection (1) by giving the dangerous drug or precursor to a person or body specified in the request if the Commissioner is satisfied:
  - (a) samples of the drug or precursor are retained in accordance with section 19B(3); and
  - (b) if notice is required to be given in accordance with section 19B(4) in relation to the drug or precursor – the notice has been given.

#### **19M Order on committal for trial**

- (1) On the committal for trial of a person for an offence with respect to a dangerous drug involving an amount which is not less than the minimum amount of the dangerous drug and which has not been destroyed under section 19B or ordered to be destroyed, the magistrate shall make a determination whether the dangerous drug should be retained.
- (2) Where the magistrate determines that the dangerous drug be retained, the magistrate shall give the reasons for the determination.

#### **19N Order on initial hearing of trial**

Where a person is committed for trial for an offence with respect to a dangerous drug involving an amount which is not less than the minimum amount of the dangerous drug and which has not been destroyed under section 19B or ordered to be destroyed, the court hearing the trial shall, on the first occasion on which the matter is mentioned before it, make a determination whether the dangerous drug should be retained.

#### **19P Seized substances may be destroyed or disposed of**

- (1) If a member of the Police Force of or above the rank of Commander thinks that a substance seized under this Act, other than a dangerous drug or a precursor, is:
  - (a) dangerous to the health or safety of humans or property; or

- (b) toxic, flammable or corrosive,
- he or she may order the destruction or disposal of the substance by a member of the Police Force.
- (2) This section applies to and in relation to a substance whether or not a person has been or is to be charged with an offence in relation to the substance or a dangerous drug or precursor seized under this Act.
- (3) A substance may only be destroyed under subsection (1) if:
- (a) a sample, or samples, that provide a true representation of the nature of the property have been taken by or on behalf of a member of the Police Force;
  - (b) a sample, or samples, that provide a true representation of the nature of the property are kept for the purpose of enabling at least one person who is, or is to be, charged with an offence in relation to the property to have the samples analysed or examined under section 19PA; and
  - (c) a sample is kept by the Commissioner of Police or a member of the Police Force who is of or above the rank of Commander and is nominated by the Commissioner of Police.
- (4) A member of the Police Force must make all reasonable attempts to serve on each person who is, or is to be, charged with an offence in relation to the property written notice of his or her entitlement under section 19PA to have a sample or samples of the substance analysed or examined.
- (5) Subsections (3) and (4) do not apply if an analyst has issued a certificate in relation to the substance specifying that the substance may be too dangerous to the health or safety of persons to take or keep samples of it.
- (6) Section 19PA and subsections (3) and (4) do not apply in relation to a substance or thing if a member of the Police Force of or above the rank of Commander is satisfied on reasonable grounds that:
- (a) there is no lawful owner of the substance or thing; and
  - (b) if the substance was seized in circumstances that relate to a dangerous drug or a precursor – it is not intended to charge any person with an offence in relation to the dangerous drug or precursor.

- (7) A substance may be destroyed or disposed of under this section at the place at which it was seized or another place that a member of the Police Force who is of or above the rank of Commander thinks fit.
- (8) This Part does not apply to the destruction of part or all of a substance if the destruction occurs as part of the process of analysing or examining the substance.

**19PA    Entitlement to have substance analysed or examined**

- (1) A person who is the owner of a seized substance that:
  - (a) is to be destroyed under section 19P; and
  - (b) has been analysed or examined by an analyst under this Act,is entitled to have a sample or samples that provide a true representation of the nature of the substance analysed or examined by a person if, after the analysis or examination referred to in paragraph (b), there is a sufficient quantity of the substance remaining to enable a sample or samples of the substance to be further analysed or examined.
- (2) A person to whom subsection (1) applies who is the owner of a seized substance may apply in the prescribed form to the Commissioner of Police for the release, into the custody of a person specified in the application, of a sample or samples of the substance.
- (3) A member of the Police Force of or above the rank of Commander may, on the application of a person under subsection (2), authorise the release, into the custody of a person specified in the application, of a sample or samples of the substance to which the application relates for the purpose of conducting an analysis or examination to determine the nature of the substance.

**19PB    Contaminated objects may be cleaned or disposed of**

- (1) An instrument, device, equipment or other thing that is seized under this Act may be destroyed, disposed of, or dealt with in a way intended to make it harmless by a member of the Police Force if an analyst issues a certificate under subsection (2).

- (2) An analyst may issue a certificate specifying that the destruction, disposal or dealing referred to in subsection (1) is required because the instrument, device equipment or thing contains or is contaminated with a substance (which may include a dangerous drug or a precursor) that is:
  - (a) dangerous to the health or safety of a person or property; or
  - (b) toxic, flammable or corrosive.
- (3) A substance or thing may be destroyed, disposed of or dealt with under this section at the place at which it was seized or another place.
- (4) This section applies to and in relation to a substance or thing whether or not a person has been or is to be charged with an offence in relation to the substance or thing or a dangerous drug or precursor seized under this Act.
- (5) This Part does not apply to the destruction of part or all of a substance or thing if the destruction occurs as part of the process of analysing or examining the substance or thing.

## **Division 2          Post-trial orders**

### **19Q          Order on appeal**

Where an appeal is made to the Supreme Court, the Court of Criminal Appeal or the Court of Appeal in respect of an offence involving a prohibited plant, dangerous drug or precursor which has not been destroyed, the Court shall, on the first occasion on which the appeal is mentioned before it, make a determination whether the prohibited plant, dangerous drug or precursor should be retained.

## **Division 3          Supplementary**

### **19R          Presumption on appeal**

Where:

- (a) a person who was legally represented before a magistrate on the trial of an offence with respect to a prohibited plant, dangerous drug or precursor pleaded guilty to the charge;
- (b) an appeal is made against any determination of the magistrate with respect to the offence; and



- (c) before the appeal is heard:
- (i) the prohibited plant, dangerous drug or precursor is destroyed under section 19B or 19P or under an order under this Part; or
  - (ii) a substance or thing seized in relation to the offence is destroyed, disposed of or dealt with under section 19PB,

any particular in the information as to the nature or quantity of the prohibited plant, dangerous drug, precursor, substance or thing is, for the purposes of the appeal, presumed to be true.

### **19S      Return of dangerous drug or precursor to lawful owner**

- (1) Nothing in this Part prevents a person lawfully entitled to a dangerous drug or precursor seized by a member of the Police Force from applying to a magistrate for an order that the dangerous drug or precursor be returned to the person, and the magistrate may order the return of so much of the dangerous drug or precursor as has not been destroyed.
- (2) Nothing in this Part prevents a magistrate or court from ordering the return of a dangerous drug or precursor to a person lawfully entitled to the dangerous drug or precursor whether or not an application for the return of the dangerous drug or precursor has been made by the person.

### **19T      Regulations**

The Regulations may make provisions, whether for the purpose of this Part or otherwise, for or with respect to the handling, storage and destruction of prohibited plants, dangerous drugs or precursors seized by members of the Police Force, the sampling and analysis of those prohibited plants, dangerous drugs or precursors and the return of such prohibited plants, dangerous drugs or precursors to a person lawfully entitled to them.

### **19TA      Service of notices**

A notice under this Part may be served on a person by:

- (a) handing it to the person;
- (b) posting it to the person at the person's last known postal address or place of residence or business; or

- (c) leaving it for the person at the person's last known place of residence or business with some other person apparently resident or employed there and apparently over the age of 16 years.

## Part IIB          Infringement notices

### 20A          Definitions

In this Part, unless the contrary intention appears:

***offence*** means an offence against:

- (a) section 7 where the prohibited plant is a cannabis plant and the number of plants being cultivated is not more than 2; or
- (b) section 9 where the dangerous drug is one specified in column 1 of Schedule 3 and the amount of the drug in the possession of the person is less than the amount specified opposite the drug in column 2.

***offender*** means a person who a member of the Police Force reasonably believes has committed an offence.

***infringement notice*** means an infringement notice issued under this Part.

### 20B          Issuing of infringement notices

- (1) Subject to this section, where a member has reason to believe that an offence has been committed, the member may serve on the person who appears to have committed the offence an infringement notice.
- (2) A member of the Police Force shall not serve an infringement notice on a person under subsection (1) unless the person is, or the member reasonably believes that the person is, an adult.

### 20C          Particulars to be shown on infringement notice

An infringement notice shall have clearly shown on it:

- (a) the date, time and place of the offence;
- (b) the nature of the offence and the penalty payable;
- (c) the place or places at which a penalty may be paid;

- (d) the date of the infringement notice and a statement that the penalty may be paid within 28 days after that date; and
- (e) a statement to the effect that, if the amount specified in the infringement notice as the penalty for the offence is paid at a place referred to in the notice within the time specified in the notice, no further action will be taken.

**20D          Penalty for offence**

The penalty payable for the purposes of this Part for an offence is a maximum of 1.7 penalty units.

**20E          Payment before expiry date of infringement notice**

- (1) Subject to section 20F, where, before the expiration of the period specified in an infringement notice for the payment of a penalty, the amount of the penalty shown on the notice is paid at a place specified in the notice the offender shall be deemed to have expiated the offence by payment of the penalty.
- (2) Where the amount of a penalty under this Part is paid by cheque, payment shall be deemed not to be made unless the cheque is cleared on presentation.

**20F          General**

Nothing in this Part:

- (a) prevents the service of more than one infringement notice in relation to the same offence but it is sufficient for the application of section 20E to a person on whom more than one such notice has been served for that person to pay the amount of the penalty in accordance with any one notice so served on that person;
- (b) prejudices or affects (except as provided by section 20E) the institution or prosecution of proceedings, or limits the penalty that may be imposed by a court, in relation to an offence; or
- (c) shall be construed as requiring the serving of an infringement notice or as affecting the liability of a person to be prosecuted in a court in relation to an offence in respect of which an infringement notice has not been served.

**20G          Service of notices**

A notice under this Part may be served by:

- (a) handing it to the offender;

- (b) posting it to the offender at the offender's last known postal address or place of residence or business; or
- (c) leaving it for the offender at the offender's last known place of residence or business with some other person apparently resident or employed there and apparently over the age of 16 years.

## **Part III                    Miscellaneous**

### **20                    Act to be construed with Criminal Code**

The Criminal Code, with the necessary changes, shall be read and construed with this Act.

### **21                    Knowledge of age immaterial**

It is immaterial in relation to an offence against this Act committed in respect of a child that the accused person did not know that the child had not attained the age of 18 years or that the accused person believed that the child had attained that age.

### **22                    Certain offences may be dealt with summarily**

- (1) Where a person charged with an offence against section 5, 7, 8, 9 or 11 is liable on being found guilty to a fine or to imprisonment for a term not exceeding 14 years, proceedings in respect of the commission of the offence may be taken summarily, in which case the person, on being found guilty, is liable to a maximum penalty of 85 penalty units or imprisonment for 2 years, or if there is a lesser penalty prescribed in relation to the particular offence, that lesser penalty.
- (2) Despite subsection (1), a person who is charged with an offence referred to in section 36A(6) and who could, if found guilty of the offence, be declared under section 36A to be a drug trafficker is not to be tried summarily for the offence.

### **23                    Proceedings for offences**

- (1) Proceedings for the summary conviction of a person for an offence against this Act or an examination of witnesses in relation to such an offence shall be before a magistrate.
- (2) Notwithstanding section 121A of the *Justices Act*, where in pursuance of section 22 an offence may be prosecuted on indictment or summarily, the proceedings before a magistrate shall be proceedings with a view to the committal of the defendant for trial or sentence unless the prosecution elects that they shall be

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proceedings with a view to summary conviction.

- (3) Notwithstanding that a period of 6 months has elapsed after the commission of a crime under this Act, where a person is arrested on a charge of having committed that crime proceedings for the summary conviction of the person on that charge may be brought before a magistrate and the magistrate has jurisdiction to deal summarily with the charge.
- (4) Where proceedings are taken with a view to summary conviction of a defendant and the magistrate forms the opinion that the offence ought to be prosecuted on indictment, the magistrate shall abstain from determining the charge summarily and shall instead deal with the proceedings as proceedings for the committal of the defendant for trial or sentence.
- (5) Where, pursuant to subsection (4), the magistrate abstains from determining a charge summarily, the plea of the defendant taken at the outset of the summary proceedings shall be disregarded, the evidence adduced in the proceedings before the magistrate's decision to abstain shall be deemed to be evidence in the proceedings with a view to the committal of the defendant for trial or sentence and, before committing the defendant for trial or sentence, the magistrate shall address the defendant in accordance with section 110 of the *Justices Act*.
- (6) An accused person may be charged (whether on indictment or not) and proceeded against for supplying a dangerous drug notwithstanding that the supply is alleged to be constituted by a number of instances of supply and notwithstanding that different persons are alleged to have been supplied if the different instances of supply are, or form part of, a series of offences of the same or a similar character.

## **24 Protection of informers**

- (1) Where an informer supplies information to a member of the Police Force in respect of the commission of an offence against Division 1 of Part II, then, subject to section 25(3), the informer's identity at all times shall be kept confidential.
- (2) Subject to section 25(3), a person who discloses the name of an informer, or any other particular that may be likely to lead to the informer's identification, is guilty of a crime.

Maximum penalty: 85 penalty units or imprisonment for 2 years.

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- (3) A person is not criminally responsible for an offence against subsection (2) if it is proved that the disclosure was made in good faith for the protection of the interests of the informer or for the public good.

## **25 Source of information not to be disclosed**

- (1) In proceedings for an offence against Division 1 of Part II:
- (a) the prosecutor;
  - (b) a person who appears as a witness for the prosecution; or
  - (c) where a member of the Police Force appears as a witness for the defence, that member,

shall not be asked, and if asked shall not be compelled to disclose, the name of an informer or other particular that may be likely to lead to the informer's identification, or the fact that in respect of the offence the prosecutor, informer or member of the Police Force referred to in paragraph (b) received information from an informer or furnished information to an informer, or the nature of the information.

- (2) In proceedings for an offence against Division 1 of Part II a member of the Police Force appearing as a prosecutor or witness shall not be compelled to produce a report or document made or received in his or her official capacity or containing confidential information in relation to such offence, or to make a statement in relation to such a report, document or information.
- (3) Subsection (1) or (2) does not apply to the extent that the defendant satisfies the court that it is in the interest of justice in the particular case that the information be given, the report or document produced or the statement made, as the case may be.

## **26 Power to prohibit publication of proceedings**

- (1) In proceedings for an offence against Division 1 of Part II:
- (a) a magistrate hearing and determining the matter summarily or conducting the examination of witnesses; or
  - (b) the Judge presiding at the court to which a person has been committed for trial or sentence,

may make an order (which shall remain in force for such time as the magistrate or Judge specifies in the order) prohibiting the publication of the whole or any part of such proceedings and the name and address of any witness.

- (2) An application for an order under subsection (1) may be made to the magistrate or Judge in the magistrate's or Judge's chambers in the presence of only such persons as the magistrate or Judge thinks fit.
- (3) On the hearing of the application under subsection (2) the magistrate or Judge may receive and act on such information as he or she thinks fit.
- (4) When considering an application under subsection (2) regard shall be had to:
  - (a) the safety of any person;
  - (b) the extent to which the detection of offences of a like nature may be affected; and
  - (c) the need to guarantee the confidentiality of information given by an informer.
- (5) A person who contravenes an order made under subsection (1) is guilty of an offence.

Maximum penalty: 85 penalty units or imprisonment for 2 years.

## **27 Certain proceedings relating to sentence**

- (1) A court before which a person is found guilty of an offence against this Act may, with the consent of the prosecution and the defendant, determine the question of sentence otherwise than in open court.
- (2) An application to have the question of sentence determined otherwise than in open court may be made to the Judge or magistrate constituting the court before or by which the person is found guilty, in the Judge's or magistrate's chambers.
- (3) In determining the question of sentence pursuant to this section:
  - (a) the proceedings shall be as prescribed by the rules of the court or, if no procedure is so prescribed, as the court directs;
  - (b) the proceedings shall be heard in the presence of only such persons as the court thinks fit;
  - (c) the court may receive and act on such information as it thinks fit;

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- (d) no transcript shall be made of the proceedings unless directed by the court; and
  - (e) no notice or report relating to the proceedings shall be published and no record of the proceedings (other than the order as to the sentence to be imposed) shall be available for search by a person except by direction of the court or, in the absence or incapacity of the Judge or magistrate who constituted the court, another Judge or, as the case may be, another magistrate.

## 28 Fines

A person found guilty of an offence against Division 1 of Part II, in addition to any other penalty, may be ordered to pay a fine the amount of which is not limited by section 16 of the *Sentencing Act* and in default of payment of that fine the person may be ordered to be imprisoned for not longer than 3 years notwithstanding that it may extend the term of imprisonment beyond the longest term to which the person might be sentenced to imprisonment without fine.

## 29 Analyst's certificate

In proceedings for an offence against this Act, the production of a certificate purporting to be signed by an analyst in relation to an analysis or examination made by the analyst is, without proof of the analyst's signature, or that he or she is an analyst, evidence of:

- (a) the identity and quantity of the thing analyzed or examined; and
- (b) the result of the analysis or examination and of the matters relevant to the proceedings stated in the certificate,

and, in the absence of evidence to the contrary, is conclusive evidence.

## 31 Possession by member of Police Force etc.

- (1) Notwithstanding anything contained in this Act, the possession of a dangerous drug or precursor by a member of the Police Force, or by a person authorized by a member of the Police Force to have that dangerous drug or precursor in the person's possession, is not an offence if that dangerous drug or precursor:
  - (a) was seized or obtained in:
    - (i) the execution of the duties; or
    - (ii) the exercise of the powers,



of that member or other person under this Act or any other law in force in the Territory;

- (b) is in the member's or person's possession pending the institution and hearing of proceedings for an offence against this Act or any other law in force in the Territory; or
  - (c) is in the member's or person's possession for a purpose associated with the administration of this Act.
- (2) A dangerous drug or precursor shall be deemed to be in the possession of a member of the Police Force or person for a purpose associated with the administration of this Act if it is held by the member or person for analysis for the purpose of proceedings for an offence against this Act or of any other law in force in the Territory or of qualifying the member or person to give evidence in those proceedings.
- (3) Where proceedings for an offence against this Act have commenced, a member of the Police Force who has obtained a dangerous drug or precursor and a person who has obtained a dangerous drug or precursor in pursuance of an authority given under section 32 shall not, by reason only of that circumstance, be taken to be a party to an offence against this Act or be guilty of an offence against this Act, nor shall the evidence of that member or person be taken in the proceedings to be the evidence of an accomplice.

## **32 Undercover operations**

- (1) A member of the Police Force of or above the rank of Commander may in writing, subject to such conditions as he or she thinks fit, authorize a member of the Police Force below that rank, or a person who is not a member of the Police Force, to acquire or supply for the purpose of detecting the commission of an offence against this Act, or have in the person's possession for that purpose, a dangerous drug or precursor.
- (2) Without limiting the generality of section 31, a member of the Police Force or person authorized under subsection (1) may (in the case of a person authorized under subsection (1), while acting in pursuance of that authority) acquire or supply and possess a dangerous drug or precursor for the purpose of detecting the commission of an offence against this Act.

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- (3) A person who acquires a dangerous drug or precursor in pursuance of an authority under subsection (1) shall, as soon as practicable after so acquiring it, deliver it to a member of the Police Force, unless the person is also authorized under that subsection to supply the drug or precursor and he or she supplies it in accordance with the authorization.

Maximum penalty: 17 penalty units or imprisonment for 2 years.

**33 Authorisation to possess, cultivate or manufacture dangerous drug or precursor**

- (1) The Chief Health Officer may, in writing, authorise a person to possess or manufacture a dangerous drug or precursor, or cultivate a prohibited plant, for the purpose of research, instruction, analysis or study.
- (2) An authorisation under subsection (1) is subject to the conditions, if any, specified in the authorisation.
- (3) A person may lawfully possess or manufacture a dangerous drug or precursor, or cultivate a prohibited plant, in accordance with an authorisation under subsection (1).
- (4) If an authorisation is given under subsection (1) to a body corporate, a person who is directly involved in the research, instruction, analysis or study to which the authorisation relates may lawfully possess or manufacture the dangerous drug or precursor, or cultivate the prohibited plant, in accordance with the authorisation.

**34 Forfeiture of drugs, precursors etc.**

- (1) On the finding of guilt of a person for an offence against this Act, any dangerous drug or precursor in respect of which the finding of guilt is made is forfeited to the Crown.
- (2) Where a person charged with an offence against this Act is tried but not found guilty of any offence on the charge, the court before which the person was charged may order that a dangerous drug or precursor, or thing alleged to be a dangerous drug or precursor, in respect of which the offence was alleged to have been committed be forfeited to the Crown and on the order being so made it is forfeited accordingly.
- (3) Where a person is found guilty of an offence against this Act, the court by which the person is found guilty may, on application to it made on behalf of the Crown, order that any vehicle, vessel, aircraft, other conveyance, money, money's worth, valuable

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security, acknowledgement, note or other thing that relates to that offence be forfeited to the Crown.

- (4) Where an application referred to in subsection (3) is made, a person who has an interest in the vehicle, vessel, aircraft, other conveyance, money, money's worth, valuable security, acknowledgement, note or other thing to which the application relates is entitled to:
  - (a) such notice of the application as the court thinks fit; and
  - (b) to appear and be heard on the application.
- (5) Where any vehicle, vessel, aircraft, other conveyance, money, money's worth, valuable security, acknowledgement, note or other thing that is liable to forfeiture under subsection (2) or (3) is received or acquired by a person who was not a party to the commission of the offence by virtue of which it is liable to forfeiture, an order for its forfeiture may be made unless that person proves that he or she:
  - (a) gave valuable consideration for it; and
  - (b) at the time of receiving or acquiring it had no reason to suspect the circumstances by virtue of which it is liable to forfeiture.
- (6) A court empowered under this section to order the forfeiture of any vehicle, vessel, aircraft, other conveyance, money, money's worth, valuable security, acknowledgement, note or other thing may order that it be released or returned to a person referred to in subsection (5) or any other person.
- (7) Where an order is made under subsection (3), a person referred to in subsection (5) may appeal against the order of the court as if the person were a defendant.
- (8) Where any vehicle, vessel, aircraft, other conveyance, money, money's worth, valuable security, acknowledgement, note or other thing that is forfeited under subsection (2) is in the possession or control of, or held at the direction of, a person other than the person found guilty, that other person shall, on production to the person of a copy of the order made under that subsection, immediately pay the money or deliver the money's worth, valuable security, acknowledgement, note or other thing to the Crown.

Maximum penalty: 85 penalty units or imprisonment for 2 years.

- (9) On payment or delivery being made in accordance with subsection (8), the liability to the person found guilty, or to any other person, of the person making the payment or delivery is, to the extent of that payment or delivery, discharged.
- (10) A thing forfeited to the Crown under this section shall be dealt with in such manner as the Minister directs.
- (11) Where a court makes an order under subsection (3), the Judge or magistrate constituting the court shall make and sign a minute or memorandum of the order.
- (12) A minute or memorandum of an order made under subsection (11) has the force and effect of a judgment of the court and the like proceedings (including proceedings in bankruptcy) may be taken on the minute or memorandum as if the order had been a judgment of the court:
- (a) in favour of the Crown (as plaintiff and the owner of the forfeited vehicle, vessel, aircraft, other conveyance, money, money's worth, valuable security, acknowledgement, note or other thing); and
  - (b) against the person found guilty as defendant.
- (13) For the purposes of this section, any vehicle, vessel, aircraft, other conveyance, money, money's worth, valuable security, acknowledgement, note or other thing shall be taken to relate to an offence if it:
- (a) is an article referred to in section 120BA of the *Police Administration Act*;
  - (b) was used in the commission of an offence against this Act;
  - (c) was received or acquired directly or indirectly as or from the proceeds or part of the proceeds of the sale of a dangerous drug, precursor; or
  - (d) entitles a person, or is evidence that a person is entitled, to receive money or money's worth as the proceeds or part of the proceeds of the sale of a dangerous drug or precursor,
- whether or not the money, money's worth, valuable security, acknowledgement, note or other thing is or was at any time owned by or in the possession of the person found guilty.

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**35 Return of seized items**

- (1) Where a thing is seized under this Act, is not destroyed under section 19B, 19P or 19PB and no proceedings are instituted for an offence relating to it, the Commissioner of Police:
  - (a) shall return it to the person whom the Commissioner believes, on reasonable grounds, is its owner and is entitled by law to have it in the person's possession; or
  - (b) shall, by notice in writing, where the Commissioner is not satisfied as to whom it should be returned, require the person from whom it was seized, or a person appearing to the Commissioner to be its likely owner, to claim delivery of it.
- (2) The Commissioner of Police shall not return a thing seized under this Act unless satisfied that it is not a dangerous drug, precursor or other thing the possession of which by the person to whom the Commissioner would otherwise return it would constitute an offence.
- (3) If no claim is made within 21 days after the date of service of a notice under subsection (1)(b), or after reasonable inquiry the person to whom the notice is addressed cannot be found, the thing seized is forfeited to the Crown and shall be disposed of in the manner directed by the Minister.
- (4) Where a person served with a notice under subsection (1)(b) makes a claim for the delivery to the person of a thing seized or, in the opinion of the Commissioner of Police, the owner is not entitled by law to have the thing seized in the owner's possession, the Commissioner shall refer the claim or question to the Court of Summary Jurisdiction and the court may deal with the matter as if, in either case, it were a claim under section 130B of the *Justices Act* by a claimant of property.

**35A Detention for purpose of performing search of body cavities etc.**

- (1) If a member of the Police Force has a reasonable suspicion that a person has swallowed a dangerous drug, or may be concealing a dangerous drug on or in his or her person, the member may apply to a judge of the Supreme Court for an order under subsection (2).
- (2) A judge of the Supreme Court may order that a person be detained for the purpose of enabling an intimate procedure specified in paragraph (a), (b), (c) or (k) of the definition of *intimate procedure* under the *Police Administration Act* to be performed under section 145 of that Act for the purpose of locating the presence of

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the drug, if he or she is satisfied that the member has reasonable grounds for the suspicion referred in subsection (1).

- (3) An application may be made under subsection (1) in relation to a person although the person has not been charged with an offence against this Act or any other Act.
- (4) An order made under subsection (2) in relation to a person is taken to be an approval under section 145(4) of the *Police Administration Act* in relation to the person and subsections (7) to (14) (inclusive) of that section apply accordingly.
- (5) For the purposes of this section and section 145 of the *Police Administration Act* in relation to an order under this section, a reference in paragraph (k) of the definition of *intimate procedure* in that Act to the taking of an X-ray is taken to include a reference to taking an ultrasound, or an electromagnetic radiation or radiography recording, scan or test.

### **36 Power of police**

The provisions of this Part relating to the power of a member of the Police Force (including the Commissioner of Police) are in addition to, and not in derogation of, any other power he or she may have under any other law in force in the Territory.

#### **36A Declared drug trafficker**

- (1) The Director of Public Prosecutions may apply to the Supreme Court for a declaration that a person is a drug trafficker.
- (2) An application under subsection (1) may be made at the time of a hearing for an offence or at any other time.
- (3) On hearing an application by the Director of Public Prosecutions under subsection (1), the court must declare a person to be a drug trafficker if:
  - (a) the person has been found guilty by the court of an offence referred to in subsection (6) that was committed after the commencement of this section; and
  - (b) subject to subsection (5), in the 10 years prior to the day on which the offence was committed (or the first day on which the offence was committed, as the case requires), the person has been found guilty:
    - (i) on 2 or more occasions of an offence corresponding to an offence referred to in subsection (6); or

- (ii) on one occasion of 2 (or more) separate charges relating to separate offences of which 2 or more correspond to an offence or offences referred to in subsection (6).
- (4) An offence referred to in subsection (3)(b):
  - (a) may have been committed either before or after the commencement of this section; and
  - (b) may have been tried either summarily or on indictment.
- (5) If, during the period of 10 years referred to in subsection (3), the person served a term (or more than one term) of imprisonment for an offence corresponding to an offence referred to in subsection (6), the 10 year period is extended by the total length of time the person served in imprisonment.
- (6) The following are offences relevant for the purposes of subsection (3):
  - (a) an offence under section 5;
  - (b) an offence under section 7 that is punishable under section 7(2)(a) or (b);
  - (c) an offence under section 8;
  - (d) an offence under section 9 that is punishable under section 9(2)(a), (b), (d) or (e);
  - (e) conspiring with another person to commit an offence mentioned in paragraphs (a) to (d) inclusive;
  - (f) an offence against a law of a State or another Territory corresponding to an offence mentioned in paragraphs (a) to (e) inclusive;
  - (g) an offence against section 233B of the *Customs Act 1901* (Cth);
  - (h) an offence against Division 307 of the *Criminal Code* (Cth).

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**37 Penalty guidelines**

(1) In this section:

***aggravating circumstance*** means, subject to subsection (2):

- (a) a second or subsequent offence against:
  - (i) this Act; or
  - (ii) a provision of:
    - (A) a law in force in the Territory before the commencement of this Act; or
    - (B) a law of the Commonwealth or a State or another Territory of the Commonwealth (whether the offence was committed before or after the commencement of this Act),

which, in the opinion of the court, is the equivalent of or a similar offence to an offence against a provision of this Act;

- (aa) an offence against Part II of this Act that was committed on drug premises;
- (b) an offence against this Act in circumstances involving a prison or police prison or a prisoner (within the meaning of the *Prisons (Correctional Services) Act*); or
- (c) an offence against section 5 or 9 committed on or in licensed premises, a school, playground, youth centre, video facility or public swimming pool.

***commercial gain***, in relation to supplying dangerous drugs, means to supply the dangerous drugs for fee, reward or consideration or in expectation of a fee, reward or consideration.

***drug dependent person*** means a person who:

- (a) as a result of the repeated administration of a dangerous drug:
  - (i) demonstrates impaired control; or
  - (ii) exhibits drug-seeking behaviour that suggests impaired control,

over the person's continued use of a dangerous drug; and



- (b) when the administration of a dangerous drug to the person ceases, suffers or is likely to suffer mental or physical distress or disorder.

***licensed premises*** means premises in respect of which a licensee is licensed under the *Liquor Act* and includes all buildings and land (including car parks) used in connection with those premises, whether or not forming part of the premises.

***playground*** means an outdoor facility intended for recreational purposes to which at the material time the public have or are permitted to have access, whether on payment or otherwise, and with any portion of the facility containing apparatus intended for the recreation of children including, but not limited to, slides, swings and see-saws, and includes any car park appurtenant to the facility, whether or not being part of the land on which the facility is situated.

***public swimming pool*** means a swimming pool to which at the material time the public have or are permitted to have access, whether on payment or otherwise, and includes a car park appurtenant to the swimming pool, whether or not being part of the land on which the swimming pool is situated.

***school*** means a school or institution at which a person or body of persons provides, or offers to provide, courses of instruction in primary or secondary education and includes the school grounds and any car park appurtenant to the school or school grounds, whether or not being part of the land on which the school is or school grounds are situated.

***video facility*** means a facility legally accessible to persons who have not attained the age of 18 years intended primarily for use by persons in playing pinball or video machines for amusement.

***youth centre*** means an indoor or outdoor recreation facility which regularly provides athletic, sporting, civic or cultural activities:

- (a) intended primarily for use by persons who have not attained the age of 18 years; or
- (b) which at the material time was used primarily by such persons,

including, but not limited to, a gymnasium, roller skating rink, bicycle track and discotheque, and a car park appurtenant to the facility, whether or not being part of the land on which the facility is situated.

- (2) In sentencing a person for an offence against this Act the court shall, in the case of an offence for which the maximum penalty provided by this Act (with or without a fine) is:
- (a) 7 years imprisonment or more; or
  - (b) less than 7 years imprisonment but the offence is accompanied by an aggravating circumstance,
- impose a sentence requiring the person to serve a term of actual imprisonment unless, having regard to the particular circumstances of the offence or the offender (including the age of the offender where the offender has not attained the age of 21 years) it is of the opinion that such a penalty should not be imposed.
- (3) Where a court imposes a sentence requiring the serving of a period of actual imprisonment for an offence against this Act, it shall not impose a sentence of less than actual imprisonment for 28 days.
- (4) Notwithstanding any other law of the Territory, where a person already serving a period of actual imprisonment is sentenced by a court to serve a period of actual imprisonment for an offence against this Act committed by the person while serving the first-mentioned period, the further period of actual imprisonment shall be served consecutively to the period of imprisonment currently being served by the person.
- (5) Where, in proceedings for an offence against section 9 (other than an offence in relation to a commercial quantity of a dangerous drug specified in Schedule 1 or 2 or in circumstances referred to in section 9(2)(f)(ii)) it is proved to the satisfaction of the court that the offender is a drug dependent person, that fact shall be taken to be a circumstance of the offender for the purposes of subsection (2).
- (6) In sentencing a person for an offence against section 7, 8 or 9, the court is to presume that:
- (a) if the amount of the dangerous drugs to which the offence relates is a traffickable quantity – the person intended to supply the dangerous drugs; and
  - (b) if the amount of the dangerous drugs to which the offence relates is a commercial quantity – the person intended to supply the dangerous drugs for commercial gain.
- (7) Subsection (6) applies unless the contrary is proved.

**38 Punishment of attempts**

- (1) Section 278 of the Criminal Code does not apply to or in relation to an offence against this Act.
- (2) A person who attempts to commit an offence against this Act is guilty of an offence and is liable to the same punishment and forfeiture as a person who commits the intended offence.

**39 Corporations**

- (1) Where a corporation contravenes or fails to comply with a provision of this Act, each person, being a director, or an officer concerned in the management, of the corporation, shall be deemed to have contravened the same provision and be liable to the same extent as the corporation in respect of the contravention, unless the person satisfies the court that:
  - (a) the corporation contravened the provision without the person's knowledge;
  - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
  - (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against, and an order or finding of guilt may be made in respect of the person pursuant to subsection (1), whether or not the corporation has been proceeded against or an order or finding of guilt has been made in respect of the corporation.
- (3) Nothing in subsection (1) prejudices or affects a liability imposed by this Act on a corporation by which a contravention or failure to which that subsection applies is actually committed.

**40 Evidentiary**

In respect of a charge against a person of having committed an offence against this Act:

- (a) it is not necessary to particularize the dangerous drug or precursor in respect of which the offence is alleged to have been committed;
- (b) that person is liable to be found guilty as charged notwithstanding that the identity of the dangerous drug or precursor to which the charge relates is not proved to the

satisfaction of the court that hears the charge if the court is satisfied that the thing to which the charge relates was at the material time a dangerous drug or precursor;

(c) proof that a dangerous drug or precursor was at the material time in or on a place of which the person was:

(i) the occupier; or

(ii) concerned in the management or control,

is evidence that the drug or precursor was then in the person's possession unless it is shown that the person then neither knew nor had reason to suspect that the drug or precursor was in or on that place;

(d) the operation of section 32 of the Criminal Code is excluded unless that person shows his or her honest and reasonable belief in the existence of a state of things material to the charge; and

(e) the burden of proving an authorization to do an act or make an omission lies on the person.

#### **41 Receiving or possessing some only of property alleged**

Where, in relation to a charge of having committed an offence against section 6, a magistrate or a jury finds specially that the person committed the offence in respect of some, but not all, of the property alleged by the prosecution, the person is not by reason only of the finding entitled to be acquitted or have the charge dismissed but rather shall be found guilty of the offence in respect of the property so found.

#### **42 Exemptions**

(1) Notwithstanding anything contained in this Act, a person who:

(a) is in possession of a dangerous drug which has been supplied to that person by or on the lawful prescription of a medical practitioner, dentist, optometrist or veterinarian; or

(b) administers a dangerous drug to another person in accordance with the lawful directions of a medical practitioner, dentist or optometrist,

is not guilty of an offence against this Act.

- (2) In this section *medical practitioner* includes a person who is entitled to practise medicine under a law in force in a State or another Territory of the Commonwealth.

#### **42A Acquisition**

If, but for this section, property is acquired under this Act otherwise than on just terms:

- (a) the person from whom the property is acquired is entitled to receive just compensation for the acquisition; and
- (b) a court of competent jurisdiction may determine the amount of the compensation or make the orders necessary to ensure that the compensation is on just terms.

#### **43 Regulations**

- (1) The Administrator may make regulations under this Act.
- (2) The Regulations may provide for the following:
  - (a) amend a Schedule to this Act by adding a substance or plant (including a part of a plant) to the Schedule and specifying the relevant traffickable quantity and commercial quantity in respect of that substance or plant;
  - (b) provide for notices and the form of such notices to be posted on licensed premises or particular parts of licensed premises for the purposes of this Act;
  - (c) make provision for the safe disposal of hypodermic syringes and needles;
  - (d) for an offence against the Regulations – a maximum penalty of 17 penalty units.

#### **44 Transitional provision for increased penalty for supplying dangerous drug in indigenous community**

To avoid doubt, the amendment of section 5 by the *Misuse of Drugs Amendment Act 2008* applies only to an offence committed after the commencement of that Act.

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**Schedule 1**

section 3

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Column 1 Dangerous drug	Column 2 Traffickable quantity	Column 3 Commercial quantity
Heroin	2.00 G	40.00 G
Cocaine	2.00 g	40.00 g
Phencyclidine	2.00 g	40.00 g
Lysergic acid	0.002 g	0.10 g
Lysergide	0.002 g	0.10 g

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**Schedule 2**

section 3

COLUMN 1 Dangerous drug or prohibited plant	COLUMN 2 Traffickable quantity	COLUMN 3 Commercial quantity
Acetorphine	2.00 g	100.00 g
Acetyl-a-methylfentanyl	0.005 g	0.25 g
Acetyldihydrocodeine, except when compounded with one or more other medicaments:	2.00 g	100.00 g
(a) in divided preparations containing not more than 100 mg of acetyldihydrocodeine per dosage unit; or		
(b) in undivided preparations with a concentration of not more than 2.5% of acetyldihydrocodeine		
Acetylmethadol	2.00 g	100.00 g
Acetylmorphines	2.00 g	100.00 g
Alfentanil	0.005 g	0.25 g
Alkoxyamphetamines and bromo- substituted alkoxyamphetamines, except where separately specified in this Schedule	0.50 g	25.00 g
Alkoxyphenethylamines and alkyl- substituted alkoxyphenethylamines, except where separately specified in this Schedule	0.50 g	25.00 g
Alkythioamphetamines	0.50 g	25.00 g
Allylprodine	2.00 g	100.00 g
Alphacetylmethadol	10.00 g	500.00 g
Alphameprodine	0.20 g	10.00 g
Alphamethadol	0.20 g	10.00 g
Alphaprodine	25.00 g	1.25 kg
2-Amino-1-(2,5-dimethoxy-4-methyl) phenylpropane (STP, DOM)	0.50 g	10.00 g

Amphetamine	2.00 g	100.00 g
Amylobarbitone	20.00 g	1.00 kg
Anileridine	25.00 g	1.25 kg
Benzethidine	10.00 g	500.00 g
Benzylmorphine	5.00 g	250.00 g
Benzylmorphine (3-benzylmorphine)	5.00 g	250.00 g
1-Benzylpiperazine	2.00 g	100.00 g
Betacetylmethadol	5.00 g	250.00 g
Betameprodine	5.00 g	250.00 g
Betamethadol	5.00 g	250.00 g
Betaprodine	5.00 g	250.00 g
Bezitramide	5.00 g	250.00 g
4-Bromo-2,5-dimethoxyamphetamine	0.05 g	2.50 g
4-Bromo-3,5-dimethoxyamphetamine	0.50 g	25.00 g
4-Bromo-2,5-dimethoxyphene-thylamine (BDMPEA)	0.50 g	25.00 g
3-Bromo-4-methoxyamphetamine	0.50 g	25.00 g
4-Bromo-3-methoxyamphetamine	0.50 g	25.00 g
Bufotenine	2.00 g	100.00 g
Bufotenine and its derivatives having hallucinogenic properties	2.00 g	100.00 g
Butobarbitone	20.00 g	1.00 kg
Butorphanol	2.00 g	100.00 g
Cannabis oil	1.00 g	25.00 g
Cannabis plant	not less than 5 nor more than 19 plants	not less than 20 plants
Cannabis plant material (being any part of the Cannabis plant, including the flowering or fruiting tops, leaves, stalks and seeds)	50.00 g	500.00 g
Cannabis resin	10.00 g	100.00 G
Cannabis seed	10.00 g	100.00 g
Cathinone	2.00 g	100.00 g



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Clonitazene	5.00 g	250.00 g
Coca Leaf	250.00 g	5.00 kg
Codeine except when compounded with one or more other medicaments:	10.00 g	500.00 g
(a) in divided preparations containing 30 mg or less of codeine per dosage unit; or		
(b) in undivided preparations containing 1% or less of codeine		
Codeine-N-oxide	10.00 g	500.00 g
Codoxime	10.00 g	500.00 g
Concentrate of Poppy Straw (the material arising when poppy straw has entered into a process for concentration of its alkaloids)	250.00 g	5.00 kg
4-Cyano-2-dimethylamino-4, 4-diphenylbutane (Methadone intermediate)	2.00 g	100.00 g
4-Cyano-1-methyl-4-phenylpiperidine (Pethidine intermediate A)	10.00 g	500.00 g
Cyclobarbitone	20.00 g	1.00 kg
Desomorphine	2.00 g	100.00 g
Dexamphetamine	2.00 g	100.00 g
Dextromoramide	2.00 g	100.00 g
Dextropropoxyphene, except when:	27.00 g	1.35 KG
(a) in divided preparations containing 135 mg or less of dextropropoxyphene per dosage unit; or		
(b) in liquid preparations containing 2.5% or less of dextropropoxyphene		
Diampromide	5.00 g	250.00 g
Diethylthiambutene	5.00 g	250.00 g
N,N-Diethyltryptamine (DET)	2.00 g	100.00 g

Difenoxin, except in preparations containing, per dosage unit. 0.5 mg or less of difenoxin and a quantity of atropine sulphate equivalent to at least 5% of the dose of difenoxin	2.00 g	100.00 g
Dihydrocodeine, except when compounded with one or more other medicaments:	10.00 g	500.00 g
(a) in divided preparations containing not more than 100 mg of dihydrocodeine per dosage unit; or		
(b) in undivided preparations with a concentration of not more than 2.5% of dihydrocodeine		
Dihydromorphine	10.00 g	500.00 g
Dimenoxadol	10.00 g	500.00 g
Dimepheptanol	10.00 g	500.00 g
2,4-Dimethoxyamphetamine	0.50 g	25.00 g
3,4-Dimethoxyamphetamine	0.50 g	25.00 g
2,5-Dimethoxy-4-bromoamphetamine (DOB)	0.50 g	25.00 g
3,4-Dimethoxy-5-ethoxyamphetamine	0.50 g	25.00 g
2,5-Dimethoxy-4-ethoxyamphetamine	0.50 g	25.00 g
4,5-Dimethoxy-2-ethoxyamphetamine	0.50 g	25.00 g
2,5-Dimethoxy-4-ethyl- $\alpha$ -methylphenylethylamine (DOET)	0.50 g	25.00 g
2,5-Dimethoxy-4-methylamphetamine and other substances structurally derived from methoxyphenylethylamine having hallucinogenic properties	2.00 g	100.00 g
2,3-Dimethoxy-4,5-methylenedioxyamphetamine	0.50 g	25.00 g
2,5-Dimethoxy-3,4-methylenedioxyamphetamine	0.50 g	25.00 g
2,5-Dimethoxy- $\alpha$ -methylphenylethylamine (DMA)	0.50 g	25.00 g
3,4-Dimethoxyphenylethylamine	0.50 g	25.00 g
3-(2-Dimethylaminoethyl)-4-hydroxyindole (Psilocine, Psilotsin)	0.10 g	5.00 g

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3-(1,2-Dimethylheptyl)-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo (b,d)pyran (DMHP)	2.00 g	100.00 g
Dimethylthiambutene	20.00 g	1.00 kg
N,N,-Dimethyltryptamine (DMT)	2.00 g	100.00 g
N:N-Dimethyltryptamine and its derivatives having hallucinogenic properties	2.00 g	100.00 g
Dioxaphetyl Butyrate	2.00 g	100.00 g
Diphenoxylate, except in preparations containing, per dosage unit, 2.5 mg or less of diphenoxylate and a quantity of atropine sulphate equivalent to at least 1% of the dose of diphenoxylate	2.00 g	100.00 g
Dipipanone	10.00 g	500.00 g
Drotebanol	2.00 g	100.00 g
Ecgonine	10.00 g	1.00 kg
Ethylamphetamine	2.00 g	100.00 g
4,5-Ethylenedioxy-3-methoxyamphetamine	0.50 g	25.00 g
Ethylmethylthiambutene	10.00 g	500.00 g
Ethylmorphine, except when compounded with one or more other medicaments:	2.00 g	100.00 g
(a) in divided preparations containing not more than 100 mg of ethylmorphine per dosage unit; or		
(b) in undivided preparations with a concentration of not more than 2.5% of ethylmorphine		
Eticyclidine (PCE)	2.00 g	100.00 g
Etonitazene	5.00 g	250.00 g
Etorphine	5.00 g	250.00 g
Etoxidine	5.00 g	250.00 g
Fenetylline	2.00 g	100.00 g
Fentanyl	0.005 g	0.25 g
Furethidine	1.00 g	50.00 g

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Harmaline	2.00 g	100.00 g
Harmine	2.00 g	100.00 g
3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d)pyran (Parahexyl)	2.00 g	100.00 g
Hydrocodone	2.00 g	100.00 g
Hydromorfinol	2.00 g	100.00 g
Hydromorphone	2.00 g	100.00 g
B-Hydroxyfentanyl	0.005 g	0.25 g
B-Hydroxy-3-methylfentanyl	0.005 g	0.25 g
Hydroxypethidine	5.00 g	250.00 g
4-Hydroxybutanoic acid	2.00g	100.00g
Isomethadone	2.00 g	100.00 g
Ketobemidone	2.00 g	100.00 g
Ketamine	0.002g	0.10 g
Khat leaf	250.00 g	5.00 kg
Levamphetamine	2.00 g	100.00 g
Levomethamphetamine	2.00 g	100.00 g
Levomethorphan	2.00 g	100.00 g
Levomoramide	2.00 g	100.00 g
Levophenacilmorphan	2.00 g	100.00 g
Levorphanol	1.00 g	50.00 g
Mecloqualone	60.00 g	3.00 kg
Mescaline – see 3,4,5-Trimethoxyphenethylamine		
Mescaline and other substances structurally derived from methoxyphenylethylamine having hallucinogenic properties	7.50 g	375.00 g
Metazocine	7.00 g	350.00 g
Methadone	2.00 g	100.00 g
Methamphetamine	2.00 g	100.00 g

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Methaqualone	50.00 g	2.50 kg
Methcathinone	2.00 g	100.00 g
2-Methoxy-3,4-methylenedioxyamphetamine	50.00 g	2.50 kg
2-Methoxy-4,5-methylenedioxyamphetamine	0.50 g	25.00 g
4-Methoxy-2,3-methylenedioxyamphetamine	0.50 g	25.00 g
5-Methoxy-3,4-methylenedioxy- $\alpha$ -methylphenylethylamine (MMDA)	0.50 g	25.00 g
2-Methoxy-3,4-methylenedioxyphenylethylamine	0.50 g	25.00 g
3-Methoxy-4,5-methylenedioxyphenylethylamine	0.50 g	25.00 g
4-Methoxy- $\alpha$ -methylphenylethylamine (PMA)	0.50 g	25.00 g
4-Methoxyphenylethylamine	0.50 g	25.00 g
3,4-Methylenedioxyamphetamine (MDA)	0.50 g	25.00 g
3,4-Methylenedioxy-N, $\alpha$ -dimethylphenylethylamine (MDMA)	0.50 g	25.00 g
3,4-Methylenedioxy-N-ethylamphetamine (MDE)	0.50 g	25.00 g
2-Methyl-3-morpholino-1,1-diphenylpropane Carboxylic Acid (Moramide intermediate)	8.00 g	400.00 g
1-Methyl-4-phenylpiperidine-4-carboxylic acid (Pethidine intermediate C)	10.00 g	500.00 g
1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP)	2.00 g	100.00 g
Methylamphetamine	2.00 g	100.00 g
Methyl-desorphan	2.00 g	100.00 g
Methyldihydromorphine	2.00 g	100.00 g
3,4-Methylenedioxyamphetamine	0.50 g	25.00 g
3-Methylfentanyl	0.005 g	0.25 g
$\alpha$ -Methylfentanyl	0.005 g	0.25 g
Methylphenidate	2.00 g	100.00 g
3-Methylthiofentanyl	0.005 g	0.25 g
Metopon	2.00 g	100.00 g

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Morpheridine	2.00 g	100.00 g
Morphine	2.00 g	100.00 g
Morphine Methobromide	2.00 g	100.00 g
Morphine-N-oxide	2.00 g	100.00 g
Muscimol	2.00 g	100.00 g
Myrophine	20.00 g	1.00 kg
Nabilone	0.40 g	20.00 g
Nicocodine, except when compounded with one or more other medicaments:  in divided preparations containing not more than 100 mg of nicocodine per dosage unit; or  in undivided preparations with a concentration of not more than 2.5% of nicocodine	2.00 g	100.00 g
Nicodicodine, except when compounded with one or more other medicaments:	2.00 g	100.00 g
(a) in divided preparations containing not more than 100 mg of nicodicodine per dosage unit; or		
(b) in undivided preparations with a concentration of not more than 2.5% of nicodicodine		
Nicomorphine	2.00 g	100.00 g
Noracylmethadol	2.00 g	100.00 g
Noracymethadol	2.00 g	100.00 g
Norcodeine, except when compounded with one or more other medicaments:	2.00 g	100.00 g
(a) in divided preparations containing not more than 100 mg of norcodeine per dosage unit; or		
(b) in undivided preparations with a concentration of not more than 2.5% of norcodeine		
Norlevorphanol	2.00 g	100.00 g
Normethadone	5.00 g	250.00 g
Normorphine	20.00 g	1.00 kg

Norpipanone	10.00 g	500.00 g
Opium in any form, except the alkaloids noscapine and papaverine	20.00 g	100.00 g
Oxycodone	5.00 g	250.00 g
Oxymorphone	2.00 g	100.00 g
Para-fluorofentanyl	0.005 g	0.25 g
Parahexyl	–	–
Pentazocine	20.00 g	1.00 kg
Pentobarbitone	20.00 g	1.00 kg
Pethidine	10.00 g	500.00 g
Phenadoxone	10.00 g	500.00 g
Phenampromide	10.00 g	500.00 g
Phenazocine	1.00 g	50.00 g
Phendimetrazine	5.00 g	250.00 g
Phenmetrazine	5.00 g	250.00 g
Phenomorphane	5.00 g	250.00 g
Phenoperidine	1.00 g	50.00 g
1-Phenylethyl-4-phenyl-4-acetoxypiperidine (PEPAP)	2.00 g	100.00 g
4-Phenylpiperidine-4-carboxylic Acid Ethyl Ester (Pethidine intermediate B)	10.00 g	500.00 g
Pholcodine, except when compounded with one or more other medicaments:	5.00 g	250.00 g
(a) in divided preparations containing not more than 100 mg of pholcodine per dosage unit; or		
(b) in undivided preparations with a concentration of not more than 2.5% of pholcodine		
Piminodine	10.00 g	500.00 g
Piritramide	1.00 g	50.00 g
Proheptazine	1.00 g	50.00 g
Prohibited plant, other than elsewhere described in this Schedule	not less than 5 nor more than 19 plants	not less than 20 plants

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Properidine	25.00 g	1.25 kg
Propiram	10.00 g	500.00 g
Psilocybin and its derivatives having hallucinogenic properties	0.10 g	5.00 g
Quinalbarbitone	20.00 g	1.00 kg
Racemethorphan	2.00 g	100.00 g
Racemoramide	2.00 g	100.00 g
Racemorphan	2.00 g	100.00 g
Rolicyclidine (PHP, PCPY)	2.00 g	100.00 g
Salvia Divinorum, including extracts and other substances structurally derived from Salvia Divinorum and having hallucinogenic properties	7.50 g	375.00 g
Secbutobarbitone	20.00 g	1.00 kg
Sufentanil	0.005 g	0.25 g
Tenocyclidine (TCP)	2.00 g	100.00 g
Tetrahydrocannabinols and their alkyl homologues except:		
(a) when separately specified in this Schedule;		
(b) in hemp seed oil, containing 50 mg/kg or less of tetrahydrocannabinols, when labelled "Not for internal use" or "Not to be taken"; or		
(c) in products for purposes other than internal human use containing 50 mg/kg or less of tetrahydrocannabinols.		
2,3,4,5-Tetramethoxyamphetamine	0.50 g	25.00 g
Thebacon	2.00 g	100.00 g
Thebaine	2.00 g	100.00 g
Thiofentanyl	0.005 g	0.25 g
Tilidine	20.00 g	1.00 kg



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1-(3-Trifluoromethylphenyl) piperazine and other piperazine derivatives	2.00 g	100.00 g
Trimeperidine	10.00 g	500.00 g
2,3,4-Trimethoxyamphetamine	0.50 g	25.00 g
2,3,5-Trimethoxyamphetamine	0.50 g	25.00 g
2,3,6-Trimethoxyamphetamine	0.50 g	25.00 g
2,4,5-Trimethoxyamphetamine	0.50 g	25.00 g
2,4,6-Trimethoxyamphetamine	0.50 g	25.00 g
3,4,5-Trimethoxy-a-methylphenylethylamine (TMA)	0.50 g	25.00 g
3,4,5-Trimethoxyphenethylamine (mescaline) and other substances structurally derived from methoxyphenylethylamine, except:	7.50 g	375.00 g
(a) methoxyphenamine; or		
(b) where separately specified in this Schedule		
1-(3,4,5,-Trimethoxyphenyl)-2-aminobutane	0.50 g	25.00 g
2,4,5-Trimethoxyphenylethylamine	0.50 g	25.00 g
Anabolic Steroids:		
Danazol	10.00 g	500.00 g
Dromostanolone propionate	12.00 g	600.00 g
Ethylestrenol	10.00 g	500.00 g
Fluoxymesterone	12.00 g	600.00 g
Methandriol	32.00 g	1.60 kg
Methyltestosterone	48.00 g	2.40 kg
Nandrolone decanoate	6.00 g	300.00 g
Nandrolone phenpropionate	8.00 g	400.00 g
Oxandrolone	12.00 g	600.00 g
Oxymetholone	300.00 g	15.00 kg
Stanozolol	7.20 g	360.00 g
Testolactone	1.20 kg	6.00 kg
Testosterone	2.40 g	120.00 g
Testosterone cypionate	32.00 g	1.60 kg
Testosterone enanthate	32.00 g	1.60 kg
Testosterone propionate except anabolic steroids in products packaged for ovulation control or in quantities which can lawfully be prescribed in accordance with Schedule 4 of the <i>Poisons and Dangerous Drugs Act</i>	12.00 g	600.00 g

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**Schedule 3**

section 20A

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Column 1 Dangerous Drug	Column 2 Quantity
Cannabis oil	1.00g
Cannabis plant material (being any part of the Cannabis plant, including the flowering or fruiting tops, leaves, stalks and seeds)	50.00g
Cannabis resin	10.00g
Cannabis seed	10.00g

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 ENDNOTES

## 1

## KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
<i>Gaz</i> = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

## 2

## LIST OF LEGISLATION

<b><i>Misuse of Drugs Act 1990 (Act No. 15, 1990)</i></b>	
Assent date	12 April 1990
Commenced	1 November 1990 ( <i>Gaz</i> G40, 10 October 1990, p 3)
<b><i>Statute Law Revision Act 1990 (Act No. 33, 1990)</i></b>	
Assent date	11 June 1990
Commenced	11 June 1990
<b><i>Misuse of Drugs Amendment Act 1992 (Act No. 11, 1992)</i></b>	
Assent date	21 April 1992
Commenced	10 June 1992 ( <i>Gaz</i> G23, 10 June 1992, p 3)
<b><i>Misuse of Drugs Amendment Act 1992 (Act No. 44, 1992)</i></b>	
Assent date	7 September 1992
Commenced	20 May 1992 (s 2)
<b><i>Statute Law Revision Act 1993 (Act No. 6, 1993)</i></b>	
Assent date	18 March 1993
Commenced	18 March 1993
<b><i>Misuse of Drugs Amendment Act 1994 (Act No. 56, 1994)</i></b>	
Assent date	22 September 1994
Commenced	7 November 1994 ( <i>Gaz</i> G44, 2 November 1994, p 3)
<b><i>Amendment of Misuse of Drugs Regulations (SL No. 15, 1995)</i></b>	
Notified	10 May 1995
Commenced	10 May 1995
<b><i>Statute Law Revision Act 1995 (Act No. 14, 1995)</i></b>	
Assent date	23 June 1995
Commenced	23 June 1995

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***Misuse of Drugs Amendment Act 1996 (Act No. 4, 1996)***

Assent date 20 March 1996  
Commenced 1 July 1996 (*Gaz* S15, 13 June 1996)

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date 19 April 1996  
Commenced s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz* S15, 13 June 1996)

***Statute Law Revision Act 1996 (Act No. 42, 1996)***

Assent date 17 September 1996  
Commenced 17 September 1996

***Statute Law Revision Act 1997 (Act No. 17, 1997)***

Assent date 11 April 1997  
Commenced 1 May 1997 (*Gaz* G17, 30 April 1997, p 2)

***Misuse of Drugs Amendment Act 1999 (Act No. 21, 1999)***

Assent date 5 May 1999  
Commenced 5 May 1999

***Sentencing of Juveniles (Miscellaneous Provisions) Act 2000 (Act No. 17, 2000)***

Assent date 30 May 2000  
Commenced 1 June 2000 (s 2)

***Misuse of Drugs Amendment Act 2000 (Act No. 74, 2000)***

Assent date 14 December 2000  
Commenced 14 December 2000

***Misuse of Drugs Amendment Act 2002 (Act No. 32, 2002)***

Assent date 16 July 2002  
Commenced 1 August 2002 (*Gaz* G30, 31 July 2002, p 4)

***Criminal Property Forfeiture (Consequential Amendments) Act 2002 (Act No. 35, 2002)***

Assent date 16 July 2002  
Commenced 1 June 2003 (s 2, s 2 *Criminal Property Forfeiture Act 2002* (Act No. 34, 2002) and *Gaz* G21, 28 May 2003, p 2)

***Statute Law Revision Act (No. 2) 2002 (Act No. 59, 2002)***

Assent date 7 November 2002  
Commenced 7 November 2002

***Statute Law Revision Act 2004 (Act No. 18, 2004)***

Assent date 15 March 2004  
Commenced 1 July 2004 (s 2(2), s 2 *Business Tenancies (Fair Dealings) Act 2003* (Act No. 55, 2003) and *Gaz* G9, 3 March 2004, p 5)

***Misuse of Drugs Amendment Regulations (SL No. 35, 2004)***

Notified 24 November 2004  
Commenced 24 November 2004

***Misuse of Drugs Amendment Act 2005 (Act No. 24, 2005)***

Assent date 6 May 2005  
Commenced 9 February 2006 (*Gaz* S2, 9 February 2006)

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***Statute Law Revision Act 2005 (Act No. 44, 2005)***

Assent date 14 December 2005  
Commenced 14 December 2005

***Misuse of Drugs Amendment Act 2008 (Act No. 20, 2008)***

Assent date 24 June 2008  
Commenced 23 July 2008 (*Gaz* G29, 23 July 2008, p 6)

***Justice Legislation Amendment (Penalties) Act 2010 (Act No. 12, 2010)***

Assent date 20 May 2010  
Commenced 1 July 2010 (*Gaz* G, 2010, p )

***Health Practitioner (National Uniform Legislation) Implementation Act 2010 (Act No. 18, 2010)***

Assent date 20 May 2010  
Commenced 1 July 2010 (s 2)

***Statute Law Revision Act 2010 (Act No. 29, 2010)***

Assent date 9 September 2010  
Commenced 13 October 2010 (*Gaz* G41, 13 October 2010, p 2)

### 3 SAVINGS AND TRANSITIONAL PROVISIONS

s 28 *Misuse of Drugs Amendment Act 2002 (Act No. 32, 2002)*

### 4 LIST OF AMENDMENTS

s 3 amd No. 11, 1992, s 4; No. 17, 1997, s 17; No. 17, 2000, s 6; No. 32, 2002, s 4; No. 44, 2005, ss 22 and 23; No. 24, 2005, s 3; No. 20, 2008, s 4; No. 18, 2010, s 89

s 4A ins No. 21, 1999, s 3

s 4B ins No. 20, 2008, s 5

s 5 amd No. 11, 1992, s 5; No. 44, 1992, s 3; No. 17, 1996, s 6; No. 20, 2008, s 6; No. 12, 2010, s 3

s 6 amd No. 12, 2010, s 3

s 7 sub No. 11, 1992, s 6

s 8 amd No. 17, 1996, s 6; No. 12, 2010, s 3

ss 8A – 8B ins No. 32, 2002, s 5  
amd No. 12, 2010, s 3

s 8C ins No. 32, 2002, s 5  
amd No. 59, 2002, s 4; No. 12, 2010, s 3

s 8D ins No. 32, 2002, s 5  
amd No. 12, 2010, s 3

s 9 sub No. 11, 1992, s 6  
amd No. 17, 1996, s 6; No. 12, 2010, s 3

s 10 amd No. 17, 1996, s 6

s 11 sub No. 11, 1992, s 7  
amd No. 17, 1996, s 6; No. 12, 2010, s 3

pt II

div 1A hdg ins No. 32, 2002, s 6

pt II

div 1A

sdiv 1 hdg ins No. 32, 2002, s 6

## ENDNOTES

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s 11A	ins No. 32, 2002, s 6 amd No. 18, 2004, s 3
ss 11B – 11D	ins No. 32, 2002, s 6
pt II	
div 1A	
sdiv 2 hdg	ins No. 32, 2002, s 6
ss 11E – 11G	ins No. 32, 2002, s 6
pt II	
div 1A	
sdiv 3 hdg	ins No. 32, 2002, s 6
ss 11H – 11M	ins No. 32, 2002, s 6
s 11N	ins No. 32, 2002, s 6 amd No. 18, 2004, s 3
s 11P	ins No. 32, 2002, s 6
s 11Q	ins No. 32, 2002, s 6 amd No. 12, 2010, s 3
pt II	
div 1A	
sdiv 4 hdg	ins No. 32, 2002, s 6
s 11R	ins No. 32, 2002, s 6
ss 11S – 11T	ins No. 32, 2002, s 6 amd No. 12, 2010, s 3
s 11U	ins No. 32, 2002, s 6 amd No. 18, 2004, s 3
ss 11V – 11W	ins No. 32, 2002, s 6
ss 12 – 14	amd No. 12, 2010, s 3
ss 15 – 16	amd No. 44, 2005, s 23; No. 12, 2010, s 3
s 17	amd No. 32, 2002, s 7; No. 44, 2005, s 23; No. 12, 2010, s 3
s 18	rep No. 24, 2005, s 5
s 19	amd No. 17, 1996, s 6
pt IIA hdg	ins No. 56, 1994, s 5
pt IIA	
div 1 hdg	ins No. 56, 1994, s 5
s 19A	ins No. 56, 1994, s 5 amd No. 42, 1996, s 5
ss 19B – 19C	ins No. 56, 1994, s 5 sub No. 32, 2002, s 8
s 19D	ins No. 56, 1994, s 5 rep No. 32, 2002, s 8
ss 19E – 19F	ins No. 56, 1994, s 5
s 19G	ins No. 56, 1994, s 5 amd No. 32, 2002, s 9
ss 19H – 19J	ins No. 56, 1994, s 5
s 19K	ins No. 56, 1994, s 5 amd No. 32, 2002, s 10
s 19M	ins No. 56, 1994, s 5 amd No. 32, 2002, s 11
s 19N	ins No. 56, 1994, s 5 amd No. 32, 2002, s 12
s 19P	ins No. 56, 1994, s 5 sub No. 32, 2002, s 13
ss 19PA – 19PB	ins No. 32, 2002, s 13
pt IIA	
div 2 hdg	ins No. 56, 1994, s 5
s 19Q	ins No. 56, 1994, s 5 amd No. 32, 2002, s 14
pt IIA	
div 3 hdg	ins No. 56, 1994, s 5

## ENDNOTES

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s 19R	ins No. 56, 1994, s 5 amd No. 32, 2002, s 15
s 19S	ins No. 56, 1994, s 5 amd No. 32, 2002, s 16
s 19T	ins No. 56, 1994, s 5 amd No. 32, 2002, s 17
s 19TA	ins No. 32, 2002, s 18
pt IIB hdg	ins No. 4, 1996, s 3
ss 20A – 20C	ins No. 4, 1996, s 3
s 20D	ins No. 4, 1996, s 3 amd No. 12, 2010, s 3
ss 20E – 20G	ins No. 4, 1996, s 3
s 21	amd No. 17, 2000, s 6
s 22	amd No. 17, 1996, s 6; No. 35, 2002, s 4; No. 12, 2010, s 3
s 24	amd No. 11, 1992, s 8; No. 12, 2010, s 3
s 25	amd No. 11, 1992, s 9
s 26	amd No. 12, 2010, s 3
s 27	amd No. 17, 1996, s 6
s 28	amd No. 17, 1996, s 6; No. 21, 1999, s 4
s 30	rep No. 11, 1992, s 10
s 31	amd No. 32, 2002, s 19
s 32	amd No. 11, 1992, s 11; No. 32, 2002, s 20; No. 12, 2010, s 3
s 33	amd No. 17, 1997, s 17 sub No. 32, 2002, s 21
s 34	amd No. 56, 1994, s 4; No. 14, 1995, s 12; No. 17, 1996, s 6; No. 32, 2002, s 22; No. 59, 2002, s 4; No. 12, 2010, s 3
s 35	amd No. 32, 2002, s 23
s 35A	ins No. 32, 2002, s 24
s 36A	ins No. 35, 2002, s 4 amd No. 44, 2005, s 28
s 37	amd No. 33, 1990, s 6; No. 6, 1993, s 8; No. 74, 2000, s 2; No. 32, 2002, s 25
s 39	amd No. 17, 1996, s 6
s 40	amd No. 17, 1996, s 6; No. 32, 2002, s 26
s 41	amd No. 17, 1996, s 6
s 42	amd No. 44, 2005, s 23
s 42A	ins No. 32, 2002, s 27
s 43	amd No. 20, 2008, s 7; No. 12, 2010, s 3
s 44	ins No. 20, 2008, s 8
sch 2	amd No. 11, 1992, s 12; SL No. 15, 1995; No. 21, 1999, s 5; No. 74, 2000, s 3; SL No. 35, 2004; No. 29, 2010, s 7
sch 3	ins No. 4, 1996, s 4