

NORTHERN TERRITORY OF AUSTRALIA

MISUSE OF DRUGS ACT

As in force at 17 September 1996

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 17 September 1996

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, unless the contrary intention appears:

adult means a person who has attained the age of 17 years.

analyst means a person appointed under subsection (8) to be an analyst.

child means a person who has not attained the age of 17 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 Medical Officer means the person appointed as the Chief Medical 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 dentist or dental specialist within the meaning of the *Dental Act*.

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 registered optometrist within the meaning of the *Optometrists Act*.

pharmacist means a registered pharmacist within the meaning of the *Pharmacy Act*.

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.

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.

veterinary surgeon means a registered veterinary surgeon within the meaning of the *Veterinary Surgeons Act*.

volatile substance means:

- (a) plastic solvent, adhesive cement, cleaning agent, glue, dope, nail polish remover, lighter fluid, gasoline or any other volatile product derived from petroleum, paint thinner, lacquer thinner, aerosol propellant or anaesthetic gas; or
- (b) a substance declared under section 18(2).

(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 admixture 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) For the purposes of this Act, the traffickable quantity or commercial quantity respectively of a dangerous drug comprising an admixture of dangerous drugs is the traffickable quantity or commercial quantity of that dangerous drug component (including a drug analogue within the meaning of subsection (2)(b)) of the admixture having specified in Schedule 1 or 2 in respect of it the least traffickable quantity or commercial quantity, as the case may be, of all of the component dangerous drugs in the admixture, and in calculating whether or not the quantity of the admixture is a traffickable quantity or commercial quantity of dangerous drug, the whole quantity of the admixture shall be treated as if it were a quantity of that dangerous drug component.
- (3A) For the purposes only of illustrating subsection (3), where a 100 g combination of substances is found to be comprised of 50 g of a substance that is not a dangerous drug and a 50 g admixture of Dimenoxadol, Fentanyl and Piritramide, then the 50 g dangerous drug admixture component of the combination of substances would be taken to be a commercial quantity of dangerous drugs because the commercial quantity of Fentanyl is listed in Schedule 2 as being 0.25 g (the least quantity so specified for the 3 component dangerous drugs in the admixture) and the whole 50 g quantity of the admixture of the 3 dangerous drugs is to be treated as Fentanyl for the purpose of calculating whether a commercial quantity has been reached, whether or not the quantity of Fentanyl in the admixture actually exceeds 0.25 g.
- (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 or volatile substance includes a reference to the ingestion, injection, inhalation and smoking of a dangerous drug or volatile substance, the inhalation of fumes caused by the heating or burning of a dangerous drug or volatile substance and any other means of introducing a dangerous drug or volatile substance 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.

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 penalty not exceeding:
- (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 – \$10,000 or imprisonment for 5 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.

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.

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.

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 penalty not exceeding:
- (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 – \$5,000 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 penalty not exceeding:
- (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.

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 penalty not exceeding:
- (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 – \$10,000 or imprisonment for 5 years; or
 - (ii) in any other case – \$5,000 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 – \$10,000 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 – \$5,000 or imprisonment for 2 years; or
 - (ii) in any other case – \$2,000.

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 penalty not exceeding:
 - (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 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.

Penalty: \$2,000 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.

Penalty: \$2,000 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.

Penalty: \$2,000 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.

Penalty: \$2,000 or imprisonment for 2 years.

13 Administering dangerous drug to self

A person who administers a dangerous drug to himself or herself is guilty of an offence.

Penalty: \$2,000 or imprisonment for 2 years.

14 Permitting another to administer

A person who allows another person to unlawfully administer a dangerous drug to the first-mentioned person is guilty of an offence.

Penalty: \$2,000 or imprisonment for 2 years.

15 Forging, &c., prescription

A person who forges or fraudulently alters, or utters knowing it to be forged or fraudulently altered, a prescription of a medical practitioner, dentist or veterinarian which includes a dangerous drug is guilty of an offence.

Penalty: \$2,000 or imprisonment for 2 years.

16 Obtaining prescription by deception

A person who:

- (a) by a deception:

- (i) obtains from a medical practitioner, dentist or veterinarian a prescription including a dangerous drug; or
- (ii) induces a pharmacist to dispense a forged or fraudulently altered prescription obtained in contravention of subparagraph (i); or

- (b) is in actual possession of a forged or fraudulently altered prescription including a dangerous drug or a prescription obtained in contravention of paragraph (a),

is guilty of an offence.

Penalty: \$2,000 or imprisonment for 2 years.

17 Obtaining dangerous drug or precursor by deception

A person who by a deception obtains, or attempts to obtain, a dangerous drug from a medical practitioner, pharmacist, dentist or veterinary surgeon is guilty of an offence.

Penalty: \$2,000 or imprisonment for 2 years.

18 Volatile substances

- (1) A person who sells or supplies a volatile substance to another person and who knows or who ought to know that the other person intends to use the substance by administering it to himself or herself or a third person or to sell or supply it to a third person for use by the third person to administer it to himself or herself or to a fourth person, is guilty of an offence.

Penalty: \$2,000 or imprisonment for 2 years.

- (2) The Minister may, by notice in the *Gazette*, declare a substance to be a volatile substance.

19 Parties to offences committed outside Territory

A person who, in the Territory, is a party to an act done at a place not in the Territory which if it had been done in the Territory would have constituted an offence against this Act and which is an offence under the law in force in the place where it was done, is guilty of an offence and is liable on being found guilty to the same penalty and forfeiture as if the act had been done in the Territory.

Part IIA Destruction of exhibits

Division 1 Pre-trial orders

19A Definition

In this Division:

minimum amount means:

- (a) in relation to a dangerous drug other than heroin, the traffickable quantity by weight of the dangerous drug;
- (b) in relation to heroin, 1 g.; or
- (c) in relation to cannabis, 5 plants.

magistrate means a magistrate sitting as the Court of Summary Jurisdiction.

19B Extent of order for destruction

An order under this Division for the destruction of a dangerous drug shall not authorise the destruction of so much of the dangerous drug as comprises 3 times the amount that is required for the purpose of sampling and analysis.

19C Order for destruction by certain police officers

- (1) Where no order has been made under this Division for the retention of a dangerous drug seized by a member of the Police Force, a member of the Police Force of or above the rank of Commander may, whether or not any person has been charged with an offence with respect to the dangerous drug, order that the dangerous drug be destroyed if the member is of the opinion that, by reason of the amount of the drug or otherwise, the dangerous drug could not reasonably be securely retained pending an order under this Division of a magistrate.
- (2) Where a dangerous drug is seized by a member of the Police Force, a Commander may order the dangerous drug to be destroyed without a Court order, if the Commander is satisfied on reasonable grounds that there is no lawful owner and it is not intended that any person is to be charged with an offence with respect to the dangerous drug.

19D Application to magistrate for order with respect to destruction

- (1) Where an amount which is not less than the minimum amount of a dangerous drug is seized by a member of the Police Force, a

member of the Police Force may, any time on or after the date of the seizure, make application to a magistrate for an order with respect to the destruction of the dangerous drug.

- (2) On the hearing of the application, the magistrate shall make a determination whether the dangerous drug should be retained.

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 hearing of an application under section 19D or 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 hearing or 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.

Where, after a magistrate has ordered that a dangerous drug be destroyed and before the drug 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 to a person or body specified in the request for the purpose of scientific research, instruction, analysis or study, the dangerous drug shall be dealt with in accordance with the request.

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 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 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 Amount of dangerous drug less than minimum amount

- (1) Where an amount which is less than the minimum amount of a dangerous drug is seized by a member of the Police Force, a member of the Police Force may, at any time, make an application to a magistrate for an order with respect to the destruction of the

dangerous drug.

- (2) This Division applies to and in relation to an application under subsection (1) in the same way as it applies to and in relation to an application under section 19D.

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 or dangerous drug 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 or dangerous drug 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 or dangerous drug 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, the prohibited plant or dangerous drug is destroyed pursuant to an order under this Part,

any particular in the information as to the nature or quantity of the prohibited plant or dangerous drug shall, for the purposes of the appeal, be 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 seized by a member of the Police Force from applying to a magistrate for an order that the dangerous drug be returned to the person, and the magistrate may order the return of so much of the dangerous drug as has not been destroyed.
- (2) Nothing in this Part prevents a magistrate or court from ordering the return of a dangerous drug to a person lawfully entitled to the dangerous drug whether or not an application for the return of the dangerous drug 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 or dangerous drugs seized by members of the Police Force, the sampling and analysis of those prohibited plants or dangerous drugs and the return of such prohibited plants or dangerous drugs to a person lawfully entitled to them.

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 \$200.

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 17 years or that the accused person believed that the child had attained that age.

22 Certain offences may be dealt with summarily

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 fine of \$10,000 or imprisonment for 2 years, or if there is a lesser penalty prescribed in relation to the particular offence, that lesser penalty.

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

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.

Penalty: \$10,000 or imprisonment for 2 years.

- (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.

Penalty: \$10,000 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;
 - (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 390 of the Criminal Code 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 &c.

- (1) Notwithstanding anything contained in this Act, the possession of a dangerous drug by a member of the Police Force, or by a person authorized by a member of the Police Force to have that dangerous drug in the person's possession, is not an offence if that dangerous drug:

- (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 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 and a person who has obtained a dangerous drug 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.
- (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 for the purpose of detecting the commission of an offence against this Act.
- (3) A person who acquires a dangerous drug 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 and he or she supplies it in accordance with the authorization.

Penalty: \$2,000 or imprisonment for 2 years.

33 Authorization to possess and cultivate for research purposes

- (1) The Chief Medical Officer may in writing, and subject to such conditions if any as he or she thinks fit, authorize a person to possess a dangerous drug or cultivate a prohibited plant for the purposes of research and a person so authorized may lawfully possess that drug or cultivate that plant in accordance with and subject to the conditions, if any, of that authorization.
- (2) An authorization of a body corporate under subsection (1) shall be deemed to authorize each person directly involved in the research to which it relates on behalf of the body corporate to possess the dangerous drug or cultivate the prohibited plant in accordance with and subject to the conditions, if any, of the authorization.

34 Forfeiture of drugs, precursors etc.

- (1) On the finding of guilt of a person for an offence against this Act, any dangerous drug 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 thing alleged to be a dangerous drug, 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 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.
- Penalty: \$10,000 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; 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,

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.

35 Return of seized items

- (1) Where a thing is seized under this Act 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 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.

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.

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;

- (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.

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).

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 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 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;
- (c) proof that a dangerous drug 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 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 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.

43 Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may:
- (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; and
 - (d) prescribe penalties, not exceeding a fine of \$2,000, for offences against the Regulations.

Schedule 1

section 3

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

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
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
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
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- α -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- α -methylphenylethylamine (DMA)	0.50 g	25.00 g
3,4-Dimethoxyphenylethylamine	0.50 g	25.00 g
3-(2-Dimethylaminoethyl)-4-hydroxyindole (Psilocine, Psilocin)	0.10 g	5.00 g
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
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
Etoxeridine	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
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
Hydromorphenol	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
Isomethadone	2.00 g	100.00 g
Ketobemidone	2.00 g	100.00 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
Levophenacymorphan	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
Methaqualone	50.00 g	2.50 kg
Methcathione	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- α -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- α -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, α -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-desorphine	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
α -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
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:	2.00 g	100.00 g
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		
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
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
Secbutobarbitone	20.00 g	1.00 kg
Sufentanil	0.005 g	0.25 g
Tenocyclidine (TCP)	2.00 g	100.00 g
Tetrahydrocannabinols (THC) and their alkyl homologues, except where separately specified in this Schedule	2.00 g	100.00 g
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
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

Schedule 3

section 20A

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

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
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2**LIST OF LEGISLATION**

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

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

3 LIST OF AMENDMENTS

s 3	amd No. 11, 1992, s 4
s 5	amd No. 11, 1992, s 5; No. 44, 1992, s 3; No. 17, 1996, s 6
ss 7 – 8	sub No. 11, 1992, s 6 amd No. 17, 1996, s 6
s 9	sub No. 11, 1992, s 6 amd No. 17, 1996, s 6
s 10	amd No. 17, 1996, s 6
s 11	sub No. 11, 1992, s 7 amd No. 17, 1996, s 6
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 – 19P	ins No. 56, 1994, s 5
pt IIA	
div 2 hdg	ins No. 56, 1994, s 5
s 19Q	ins No. 56, 1994, s 5
pt IIA	
div 3 hdg	ins No. 56, 1994, s 5
ss 19R – 19T	ins No. 56, 1994, s 5
pt IIB hdg	ins No. 4, 1996, s 3
ss 20A – 20G	ins No. 4, 1996, s 3
s 22	amd No. 17, 1996, s 6
s 24	amd No. 11, 1992, s 8
s 25	amd No. 11, 1992, s 9
ss 27 – 28	amd No. 17, 1996, s 6
s 30	rep No. 11, 1992, s 10
s 32	amd No. 11, 1992, s 11
s 34	amd No. 56, 1994, s 4; No. 14, 1995, s 12; No. 17, 1996, s 6;
s 37	amd No. 33, 1990, s 6; No. 6, 1993, s 8
ss 39 – 41	amd No. 17, 1996, s 6
sch 2	amd No. 11, 1992, s 12; SL No. 15, 1995
sch 3	ins No. 4, 1996, s 4