

# NORTHERN TERRITORY OF AUSTRALIA

## MEDICINES, POISONS AND THERAPEUTIC GOODS ACT 2012

As in force at 6 May 2020

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 6 May 2020

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## MEDICINES, POISONS AND THERAPEUTIC GOODS ACT 2012

### An Act about medicines, poisons and therapeutic goods

#### Chapter 1 Introduction

##### Part 1.1 Preliminary matters

###### 1 Short title

This Act may be cited as the *Medicines, Poisons and Therapeutic Goods Act 2012*.

###### 2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

###### 3 Objects

- (1) The main object of this Act is to promote and protect public health and safety by minimising:
  - (a) accidental and deliberate poisoning by Scheduled substances; and
  - (b) misadventures by poisoning by Scheduled substances; and
  - (c) the manufacture of substances that are subject to abuse (***substances of abuse***); and
  - (d) the diversion for abuse of substances of abuse; and
  - (e) harm from therapeutic goods.
- (2) Other objects of this Act are to ensure:
  - (a) consumers of Schedule 4 and 8 substances have adequate information and the understanding necessary to allow them to administer the substances safely and effectively; and

- (b) consumers of Schedule 2 and 3 substances have adequate information and the understanding to allow them to:
  - (i) select the most appropriate substances for their condition; and
  - (ii) administer the substances safely and effectively, taking into account the condition of their health.

#### **4 Overview**

- (1) The objects of this Act are primarily achieved by prohibiting and regulating people dealing with Scheduled substances.
- (2) In general, under Part 2.1, only the holder of an authority issued under Chapter 3 may manufacture and, in some circumstances sell, Scheduled substances.
- (3) In addition, under Part 2.2, only those authority holders, or health practitioners, veterinarians and others authorised under Part 2.3, may possess, supply or use Scheduled substances.
- (4) Those general rules are subject to, or complemented by, special rules under Parts 2.4 to 2.8 about the following:
  - (a) the issue of prescriptions for the supply of Scheduled substances by health practitioners and veterinarians;
  - (b) the storage, packaging, labelling, advertisement, supply by vending machines, transport and destruction of Scheduled substances; and
  - (c) the manufacture, supply and use of paints containing Scheduled substances; and
  - (d) other circumstances in which dealing with Scheduled substances may be prohibited.
- (5) Apart from prohibiting and regulating people dealing with Scheduled substances, Chapter 6 contributes to achieving the objects of this Act by adopting in the Territory a uniform Australian approach to the regulation of therapeutic goods.
- (6) For the effective administration and enforcement of this Act, provision is made about the following:
  - (a) codes of practice and exemptions;
  - (b) the Scheduled Substances Clinical Advisory Committee;

(c) authorised officers and their functions and powers.

## Part 1.2 Interpretation

### Division 1 Defined terms

#### 5 Definitions

In this Act:

**Aboriginal and Torres Strait Islander health practitioner**, see section 28(1).

**accepted representations**, for Part 3.6, see section 167(4).

**acting in an official capacity**, in relation to an authorised officer, means the officer is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

**addiction**, to a Scheduled substance, means a state of physiological or psychological dependence on, or increased tolerance to, the habitual and excessive use of the substance, and includes pain and other symptomatic indications arising specifically from withdrawal of the substance.

**administer**, see section 22(2).

**administration order**, see section 92(1)(a).

**affected person**, see section 220(2).

**amphetamine**, see section 11.

**applied provisions**, for Chapter 6, see section 228.

**appointed members**, see section 264(1)(a).

**approved ATSI health practitioner**, see section 28(2).

**approved midwife**, see section 25(7).

**approved nurse**, see section 25(4).

**approved form** means a form approved under section 258.

**approved paramedic**, see section 28A(2).

**at**, for Chapter 4, see section 178.

**authorised officer**, see section 274(1).

**authorised health practitioner**, see section 23(2).

**authorised prescriber**, for a Scheduled substance, means a health practitioner or veterinarian who is authorised under Part 2.4, Division 1, to issue a prescription for the supply of the substance.

**authorised purpose** means:

- (a) for the use of a Schedule 4 or unrestricted Schedule 8 substance:
  - (i) analysing or testing specimens for the diagnosis, treatment and prevention of disease of humans or animals; or
  - (ii) providing a higher education course; or
  - (iii) forensic science; or
  - (iv) preservation of animal or plant specimens; or
  - (v) domestic animal control; or
  - (vi) sedation of wild animals; or
  - (vii) mineral testing; or
  - (viii) another purpose prescribed by regulation; or
- (b) for the use of an amphetamine:
  - (i) therapeutic use for a medical condition declared under section 247; or
  - (ii) analysing or testing specimens for the diagnosis, treatment and prevention of disease of humans or animals; or
  - (iii) providing a higher education course; or
  - (iv) forensic science; or
- (c) for the use of another restricted Schedule 8 substance:
  - (i) therapeutic use; or
  - (ii) treating an addiction to a substance; or
  - (iii) analysing or testing specimens for the diagnosis, treatment and prevention of disease of humans or animals; or

- (iv) providing a higher education course; or
- (v) forensic science.

**authority**, see section 117.

**certificate of registration** means:

- (a) a manufacturer certificate of registration; or
- (b) a wholesaler certificate of registration.

**CHO** means the Chief Health Officer.

**code of practice** means a code of practice in force under section 244.

**Committee** means the Scheduled Substances Clinical Advisory Committee established by section 260.

**Commonwealth administrative laws**, for Chapter 6, see section 228.

**Commonwealth Minister**, for Chapter 6, see section 228.

**Commonwealth official**, for Chapter 6, see section 228.

**Commonwealth Secretary**, for Chapter 6, see section 228.

**compliance notice**, see section 201(1).

**condition**, for Part 3.5, see section 156.

**connected**, for Chapter 4, see section 179.

**corresponding law** means a law of a State or another Territory that:

- (a) corresponds, or substantially corresponds, to this Act; and
- (b) is declared by regulation to be a corresponding law.

**deal with**, for a Scheduled substance, see section 17.

**declared place** means a health centre or clinic declared under section 252 to be a place to which Part 2.6 applies.

**declared provision**, for Part 4.7, Division 1, see section 212.

**dental hygienist**, see section 26(3).

**dental therapist**, see section 26(2).

**dentist**, see section 26(1).

**doctor**, see section 24(1).

**eligible midwife**, see section 25(6).

**enter**, for Chapter 4, see section 178.

**excluded person** means a person who is:

- (a) declared under section 248(1)(a) to be an excluded person; or
- (b) a member of a class of persons declared under section 248(1)(b) to be a class of excluded persons.

**executive officer**, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

**forfeited thing**, for Part 4.4, see section 198(1).

**health practitioner**, see section 23(1).

**health profession**, see section 5 of the *Health Practitioner Regulation National Law*.

**hospital** means:

- (a) a hospital as defined in section 5 of the *Medical Services Act 1982*; or
- (b) a private hospital as defined in section 4 of the *Private Hospitals Act 1981*.

**information notice**, for a decision, means a written notice stating the following:

- (a) the decision and the reasons for it;
- (b) that a reconsideration of the decision may be sought;
- (c) the period allowed for requesting the reconsideration;
- (d) how to request the reconsideration.

**interstate prescriber**, for a Schedule 4 or 8 substance, means a health practitioner in a State or another Territory who is authorised under the law of that State or Territory to issue a prescription for the supply of the substance.

**licence** means:

- (a) a retailer licence; or
- (b) a pest management technician licence.

**licensed place** means a place for which a retailer licence is in force.

**manager**, for:

- (a) a hospital declared under section 6(2) of the *Medical Services Act 1982* – means the person appointed under section 7(2)(a) of that Act to be the person in charge of the hospital; or
- (b) a private hospital licensed under the *Private Hospitals Act 1981* – see section 4 of that Act.

**manufacture**, see section 18.

**manufacturer certificate of registration**, see section 121.

**manufacturer's pack**, for Part 2.7, Division 2, see section 105.

**medical kit authorisation**, see section 130.

**medical or scientific research** includes for analysis, clinical trials, instruction and study.

**medicines and poisons standard**, see section 14(1).

**methylated spirit** means:

- (a) a spirit that has been methylated or denatured; or
- (b) methyl alcohol or wood spirit; or
- (c) a spirit to which a methylated substance has been added; or
- (d) a drinkable liquid with which a methylated spirit is mixed.

**midwife**, see section 25(5).

**minimum repeat interval**, for a repeat prescription for the supply of a Scheduled substance, means the period stated in the prescription that limits the frequency of the repeat supplies of the substance.

*Note*

*Under the Australian Government's Pharmaceutical Benefits Scheme, an authorised prescriber is required to state the minimum repeat interval for some Scheduled substances.*

**modifications**, for Chapter 6, see section 228.

**nominated person**, see section 131(c).

**NT doctor**, see section 24(2).

**NT health practitioner**, see section 23(3).

**NT nurse practitioner**, see section 25(3).

**NT specialist health practitioner**, see section 23(4).

**nurse**, see section 25(1).

**nurse practitioner**, see section 25(2).

**occupier**, of a place:

- (a) generally, means:
  - (i) a person in occupation of the place; or
  - (ii) the person in control of the place; or
  - (iii) if the place has different parts occupied or controlled by different persons – each person in occupation or control of the part concerned; or
- (b) for Chapter 4 – see section 178.

**optometrist**, see section 27(1).

**oral health therapist**, see section 26(4).

**original decision**, see section 220(1).

**paramedic**, see section 28A(1).

**patient**, of a hospital, includes a person attending the hospital for treatment as an outpatient by a health practitioner.

**pesticide**, see section 9.

**pest management technician licence**, see section 126.

**pharmacist**, see section 27(2).

**pharmacy**, see clause 1 of Schedule 7 to the *Health Practitioners Act 2004*.

**podiatrist**, see section 27(3).

**place** includes:

- (a) vacant land; and
- (b) premises; and
- (c) an aircraft, vehicle or vessel.

**possess**, see section 20.

**premises** includes:

- (a) a building or structure; and
- (b) a part of a building or structure; and
- (c) land on which a building or structure is situated.

**prescription**, see section 19.

**prohibited circumstance**, see:

- (a) for the supply or administration of an unrestricted Schedule 8 substance – section 48(2); or
- (b) for issuing a prescription for the supply of an unrestricted Schedule 8 substance – section 84(2).

**prohibited substance**, see section 12.

**prohibited substance authorisation**, see section 128.

**proposed action**, for Part 3.6, see section 167(2)(a).

**reconsidered decision**, see section 223(1)(b).

**registered place** means a place for which a certificate of registration is in force.

**repeat prescription** means a prescription authorising the supply of a Scheduled substance on more than one occasion.

**representative**, for Part 4.7, Division 1, see section 212.

**research authorisation**, see section 129.

**residential facility** means a residential facility for which an approval is in force under the *Aged Care Act 1997* (Cth) for an approved provider to provide residential care to persons in the facility.

**restricted Schedule 4 substance**, see section 8(2).

**restricted Schedule 8 substance**, see section 10(2).

**retailer licence**, see section 123.

**review notice**, see section 223(1)(b).

**Scheduled substance**, see section 7.

**Scheduled substance treatment protocol**, see section 254.

**Schedule 4 authorisation**, see section 124.

**Schedule 4 substance declaration** means a declaration in force under section 246 for a restricted Schedule 4 substance.

**Schedule 7 authorisation**, see section 125(1).

**Schedule 8 authorisation**, see section 127.

**Schedule 8 exemption** means an exemption in force under section 245(1).

**seized thing**, for Part 4.4, see section 188.

**sell**, see section 21(3).

**suitable person**, for Chapter 3, means:

- (a) for the holder of an authority – an individual or body corporate that is a suitable person to hold the authority under section 118 or 119; or
- (b) for a nominated person for a certificate of registration – an individual who is a suitable person for the authority under section 120.

**supply**, see section 21(1) and (2).

**supply order**, see section 92(1)(b).

**therapeutic goods**, see section 3(1) of the Therapeutic Goods Act.

**Therapeutic Goods Act** means the *Therapeutic Goods Act 1989* (Cth).

*Note*

*Under sections 15(2), 51 and 52 of the Interpretation Act 1978, a reference to a Commonwealth Act includes a reference to:*

- (a) the Act as amended and in force from time to time; and*
- (b) if another Act is enacted in substitution for the Act – the other Act as amended and in force from time to time; and*
- (c) statutory instruments in force under the Act, including, for example:*
  - (i) regulations; and*
  - (ii) orders; and*
  - (iii) manufacturing principles; and*
  - (iv) standards, including a medical device standard.*

**therapeutic use**, see section 3(1) of the Therapeutic Goods Act.

**unrestricted Schedule 4 substance**, see section 8(1).

**unrestricted Schedule 8 substance**, see section 10(1).

**unscheduled substance**, for Part 2.7, Division 2, see section 105.

**use**, for a Scheduled substance, see section 22(1).

**variation**, for Part 3.5, see section 156.

**vending machine**, for Part 2.7, Division 2, see section 105.

**veterinarian** means a registered veterinarian under the *Veterinarians Act 1994*.

**wholesaler certificate of registration**, see section 122.

*Note for section 5*

*The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.*

## Division 2 Important concepts

### Subdivision 1 Substances to which this Act applies

#### 7 Meaning of *Scheduled substance* and related terms

- (1) A ***Scheduled substance*** is a substance to which a Schedule to the medicines and poisons standard applies.

*Note for subsection (1)*

*See section 16 for when the medicines and poisons standard applies to a substance.*

- (2) A reference to a Scheduled substance by number is a reference to a substance to which the Schedule of that number of the medicines and poisons standard applies.

*Example for subsection (2)*

*A reference to a Schedule 4 substance is a reference to a substance to which Schedule 4 of the medicines and poisons standard applies.*

*Note for section 7*

*Under the medicines and poisons standard, substances are classified according to the Schedules in which they are included. The following is a general description of the substances:*

- (a) Schedule 2 substances may require advice from a pharmacist or retailer licensee to be used safely but are available without a prescription;*
- (b) Schedule 3 substances require advice from a pharmacist to be used safely but are available without a prescription;*
- (c) Schedule 4 substances are available from a pharmacy only on prescription and are commonly known as "prescription only medicines", including prescription animal remedies;*
- (d) Schedule 5 substances have a low potential for causing harm;*
- (e) Schedule 6 substances have a moderate potential for causing harm;*
- (f) Schedule 7 substances have a high potential for causing harm and are available only to the holder of an authority for non-human use;*
- (g) Schedule 8 substances are available only on prescription with restrictions to reduce abuse, misuse or dependence;*
- (h) Schedule 9 substances are generally illegal substances that are subject to abuse or misuse;*
- (i) Schedule 10 substances are substances, other than Schedule 9 substances, the supply and use of which are prohibited because of the degree of danger to health they represent.*

**8 Meaning of *unrestricted Schedule 4 substance* and *restricted Schedule 4 substance***

- (1) An ***unrestricted Schedule 4 substance*** is a substance other than a restricted Schedule 4 substance.
- (2) A ***restricted Schedule 4 substance*** is a substance declared under section 246(1)(a) to be a restricted Schedule 4 substance.

**9 Meaning of *pesticide***

A ***pesticide*** is a substance that is:

- (a) a Schedule 5, 6 or 7 substance; and
- (b) a pesticide as defined in the medicines and poisons standard.

**10 Meaning of *unrestricted Schedule 8 substance* and *restricted Schedule 8 substance***

- (1) An ***unrestricted Schedule 8 substance*** is a Schedule 8 substance other than a restricted Schedule 8 substance.
- (2) A ***restricted Schedule 8 substance*** is:
  - (a) an amphetamine; or
  - (b) a Schedule 8 substance declared under section 246(1)(b) to be a restricted Schedule 8 substance.

**11 Meaning of *amphetamine***

- (1) An ***amphetamine*** includes:
  - (a) beta-aminoisopropylbenzene; and
  - (b) a substance structurally derived from amphetamine or beta-aminoisopropylbenzene by substitution in the side chain or by ring closure (or both).
- (2) However, a substance mentioned in subsection (1)(a) or (b) is not an amphetamine when contained in a Schedule 2, 3 or 4 substance.

**12 Meaning of *prohibited substance***

A ***prohibited substance*** is any of the following substances:

- (a) a Schedule 9 substance;
- (b) a Schedule 10 substance.

## Subdivision 2 Medicines and poisons standard

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

- (1) The ***medicines and poisons standard*** is the poisons standard as in force from time to time as modified under this section.
- (2) A regulation may declare a substance is taken to be included in, or excluded from, a provision of the medicines and poisons standard.
- (3) The declaration may impose restrictions in relation to dealings with the substance.
- (4) For subsection (1), but subject to a modification under this section:
  - (a) an amendment of a current poisons standard takes effect on the date of effect of the instrument of amendment under the *Legislative Instruments Act 2003* (Cth); and
  - (b) a new poisons standard takes effect on the date of effect of the standard under the *Legislative Instruments Act 2003* (Cth).
- (5) In this section:

***current poisons standard*** means the current Poisons Standard as defined in section 52A of the Therapeutic Goods Act.

***new poisons standard*** means a document prepared under section 52D(2)(b) of the Therapeutic Goods Act.

***poisons standard*** means the document prepared under section 52D(2) of the Therapeutic Goods Act.

### 15 Interpretation provisions in medicines and poisons standard – application to Act

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

*Examples for subsection (2)*

1 Subject to stated exceptions, a reference in the medicines and poisons standard to a substance in a Schedule or Appendix to the standard includes:

- (a) a substance prepared from natural sources or artificially; and
- (b) every salt, active principle or derivative of the substance; and
- (c) a preparation or admixture containing any proportion of the substance.

- 2 Accordingly, subject to the exceptions, a reference to the substance in this Act includes a reference to those things.
- 3 In addition, unless there is a contrary intention, the standard does not apply to the following:
- (a) a substance in stated preparations or products;
  - (b) stated substances;
  - (c) some low concentrations of stated substances;
  - (d) some impurities in pesticides.

*Note for section 15*

*Under section 30, this Act prevails if there is an inconsistency between this Act and the medicines and poisons standard.*

## **16 When medicines and poisons standard applies to substances**

For this Act, a Schedule or Appendix to the medicines and poisons standard applies to a substance in a circumstance if:

- (a) the substance is included in the Schedule or Appendix; and
- (b) either:
  - (i) the standard does not, in the circumstance, exclude the substance from the operation of the Schedule or Appendix; or
  - (ii) a restriction in the standard applies in relation to the substance in the circumstance.

*Example for paragraph (b)(ii)*

*If a Schedule 2 substance is listed as restricted "for human therapeutic use" and the substance is included only in that schedule, the standard applies to the substance only for human therapeutic use.*

## **Subdivision 3 Dealing with Scheduled substances**

### **17 Meaning of *deal with***

To ***deal with*** a Scheduled substance is to do any of the following:

- (a) manufacture the substance;
- (b) issue a prescription for the supply of the substance;
- (c) issue an administration order or supply order for administering or supplying the substance;
- (d) possess the substance;

- (e) supply the substance to another person;
- (f) administer the substance to another person or otherwise use the substance;
- (g) pack, label or advertise the substance;
- (h) store or transport the substance, including import it into the Territory;
- (i) destroy the substance;
- (j) something else prescribed by regulation.

## 18 Meaning of *manufacture*

**Manufacture** includes the following:

- (a) produce;
- (b) make or prepare;
- (c) mix, extract or refine;
- (d) pack or repack for:
  - (i) sale by wholesale; or
  - (ii) use in connection with a business, industry, profession or trade.

## 19 Meaning of *prescription*

A **prescription**, for a Scheduled substance, is a written instruction authorising the supply of the substance for:

- (a) administering to a particular person; or
- (b) administering to animals.

*Notes for section 19*

- 1 A prescription may be issued electronically in accordance with the *Electronic Transactions (Northern Territory) Act 2000*.
- 2 Part 2.4, Division 1 contains provisions about who is authorised to issue prescriptions for Scheduled substances. Part 2.4, Division 2 contains other requirements about the content, issue and duration of prescriptions for Scheduled substances.

**20 Meaning of *possess***

**Possess**, in relation to a Scheduled substance, includes:

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

**21 Meaning of *supply and sell***

(1) **Supply**, of a Scheduled substance, includes:

- (a) sell the substance; and
- (b) provide the substance on prescription; and
- (c) provide the substance to a person in accordance with a Scheduled substance treatment protocol.

(2) However, supply of a Scheduled substance does not include issue a prescription for the supply of the substance.

(3) **Sell**, in relation to a Scheduled substance, includes:

- (a) offer or expose the substance for sale; and
- (b) dispose of the substance by any method for value (or offer or expose the substance for disposal by any method for value).

**22 Meaning of *use and administer***

(1) **Use**, in relation to a Scheduled substance, includes administer the substance.

(2) **Administer**, a Scheduled substance, is to apply or introduce the substance to the body of a person or animal.

**Subdivision 4 Health practitioners and others authorised to deal with Scheduled substances**

**23 Meaning of *health practitioner* and related terms**

(1) A **health practitioner** is a person registered under the Health Practitioner Regulation National Law to practise a health profession (other than as a student).

- (2) An **authorised health practitioner** is:
- (a) an NT doctor or NT nurse practitioner; or
  - (b) another NT health practitioner prescribed by regulation.
- (3) An **NT health practitioner** is a health practitioner who practises in the Territory.
- (4) An **NT specialist health practitioner** is a person who:
- (a) is registered under the Health Practitioner Regulation National Law in a recognised specialty; and
  - (b) practises in the Territory.

## 24 Meaning of **doctor** and **NT doctor**

- (1) A **doctor** is a medical practitioner.

*Note for subsection (1)*

*A medical practitioner is defined in section 17 of the Interpretation Act 1978 to be a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student).*

- (2) An **NT doctor** is a doctor who practises in the Territory.

## 25 Meaning of **nurse**, **midwife** and related terms

- (1) A **nurse** is a health practitioner registered under the Health Practitioner Regulation National Law to practise in the nursing profession (other than as a student).
- (2) A **nurse practitioner** is a nurse whose registration under the Health Practitioner Regulation National Law is endorsed as being qualified to practise as a nurse practitioner.
- (3) An **NT nurse practitioner** is a nurse practitioner who practises in the Territory.
- (4) An **approved nurse** is a nurse declared under section 250(1)(a) to be an approved nurse.
- (5) A **midwife** is a health practitioner registered under the Health Practitioner Regulation National Law to practise in the midwifery profession (other than as a student).
- (6) An **eligible midwife** is a midwife whose registration under the Health Practitioner Regulation National Law is endorsed as being qualified to possess, issue a prescription for the supply of, supply or administer a Scheduled substance.

- (7) An **approved midwife** is a midwife declared under section 250(1)(a) to be an approved midwife.

## 26 Meaning of **dentist** and **dental therapist**

- (1) A **dentist** is 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.
- (2) A **dental therapist** is a person registered under the Health Practitioner Regulation National Law:
- (a) to practise in the dental profession as a dental therapist (other than as a student); and
  - (b) in the dental therapists division of that profession.
- (3) A **dental hygienist** is a person registered under the Health Practitioner Regulation National Law:
- (a) to practise in the dental profession as a dental hygienist (other than as a student); and
  - (b) in the dental hygienists division of that profession.
- (4) An **oral health therapist** is a person registered under the Health Practitioner Regulation National Law:
- (a) to practise in the dental profession as an oral health therapist (other than as a student); and
  - (b) in the oral health therapists division of that profession.

## 27 Meaning of **optometrist**, **pharmacist** and **podiatrist**

- (1) An **optometrist** is a person registered under the Health Practitioner Regulation National Law to practise in the optometry profession (other than a student).
- (2) A **pharmacist** is a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession (other than a student).
- (3) A **podiatrist** is a person registered under the Health Practitioner Regulation National Law to practise in the podiatry profession (other than a student).

**28 Meaning of *Aboriginal and Torres Strait Islander health practitioner* and *approved ATSI health practitioner***

- (1) An ***Aboriginal and Torres Strait Islander health practitioner*** is a person registered under the Health Practitioner Regulation National Law to practise in the Aboriginal and Torres Strait Islander health practice profession (other than as a student).
- (2) An ***approved ATSI health practitioner*** is an Aboriginal and Torres Strait Islander health practitioner declared under section 250(1)(b) to be an approved ATSI health practitioner.

**28A Meaning of *paramedic* and *approved paramedic***

- (1) A ***paramedic*** is a person registered under the Health Practitioner Regulation National Law to practise in the paramedicine profession (other than as a student).
- (2) An ***approved paramedic*** is a paramedic declared under section 250(1)(c) to be an approved paramedic.

**Part 1.3 Application of Act**

**29 Act binds Crown**

- (1) This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.
- (2) However, this Act does not make the Crown liable to be prosecuted for an offence.

**30 Inconsistency between Act and medicines and poisons standard**

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

**31 Relationship with Health Practitioner Regulation National Law**

A health practitioner's authorisation under this Act to deal with a Scheduled substance is subject to the conditions or other restrictions to which the health practitioner is subject under the Health Practitioner Regulation National Law.

*Note for section 31*

*Part 2.3, Division 1 and Part 2.4, Division 1 authorise health practitioners in the Territory to possess, supply, administer and issue prescriptions for Scheduled substances they are qualified to do under the Health Practitioner Regulation National Law. In particular, this includes an authorisation for a qualification*

*endorsed on a health practitioner's certificate of registration in addition to the specific authorisations, see sections 73 and 86.*

### **31A Relationship with *Hemp Industry Act 2019***

- (1) This Act does not affect the operation of the *Hemp Industry Act 2019* or make unlawful anything done in accordance with that Act.
- (2) Without limiting subsection (1), this Act does not apply to processed low THC hemp as defined in section 4A(3) of the *Misuse of Drugs Act 1990*.

### **32 Relationship with *Misuse of Drugs Act 1990***

This Act does not affect the operation of the *Misuse of Drugs Act 1990* in relation to Scheduled substances that are dangerous drugs as defined in that Act except to the extent to which this Act provides otherwise (whether expressly or by necessary implication).

*Notes for section 32*

- 1 *Under the Misuse of Drugs Act 1990, it is unlawful to manufacture, possess, supply or administer a dangerous drug. Some prohibited substances and some Schedule 4 and 8 substances are dangerous drugs. However, the manufacture, possession, supply or administration of those substances may be lawful under that Act because a manufacturer certificate of registration, prohibited substance authorisation or Schedule 8 authorisation authorises the activity, see sections 121, 127 and 128.*
- 2 *In addition, Part 2.3 authorises the possession, supply and use of Schedule 8 substances by some people in some circumstances.*

### **33 Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Notes for section 33*

- 1 *Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*
- 2 *In particular, under section 43BE of the Criminal Code, a person is not criminally responsible for an offence if the conduct constituting the offence is justified or excused by or under a law. Accordingly, the authorisations for health practitioners and others to deal with Scheduled substances under Part 2.3 provide a defence to an offence against Part 2.1 or 2.2.*

## **Chapter 2 Dealing with Scheduled substances**

### **Part 2.1 Requirements for registration and licensing of manufacturers, wholesalers and retailers**

#### **34 Manufacturer of certain Scheduled substances to be registered**

- (1) A person commits an offence if the person:
- (a) manufactures a Scheduled substance, other than a Schedule 5 or 6 substance, at a place; and
  - (b) is not authorised under a manufacturer certificate of registration to manufacture the substance at the place.

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

- (2) Subsection (1) does not apply to:
- (a) a health practitioner or veterinarian preparing or mixing the substance for the treatment of a person or animal in the course of practising in the health practitioner's health profession or providing veterinary services; or
  - (b) an employee of a health practitioner or veterinarian who prepares or mixes the substance under the direct supervision of a health practitioner or veterinarian for the treatment of a person or animal in the course of practising in the health practitioner's health profession or providing veterinary services.
- (3) In addition, subsection (1) does not apply to a person if:
- (a) the substance is a Schedule 4 or 8 substance; and
  - (b) the substance is supplied to the person under a Schedule 4 or 8 authorisation; and
  - (c) the person prepares the substance for self-administration; and
  - (d) the person does not supply it to anyone else.

**35 Wholesaler of certain Scheduled substances to be registered**

- (1) A person commits an offence if the person:
- (a) sells by wholesale a Scheduled substance, other than a Schedule 5 or 6 substance, from a place; and
  - (b) the sale is not authorised under a wholesaler certificate of registration.

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

- (2) Subsection (1) does not apply to a sale of the substance by a pharmacist in the course of practising in the pharmacy profession.

**36 Retailer of Schedule 2 and 7 substances to be licensed**

- (1) A person commits an offence if the person:
- (a) sells by retail a Schedule 2 or 7 substance from a place; and
  - (b) the sale is not authorised under a retailer licence.

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

- (2) Subsection (1) does not apply to a pharmacist selling a Schedule 2 substance in the course of practising in the pharmacy profession.

**Part 2.2 Requirements for authorised possession, supply and use of Scheduled substances**

**Division 1 Schedule 3 substances**

**37 Sale of Schedule 3 substance**

A person must not sell a Schedule 3 substance unless the sale is authorised under a certificate of registration.

Maximum penalty: 50 penalty units.

**38 Administering Schedule 3 substance**

A person must not administer a Schedule 3 substance to someone else unless the administration is authorised under:

- (a) a research authorisation; or

(b) a medical kit authorisation.

Maximum penalty: 50 penalty units.

## **Division 2 Schedule 4 substances**

### **39 Possession**

A person must not possess a Schedule 4 substance unless the possession is authorised under:

- (a) a certificate of registration; or
- (b) a Schedule 4 authorisation; or
- (c) a research authorisation; or
- (d) a medical kit authorisation.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

### **40 Supply**

A person must not supply a Schedule 4 substance to someone unless the supply is authorised under:

- (a) a certificate of registration; or
- (b) a medical kit authorisation.

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

### **41 Use**

A person must not use a Schedule 4 substance unless the use is authorised under:

- (a) a Schedule 4 authorisation; or
- (b) a research authorisation; or
- (c) a medical kit authorisation.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

### **Division 3 Pesticides and other Schedule 7 substances**

#### **42 Supply by authorised persons only**

A person must not supply a Schedule 7 substance to someone unless the supply is authorised under:

- (a) a certificate of registration; or
- (b) a retailer licence.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

#### **43 Supply to authorised persons only**

(1) A person (the **supplier**) must not supply a Schedule 7 substance to someone (the **recipient**) unless:

- (a) the recipient shows the supplier one of the following authorising the recipient to use the substance:
  - (i) a Schedule 7 authorisation;
  - (ii) a pest management technician licence;
  - (iii) a research authorisation;
  - (iv) a licence endorsed for the substance under Part 5, Division 2 of the *Agricultural and Veterinary Chemicals (Control of Use) Act 2004*;
  - (v) an S7 authorisation under the *Agricultural and Veterinary Chemicals (Control of Use) Regulations 2005*; or
- (b) the supplier is satisfied, by a statutory declaration made by the recipient, that the recipient:
  - (i) intends to use the substance only in a place outside the Territory; and
  - (ii) is authorised under the law of that place to use the substance; or
- (c) the recipient is exempted by regulation from the requirement to hold:
  - (i) a Schedule 7 authorisation for the use of the substance; or

- (ii) a pest management technician licence for the use of the substance.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) If the supplier supplies a Schedule 7 substance to the recipient under subsection (1)(b), the supplier must keep the declaration for 2 years after the date of the supply.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

#### **44 Use**

- (1) A person must not use a pesticide in carrying out pest control operations for fee or reward unless:

- (a) the use is authorised under:

- (i) a pest management technician licence; or
- (ii) a licence under Part 5, Division 2 of the *Agricultural and Veterinary Chemicals (Control of Use) Act 2004*; or
- (iii) an S7 authorisation under the *Agricultural and Veterinary Chemicals (Control of Use) Regulations 2005*; or

- (b) the person:

- (i) is employed by the holder of a pest management technician licence; and
- (ii) uses the pesticide under the direct supervision of the licensee.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) A person must not use a Schedule 7 substance (other than a pesticide) unless the use is authorised under:

- (a) a Schedule 7 authorisation; or

(b) a research authorisation.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(3) Subsections (1) and (2) do not apply if the person is exempted by regulation from the requirement to hold an authority mentioned in the subsection for the use of the substance.

## **Division 4 Schedule 8 substances**

### **Subdivision 1 Unrestricted Schedule 8 substances**

#### **45 Possession**

A person must not possess an unrestricted Schedule 8 substance unless the possession of the substance is authorised under:

- (a) a certificate of registration; or
- (b) a Schedule 8 authorisation; or
- (c) a research authorisation; or
- (d) a medical kit authorisation.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

#### **46 Supply generally**

A person must not supply an unrestricted Schedule 8 substance to someone unless the supply is authorised under a certificate of registration.

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

#### **47 Use generally**

A person must not use an unrestricted Schedule 8 substance unless the use is authorised under:

- (a) a Schedule 8 authorisation; or
- (b) a research authorisation; or

(c) a medical kit authorisation.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

#### **48 Supplying and administering for therapeutic use or treating addiction**

(1) An authorised health practitioner must not supply or administer an unrestricted Schedule 8 substance to someone in a prohibited circumstance mentioned in subsection (2) unless the supply or administration is authorised under:

(a) a Schedule 8 authorisation; or

(b) a Schedule 8 exemption.

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

(2) Each of the following is a ***prohibited circumstance*** for the supply or administration of the substance:

(a) for therapeutic use (other than for treating an addiction to a substance) by more persons than the limit prescribed by a code of practice;

(b) for treating a person's addiction to a substance.

#### **Subdivision 2 Restricted Schedule 8 substances**

##### **49 Possession**

A person must not possess a restricted Schedule 8 substance unless the possession is authorised under:

(a) a certificate of registration; or

(b) a Schedule 8 authorisation for an authorised purpose; or

(c) a Schedule 8 exemption for an authorised purpose; or

(d) a research authorisation; or

(e) a medical kit authorisation.

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

*Note for section 49*

*Under section 139(1)(b), a Schedule 8 authorisation for the possession of a restricted Schedule 8 substance may be issued only to an authorised health practitioner for supply or administration for an authorised purpose. In addition, under section 245, the CHO may issue a Schedule 8 exemption to an authorised health practitioner for the possession of a restricted Schedule 8 substance for its supply for an authorised purpose.*

## **50 Supply**

A person must not supply a restricted Schedule 8 substance to someone unless the supply is authorised under:

- (a) a certificate of registration; or
- (b) a Schedule 8 authorisation for an authorised purpose; or
- (c) a Schedule 8 exemption for an authorised purpose.

Maximum penalty: 400 penalty units or imprisonment for 4 years.

*Note for section 50*

*Under section 139(1)(b), a Schedule 8 authorisation for the supply of a restricted Schedule 8 substance may be issued only to an authorised health practitioner for supply for an authorised purpose. In addition, under section 245, the CHO may issue a Schedule 8 exemption to an authorised health practitioner for the supply of a restricted Schedule 8 substance for an authorised purpose.*

## **51 Use**

A person must not use a restricted Schedule 8 substance unless the use is authorised under:

- (a) a Schedule 8 authorisation for an authorised purpose; or
- (b) a Schedule 8 exemption for an authorised purpose; or
- (c) a research authorisation; or

(d) a medical kit authorisation.

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

*Note for section 51*

*Under section 139(1)(b), a Schedule 8 authorisation for the administration of a restricted Schedule 8 substance may be issued only to an authorised health practitioner for administration for an authorised purpose. In addition, under section 245, the CHO may issue a Schedule 8 exemption to an authorised health practitioner for the administration of a restricted Schedule 8 substance for an authorised purpose.*

## **Division 5 Prohibited substances**

### **52 Possession**

(1) A person must not possess a prohibited substance unless the possession is authorised under:

- (a) a certificate of registration; or
- (b) a prohibited substance authorisation; or
- (c) a research authorisation.

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

(2) Subsection (1) does not apply to a person possessing the substance if:

- (a) the substance is subject to an exemption under section 18 of the Therapeutic Goods Act for use of the substance solely for experimental purposes in humans; or
- (b) the person uses the substance in the treatment of another person or experimental purposes in humans under an approval given under section 19 of the Therapeutic Goods Act.

*Note for section 52*

*Under section 140, a prohibited substance authorisation for the possession of a prohibited substance may be issued only to:*

- (a) for etorphine – a veterinarian or other prescribed person for use to sedate animals; or
- (b) for other prohibited substances – an authorised health practitioner for administration for the treatment of a person's terminal illness.

### **53 Supply**

A person must not supply a prohibited substance to someone unless the supply is authorised under:

- (a) a certificate of registration; or
- (b) a prohibited substance authorisation.

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

*Note for section 53*

*Under section 140, a prohibited substance authorisation for the supply of a prohibited substance may be issued only to:*

- (a) for etorphine – a veterinarian or other prescribed person for use to sedate animals; or*
- (b) for other prohibited substances – an authorised health practitioner for administration for the treatment of a person's terminal illness.*

### **54 Use**

- (1) A person must not use a prohibited substance unless the use is authorised under:

- (a) a prohibited substance authorisation; or
- (b) a research authorisation.

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

- (2) Subsection (1) does not apply to a person using the substance if:

- (a) the substance is subject to an exemption under section 18 of the Therapeutic Goods Act for use of the substance solely for experimental purposes in humans; or
- (b) the person uses the substance in the treatment of another person or experimental purposes in humans under an approval given under section 19 of the Therapeutic Goods Act.

*Note for section 54*

*Under section 140, a prohibited substance authorisation for the use of a prohibited substance may be issued only to:*

- (a) for etorphine – a veterinarian or other prescribed person to sedate animals; or*
- (b) for other prohibited substances – an authorised health practitioner for the treatment of a person's terminal illness.*

## **Part 2.3 Authorisations for possession, supply and use of Schedule 3, 4 and 8 substances**

### **Division 1 Authorisations for health practitioners and other health-related occupations**

#### **Subdivision 1 Authorised health practitioners**

##### **55 Schedule 4 substances and unrestricted Schedule 8 substances**

- (1) An authorised health practitioner may, in the course of practising in the health practitioner's health profession:
  - (a) supply or administer a Schedule 4 substance or unrestricted Schedule 8 substance to another person; and
  - (b) possess the substance for those purposes.
- (2) However, the health practitioner must supply and administer a restricted Schedule 4 substance in accordance with the conditions stated in the declaration of the substance as a restricted Schedule 4 substance.

#### **Subdivision 2 Pharmacists**

##### **56 Possessing Schedule 4 and 8 substances**

A pharmacist may, in the course of practising in the pharmacy profession, possess Schedule 4 and 8 substances for supply:

- (a) under this Subdivision; or
- (b) in another circumstance prescribed by regulation.

##### **57 Supplying Schedule 4 and 8 substances – general**

- (1) A pharmacist may, in the course of practising in the pharmacy profession, supply a Schedule 4 or 8 substance:
  - (a) to an authorised prescriber for the substance; or
  - (b) to a person on a prescription issued by an authorised prescriber (other than an interstate prescriber) for the substance; or

- (c) on a written supply order for the substance to:
- (i) a person who was a patient of a hospital on the person's discharge from the hospital; or
  - (ii) a nurse employed at a residential facility for administration to a resident at the facility; or
  - (iii) the person in charge of a declared place for administration to a person receiving medical treatment at the place; or
- (d) to another pharmacist for the other pharmacist to supply the substance in the course of practising in the pharmacy profession; or
- (e) to the master of a ship, who is authorised or required under the *Navigation Act 2012* (Cth) to carry the substance on board the ship, on the written request of the master or ship's medical officer; or
- (f) to the holder of a research authorisation or medical kit authorisation for the substance; or
- (g) for a Schedule 4 substance – to the holder of a Schedule 4 authorisation; or
- (h) to a person prescribed by regulation.

*Note for subsection (1)(d)*

*A pharmacist is not required to have a wholesaler certificate of registration for the wholesale supply of the substances in the course of practising the pharmacy profession, see section 35(2).*

*Note for subsection (1)(e)*

*Orders made by the Australian Maritime Safety Authority under the Navigation Act 1912 (Cth) also authorise some people to deal with the substance. Accordingly, a person who deals with the substance in accordance with the orders is not criminally responsible for an offence against Part 2.1, see section 43BE of the Criminal Code.*

- (2) In addition, a pharmacist employed at a hospital may, in the course of practising in the pharmacy profession, supply a Schedule 4 or 8 substance to one of the following health practitioners on the written requisition of the health practitioner containing the information prescribed by regulation:
- (a) a doctor, dentist, nurse practitioner or eligible midwife employed or engaged at the hospital;

- (b) the nurse in charge of a ward or department of the hospital.

**58 Supplying Schedule 4 and 8 substances – prescription of interstate prescribers**

- (1) A pharmacist may, in the course of practising in the pharmacy profession, supply an unrestricted Schedule 4 substance to a person on a prescription issued by an interstate prescriber.
- (2) A pharmacist may, in the course of practising in the pharmacy profession, supply a Schedule 8 substance or restricted Schedule 4 substance to a person on a prescription issued by an interstate prescriber in accordance with:
- (a) the conditions prescribed by regulation applying to the supply;  
or
- (b) an approval under section 253.

**59 Supplying unrestricted Schedule 4 substance in emergency for patient previously supplied on prescription**

- (1) A pharmacist may, in the course of practising in the pharmacy profession, supply an unrestricted Schedule 4 substance to a person (the **patient**), or another person who acts for the patient (the **agent**) if:
- (a) the pharmacist is reasonably satisfied supplying the substance is justified because of urgent circumstances; and
- (b) the pharmacist, or another pharmacist, has previously supplied the substance for administration to or by the patient on the prescription of an authorised prescriber for the substance; and
- (c) for a supply to the agent:
- (i) the agent gives the pharmacist the name and contact details of the authorised prescriber; and
- (ii) the agent produces to the pharmacist proof of the agent's identity.
- (2) Subsection (1) does not authorise the pharmacist to supply more than:
- (a) 7 days supply of the substance administered at the daily dose the pharmacist reasonably believes the authorised prescriber would recommend be administered to the patient; or

- (b) the smallest primary pack of the substance that has been packaged and labelled by the substance's manufacturer in compliance with the medicines and poisons standard.

**59A Supplying unrestricted Schedule 4 substance – continued dispensing**

A pharmacist may, in the course of practising in the pharmacy profession, supply an unrestricted Schedule 4 substance to a person if:

- (a) the substance is a pharmaceutical benefit that is covered by an instrument made under section 89A(3) of the *National Health Act 1953* (Cth); and
- (b) the supply is made in accordance with the conditions that are specified in that instrument as if the pharmacist were an approved pharmacist.

**60 Supplying unrestricted Schedule 4 substance for patient in residential care**

- (1) A pharmacist may, in the course of practising in the pharmacy profession, supply an unrestricted Schedule 4 substance to a person (the **agent**), for administration to or by another person for whom the agent acts (the **patient**) if:
  - (a) the pharmacist has previously supplied the substance to the agent or patient for administration to the patient on the prescription of an authorised prescriber for the substance; and
  - (b) the pharmacist is satisfied the patient:
    - (i) is in residential care; and
    - (ii) the substance is administered in accordance with a therapeutic regime decided by a health practitioner for treatment of a chronic medical condition; and
  - (c) for a supply to the agent:
    - (i) the agent gives the pharmacist the name and contact details of the authorised prescriber; and
    - (ii) the agent produces to the pharmacist proof of the agent's identity.

- (2) Subsection (1) does not authorise the pharmacist to supply more than:
- (a) 7 days supply of the substance administered at the daily dose the pharmacist reasonably believes an authorised prescriber would recommend be administered to the patient; or
  - (b) the smallest primary pack of the substance that has been packaged and labelled by the substance's manufacturer in compliance with the medicines and poisons standard.

**61 Supplying Schedule 4 and 8 substances on verbal request of authorised prescriber**

- (1) A pharmacist may, in the course of practising in the pharmacy profession, supply a Schedule 4 or 8 substance to a person (the **patient**), or another person who acts for the patient (the **agent**) if the pharmacist:
- (a) has been verbally requested to supply the substance to:
    - (i) the patient for self-administration or administration to the patient by someone else; or
    - (ii) the agent for administration to the patient by the agent or someone else; and
  - (b) is satisfied the person making the request is an authorised prescriber for the substance.
- (2) Subsection (1) does not authorise the pharmacist to supply more than 7 days supply of the substance administered at the daily dose stated by the authorised prescriber.

**62 Qualified pharmacist may supply and administer Schedule 4 vaccine**

A pharmacist who has the qualifications prescribed by the CHO by *Gazette* notice may, in the course of practising in the pharmacy profession, supply or administer a Schedule 4 substance that is a vaccine to a person.

### **Subdivision 3 Other health practitioners and health-related occupations**

#### **63 Aboriginal and Torres Strait Islander health practitioners**

- (1) An Aboriginal and Torres Strait Islander health practitioner may, in the course of practising in the Aboriginal and Torres Strait Islander health practice profession:
  - (a) supply or administer a Schedule 4 or 8 substance, other than a vaccine, to another person; and
  - (b) possess the substance for those purposes.
- (2) An ATSI health practitioner who has the qualifications prescribed by the CHO by *Gazette* notice may, in the course of practising in the Aboriginal and Torres Strait Islander health practice profession:
  - (a) supply or administer a Schedule 4 substance that is a vaccine to another person; and
  - (b) possess the substance for those purposes.
- (3) However, an approved ATSI health practitioner must deal with a Schedule 4 or 8 substance in accordance with the Scheduled substance treatment protocol applying to the health practitioner.
- (4) In addition, if an authorised prescriber, by administration order, authorises an Aboriginal and Torres Strait Islander health practitioner to administer a Schedule 4 or 8 substance, the health practitioner must administer the substance in accordance with the order.

#### **64 Approved paramedics**

- (1) An approved paramedic may, in the course of carrying out the officer's duties:
  - (a) administer a Schedule 3, 4 or 8 substance to another person; and
  - (b) possess the substance for that purpose.
- (2) However, the paramedic must deal with the substance in accordance with the Scheduled substance treatment protocol applying to the officer.

## **65 Nurses and midwives**

- (1) A nurse or midwife may, in the course of practising in the nursing and midwifery profession as a nurse or midwife:
- (a) supply or administer a Schedule 4 or 8 substance, other than a vaccine, to another person; and
  - (b) possess the substance for those purposes.
- (1A) A nurse or midwife who has the qualifications prescribed by the CHO by *Gazette* notice may, in the course of practising in the nursing and midwifery profession as a nurse or midwife:
- (a) supply or administer a Schedule 4 substance that is a vaccine to another person; and
  - (b) possess the substance for those purposes.
- (2) However, an approved nurse or approved midwife must deal with a Schedule 4 or 8 substance in accordance with the Scheduled substance treatment protocol applying to the nurse or midwife.
- (3) In addition, if an authorised prescriber, by administration order, authorises a nurse or midwife to administer a Schedule 4 or 8 substance, the nurse or midwife must administer the substance in accordance with the order.

## **66 Dentists**

A dentist may, in the course of practising in the dental profession as a dentist:

- (a) supply or administer a Schedule 4 substance or unrestricted Schedule 8 substance to another person; and
- (b) possess the substance for those purposes.

## **67 Dental therapists, dental hygienists and oral health therapists**

A dental therapist, dental hygienist or oral health therapist may, in the course of practising in the dental profession as a dental therapist, dental hygienist or oral health therapist:

- (a) administer an unrestricted Schedule 4 substance in accordance with conditions declared under section 249; and
- (b) possess the substance for that purpose.

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## 68 Optometrists

An optometrist may, in the course of practising in the optometry profession:

- (a) supply or administer an unrestricted Schedule 4 substance to another person; and
- (b) possess the substance for those purposes.

## 69 Podiatrists

A podiatrist may, in the course of practising in the podiatry profession:

- (a) supply or administer a Schedule 4 substance or unrestricted Schedule 8 substance to another person; and
- (b) possess the substance for those purposes.

## Subdivision 4 Special provisions for health practitioners to supply and administer Schedule 3 substances

### 71 Sales and other supplies of Schedule 3 substances

- (1) A health practitioner may sell a Schedule 3 substance to a person (the **recipient**) in the course of practising in his or her health profession.

*Notes for subsection (1)*

- 1 *Schedule 3 substances are available to the public from a pharmacist without a prescription but their safe use requires professional advice.*
  - 2 *These substances include medications that are commonly included in first aid kits (for example, medications to treat asthma and allergic reactions). Accordingly, a pharmacist may sell a Schedule 3 substance to an employer, university or organiser of a public sporting event for a first aid kit for administering to an employee, student or spectator by a person who, for example, has completed a first aid course, in accordance with the instructions for using the substance.*
- (2) To avoid doubt, subsection (1) does not authorise the sale by retail of a Schedule 3 substance by a health practitioner other than a pharmacist.
  - (3) In addition, subsection (1) does not prevent a health professional otherwise supplying a Schedule 3 substance in the course of practising in his or her health profession.

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- (4) However, a health practitioner who sells or otherwise supplies a Schedule 3 substance must give the recipient adequate instructions for administering the substance (written or verbal) at the time of the sale or supply.
- (5) Subsection (4) applies regardless of whether the substance is for administering to the recipient or someone else.

## **72 Administering Schedule 3 substances**

A health practitioner may, in the course of practising in his or her health profession, administer a Schedule 3 substance to someone else.

*Note for section 72*

*A Schedule substance treatment protocol may apply to the health practitioner administering the substance.*

## **Subdivision 5 Additional qualifications for health practitioners under Health Practitioner Regulation National Law**

### **73 Endorsement on health practitioner's registration for additional qualifications**

- (1) This section applies to a health practitioner whose registration under the Health Practitioner Regulation National Law is endorsed as qualified to possess, supply or administer, a Scheduled substance (the **endorsed qualification**) in addition to an authorisation under this Division.

*Note for subsection (1)*

*Part 7, Division 3 of the Health Practitioner Regulation National Law deals with the endorsement of registration under the Law.*

- (2) The health practitioner may, in the course of practising in the health practitioner's health profession, deal with the Scheduled substance in accordance with the endorsed qualification.
- (3) The health practitioner's authorisation under subsection (2) is subject to the conditions or other restrictions prescribed by regulation.

## **Division 2 Other authorisations**

### **74 Veterinarians**

- (1) A veterinarian may, in the course of providing veterinary services, deal with Scheduled substances as follows:
  - (a) supply or administer a Schedule 3, 4 or 8 substance for the treatment of animals;
  - (b) possess the substance for the purpose mentioned in paragraph (a).
- (2) However, the veterinarian must deal with the substance in accordance with the conditions of the veterinarian's registration.

### **75 Administering Schedule 3 substances**

- (1) This section applies if a health practitioner supplies a Schedule 3 substance for administering to a person (the *patient*).
- (2) Anyone may administer the substance to the patient in accordance with the health practitioner's instructions for administering it.

### **76 Possessing and administering lawfully supplied Schedule 4 and 8 substances for administering to patients**

- (1) This section applies if, under this Act or an Act of the Commonwealth, a State or another Territory, a health practitioner supplies a Schedule 4 or 8 substance for administering to a person (the *patient*).
- (2) The patient may:
  - (a) self-administer the supplied substance in accordance with the instructions of the health practitioner; and
  - (b) possess the supplied substance for self-administration.
- (3) In addition, another person may:
  - (a) administer the supplied substance to the patient in accordance with the instructions of the health practitioner; and

- (b) possess the supplied substance for administering to the patient.

*Example of application of subsection (3)*

*A doctor issues a prescription for the supply of a restricted Schedule 4 substance for administering to an elderly patient. A child or carer of the patient does not commit an offence against section 41(1) merely because the child or carer administers the substance to the patient in accordance with the doctor's instructions.*

**77 Possessing and administering lawfully supplied Schedule 4 and 8 substances for administering to animals**

- (1) This section applies if, under this Act or an Act of the Commonwealth, a State or another Territory, a pharmacist or veterinarian supplies a Schedule 4 or 8 substance for administering to animals under a person's control.
- (2) The person may:
- (a) administer the supplied substance to the animals in accordance with the instructions of the pharmacist or veterinarian who authorised the supply; and
- (b) possess the supplied substance for administering it to the animals.
- (3) However, subsection (2) does not apply to the administration of the supplied substance by the pharmacist or veterinarian.
- (4) In this section:

**veterinarian** includes a person registered or otherwise authorised under an Act of a State or another Territory to provide veterinary services.

**78 Possessing, supplying and administering Schedule 3, 4 and 8 substances under emergency authorisation**

While an emergency authorisation is in force under section 251, an authorised person under the authorisation may, in accordance with the authorisation:

- (a) supply or administer the Schedule 3, 4 or 8 substances stated in the authorisation; and
- (b) possess the substances for those purposes.

## 79 Possessing Scheduled substances for delivery

- (1) This section applies to a person (the **delivery person**) who is:
- (a) engaged by an authorised supplier to transport and deliver a Scheduled substance to someone who is authorised under this Act to possess the substance (the **recipient**); or
  - (b) an employee or agent of a person mentioned in paragraph (a).

*Examples of delivery person for subsection (1)*

- 1 A hospital employee.
- 2 An employee of a courier service.

- (2) The delivery person is authorised to:
- (a) possess the Scheduled substance for transporting and delivering it to the recipient in accordance with the delivery person's engagement by the authorised supplier; and
  - (b) supply the substance to the recipient or recipient's employee or agent.

*Example of agent for subsection (2)(b)*

*The guardian of a child for a substance supplied for administering to the child on a prescription issued by an authorised prescriber.*

- (3) In this section:

**authorised supplier**, for a Scheduled substance, means:

- (a) a person authorised to supply the substance under:
  - (i) Part 2.3 or a regulation; or
  - (ii) an Act of the Commonwealth, a State or another Territory; or
- (b) the holder of an authority authorised to supply the substance.

## 80 Possessing Scheduled substances for destruction

- (1) This section applies to a waste disposer who is engaged by a person authorised under this Act to possess a Scheduled substance (the **authorised person**) to destroy the substance.
- (2) The waste disposer is authorised to possess the Scheduled substance for its destruction in accordance with the waste disposer's engagement by the authorised person.

(3) However, the authorisation to possess the Scheduled substance has effect only for as long as is reasonably practicable for the waste disposer to destroy it after receiving it.

(4) In this section:

**waste disposer** means the holder of a licence under the *Waste Management and Pollution Control Act 1998* for disposing of a Scheduled substance that is a listed waste under that Act.

## **Part 2.4 Prescriptions and orders for Schedule 4 and 8 substances**

### **Division 1 Authorised prescribers**

#### **Subdivision 1 Schedule 4 substances**

##### **81 Unrestricted Schedule 4 substance**

(1) A person must not issue a prescription for the supply of an unrestricted Schedule 4 substance unless:

(a) the person:

(i) is a dentist, doctor, eligible midwife, nurse practitioner, optometrist or podiatrist or another health practitioner prescribed by regulation; and

(ii) issues the prescription in the course of practising the person's health profession; or

(b) the person:

(i) is a veterinarian; and

(ii) issues the prescription in the course of providing veterinary services in the Territory for the treatment of animals.

Maximum penalty: 50 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

## **82 Restricted Schedule 4 substance**

(1) A person must not issue a prescription for the supply of a restricted Schedule 4 substance unless:

(a) the person:

- (i) is an authorised health practitioner; and
- (ii) issues the prescription in the course of practising the person's health profession in accordance with the conditions stated in the declaration of the substance as a restricted Schedule 4 substance; or

(b) the person:

- (i) is a veterinarian; and
- (ii) issues the prescription in the course of providing veterinary services in the Territory for the treatment of animals.

Maximum penalty: 100 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

## **Subdivision 2 Schedule 8 substances**

### **83 Unrestricted Schedule 8 substance – general**

(1) A person must not issue a prescription for the supply of an unrestricted Schedule 8 substance unless:

(a) the person:

- (i) is a dentist, doctor, eligible midwife or nurse practitioner, podiatrist or another health practitioner prescribed by regulation; and
- (ii) issues the prescription in the course of practising the person's health profession; or

(b) the person:

- (i) is a veterinarian; and

- (ii) issues the prescription in the course of providing veterinary services in the Territory for the treatment of animals.

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

**84 Unrestricted Schedule 8 substance – therapeutic use or treating addiction**

- (1) A person must not issue a prescription for the supply of an unrestricted Schedule 8 substance in a prohibited circumstance mentioned in subsection (2) unless the person:

- (a) is an authorised health practitioner; and
- (b) issues the prescription:
  - (i) under a Schedule 8 authorisation or Schedule 8 exemption; and
  - (ii) in the course of practising the health practitioner's health profession.

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

- (2) Each of the following is a ***prohibited circumstance*** for issuing the prescription:

- (a) for therapeutic use (other than for treating an addiction to a substance) by more persons than the limit prescribed by a code of practice;
- (b) for treating a person's addiction to a substance.

**85 Restricted Schedule 8 substance**

- (1) A person must not issue a prescription for the supply of a restricted Schedule 8 substance unless:

- (a) the person:
  - (i) is an authorised health practitioner; and
  - (ii) issues the prescription in the course of practising the person's health profession under a Schedule 8 authorisation, or Schedule 8 exemption, for an authorised purpose; or

- (b) the person:
- (i) is a veterinarian; and
  - (ii) issues the prescription in the course of providing veterinary services in the Territory for the treatment of animals.

Maximum penalty: 100 penalty units.

*Note for subsection (1)(a)*

*Under section 139(1)(c), a Schedule 8 authorisation for the issue of a prescription for the supply of a restricted Schedule 8 substance may be issued only to an authorised health practitioner for administration for an authorised purpose. In addition, under section 245, the CHO may issue a Schedule 8 exemption to an authorised health practitioner for the issue of a prescription for the supply of a restricted Schedule 8 substance for administration for an authorised purpose.*

- (2) An offence against subsection (1) is an offence of strict liability.

### **Subdivision 3 Additional qualifications for health practitioners under Health Practitioner Regulation National Law**

#### **86 Endorsement on health practitioner's registration for additional qualifications**

- (1) This section applies to a health practitioner whose registration under the Health Practitioner Regulation National Law is endorsed as qualified to issue a prescription for the supply of a Scheduled substance (the **endorsed qualification**) in addition to an authorisation under Subdivision 1 or 2.

*Note for subsection (1)*

*Part 7, Division 3 of the Health Practitioner Regulation National Law deals with the endorsement of registration under the Law.*

- (2) The health practitioner may, in the course of practising in the health practitioner's health profession, issue a prescription for the supply of the Scheduled substance in accordance with the endorsed qualification.
- (3) The health practitioner's authorisation under subsection (2) is subject to the conditions or other restrictions prescribed by regulation.

*Note for section 86*

*A health practitioner may also issue a prescription for a Schedule 3 substance, the cost of which is subsidised under the Australian Government's Pharmaceutical Benefits Scheme.*

## Division 2 Issue of prescriptions

### 87 Requirements for prescription

- (1) An authorised prescriber must not issue a prescription for a Scheduled substance unless the issue of the prescription complies with:
- (a) the requirements prescribed by regulation; and
  - (b) for a Schedule 8 substance or restricted Schedule 4 substance – the requirements prescribed by a code of practice.

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

### 88 Duration of prescription

A prescription issued under this Part for the supply of a Scheduled substance remains in force for the following period from the date it is issued:

- (a) if it is for supplying a Schedule 8 substance – 6 months or, if a shorter period is prescribed by a code of practice, the shorter period;
- (b) if it is for supplying another substance – 12 months.

### 89 Issuing prescription to patient

- (1) An authorised prescriber commits an offence if the prescriber:
- (a) issues a prescription for the supply of a Schedule 4 or 8 substance for administering to a person (the **patient**) for the patient's therapeutic use or treating a medical condition of the patient; and
  - (b) gives the prescription to a person (the **recipient**) other than:
    - (i) the patient; or
    - (ii) a carer of the patient; or
    - (iii) a guardian of the patient; or
    - (iv) a prescribed person.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the patient is the partner of the recipient; and
  - (b) the substance is a Schedule 4 substance for treating the partner for the medical condition of chlamydia; and
  - (c) the prescribed conditions apply to the issue of the prescription.
- (3) In addition, the authorised prescriber is not civilly liable in relation to the issue of the prescription.
- (4) Without limiting subsection (3), issuing and giving the prescription does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.
- (5) In this section:

**carer**, see section 5 of the *Carer's Recognition Act 2006*.

**partner**, of a person, includes:

- (a) the person's spouse; and
- (b) the person's de facto partner; and
- (c) someone with whom the person is in a sexual relationship.

**prescribed** means prescribed by regulation.

## **90 No self-prescription of Schedule 8 or restricted Schedule 4 substances**

An authorised prescriber must not issue to himself or herself a prescription for the supply of a Schedule 8 substance or restricted Schedule 4 substance.

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

## **91 Quantity of Schedule 8 substance authorised by prescription**

- (1) An authorised prescriber must not issue a prescription for the supply of a Schedule 8 substance for more than:
- (a) 3 months supply of the substance administered at the daily dose recommended by the authorised prescriber; or

- (b) if a greater quantity is prescribed by a code that applies to the issue of the prescription – that quantity.

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

### **Division 3 Orders for administering and supplying Schedule 4 and 8 substances**

#### **92 Authorised prescriber may authorise administration and supply by order**

- (1) An authorised prescriber for a Scheduled substance may:
- (a) by written or verbal order (an **administration order**), authorise the administration of the substance by a nurse, midwife or approved ATSI health practitioner to:
- (i) a patient of a hospital; or
  - (ii) a resident at a residential facility; or
  - (iii) a person receiving medical treatment at a declared place; or
  - (iv) a person receiving palliative care at the person's residence in a circumstance prescribed by regulation; or
- (b) by written order (a **supply order**), authorise the supply of the substance by a pharmacist to:
- (i) a person on the person's discharge as a patient of a hospital; or
  - (ii) the nurse employed at a residential facility for administration to a resident at the facility; or
  - (iii) the person in charge of a declared place.
- (2) An administration order or supply order must comply with the requirements prescribed by regulation.

#### *Notes for section 92*

- 1 An administration or supply order may be issued electronically in accordance with the *Electronic Transactions (Northern Territory) Act 2000*.
- 2 A Scheduled substance treatment protocol may apply to the administration of a Scheduled substance by health practitioners at a hospital, residential facility or declared place.

## **Part 2.5            Special provisions about supplies of Schedule 4 and 8 substances**

### **93            Supply of Schedule 4 and 8 substances on prescription**

- (1) A pharmacist who supplies a Schedule 4 or 8 substance on a prescription must write the date of the supply on the prescription.

Maximum penalty:     20 penalty units.

- (2) A pharmacist must not supply a Schedule 4 or 8 substance on a prescription that is not in force when the substance is supplied.

Maximum penalty:     50 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant establishes a reasonable excuse.

*Note for section 93*

*In some circumstances, a pharmacist may supply a Schedule 4 or 8 substance without a prescription under sections 59 to 61.*

### **94            Repeat supply of Schedule 8 substance**

- (1) A pharmacist commits an offence if:
- (a) an authorised prescriber issues a repeat prescription for the supply of a Schedule 8 substance; and
  - (b) the pharmacist supplies the substance within the minimum repeat interval for the prescription.

Maximum penalty:     100 penalty units or imprisonment for  
12 months.

- (2) Subsection (1) does not apply if the pharmacist is satisfied:
- (a) the previous supply of the substance was lost, stolen or destroyed; or
  - (b) the supply is urgently needed to treat the person to whom the substance is supplied; or
  - (c) other circumstances prescribed by a code of practice apply to the supply.

**95 Health practitioner to ensure self-administration of some supplied Schedule 8 substances**

- (1) This section applies to a health practitioner:
  - (a) supplying a prescribed Schedule 8 substance under a Schedule 8 authorisation or Schedule 8 exemption; or
  - (b) a health practitioner who is a pharmacist supplying a prescribed Schedule 8 substance on a prescription issued by an authorised prescriber.
- (2) The health practitioner must ensure the person to whom the substance is supplied self-administers the substance in the health practitioner's presence.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) Subsection (2) does not apply if, under a code of practice, takeaway doses of the substance are authorised for the person.
- (5) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.
- (6) In this section:

***prescribed Schedule 8 substance*** means a Schedule 8 substance prescribed by a code of practice for this section.

**96 Pharmacist to give CHO prescription for supply of Schedule 8 substance**

- (1) A pharmacist who supplies a Schedule 8 substance or restricted Schedule 4 substance on a prescription must, within 7 days after the supply, give the CHO:
  - (a) if the prescription is a repeat prescription that authorises supply on a later occasion – a copy of the prescription; or
  - (b) otherwise – the prescription on which the pharmacist supplied the substance.

Maximum penalty: 50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

**97 Obligations of authorised prescriber and pharmacist for supply made without prescription in emergency**

- (1) This section applies if, under section 61, a pharmacist supplies a Schedule 4 or 8 substance to a person at the request of an authorised prescriber.
- (2) The authorised prescriber must give the pharmacist a prescription for the supply within 7 days after making the request.

Maximum penalty: 20 penalty units.

- (3) If the pharmacist does not receive a prescription for the supply of the substance on the request within 7 days after the supply, the pharmacist must give a written report about the supply to the CHO.

Maximum penalty: 20 penalty units.

- (4) An offence against subsection (2) or (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (2) or (3) if the defendant establishes a reasonable excuse.

**Part 2.6 Special provisions about dealing with Scheduled substances in hospitals, residential facilities and declared places**

**98 Storage at hospital**

- (1) The manager of a hospital must:
  - (a) ensure all Scheduled substances received at the hospital are stored in an area and in a way to prevent unauthorised access to them; and
  - (b) take reasonable measures to prevent unauthorised access at any time to the substances.

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

**99 Administering Schedule 3, 4 or 8 substance at hospital, residential facility or declared place**

- (1) This section applies if:
- (a) a health practitioner is practising in the health practitioner's health profession at a hospital, residential facility or declared place; and
  - (b) in the course of practising the health profession, the health practitioner:
    - (i) is supplied a Schedule 3 substance; or
    - (ii) is supplied a Schedule 4 or 8 substance on a prescription or supply order of an authorised prescriber for the substance; and
  - (c) the substance is supplied for administering to a patient of the hospital, resident at the residential facility or person receiving medical treatment at the declared place (the **relevant patient**).
- (2) The health practitioner commits an offence if the health professional:
- (a) knows the supplied substance is a Schedule 3, 4 or 8 substance; and
  - (b) administers the substance to the relevant patient; and
  - (c) does not administer the substance in accordance with:
    - (i) the instructions of the authorised prescriber; or
    - (ii) the Scheduled substance treatment protocol applying to the health practitioner.

Maximum penalty: 100 penalty units.

- (3) The health practitioner commits an offence if the health practitioner:
- (a) knows the supplied substance is a Schedule 3, 4 or 8 substance; and
  - (b) administers the substance to a person; and
  - (c) knows the person is not the relevant patient.

Maximum penalty: 200 penalty units.

**100 Supply or administration of Schedule 8 substance to be witnessed**

(1) This section applies if a health practitioner supplies or administers a Schedule 8 substance to one of the following persons (the **patient**):

- (a) a patient of a hospital;
- (b) a resident of a residential facility;
- (c) a person receiving medical treatment at a declared place.

(1A) The health practitioner commits an offence if:

- (a) a person who is neither the practitioner nor the patient (the **third party**) does not witness the supply or administration; or
- (b) the third party does not sign the record prescribed by regulation for this purpose.

Maximum penalty: 20 penalty units.

(2) However, subsection (1A) does not apply:

- (a) to a nurse, midwife or Aboriginal and Torres Strait Islander health practitioner (the **health practitioner**) if:
  - (i) the health practitioner administers the substance on a prescription or administration order of an authorised prescriber for the substance and in accordance with the Scheduled substance treatment protocol applying to the health practitioner; and
  - (ii) because of the remote location of the place or other special circumstances, another person was not available to witness the administration; and
  - (iii) the health practitioner records the reason the administration was not witnessed in the patient's clinical record; or
- (b) if the patient is taking part in a pharmacotherapy program conducted at the hospital, residential facility or declared place – to a pharmacist supplying or administering a restricted Schedule 8 substance to the patient.

## **Part 2.7 Other requirements for Scheduled substances**

### **Division 1 Packaging and labelling**

#### **101 Packaging supplied Scheduled substances**

- (1) A person commits an offence if:
- (a) the person is authorised under this Act to supply a Scheduled substance to another person; and
  - (b) the person supplies the substance to another person; and
  - (c) the substance is not packaged as prescribed by regulation.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) Subsection (1) does not apply if the substance is supplied for immediately administering to a person.

#### **102 Labelling supplied Scheduled substances**

- (1) A person commits an offence if:
- (a) the person is authorised under this Act to supply a Scheduled substance to another person; and
  - (b) the person supplies the substance to another person; and
  - (c) the container of the substance is not labelled as prescribed by regulation.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) Subsection (1) does not apply if the substance is supplied for immediately administering to a person.

#### **103 Permanently marked containers – use for other Scheduled substances**

- (1) A person commits an offence if:
- (a) the person uses a container for storing a Scheduled substance; and

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

Maximum penalty: 50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.  
(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

**104 Scheduled substance container not to be used for human-use substance**

- (1) A person commits an offence if:
- (a) the person supplies a human-use substance in a container; and
  - (b) the container is of a kind of container prescribed by regulation that has been used for storing a Scheduled substance.

Maximum penalty: 50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.  
(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.  
(4) In this section:

***human-use substance*** means any of the following substances:

- (a) food;
- (b) a drink;
- (c) a condiment.

## Division 2 Vending machine supplies

### 105 Definitions

In this Division:

**manufacturer's pack**, of an unscheduled substance, means a primary pack of the substance that has been packaged and labelled by the substance's manufacturer in compliance with the medicines and poisons standard.

*Note*

*A primary pack is a pack in which a substance and its immediate container or immediate wrapper or measure pack are presented for sale or supply (see the medicines and poisons standard).*

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

*Example*

*Aspirin is mentioned in several Schedules of the medicines and poisons standard but in small packages is an unscheduled substance.*

**vending machine** means a machine or device from which a Scheduled substance can be obtained, including by one or more of the following:

- (a) electronic funds transfer;
- (b) inserting money, a token or something else.

*Examples of other things for paragraph (b)*

- 1 A credit card.
- 2 A debit card.
- 3 A key.

### 106 Vending machine supplies of unscheduled substances

- (1) A person commits an offence if:
  - (a) the person is the occupier of premises; and
  - (b) a vending machine is installed on the premises; and

- (c) the vending machine is used, or available for use, for supplying an unscheduled substance.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) Strict liability applies to subsection (1)(a) and (b).
- (3) Subsection (1) does not apply if the vending machine was placed on the premises without the occupier's consent.
- (4) In addition, subsection (1) does not apply if:
- (a) the unscheduled substance is supplied in a manufacturer's pack containing not more than 2 adult doses of the substance; and
  - (b) the substance was packed in the manufacturer's pack by the manufacturer of the substance; and
  - (c) the vending machine is presented and located in a way that makes unsupervised access by children unlikely.

### **Division 3 Methylated spirit**

#### **107 Drinking methylated spirit**

- (1) A person must not drink a methylated spirit.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

#### **108 Supplying methylated spirit for drinking**

A person must not supply a methylated spirit to another person for drinking by the other person or someone else.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

### **Division 4 Paints**

#### **110 Manufacture, supply and use of first, second and third schedule paints**

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

Maximum penalty: 40 penalty units.

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

Maximum penalty: 50 penalty units.

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

Maximum penalty: 100 penalty units or imprisonment for 12 months.

*Note for section 110*

*Paragraph 1(1) of Part 1 of the medicines and poisons standard defines the paints to which this section applies.*

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

- (1) A person commits an offence if:

- (a) the person manufactures a paint with the intention the paint be applied to toys; and
- (b) the paint does not comply with the requirements prescribed by regulation.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) A person commits an offence if:

- (a) the person supplies a paint; and
- (b) knows the paint is to be applied to toys; and
- (c) the paint does not comply with the requirements prescribed by regulation.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (3) A person commits an offence if:

- (a) the person applies a paint to toys; and
- (b) the paint does not comply with the requirements prescribed by regulation.

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

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

A person commits an offence if:

- (a) the person manufactures, supplies or uses a paint containing a pesticide; and
- (b) the pesticide is not prescribed by regulation.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

## **Division 5 Miscellaneous matters**

### **113 Advertising some Scheduled substances**

(1) A person commits an offence if:

- (a) the person publishes an advertisement; and
- (b) the advertisement promotes or encourages the use of a prescribed substance.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(2) A person commits an offence if:

- (a) the person publishes an advertisement; and
- (b) the advertisement indicates someone is willing or authorised under this Act to supply a prescribed substance.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(3) Subsections (1) and (2) do not apply to:

- (a) an advertisement for a prescribed substance in a publication published primarily for health practitioners or veterinarians; or
- (b) an advertisement prescribed by regulation.

(4) In this section:

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

**prescribed substance** means:

- (a) a Schedule 3 substance other than a Schedule 3 substance to which Appendix H to the medicines and poisons standard applies; or
- (b) a Schedule 4, 8 or 9 substance.

**114 No self-administration of Schedule 8 or restricted Schedule 4 substances**

- (1) A person who is authorised under this Act to supply a Schedule 8 substance or restricted Schedule 4 substance must not self-administer the substance.

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

- (2) Subsection (1) does not apply if the substance has been supplied to the person for self-administration by someone else who is authorised under this Act to do so (an **authorised person**).
- (3) In addition, it is a defence to a prosecution for an offence against subsection (1) if the defendant proves:
  - (a) the defendant:
    - (i) self-administered the substance for a genuine therapeutic use in an emergency and had no access to an authorised person to administer the substance; and
    - (ii) gives notice of the administration in the approved form to the CHO within 7 days after the administration; or
  - (b) the defendant self-administered the substance under another circumstance prescribed by regulation.

**Part 2.8 CHO prohibitions**

**115 Temporary prohibition on dealing with substance**

- (1) This section applies if the CHO is satisfied, because of urgent circumstances, it is necessary to immediately prohibit dealing with a substance to promote or protect public health and safety.
- (2) The CHO may, by *Gazette* notice, prohibit the dealing subject to the conditions the CHO considers appropriate.



**116 Prohibition on health practitioner or veterinarian dealing with Schedule 8 substance**

- (1) If the CHO considers a health practitioner or veterinarian should be prohibited from dealing with Schedule 8 substances, or a particular Schedule 8 substance, the CHO may give the health practitioner or veterinarian written notice stating:
  - (a) the particulars of the proposed prohibition, including its duration; and
  - (b) the reasons for the proposed prohibition; and
  - (c) the health practitioner or veterinarian may, within the period stated in the notice, make written representations to the CHO objecting to the proposed prohibition.
- (2) After the end of the period stated in the notice, the CHO may, by written notice (the **prohibition notice**), prohibit the health practitioner or veterinarian from dealing with Schedule 8 substances, or a stated Schedule 8 substance, as stated in the notice.
- (3) The prohibition notice may be subject to stated conditions.

*Example for subsection (3)*

*The prohibition may state a place from where a pharmacist may store a substance to enable the pharmacist to supply it on a prescription issued by an authorised prescriber.*

- (4) In deciding whether to give the prohibition notice, the CHO must have regard to written submissions made by the health practitioner or veterinarian before the end of the period.
- (5) The prohibition notice must include an information notice for the decision.
- (6) The health practitioner or veterinarian must not engage in conduct that results in a contravention of the prohibition notice.

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

- (7) The notice has effect despite another provision of this Act.

## Chapter 3 Authorities to deal with Scheduled substances

### Part 3.1 Preliminary matters

#### Division 1 Interpretation

##### 117 Types of authorities

Each of the following is an **authority** issued by the CHO:

- (a) a manufacturer certificate of registration;
- (b) a wholesaler certificate of registration;
- (c) a retailer licence;
- (d) a Schedule 4 authorisation;
- (e) a Schedule 7 authorisation;
- (f) a pest management technician licence;
- (g) a Schedule 8 authorisation;
- (h) a prohibited substance authorisation;
- (i) a research authorisation;
- (j) a medical kit authorisation.

##### 118 Suitability of authority holder – individuals

- (1) In deciding whether an individual (other than a health practitioner) is a **suitable person** to hold an authority, the CHO must have regard to the following:
- (a) the knowledge, experience and qualifications of the individual in relation to the Scheduled substances to which the authority relates;
  - (b) the dealings with Scheduled substances to which the authority relates and the purpose of the dealings;
  - (c) another matter prescribed by regulation.

- (2) However, an individual is not a suitable person to hold an authority if:
- (a) the individual has been convicted or found guilty of any of the following in the 5-year period before the day the application for the authority is made:
    - (i) an offence against this Act;
    - (ii) an offence in Australia or elsewhere in relation to a Scheduled substance; or
  - (b) the individual at any time in the 5-year period before the day the application for the authority is made:
    - (i) was an undischarged bankrupt; or
    - (ii) executed a personal insolvency agreement; or
  - (c) at any time in the 5-year period before the day the application for the authority is made, the individual was involved in the management of a body corporate when:
    - (i) the body corporate became the subject of a winding-up order; or
    - (ii) an administrator was appointed for the body corporate; or
  - (d) a circumstance prescribed by regulation applies in relation to the individual.
- (3) Despite subsection (2), the CHO may decide an individual is a suitable person to hold an authority if satisfied:
- (a) the individual's dealings with Scheduled substances authorised, or to be authorised, by the authority would not be inconsistent with the objects of this Act if the CHO decided that the individual is a suitable person; and
  - (b) it is otherwise in the public interest that the individual be treated as a suitable person.

#### **119 Suitability of authority holder – bodies corporate**

- (1) A body corporate is a ***suitable person*** for an authority if:
- (a) each executive officer of the body corporate is a suitable person to hold the authority; and

- (b) the body corporate is not the subject of a winding-up order, and has not been the subject of a winding-up order in the 5-year period before the day the application for the authority is made; and
  - (c) an administrator has not been appointed for the body corporate in the 5-year period before the day the application for the authority is made.
- (2) However, if a body corporate is not a suitable person for an authority under subsection (1), the CHO may decide the body corporate is a suitable person to hold an authority if satisfied:
- (a) the body corporate's dealings with Scheduled substances to which the authority relates would not be inconsistent with the objects of this Act if the CHO decided the body corporate is a suitable person; and
  - (b) it is otherwise in the public interest that the body corporate be treated as a suitable person.

## **120 Suitability of nominated person – certificate of registration**

An individual is a ***suitable person*** to be the nominated person for a certificate of registration if the individual:

- (a) is a suitable person to hold the authority; and
- (b) the CHO is satisfied the person is suitable to have control of the business activities to be carried out under the authority.

## **Division 2 Authorised activities under authorities**

### **121 Manufacturer certificate of registration**

A ***manufacturer certificate of registration***, for a place, is an authority that authorises its holder to:

- (a) manufacture the Scheduled substances stated in the certificate at the place; and
- (b) supply the manufactured substances from the place in the course of carrying out business activities for the manufacture of the substances; and

- (c) possess the substances for a purpose mentioned in paragraph (a) or (b).

*Note for section 121*

*A manufacturer certificate of registration may authorise the manufacture, possession and supply of a dangerous drug that would otherwise be unlawful under Part II, Division 1 of the Misuse of Drugs Act 1990.*

## **122 Wholesaler certificate of registration**

A **wholesaler certificate of registration**, for a place, is an authority that authorises its holder to:

- (a) supply the Scheduled substances stated in the certificate from the place in the course of carrying out business activities for the sale of the substances by wholesale; and
- (b) possess the substances for a purpose mentioned in paragraph (a).

## **123 Retailer licence**

A **retailer licence**, for a place, is an authority that authorises the licensee to:

- (a) supply the Schedule 2 and 7 substances stated in it from the place in the course of carrying out business activities for the retail sale of the substances; and
- (b) possess the substances for a purpose mentioned in paragraph (a).

*Note for section 123*

*However, under section 145, the licensee is prohibited from supplying a Schedule 2 substance from the licensed place if it is located within 25 km, by the shortest practical route, of a pharmacy.*

## **124 Schedule 4 authorisation**

A **Schedule 4 authorisation** is an authority that authorises its holder, and the persons stated in it, to do one or more of the following in relation to the Schedule 4 substances stated in it:

- (a) administer the substances to animals (but not humans) for the purposes stated in it;
- (b) otherwise use the substances;
- (c) possess the substances for a purpose mentioned in paragraph (a) or (b).

## 125 Schedule 7 authorisation

- (1) A **Schedule 7 authorisation** is an authority that authorises its holder to use the Schedule 7 substances (other than a chemical product) stated in it.
- (2) In this section:

**chemical product**, see section 4(1) of the *Agricultural and Veterinary Chemicals (Control of Use) Act 2004*.

*Note for subsection (2)*

*The Agricultural and Veterinary Chemicals (Control of Use) Act 2004 provides controls on the use of chemical products. The controls under that Act include, for example, obligations on pharmacists providing information to people about chemical products supplied to them on the prescription of a veterinarian, see section 34 of that Act.*

## 126 Pest management technician licence

A **pest management technician licence** is an authority that authorises the licensee to use the pesticides stated in it for carrying out pest control operations.

*Note for section 126*

*Depending on the knowledge, experience and qualifications of the licensee in the use of pesticides, the licence may be subject to conditions about the use of stated pesticides. For example, the licence may authorise use of a pesticide only under the direct supervision of a licensee with additional qualifications.*

## 127 Schedule 8 authorisation

A **Schedule 8 authorisation** is an authority that authorises its holder to do one or more of the following in relation to the Schedule 8 substances stated in it:

- (a) supply the substances;
- (b) administer the substances to another person or to animals;
- (c) otherwise use the substances;
- (d) issue a prescription for the supply of the substances;
- (e) possess the substances for a purpose mentioned in paragraphs (a) to (d).

*Notes for section 127*

- 1 A *Schedule 8 authorisation* may authorise the possession, supply or use of a dangerous drug that would otherwise be unlawful under Part II, Division 1 of the *Misuse of Drugs Act 1990*.

2 Also, see section 139 for restrictions applying in relation to the issue of Schedule 8 authorisations.

## 128 Prohibited substance authorisation

- (1) A **prohibited substance authorisation**, for a prohibited substance (other than etorphine), is an authority that authorises the authorised health practitioner who is its holder, and other authorised health practitioner stated in it, to do one or more of the following in relation to the prohibited substance stated in it:
- (a) administer the substance to the person stated in it;
  - (b) supply the substance to the person stated in it for the person to self-administer;
  - (c) possess the substance for a purpose mentioned in paragraph (a) or (b).
- (2) If the authorisation authorises the supply of the substance to the person stated in it for self-administration, the authorisation also authorises the person to:
- (a) self-administer the substance; and
  - (b) possess the substance to self-administer.
- (3) A **prohibited substance authorisation**, for etorphine, is an authority that authorises its holder to do the following in relation to the substance:
- (a) administer the substance to animals;
  - (b) possess the substance for the purpose mentioned in paragraph (a).

### Notes for section 128

- 1 A prohibited substance authorisation may authorise the possession, supply or use of a dangerous drug that would otherwise be unlawful under Part II, Division 1 of the Misuse of Drugs Act 1990.
- 2 Also, see section 140 for restrictions applying in relation to prohibited substance authorisations.

## 129 Research authorisation

A **research authorisation** is an authority that authorises its holder to:

- (a) administer Schedule 3 substances to another person; or

- (b) do one or more of the following in relation to the Schedule 4, 7 and 8 substances, or prohibited substances, stated in it for medical or scientific research:
  - (i) administer the substances to stated persons or to animals;
  - (ii) otherwise use the substances;
  - (iii) possess the substances for a purpose mentioned in subparagraph (i) or (ii).

*Notes for section 129*

- 1 *A research authorisation may authorise the possession, supply or use of a dangerous drug that would otherwise be unlawful under Part II, Division 1 of the Misuse of Drugs Act 1990.*
- 2 *Also, see section 141 for restrictions applying in relation to research authorisations.*

### **130 Medical kit authorisation**

- (1) A **medical kit authorisation** is an authority that authorises its holder, and the other persons stated in it, to:
  - (a) administer Schedule 3 substances to another person; and
  - (b) do one or more of the following in relation to the Schedule 4 substances stated in it:
    - (i) supply the substances;
    - (ii) self-administer the substances;
    - (iii) administer the substances to another person;
    - (iv) possess the substances for a purpose mentioned in subparagraphs (i) to (iii).
- (2) In addition, the authorisation may authorise its holder, and the other persons stated in it, to:
  - (a) administer the Schedule 8 substances stated in it; and
  - (b) possess the substances for that purpose.

## **Part 3.2 Application process for authorities**

### **Division 1 Making and consideration of application**

#### **131 Making application**

An application for an authority must:

- (a) be made to the CHO in the approved form; and
- (b) be accompanied by sufficient documents and information to enable the CHO to decide the application; and
- (c) for an application for a certificate of registration – state the name of the individual to have control of the business activities to be carried out at the place (the ***nominated person***).

#### **132 CHO may require further information**

The CHO may, by written notice, require the applicant to give the CHO further documents or information, within the reasonable period stated in the notice, for considering and deciding the application.

#### **133 CHO to give application for Schedule 8 authorisation to Committee**

If the application is for a Schedule 8 authorisation for a restricted Schedule 8 substance, the CHO must give the application and all documents and information in support of it to the Committee for its advice.

*Note for section 133*

*Under section 139(5), the CHO may issue a Schedule 8 authorisation to the applicant without considering the Committee's advice if the circumstances prescribed by regulation apply.*

#### **134 Considering and deciding application**

- (1) The CHO must consider the application and either issue, or refuse to issue, the authority sought.
- (2) The CHO must issue the authority if satisfied:
  - (a) no restriction on the issue of the authority under Division 2, or prescribed by regulation, applies in relation to the application; and
  - (b) the applicant can comply with this Act in relation to the Scheduled substances to which the application relates; and

- (c) the substances are to be stored in an area and in a way to prevent unauthorised access to them; and
- (d) if the application is for a certificate of registration – the proposed nominated person stated in the application is a suitable person; and
- (e) if the application is made by a person who is not a health practitioner – the applicant is a suitable person to hold the authority.

*Note about storage of Scheduled substances for subsection (2)(d)*

*In addition, the CHO must be satisfied about security arrangements for some places where Scheduled substances are stored, see sections 135(b), 136(b), 140(1)(e) and 141(1)(e).*

- (3) The CHO must refuse to issue the authority if the CHO is not satisfied about the matters mentioned in subsection (2).
- (4) In addition, the CHO may refuse to issue a Schedule 7 authorisation or pest management technician licence if satisfied about the matter mentioned in section 172(4).

*Note for subsection (4)*

*Under section 172(4)(a), the CHO may refuse to issue a Schedule 7 authorisation or pest management technician licence if satisfied a medical examination indicates the applicant's use or continued use of Schedule 7 substances or pesticides is a threat to the applicant's health.*

## **Division 2 Restrictions on issue of authorities**

### **135 Certificate of registration**

The CHO may issue a certificate of registration only if satisfied, having regard to the nature of the business activities to be carried out and the Scheduled substances involved:

- (a) the place to which the application relates is suitable:
  - (i) for a manufacturer certificate of registration – for manufacturing and storing the Scheduled substances; or
  - (ii) for a wholesaler certificate of registration – for storing the Scheduled substances; and
- (b) security arrangements for the place are adequate to prevent the unlawful use or removal of the substances from the place.

**136 Retailer licence**

The CHO may issue a retailer licence only if satisfied:

- (a) the place to which the application relates:
  - (i) is suitable for storing Scheduled substances for supply; and
  - (ii) constitutes one retail outlet only; and
- (b) security arrangements for the place are adequate to prevent the unlawful use or removal of the substances from the place.

**137 Schedule 4 authorisation**

The CHO may issue a Schedule 4 authorisation only if satisfied the intended use of a Schedule 4 substance is an authorised purpose.

*Note for section 137*

*For authorised purposes for Schedule 4 substances, see paragraph (a) of the definition **authorised purpose** in section 5.*

**138 Pest management technician licence**

The CHO may issue a pest management technician licence only to an individual.

**139 Schedule 8 authorisation**

- (1) The CHO may issue a Schedule 8 authorisation that authorises any of the following only if satisfied the applicant is an authorised health practitioner:
  - (a) the supply or administration of an unrestricted Schedule 8 substance in a prohibited circumstance;
  - (b) the supply or administration of a restricted Schedule 8 substance for an authorised purpose and possession of the substance for that purpose;
  - (c) the issue of a prescription for the supply of:
    - (i) an unrestricted Schedule 8 substance in a prohibited circumstance; or

- (ii) a restricted Schedule 8 substance for an authorised purpose.

*Note for subsection (1)(a) and (c)(i)*

*For prohibited circumstances for the supply or administration, or the issue of a prescription for the supply, of an unrestricted Schedule 8 substance, see sections 48(2) and 84(2).*

*Note for subsection (1)(b) and (c)(ii)*

*For authorised purposes for restricted Schedule 8 substances, see paragraphs (b) and (c) of the definition **authorised purpose** in section 5.*

- (2) In addition, the CHO may issue a Schedule 8 authorisation that authorises the supply of a restricted Schedule 8 substance to a person for self-administration for an authorised purpose only if satisfied:
- (a) it is not reasonably practicable in the circumstances for the substance to be administered by an authorised health practitioner; and
  - (b) the person is competent to properly self-administer the substance.
- (3) Otherwise, the CHO may issue a Schedule 8 authorisation for a Schedule 8 substance only if satisfied the intended use of the substance is an authorised purpose.
- (4) The CHO must consider the Committee's advice before issuing a Schedule 8 authorisation mentioned in subsection (2).
- (5) However, if the circumstances prescribed by regulation apply, the CHO may issue a Schedule 8 authorisation mentioned in subsection (2) without considering the Committee's advice.

#### **140 Prohibited substance authorisation**

- (1) The CHO may issue a prohibited substance authorisation for a prohibited substance (other than etorphine) only if satisfied:
- (a) the applicant is an authorised health practitioner; and
  - (b) a person is suffering a life-threatening illness; and
  - (c) the substance is to be administered to the person by an authorised health practitioner (including the applicant), or self-administered by the person, to treat the illness; and
  - (d) the administration of the substance is justified in the circumstances because the person is suffering from symptoms unresponsive to other available treatment; and

- (e) security arrangements for the place where the substance is to be stored are adequate to prevent the unlawful use or removal of the substance from the place.
- (2) In addition, the CHO may issue a prohibited substance authorisation for the supply of a substance mentioned in subsection (1) to a person for self-administration only if satisfied:
- (a) it is not reasonably practicable in the circumstances for the substance to be administered by an authorised health practitioner; and
  - (b) the person is competent to properly self-administer the substance.
- (3) The CHO may issue a prohibited substance authorisation for etorphine only if satisfied:
- (a) the applicant is a veterinarian or other person prescribed by regulation; and
  - (b) the substance is for use to sedate animals.

#### **141 Research authorisation**

- (1) The CHO may issue a research authorisation for a Schedule 4 or 8 substance, or a prohibited substance, for medical or scientific research only if satisfied:
- (a) the research has merit and is justified; and
  - (b) the research is to be conducted or supervised by persons with experience, qualifications and competence that are appropriate for the research; and
  - (c) the research is to be conducted using facilities and resources appropriate for the research; and
  - (d) the research cannot be carried out without the use of the substance; and
  - (e) security arrangements for the place where the research is to be conducted are adequate to prevent the unlawful use or removal of the substance from the place.
- (2) In deciding whether the research has merit and is justified, the CHO must take into account the following:
- (a) the scope and objectives of the research;

- (b) the potential benefits or predicted value to be gained by the research;
- (c) if the research involves participation by humans:
  - (i) ethical considerations; and
  - (ii) the risk of potential harm to the participants, their families and the community at large, including, for example, the kind of harm, the likelihood of the harm occurring and the severity of the harm;
- (d) if the research involves the use of animals:
  - (i) ethical considerations; and
  - (ii) the potential effects on the welfare of the animals.

*Note for section 141*

*Other legislation may apply to the medical or scientific research for which the application is made, for example, the National Health and Medical Research Council Act 1992 (Cth). Under that Act, guidelines are issued on matters relating to public health research and medical research.*

## **142 Medical kit authorisation**

The CHO may issue a medical kit authorisation for Scheduled substances only if satisfied:

- (a) the professional advice or personal attendance of a health practitioner is not always reasonably available before administering the substances; and
- (b) the applicant, and each person to be authorised under the authority to administer the substances, are competent to safely handle and administer the substances.

*Examples of circumstances for issue of medical kit authorisation*

- 1 The applicant is the lessee of a pastoral or mining lease where the substances are to be kept to treat medical problems that may arise.*
- 2 The substances are to be kept on an ocean-going boat to treat medical problems that may arise while at sea.*
- 3 The substances are for use at a cyclone shelter to treat medical problems that may arise during an emergency.*

## **Division 3 Conditions of authorities**

### **143 Conditions – general**

- (1) An authority is subject to:
- (a) the conditions stated in this Division for the authority; and
  - (b) the other conditions prescribed by:
    - (i) regulation; or
    - (ii) for a Schedule 8 substance or restricted Schedule 4 substance – a code of practice.

*Examples of conditions for subsection (1)(b)*

- 1 *The quantity, form and strength of a Scheduled substance authorised to be used under an authority.*
- 2 *A limit in relation to the persons:*
  - (a) *to whom the Scheduled substance can be supplied or administered under the authority; and*
  - (b) *for whom prescriptions can be issued under the authority.*

- (2) In addition, the CHO may issue the authority subject to the reasonable conditions stated in it.

*Example of condition for subsection (2)*

*A pest management technician licence may be subject to the condition that its holder may carry out pest control operations only under the direct supervision of another pest management technician licensee who is the holder's employer.*

- (3) Without limiting subsection (2), conditions may be imposed about compliance with a stated code of practice applicable to activities under the authority.

### **144 Conditions – certificate of registration**

A certificate of registration for a Scheduled substance is subject to the following conditions:

- (a) its holder may supply the substance only to:
  - (i) a health practitioner or veterinarian authorised under this Act to possess the substance; or
  - (ii) the holder of an authority to possess the substance; or
  - (iii) the person in charge of a declared place; or

- (iv) a person authorised to possess the substance under another law in force in the Territory; or
- (b) its holder must deal with the substance in accordance with the code of conduct, or other document, prescribed by regulation.

**145 Conditions – retailer licence**

A retailer licence is subject to the condition that the licensee must not supply a Schedule 2 substance from the licensed place if it is located within 25 km, by the shortest practical route, of a pharmacy.

**146 Conditions – Schedule 8 authorisation**

If a condition of a Schedule 8 authorisation for a restricted Schedule 8 substance is inconsistent with a provision in Appendix D to the medicines and poisons standard, the condition prevails to the extent of the inconsistency.

**147 Contravention of condition**

The holder of an authority must not engage in conduct that results in a contravention of a condition of the authority.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

**Division 4 Miscellaneous matters**

**148 Duration of authority**

An authority remains in force for:

- (a) the period, not longer than 3 years, stated in it; or
- (b) if a longer period is prescribed by regulation – the period prescribed.

**149 Form of authority**

An authority must:

- (a) be in the approved form; and
- (b) contain the information prescribed by regulation.

**150 Notice of refusal to issue authority or impose conditions**

If the CHO refuses to issue an authority or issues an authority subject to stated conditions, the CHO must immediately give the applicant an information notice for the decision.

**151 Failure to decide application**

The CHO is taken to have refused an application for an authority if the CHO does not decide the application within 30 days after:

- (a) the application is made; or
- (b) if the CHO gives the applicant notice to give the CHO further documents or information – the end of the period stated in the notice for giving the document or information.

**Part 3.3 Renewal of licences and certificates of registration**

**152 Application for renewal**

- (1) An application for the renewal of a certificate of registration or licence must be made by the holder of the authority.
- (2) Part 3.2 applies (with the necessary changes) to the application as if it were an application for an authority.

**153 Authority continues until application decided**

If an application for the renewal of an authority is made at least 30 days before the authority ends, it continues in force until the application is decided.

**Part 3.4 Transfer of authorities**

**154 Transfer of certificate of registration**

- (1) The holder of a certificate of registration may apply for the transfer of the certificate of registration.
- (2) Part 3.2 applies (with the necessary changes) to the application as if it were an application for a certificate of registration.

**155 Other authorities not transferable**

An authority other than a certificate of registration is not transferable.

## **Part 3.5 Variation of conditions of authorities**

### **Division 1 Interpretation**

#### **156 Definitions**

In this Part:

**condition**, of an authority, means a condition of the authority imposed by the CHO under section 143(2).

**variation**, of a condition of an authority, means:

- (a) amend an existing condition of the authority; or
- (b) impose a new condition of the authority; or
- (c) remove an existing condition of the authority.

### **Division 2 Variation of conditions of authority on CHO's initiative**

#### **157 CHO may vary conditions to achieve object of Act**

- (1) The CHO may decide to vary the conditions of an authority if:
  - (a) the CHO becomes aware of information that, if it had been known when the authority was issued or renewed, the CHO would have imposed conditions or different conditions on the authority; and
  - (b) the CHO is satisfied it is necessary to achieve the objects of this Act.
- (2) Before deciding to vary the conditions, the CHO must:
  - (a) give written notice to the holder of the authority:
    - (i) of the particulars of the proposed variation; and
    - (ii) that the holder may make written submissions to the CHO about the proposed variation within a reasonable period of at least 21 days stated in the notice; and
  - (b) have regard to written submissions made to the CHO by the holder before the stated day; and
  - (c) for a Schedule 8 authorisation issued without considering the Committee's advice – consider the Committee's advice given under section 133.

- (3) If the CHO decides to vary the conditions of the authority, the CHO must immediately give the holder an information notice for the decision.

### **Division 3 Variation of conditions of authority on application by holder**

#### **158 Application**

- (1) The holder of an authority may apply to the CHO for the variation of the conditions of the authority.
- (2) The application must be:
- (a) in the approved form; and
  - (b) accompanied by sufficient documents and information to enable the CHO to decide the application, including the documents and information stated in the approved form.

#### **159 CHO may require further information**

The CHO may, by written notice, require the applicant to give the CHO further documents or information, within the reasonable period stated in the notice, for considering and deciding the application.

#### **160 Considering and deciding application**

- (1) The CHO must consider the application and either vary, or refuse to vary, the conditions of the authority.
- (2) The CHO must refuse to vary the conditions of the authority unless satisfied the authority could be issued under Part 3.3 subject to the varied conditions.

#### **161 Notice of decision on application**

- (1) If the CHO decides to vary the conditions of the authority, the CHO must immediately give its holder notice of the decision.
- (2) If the CHO refuses to vary the conditions of the authority, the CHO must immediately give its holder an information notice for the decision.

## **162 Failure to decide application**

The CHO is taken to have refused to vary the conditions of the authority if the CHO does not decide the application within 30 days after:

- (a) the application is made; or
- (b) if the CHO gives the applicant notice to give the CHO further documents or information – the end of the period stated in the notice for giving the document or information.

## **Division 4 Miscellaneous matters**

### **163 Application of Division**

This Division applies if the holder of an authority receives:

- (a) an information notice for the variation of conditions of the authority under section 157(3); or
- (b) a notice for the variation of conditions of the authority under section 161(1).

### **164 When variation of conditions takes effect**

- (1) The variation of conditions of the authority takes effect on:
  - (a) the day the notice is given to the holder of the authority; or
  - (b) the later day of effect stated in the notice.
- (2) In addition, the variation of conditions does not depend on the authority being amended to record the variation or a replacement authority being issued.

### **165 Recording variation of conditions**

- (1) The holder of the authority must return the authority to the CHO within 14 days after receiving the notice unless the holder has a reasonable excuse.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

- (4) On receiving the authority, the CHO must:
- (a) amend the authority to give effect to the variation and return the authority to the holder; or
  - (b) if the CHO is satisfied it is not practicable to amend the authority – issue a replacement authority incorporating the variation and send it to the holder.

## **Part 3.6 Suspension and cancellation of authorities**

### **166 Grounds for suspending or cancelling authority**

Each of the following is a ground for suspending or cancelling an authority:

- (a) its holder, or an agent, contractor or employee of the holder, has contravened a provision of this Act;
- (b) the authority was issued, renewed or transferred because of a materially false or misleading representation;
- (c) the CHO becomes aware of information that, if it had been known by the CHO when the authority was issued, renewed or transferred, the CHO would have refused to issue, renew or transfer it;
- (d) if its holder is not a health practitioner – its holder is not, or is no longer, a suitable person to hold the authority;
- (e) for a certificate of registration – the nominated person for the certificate is not, or is no longer, a suitable person.

### **167 Show cause notice**

- (1) If the CHO reasonably believes a ground exists to suspend or cancel an authority, the CHO must give the holder of the authority written notice under this section (a **show cause notice**).
- (2) The show cause notice must state the following:
  - (a) the action (the **proposed action**) the CHO proposes taking under this Part;
  - (b) the grounds for the proposed action;
  - (c) an outline of the facts and circumstances forming the basis for the grounds;

- (d) if the proposed action is suspension of the authority – the proposed suspension period;
  - (e) an invitation to the holder to make representations within a period stated in the notice (being at least 7 days after the date of the notice) to show cause why the proposed action should not be taken.
- (3) The holder of the authority may make written representations about the show cause notice to the CHO in the period stated in the notice.
  - (4) The CHO must consider all written representations made under subsection (3) (the ***accepted representations***).
  - (5) If the proposed action relates to a Schedule 8 authorisation, the CHO must give the Committee all information relevant to the proposed action, including any accepted representations, for its advice.

#### **168 Ending show cause process without further action**

If, after considering the accepted representations for the show cause notice and, if the proposed action relates to a Schedule 8 authorisation, the Committee's advice, the CHO no longer believes a ground exists to suspend or cancel the authority, the CHO:

- (a) must not take any further action about the show cause notice; and
- (b) must give written notice to the holder of the authority that no further action is to be taken about the show cause notice.

#### **169 Suspension or cancellation**

- (1) This section applies if:
  - (a) after considering the accepted representations for the show cause notice and, if the proposed action relates to a Schedule 8 authorisation, the Committee's advice, the CHO:
    - (i) still believes a ground exists to suspend or cancel the authority; and
    - (ii) believes suspension or cancellation of the authority is warranted; or
  - (b) there are no accepted representations for the show cause notice.

- (2) The CHO may:
  - (a) if the proposed action stated in the show cause notice was to suspend the authority for a stated period – suspend the authority for not longer than the stated period; or
  - (b) if the proposed action stated in the show cause notice was to cancel the authority – either cancel the authority or suspend it for a stated period.
- (3) The CHO must immediately give an information notice for the decision to the holder of the authority.
- (4) The decision takes effect on:
  - (a) the day the information notice is given to the holder; or
  - (b) if a later day of effect is stated in the notice – the later day.

**170 Return of cancelled authority to CHO**

- (1) If the CHO has cancelled an authority and given an information notice for the decision to the holder of the authority, the holder must return the authority to the CHO within 14 days after receiving the notice.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

**171 Immediate suspension of authority pending formal cancellation procedure**

- (1) This section applies if the CHO is satisfied:
  - (a) a ground exists to cancel an authority; and
  - (b) it is necessary, to protect public health and safety, to immediately suspend the authority until the cancellation procedure under sections 167 to 169 is completed.
- (2) The CHO must immediately suspend the authority.
- (3) The CHO must immediately give an information notice for the decision to the holder of the authority.
- (4) The suspension takes effect immediately after the information notice for the decision is given to the holder.

- (5) If, within 14 days after the CHO suspends the authority, the CHO gives the holder a show cause notice, the suspension lasts until the first of the following occurs:
  - (a) the CHO cancels the suspension;
  - (b) a decision to cancel the authority takes effect;
  - (c) a decision is made not to cancel the authority.
- (6) If a show cause notice is not given to the holder within the 14-day period mentioned in subsection (5), the suspension lapses at the end of the period unless the CHO has already cancelled the suspension.

## **Part 3.7 Miscellaneous matters**

### **172 Medical examination for some authorities**

- (1) This section applies to the following persons:
  - (a) an applicant for a Schedule 7 authorisation or pest management technician licence;
  - (b) the holder of:
    - (i) a Schedule 7 authorisation; or
    - (ii) a pest management technician licence;
  - (c) an employee of a person mentioned in paragraph (b).
- (2) The CHO may, by written notice given to the person, require the person, within the reasonable time stated in the notice, to:
  - (a) undergo a medical examination; and
  - (b) give the CHO the results of the examination.
- (3) The person must comply with the notice.

Maximum penalty: 20 penalty units.
- (4) If the CHO is satisfied the results of the medical examination indicate the use or continued use of Schedule 7 substances or pesticides by the person is a threat to the person's health, the CHO may:
  - (a) for a person mentioned in subsection (1)(a) – under section 134(4), refuse to issue the authority; or

- (b) for a person mentioned in subsection (1)(b)(i):
    - (i) under Part 3.5, vary the conditions of the person's authority; or
    - (ii) under Part 3.6, suspend for a stated period or cancel, the person's authority; or
  - (c) for a person mentioned in subsection (1)(b)(ii):
    - (i) under Part 3.3, refuse to renew the person's authority; or
    - (ii) under Part 3.5, vary the conditions of the person's authority; or
    - (iii) under Part 3.6, suspend for a stated period or cancel, the person's authority; or
  - (d) for an employee mentioned in subsection (1)(c) – by written notice given to the employee's employer, order the employer to cease employing the employee in any capacity involving the handling of, or exposure to, the Schedule 7 substances or pesticides stated in the order.
- (5) The CHO must give the employer and employee an information notice for the decision to give the notice under subsection (4)(d).
- (6) The employer must comply with the notice.
- Maximum penalty: 50 penalty units.
- (7) An offence against subsection (3) or (6) is an offence of strict liability.
- (8) It is a defence to a prosecution for an offence against subsection (3) or (6) if the defendant establishes a reasonable excuse.

**173 Authority holder to give notice of change of particulars**

- (1) The holder of an authority commits an offence if:
- (a) there is a change in a particular contained in the authority; and
  - (b) the particular is prescribed by regulation; and
  - (c) the holder does not give written notice to the CHO about the change within 14 days after the change.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

**174 Replacement of authority**

- (1) The CHO may issue a replacement authority to the holder of an authority if satisfied the original authority has been lost, stolen or destroyed.
- (2) For subsection (1), the CHO may require the holder or, if the authority is a certificate of registration, the nominated person for the authority, to give the CHO a statutory declaration stating the original authority has been lost, stolen or destroyed.

**175 Surrender of authority**

- (1) The holder of an authority may surrender the authority by written notice given to the CHO.
- (2) The surrender takes effect on:
  - (a) the day the notice is given to the CHO; or
  - (b) if a later day of effect is stated in the notice – the later day.
- (3) The person who held the authority must return it to the CHO within 14 days after the day the surrender takes effect.

Maximum penalty: 20 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.

**176 Display of certificate of registration**

- (1) The holder of a certificate of registration must display the certificate in a prominent place at the registered place.

Maximum penalty: 20 penalty units.

- (2) A retailer licensee must display the licence in a prominent place at the licensed place.

Maximum penalty: 20 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant establishes a reasonable excuse.
- (5) In addition, if the holder of the certificate of registration or licence gives it to the CHO when required by the CHO, the holder does not commit an offence against subsection (1) or (2) while the holder does not have the authority.

### **177 Authority not personal property**

For section 8(1)(k) of the *Personal Property Securities Act 2009* (Cth), an authority is not personal property for that Act.

*Note for section 177*

*A law of the Commonwealth, a State or a Territory may declare a right, licence or authority granted by or under that law not to be personal property for the Personal Property Securities Act 2009 (Cth).*

## Chapter 4      Enforcement

### Part 4.1      Interpretation

#### 178      Definitions

In this Chapter:

**at**, in relation to a place, includes on and in the place.

**connected**, see section 179.

**enter**, a place, includes re-enter and board the place.

**occupier**, of a place, includes a person who reasonably appears to be an occupier of the place.

#### 179      When thing is *connected* with offence

For this Chapter, a thing is **connected** with an offence if:

- (a) the offence has been committed in relation to the thing; or
- (b) the thing will afford evidence of the commission of the offence;  
or
- (c) the thing was used, is being used or is intended to be used,  
for the purpose of committing the offence.

### Part 4.2      Powers of authorised officers to enter places

#### 180      Entry of place – general

- (1) For the administration or enforcement of this Act, an authorised officer may enter:
  - (a) a place (other than a dwelling) at any reasonable time; or
  - (b) any place at any time:
    - (i) with the consent of the occupier of the place; or
    - (ii) under a search warrant issued under this Part for the place.

- (2) An authorised officer (other than a police officer in uniform) who enters a place under subsection (1) must not remain at the place if, when asked by the occupier of the place, the officer does not produce for the occupier's inspection:
- (a) for an authorised officer who is a police officer – the officer's police identification; or
  - (b) for another authorised officer – the officer's identity card.

**181      Consent to entry**

- (1) An authorised officer (other than a police officer in uniform) seeking the consent of an occupier of a place to enter the place must produce to the occupier for inspection:
- (a) for an authorised officer who is a police officer – the officer's police identification; or
  - (b) for another authorised officer – the officer's identity card.
- (2) In addition, an authorised officer seeking the consent of an occupier of a place to enter the place must:
- (a) give the occupier the reasons why entry is sought; and
  - (b) inform the occupier that the occupier may refuse to give consent.
- (3) If:
- (a) it is material in proceedings for a court to be satisfied the occupier consented to entry under this Part; and
  - (b) written consent of the occupier is not produced in evidence;
- the court may presume, in the absence of evidence to the contrary, the occupier did not give consent.

**182      Entry of place – search warrant**

- (1) An authorised officer may apply to a justice of the peace, by information on oath, for a search warrant for a place if the officer reasonably believes an offence against this Act is about to be, is being or has been committed at the place.
- (2) The justice of the peace may issue a search warrant only if satisfied about the matters set out in the information.

- (3) The warrant authorises the officer named in the warrant, and any other person helping the officer, to enter the place and to exercise an authorised officer's powers under this Part.
- (4) The warrant must state:
  - (a) the purpose for which it is issued; and
  - (b) the nature of the offence or contravention for which the entry is authorised; and
  - (c) the hours during which entry to the place is authorised or state that the entry is authorised at any time of the day or night; and
  - (d) the date, within 30 days after the warrant's issue, the warrant ceases to have effect.
- (5) The authorised officer executing the warrant must, if asked by the occupier of the place or another person at the place, produce the warrant for the person's inspection.

### **183      Entry to Aboriginal land**

- (1) An authorised officer's powers in relation to a place under this Part include powers in relation to Aboriginal land even though the officer does not hold a permit to enter Aboriginal land under the *Aboriginal Land Act 1978*.

- (2) In this section:

***Aboriginal land***, see section 3(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

### **184      Additional powers for entry of aircraft, vehicle or vessel**

- (1) This section applies if an authorised officer has reasonable grounds for suspecting:
  - (a) an aircraft, vehicle or vessel is being, has been or is likely to be, used in the commission of an offence against this Act; or
  - (b) an aircraft, vehicle or vessel, or a thing in or on an aircraft, vehicle or vessel, may provide evidence of the commission of an offence against this Act.
- (2) For entering the aircraft, vehicle or vessel under this Part, the authorised officer may require the person in control of the aircraft, vehicle or vessel:
  - (a) to stop, move or not to move it; or

- (b) to bring it to a stated place and remain in control of it until the officer permits it to depart; or
  - (c) to give the officer reasonable help.
- (3) A person commits an offence if the person engages in conduct that results in a contravention of the authorised officer's requirement.

Maximum penalty:      100 penalty units.

- (4) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.

## **Part 4.3              Powers of authorised officers on entry of places**

### **185              Powers on entry of place**

- (1) An authorised officer who enters a place under Part 4.2 may do any of the following:
- (a) inspect or examine the place or anything found at the place;
  - (b) break open and search fixtures and fittings, furniture and furnishings or boxes, packages and other containers found at the place;
  - (c) take measurements of, or conduct tests in relation to, the place or anything found at the place;
  - (d) take photographs, films or audio, video or other recordings of the place or anything found at the place;
  - (e) take and remove from the place samples for analysis of anything found at the place;
  - (f) take copies of, or extracts from, documents found at the place;
  - (g) require a person at the place to:
    - (i) answer questions or provide information; or
    - (ii) make available documents kept at the place; or
    - (iii) give the officer reasonable help to exercise powers under this section;
  - (h) subject to section 186:
    - (i) seize anything found at the place; or

- (ii) if the place is an aircraft, vehicle or vessel – seize it.
- (2) After taking a sample under subsection (1)(e) or seizing a thing under subsection (1)(h), the authorised officer must give a receipt for the sample or thing to:
- (a) the occupier of the place; or
  - (b) the person whom the authorised officer reasonably believes had possession or control of the sample or thing immediately before it was taken or seized.
- (3) A requirement under subsection (1)(g) must be given by written notice.
- (4) When making the requirement, the authorised officer must inform the person it is an offence not to comply with the requirement unless the person establishes a reasonable excuse.
- (5) The person must comply with the requirement.
- Maximum penalty:      100 penalty units.
- (6) It is a defence to a prosecution for an offence against subsection (5) if the defendant establishes a reasonable excuse.
- (7) Without limiting subsection (6), it is a reasonable excuse for an individual to fail to answer a question under subsection (1)(g)(i) if complying with the requirement might tend to incriminate the individual.

## **186      Restriction on power of seizure**

An authorised officer may seize a thing under section 185(1)(h) only if the officer reasonably believes the thing:

- (a) is connected with an offence against this Act and the seizure is necessary to prevent the thing from being:
  - (i) concealed, lost, damaged or destroyed; or
  - (ii) used to commit the offence; or
- (b) is connected with an offence against this Act and the seizure is necessary to conduct tests for adducing evidence for a prosecution for the offence.

**187      Authorised officer may use help and force in exercising powers**

An authorised officer may exercise a power under this Part with the help, and using the force, that is reasonable in the circumstances.

**Part 4.4      Seized and forfeited things**

**Division 1      Notice, retention and return of seized thing**

**188      Application of Division**

This Division applies if, under Part 4.3, an authorised officer seizes a thing (the **seized thing**).

**189      Notice of seizure of thing**

- (1) As soon as practicable after seizing the thing, the authorised officer must give written notice of the seizure to the person from whom it is seized.
- (2) The notice must include the following details:
  - (a) a description of the thing;
  - (b) the reason for seizing the thing;
  - (c) details of the right under section 192 to apply to the Local Court for an order disallowing the seizure;
  - (d) if the thing has been removed from the place where it was seized – the address of the place where the thing is held.

**190      Retention of thing seized**

- (1) An authorised officer may, until the start of a proceeding for an offence against this Act in relation to the seized thing and (if necessary) during the proceeding:
  - (a) keep the thing at the place where it was found; or
  - (b) remove the thing to another place and keep it there in the officer's possession or under the officer's control.
- (2) If the thing is kept under subsection (1)(a), an authorised officer:
  - (a) must ensure the thing is identified in a way that indicates it has been seized under this Act; and

(b) may physically segregate the thing.

*Examples for subsection (2)*

1 The seized thing could be placed in an appropriately labelled container.

2 A barrier with appropriate signs could be placed around the seized thing.

(3) A person commits an offence if the person:

(a) interferes with or disposes of the seized thing; or

(b) removes the seized thing from:

(i) the place it was seized; or

(ii) the place to which it was removed by an authorised officer.

Maximum penalty:      100 penalty units.

(4) Subsection (3) does not apply if the person has the written consent of the CHO.

## **191      Return of seized thing**

If, before the seized thing is forfeited to the Territory under section 197, the CHO becomes satisfied no offence relating to the thing has been committed against this Act, the CHO must, as soon as practicable, deliver the thing to the person who appears to the CHO to be entitled to it.

## **Division 2      Order disallowing seizure of seized thing**

### **192      Application for order disallowing seizure**

A person may apply to the Local Court for an order disallowing the seizure of a seized thing within 3 days after it is seized.

### **193      CHO is respondent to application**

The CHO is the respondent to the application.

*Note for section 193*

*Under the Local Court Rules, the applicant must serve a copy of the application on the CHO.*

**194      Order disallowing seizure**

- (1) On hearing the application, the Local Court must make an order disallowing the seizure of the seized thing if the Court is satisfied:
  - (a) it is:
    - (i) proved the applicant would be entitled to the thing if it had not been seized; and
    - (ii) not proved an offence relating to the thing has been committed against this Act; or
  - (b) there are exceptional circumstances justifying the making of the order.
- (2) Otherwise, the Court must dismiss the application.

**195      Ancillary orders**

- (1) If the Local Court makes an order disallowing the seizure of the seized thing, the Court must also make one or both of the following orders:
  - (a) an order directing the CHO to deliver the seized thing to the applicant;
  - (b) if the thing cannot for any reason be delivered or has, as a consequence of being seized, depreciated in value – an order directing the CHO to pay to the applicant the amount of compensation the Court considers just.
- (2) The Court may make the orders as to costs as it considers just.

**196      Adjournment pending hearing of other proceeding**

- (1) The Local Court may adjourn the hearing of the application if it appears to the Court the seized thing is required to be produced in evidence in a proceeding (which may be pending) in connection with an offence against this Act or another law of the Territory.
- (2) The adjournment may be made on the application of the CHO or on the Court's initiative.
- (3) The adjournment may be until the proceeding in connection with the offence is decided.

### **Division 3      Forfeiture of seized thing**

#### **197      When seized thing is forfeited**

A seized thing is forfeited to the Territory:

- (a) if it is not returned under section 191 and no application for an order disallowing its seizure is made under section 192 on the expiry of the period within which an application may be made under that section; or
- (b) if an application for an order disallowing its seizure under section 192 is withdrawn or dismissed – on the date of the withdrawal or dismissal.

#### **198      Destruction or disposal of forfeited thing**

- (1) The CHO may destroy, sell or otherwise dispose of a thing forfeited to the Territory under section 197 (the **forfeited thing**).
- (2) A person who was, immediately before the forfeiture, the owner of the forfeited thing is liable for the costs incurred for its destruction, sale or disposal (including any storage costs).
- (3) The costs are a debt due to the Territory by the owner.
- (4) In a proceeding for the recovery of the debt, a certificate signed by the CHO stating the amount of the costs and the way in which they were incurred is evidence of the matters stated.

#### **199      Return of forfeited thing**

- (1) This section applies if:
  - (a) the CHO becomes satisfied no offence relating to the forfeited thing has been committed against this Act; and
  - (b) the thing has not been destroyed or disposed of in a way that would prevent its return.
- (2) The CHO must, as soon as practicable, deliver the thing to:
  - (a) the person from whom it was seized; or
  - (b) if the CHO is satisfied another person is entitled to it – the other person.
- (3) On the delivery of the thing to the person, any proprietary and other interests in the thing that existed immediately before its forfeiture are restored.

**200      Compensation to be paid in certain circumstances**

- (1) A person may apply to the CHO for compensation for the forfeited thing.
- (2) The Territory is liable to pay just compensation to the applicant in relation to the thing if:
  - (a) no offence relating to the thing has been committed against this Act; and
  - (b) the thing:
    - (i) cannot be returned; or
    - (ii) has, as a consequence of being seized, depreciated in value; and
  - (c) the CHO is satisfied the applicant would be entitled to the thing if it had not been forfeited.
- (3) The CHO must:
  - (a) decide the amount of compensation to be paid; and
  - (b) give written notice to the applicant of the decision.
- (4) The notice must include an information notice.

**Part 4.5      General powers of CHO and authorised officers**

**201      Compliance notice**

- (1) The CHO may give a notice (a **compliance notice**) to a person if the CHO reasonably believes:
  - (a) the person is the occupier of a place where:
    - (i) an activity is being carried out in contravention of, or likely to be in contravention of, this Act; or
    - (ii) an activity has been carried out in contravention of this Act and it is likely the contravention will be repeated; or
  - (b) the person:
    - (i) is carrying out an activity in contravention of, or likely to be in contravention of, this Act; or

- (ii) has carried out an activity in contravention of this Act and it is likely the person will repeat the contravention.
- (2) The notice must state the following:
- (a) the reasons the CHO has given the notice;
  - (b) the person must rectify the circumstances that gave rise to the notice;
  - (c) the period within which the person must comply with the notice;
  - (d) if the CHO considers it appropriate – the action recommended (but not required) to be taken.
- (3) The notice must include an information notice.

## **202 Contravention of compliance notice**

- (1) A person commits an offence if:
- (a) a compliance notice is given to the person; and
  - (b) the person engages in conduct that results in a contravention of the notice.

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

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.
- (3) To avoid doubt, a person does not commit an offence against subsection (1) merely because the person does not take the action recommended by the CHO.

## **203 Power to prohibit supply of incorrectly packed or labelled substance**

- (1) The CHO may, by written notice, order a person not to supply a Scheduled substance that is not packed or labelled as required under this Act.
- (2) The person must comply with the notice.

Maximum penalty: 100 penalty units.

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

**204      Power to require name and address**

- (1) This section applies if an authorised officer:
  - (a) finds a person committing an offence against this Act; or
  - (b) finds a person in circumstances that lead the officer to reasonably suspect the person has just committed an offence against this Act; or
  - (c) has information that leads the officer to reasonably suspect a person has just committed an offence against this Act.
- (2) The authorised officer may require the person to state the person's name and address.
- (3) When making the requirement, the authorised officer must inform the person it is an offence to contravene the requirement unless the person establishes a reasonable excuse.
- (4) The authorised officer may require the person to give evidence of the correctness of the person's name or address if the officer reasonably suspects the name or address given is false.
- (5) A person must comply with a requirement made under this section by an authorised officer.

Maximum penalty:      100 penalty units.

- (6) An offence against subsection (5) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against subsection (5) if the defendant establishes a reasonable excuse.

**205      Power to require information from persons**

- (1) This section applies if an authorised officer reasonably suspects:
  - (a) an offence against this Act has been committed; and
  - (b) a person may be able to give information about the offence.
- (2) The authorised officer may require the person to give information about the suspected offence.
- (3) When making the requirement, the authorised officer must inform the person it is an offence to fail to give the information unless the person establishes a reasonable excuse.

- (4) The person must comply with the requirement.

Maximum penalty:      100 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.
- (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant establishes a reasonable excuse.

## **206      Requirement to give documents or information**

- (1) This section applies if a person has given a notice or other document under this Act about the person's dealing with a Scheduled substance.
- (2) The CHO may, by written notice, require the person to give the CHO further documents or information relating to the dealing (whether described generally or specifically) within the reasonable period stated in the notice.

- (3) The person must comply with the notice.

Maximum penalty:      100 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.

## **Part 4.6      Other offences**

### **207      Confidentiality of information**

- (1) A person commits an offence if:
- (a) the person:
- (i) obtains information in the course of performing functions connected with the administration or enforcement of this Act; or
  - (ii) is given substance information under an authorisation under section 257(1); and
- (b) the person engages in conduct that results in the disclosure of the information to someone else.

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

- (2) Subsection (1) does not apply if the person engages in the conduct in exercising a power or performing a function under this Act.
- (3) In addition, subsection (1) does not apply if the information is disclosed to:
- (a) a person authorised under section 251(1) to be given the information; or
  - (b) a person exercising a power or performing a function under a corresponding law; or
  - (c) a health profession body; or
  - (d) a court or tribunal for a legal proceeding arising out of the operation of this Act; or
  - (e) a law enforcement agency.
- (4) Also, if the information relates to a particular person (the **patient**), subsection (1) does not apply if the information is disclosed:
- (a) with the patient's consent; or
  - (b) to a health service provider for providing a health service to the patient.

- (5) In this section:

**health profession body** means:

- (a) a National Health Practitioner Board established under the Health Practitioner Regulation National Law; or
- (b) a State or Territory Board established under that Law by a Board mentioned in paragraph (a); or
- (c) the Australian Health Practitioner Regulation Agency established under that Law.

**health service provider**, see section 5 of the Health Practitioner Regulation National Law.

**law enforcement agency**, see section 4 of the *Information Act 2002*.

*Notes for section 207*

- 1 Under section 43BU(3) of the *Criminal Code*, a defendant who wishes to deny criminal responsibility by relying on subsection (2), (3) or (4) bears an evidential burden in relation to the matter.

*2 In addition, under section 43BE of the Criminal Code, a person is not criminally responsible for conduct constituting an offence if the conduct is justified or excused by law. A defendant who wishes to deny criminal responsibility by relying on that section, or another provision of Part IIAA, Division 3 of the Code, also bears an evidential burden in relation to the matter under section 43BU(2) of the Code.*

## **208      Misleading information**

- (1) A person commits an offence if:
- (a) the person gives information to another person; and
  - (b) the other person is an authorised officer; and
  - (c) the person knows the information is misleading; and
  - (d) the person knows the authorised officer is acting in an authorised officer capacity.

Maximum penalty:      200 penalty units or imprisonment for  
12 months.

- (2) A person commits an offence if:
- (a) the person gives a document to another person; and
  - (b) the other person is an authorised officer; and
  - (c) the person knows the document contains misleading information; and
  - (d) the person knows the authorised officer is acting in an authorised officer capacity.

Maximum penalty:      200 penalty units or imprisonment for  
12 months.

- (3) Strict liability applies to subsections (1)(b) and (2)(b).
- (4) Subsection (2) does not apply if the person, when giving the document:
- (a) draws the misleading aspect of the document to the authorised officer's attention; and
  - (b) to the extent to which the person can reasonably do so – gives the authorised officer the information necessary to remedy the misleading aspect of the document.

(5) In this section:

***misleading information*** means information that is misleading in a material particular or because of the omission of a material particular.

## **209      Obstruction of authorised officer or assistant**

(1) A person commits an offence if the person:

- (a) obstructs an authorised officer, or person assisting an authorised officer, acting in an official capacity; and
- (b) knows the authorised officer is, or person is assisting, an authorised officer acting in an official capacity.

Maximum penalty:      100 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

(3) In this section:

***obstruct*** includes resist and hinder.

## **210      Falsely representing to be authorised officer**

(1) A person commits an offence if:

- (a) the person represents, by words or conduct, that the person or another person is an authorised officer; and
- (b) the person or other person is not an authorised officer; and
- (c) the person makes the representation with an intention to deceive.

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

(2) Strict liability applies to subsection (1)(b).

## **211      Bribery of authorised officer**

A person commits an offence if the person:

- (a) knows an authorised officer is acting in an official capacity; and

- (b) gives, offers or promises a bribe to the authorised officer with the intention of influencing the authorised officer.

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

## **Part 4.7 Legal proceedings and evidentiary matters**

### **Division 1 Criminal liability for offences**

#### **212 Definitions**

In this Division:

**declared provision** means any of the following provisions:

- (a) a provision of this Act mentioned in Schedule 1;
- (b) a provision of the Regulations prescribed by regulation.

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

#### **213 Liability of representative**

- (1) It is not a defence to a prosecution for an offence against a declared provision that the defendant was, at the time of the commission of the offence, another person's representative.
- (2) However, it is a defence if the defendant proves the defendant was, at the time of the commission of the offence:
  - (a) another person's representative; and
  - (b) acting as the other person's representative under the direct or indirect supervision of the other person.

#### **214 Conduct of representative**

- (1) This section applies to a prosecution for an offence against a declared provision.

*Note for subsection (1)*

*This section deals with prosecutions of individuals. Part IIAA, Division 5, of the Criminal Code contains provisions about corporate criminal responsibility.*

- (2) Conduct engaged in by a representative of a person within the scope of the representative's actual or apparent authority is taken to have been also engaged in by the person.

- (3) However, subsection (2) does not apply if the person proves the person took reasonable steps to prevent the conduct.
- (4) In deciding whether the person took reasonable steps to prevent the conduct, a court must consider:
  - (a) any action the person took to ensure the representative had a reasonable knowledge and understanding of the requirement to comply with the contravened provision; and
  - (b) the level of management, control or supervision that was appropriate for the person to exercise over the representative.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) If it is relevant to prove a person had a fault element in relation to a physical element of an offence, it is enough to show:
  - (a) the conduct relevant to the physical element was engaged in by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the fault element in relation to the physical element.
- (7) A person may rely on section 43AX of the Criminal Code in relation to conduct by a representative that would be an offence by the person only if:
  - (a) the representative was under a mistaken but reasonable belief about the facts that, had they existed, would have meant that the conduct would not have constituted an offence; and
  - (b) the person proves the person exercised due diligence to prevent the conduct.

*Note for subsection (7)*

*Section 43AX of the Criminal Code provides a person is not criminally responsible if the person engaged in conduct under a mistake of fact in relation to an offence of strict liability.*

- (8) A person (the **defendant**) may not rely on section 43BA of the Criminal Code in relation to a physical element of an offence brought about by another person if the other person is a representative of the defendant.

*Note for subsection (8)*

*Section 43BA of the Criminal Code provides a person is not criminally responsible in circumstances of an intervening conduct or event.*

(9) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (2) or (6).

(10) In this section:

**fault element** includes intention, knowledge, recklessness, opinion, belief and purpose, but does not include negligence.

**person** means an individual.

## **215 Criminal liability of executive officer of body corporate**

(1) An executive officer of a body corporate commits an offence if:

- (a) the body corporate commits an offence by contravening a declared EO liability provision (a **relevant offence**) and the officer was reckless about whether the contravention would happen; and
- (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
- (c) the officer recklessly failed to take reasonable steps to prevent the contravention.

Maximum penalty:      The maximum penalty that may be imposed on an individual for the relevant offence.

(1A) Strict liability applies to subsection (1)(b).

(2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:

- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
  - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared EO liability provision;
  - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);

- (iii) the body corporate's representatives and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared EO liability provision;
  - (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) This section does not affect the liability of the body corporate.
- (5) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (6) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (7) In this section:

***declared EO liability provision*** means:

- (a) section 37, 39, 40, 41, 42, 43(1) or (2), 44(2), 46, 47, 49, 50, 51, 52(1), 53, 54(1), 110(1), (2) or (3), 111(1), (2) or (3), 112, 113(1) or (2) or 115(4); or
- (b) a provision of the Regulations prescribed by regulation.

## **Division 2      Miscellaneous matters**

### **216      Self-incrimination**

- (1) A person required to answer a question, give information or produce a document under this Act is not excused from doing so on the ground that the answer, information or document might tend to incriminate the person or make the person liable to a penalty.
- (2) However, the answer, information or document is not admissible in evidence against the person in a civil or criminal proceeding except a proceeding for an offence in which the falsity or misleading nature of the answer, information or document is relevant.

### **217      Judicial notice**

In any proceeding, a signature purporting to be the signature of the CHO is evidence of the signature it purports to be.

**218      Time for starting offence proceeding**

A prosecution for an offence against this Act must be started within 2 years after the offence is alleged to have been committed.

**219      Evidentiary certificate**

- (1) In a proceeding for an offence against this Act, a certificate signed by the CHO stating any of the following matters is evidence of the matter:
- (a) a person was or was not the holder of an authority;
  - (b) a document is a copy of an authority or notice issued or given under this Act;
  - (c) an authority was or was not in force in relation to a place;
  - (d) an authority authorised or did not authorise the dealing with a Scheduled substance;
  - (e) an authority was or was not subject to conditions;
  - (f) an authority was suspended or cancelled;
  - (g) a substance was or was not a Scheduled substance;
  - (h) a person was the CHO or an authorised officer;
  - (i) a person was given a notice under this Act.
  - (j) another thing prescribed by regulation.
- (2) In subsection (1), a reference to a person, place or thing is a reference to a person, place or thing stated in the certificate.
- (3) The certificate may state anything by reference to a date or period.

## Chapter 5 Reconsideration and review of decisions

### 220 Meaning of *original decision* and *affected person*

- (1) An ***original decision*** is a decision mentioned in Schedule 2.
- (2) The ***affected person***, for an original decision, is the person mentioned in Schedule 2 for the decision.

### 221 Request for reconsideration of original decision

- (1) The affected person for an original decision may request a reconsideration of the decision.
- (2) The request must be made within 28 days after:
  - (a) the affected person receives an information notice for the decision; or
  - (b) otherwise – the affected person becomes aware of the decision.
- (3) The request must:
  - (a) be in writing; and
  - (b) state the grounds on which it is made and the facts relied on to establish the grounds.

### 222 Operation and implementation of original decision

- (1) The request for the reconsideration of the original decision does not affect the operation or implementation of the decision.
- (2) Also, the validity of the original decision is not affected by a failure to give an information notice to an affected person for the decision.

### 223 Reconsideration of decision

- (1) Within 28 days after the request is made, the CHO must:
  - (a) reconsider the decision; and
  - (b) give the affected person a written notice (a ***review notice***) about the CHO's decision (the ***reconsidered decision***).
- (2) The review notice must state the following:
  - (a) the reconsidered decision and the reasons for it;

- (b) that the affected person may apply to the Local Court for a review of the merits of the reconsidered decision;
  - (c) the period allowed for applying for a review of the reconsidered decision;
  - (d) how to apply for a review.
- (3) The validity of the reconsidered decision is not affected by a failure to give a review notice to the affected person for the decision.

**224 Application for review of reconsidered decision**

- (1) The affected person for the original decision may apply to the Local Court for a review of the merits of the reconsidered decision.
- (2) The application must be made within 28 days after:
- (a) the affected person receives a review notice about the reconsidered decision; or
  - (b) otherwise – the affected person becomes aware of the decision.
- (3) However, on application by the affected person, the Local Court may at any time extend the period allowed for applying for a review of the reconsidered decision.

**225 Operation and implementation of reconsidered decision**

- (1) The application for the review of the reconsidered decision does not affect the operation or implementation of the decision.
- (2) However, the Local Court may make an order staying or otherwise varying the operation or implementation of so much of the reconsidered decision as the Court considers appropriate.
- (3) The order is subject to the conditions stated in it.
- (4) The order has effect for the period stated in it or, if no period is stated, until the Local Court decides the application.

**226 Review procedure**

- (1) In hearing the application, the Local Court must review afresh the merits of the reconsidered decision.
- (2) In doing so, the Local Court is not bound by anything done by the CHO in making the reconsidered decision.

- (3) Without limiting subsection (2), the Local Court may:
  - (a) consider evidence that was not considered by the CHO; and
  - (b) disregard evidence that was considered by the CHO.

**227 Decision on review**

- (1) In deciding the application, the Local Court may:
  - (a) confirm the reconsidered decision; or
  - (b) vary the reconsidered decision; or
  - (c) set aside the reconsidered decision and substitute its own decision; or
  - (d) set aside the reconsidered decision and refer the matter to which the application relates to the CHO for reconsideration.
- (2) In referring the matter to the CHO, the Local Court must give the directions it considers appropriate for the reconsideration of the matter.
- (3) The Local Court may make the incidental orders it considers appropriate to give effect to its decision.
- (4) A decision under subsection (1)(b) or (c) is taken for this Act (other than this Part) to be the CHO's decision.

## Chapter 6 Therapeutic Goods Act applies as a law of the Territory

### Part 6.1 Interpretation

#### 228 Definitions

In this Chapter:

***applied provisions*** means the Therapeutic Goods Act that applies as a law of the Territory because of section 230, including any modification under section 231.

***Commonwealth administrative laws*** means the following Commonwealth Acts:

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

***Commonwealth Minister*** means the minister responsible for administering the Therapeutic Goods Act.

***Commonwealth official*** means:

- (a) the Commonwealth Secretary; or
- (b) an authorised person or any other officer mentioned in the Therapeutic Goods Act.

***Commonwealth Secretary***, see section 3(1) of the Therapeutic Goods Act.

***modifications*** includes additions, omissions and substitutions.

#### 229 Words have meanings in Therapeutic Goods Act

- (1) A word defined in the Therapeutic Goods Act has the same meaning in this Act.
- (2) Subsection (1) has effect subject to a contrary intention.

## **Part 6.2 Applied provisions**

### **230 Application of Therapeutic Goods Act as law of Territory**

The Therapeutic Goods Act, as modified under this Act, applies as a law of the Territory.

### **231 Modification of Therapeutic Goods Act**

- (1) A regulation may modify the Therapeutic Goods Act.
- (2) Without limiting subsection (1), a regulation may provide that the Act applies under section 230 as if an amendment of it made by a stated Commonwealth law had not taken effect.

### **232 Interpretation of applied provisions**

- (1) The *Acts Interpretation Act 1901* (Cth) applies as a law of the Territory in relation to the interpretation of the applied provisions.
- (2) That Act so applies as if the applied provisions were a Commonwealth Act or were regulations or other instruments under a Commonwealth Act, as the case requires.
- (3) The *Interpretation Act 1978* of the Territory does not apply to the applied provisions.

## **Part 6.3 Functions and powers under applied provisions**

### **233 Functions and powers of Commonwealth Minister and officials**

The Commonwealth Minister and a Commonwealth official have the same functions and powers under the applied provisions as they have under the Therapeutic Goods Act as that Act applies to the Commonwealth.

### **234 Delegations by Commonwealth Minister and Secretary**

A delegation by the Commonwealth Minister or Commonwealth Secretary under the Therapeutic Goods Act is taken to extend to, and have effect for, the corresponding provision of the applied provisions.

### **235 Appointments under Therapeutic Goods Act**

The appointment of a person to an office or position under a provision of the Therapeutic Goods Act is taken to extend to, and have effect for, the applied provisions.

## **Part 6.4            Administrative law**

### **236            Application of Commonwealth administrative laws to applied provisions**

- (1) The Commonwealth administrative laws apply as laws of the Territory to any matter arising in relation to the applied provisions as if the provisions were a law of the Commonwealth and not a law of the Territory.
- (2) For a law of the Territory, a matter arising in relation to the applied provisions:
  - (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if the provisions were a law of the Commonwealth; and
  - (b) is taken not to be a matter arising in relation to laws of the Territory.
- (3) Subsection (2) has effect for a law of the Territory except as provided by regulation.
- (4) A provision of a Commonwealth administrative law applying because of this section that purports to confer jurisdiction on a federal court is taken not to have that effect.
- (5) For this section, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* (Cth) (as that provision applies as a law of this jurisdiction) to the whole or any part of Part IVA of that Act is taken to be a reference to the whole or any part of that Part as it has effect as a law of the Commonwealth.

### **237            Functions and powers conferred on Commonwealth officers and authorities**

- (1) A Commonwealth administrative law applying because of section 236 that confers on a Commonwealth officer or Commonwealth authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to the applied provisions.
- (2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or Commonwealth authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law.

## **Part 6.5            Offences under applied provisions**

### **238            Object of Part**

- (1) The object of this Part is to further the object of this Act by providing for an offence against the applied provisions to be treated as if it were an offence against a Commonwealth law.
- (2) The purposes for which an offence is to be so treated include, for example (but without limitation) the following:
  - (a) the investigation and prosecution of offences;
  - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences;
  - (c) proceedings relating to a matter referred to in paragraph (a) or (b);
  - (d) appeals and reviews relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c);
  - (e) the sentencing, punishment and release of persons convicted of offences;
  - (f) fines, penalties and forfeitures;
  - (g) liability to make reparation in connection with offences;
  - (h) proceeds of crime;
  - (i) spent convictions.

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

- (1) The relevant Commonwealth laws apply as laws of the Territory in relation to an offence against the applied provisions as if the provisions were a law of the Commonwealth and not a law of the Territory.
- (2) For a law of the Territory, an offence against the applied provisions:
  - (a) is taken to be an offence against the laws of the Commonwealth in the same way as if the provisions were a law of the Commonwealth; and
  - (b) is taken not to be an offence against the laws of the Territory.
- (3) Subsection (2) has effect for a law of the Territory except as provided by regulation.

**240 Functions and powers conferred on Commonwealth officials relating to offences**

- (1) A Commonwealth law applying because of section 239 that confers on a Commonwealth official a function or power in relation to an offence against the Therapeutic Goods Act also confers on the official the same function or power in relation to an offence against the corresponding provision of the applied provisions.
- (2) In performing a function or exercising a power conferred by this section, the Commonwealth official must act as nearly as practicable as the official would act in performing or exercising the same function or power in relation to an offence against the corresponding provision of the Therapeutic Goods Act.

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

If:

- (a) an act or omission is an offence against both the applied provisions and the Therapeutic Goods Act; and
- (b) the offender has been punished for the offence under the Therapeutic Goods Act;

the offender is not liable to be punished for the offence under the applied provisions.

**Part 6.6 Miscellaneous matters**

**242 Reference in Commonwealth law to provision of another law**

For sections 236 and 239, a reference in a Commonwealth law to a provision of that or another Commonwealth law is taken to be a reference to the provision as applying because of the section.

**243 Fees and other money**

A fee, penalty, fine and other money that, under this Chapter and the applied provisions, are authorised or directed to be payable by or imposed on any person (other than an amount ordered to be refunded to another person) must be paid to the Commonwealth.

## Chapter 7 Administrative matters

### Part 7.1 Codes of practice

#### 244 CHO may make code of practice

- (1) The CHO may make a code of practice about a matter that is required or permitted by this Act to be prescribed by a code of practice in relation to a Schedule 8 substance or restricted Schedule 4 substance.

*Notes for subsection (1)*

- 1 *A contravention of a code of practice does not in itself constitute an offence against this Act.*
  - 2 *However, if an authority is subject to the condition the holder of the authority comply must with a code of practice, the holder may commit an offence against section 147 for a failure to comply with the code of practice. In addition, a failure to comply with a code of practice may also be a ground for suspending or cancelling an authority under section 166.*
  - 3 *Also, contravention of a code of practice by a health practitioner may constitute behaviour for which health, conduct or performance action may be taken under the Health Practitioner Regulation National Law.*
- (2) The code of practice may apply, adopt or incorporate (with or without changes) a matter contained in another document or instrument as in force or existing at a particular time or from time to time.
- (3) Before making a code of practice, the CHO must consult with:
- (a) the Committee; and
  - (b) each professional body representing health practitioners or veterinarians to whom the code of practice is to apply.
- (4) The CHO must publish notice in the *Gazette* of the making of the code of practice.
- (5) The code of practice has no effect until publication of the notice.
- (6) The CHO must also publish the code of practice on the Agency's website.

## **Part 7.2 CHO's powers and responsibilities**

### **Division 1 Exemptions, declarations and approvals for dealing with Scheduled substances**

#### **245 Exemption from holding Schedule 8 authorisation**

- (1) The CHO may exempt an authorised health practitioner from the requirement to hold a Schedule 8 authorisation for dealing with:
  - (a) a restricted Schedule 8 substance for an authorised purpose; or
  - (b) an unrestricted Schedule 8 substance in a prohibited circumstance.
- (2) Before doing so, the CHO must ask the Committee for its advice on the proposed exemption.
- (3) The CHO may give the exemption only after considering the Committee's advice.
- (4) The exemption must be given:
  - (a) for an exemption for a particular authorised health practitioner – by written notice to the authorised health practitioner; or
  - (b) for an exemption for a class of authorised health practitioners – by *Gazette* notice.
- (5) The CHO may give the exemption subject to conditions.
- (6) An authorised health practitioner must not engage in conduct that results in a contravention of a condition of the exemption.

Maximum penalty for subsection (6): 200 penalty units or imprisonment for 2 years.

#### **246 Restricted Schedule 4 and 8 substances**

- (1) The CHO may, by *Gazette* notice, declare:
  - (a) a Schedule 4 substance to be a restricted Schedule 4 substance; or

- (b) a Schedule 8 substance (other than an amphetamine) to be a restricted Schedule 8 substance.

*Note for subsection (1)(b)*

*Section 10(2)(a) declares an amphetamine to be a restricted Schedule 8 substance.*

- (2) Before doing so, the CHO must ask the Committee for its advice on the proposed declaration.
- (3) The CHO may make the declaration only after considering the Committee's advice on the proposed declaration.
- (4) For a restricted Schedule 4 substance, the declaration must state the conditions applying to the issue of a prescription for the supply of, or the supply or administration of, the substance.
- (5) Subject to subsection (4), the conditions stated in the declaration in relation to the substance are in addition to any control in relation to the substance in Appendix D to the medicines and poisons standard.
- (6) The declaration prevails to the extent of any inconsistency between:
- (a) a condition stated in the declaration; and
- (b) a provision of this Act or any control in relation to the substance in Appendix D to the medicines and poisons standard.

#### **247 Declared medical condition**

The CHO may, by *Gazette* notice, declare a medical condition for which an authorised health practitioner may issue a prescription for the supply of an amphetamine for therapeutic use for the condition.

#### **248 Excluded person**

- (1) The CHO may:
- (a) at the request of an authorised health practitioner, declare a person to be an excluded person to be disregarded for working out the number of persons to whom the health practitioner may supply an unrestricted Schedule 8 substance for therapeutic use; or
- (b) on the CHO's initiative, declare a class of persons to be a class of excluded persons to be disregarded for working out the number of persons to whom an authorised health

practitioner may supply an unrestricted Schedule 8 substance for therapeutic use.

- (2) The declaration must be made:
- (a) for the exclusion of a particular person – by written notice given to the health practitioner who made the request; or
  - (b) for the exclusion of a class of persons – by *Gazette* notice.

**249 Conditions for dental therapist, dental hygienist or oral health therapist supplying unrestricted Schedule 4 substance**

The CHO may, by *Gazette* notice, declare conditions for a dental therapist, dental hygienist or oral health therapist to possess or administer an unrestricted Schedule 4 substance.

**250 Approved nurses, midwives, ATSI health practitioners and paramedics**

- (1) The CHO may, by *Gazette* notice, declare:
- (a) a nurse or midwife to be an approved nurse or approved midwife (as appropriate) to deal with Schedule 4 or 8 substances in accordance with the Scheduled substance treatment protocol stated in the notice; or
  - (b) an Aboriginal and Torres Strait Islander health practitioner to be an approved ATSI health practitioner to deal with Schedule 4 or 8 substances in accordance with the Scheduled substance treatment protocol stated in the notice; or
  - (c) a paramedic to be an approved paramedic to administer and possess Scheduled substances as follows in accordance with the Scheduled substance treatment protocol stated in the notice:
    - (i) administer Schedule 3, 4 or 8 substances; and
    - (ii) possess the substance for that purpose.

- (2) In this section:

***deal with***, for Scheduled substances, means one or more of the following:

- (a) supply the substances;
- (b) administer the substances to another person;

- (c) possess the substances for a purpose mentioned in paragraph (a) or (b).

*Note for section 250*

*For the authorised dealings with Scheduled substances by an approved ATSI health practitioner, paramedic, nurse or midwife in accordance with the Scheduled substance treatment protocol, see sections 63 to 65.*

**251 Emergency authorisation for possessing, supplying and administering Schedule 3, 4 and 8 substances**

- (1) The CHO may, by *Gazette* notice, declare a person (the **authorised person**) is authorised to possess, supply or administer stated Schedule 3, 4 or 8 substances in an emergency relating to public health (an **emergency authorisation**).
- (2) To avoid doubt, the emergency authorisation may be made even if no declaration of a public health emergency is in force under the *Public and Environmental Health Act 2011*.
- (3) However, the CHO may make the emergency authorisation for a person who is not a health practitioner only if the CHO considers the person is appropriately qualified to possess, supply or administer the Scheduled substances.
- (4) The emergency authorisation:
- (a) commences on the date the notice is given and ends on the date (not longer than 2 years after that date) stated in the notice; and
- (b) must include the following particulars:
- (i) a description of the public health emergency to which it relates;
- (ii) the clinical circumstances in which the substances may be possessed, supplied or administered;
- (iii) the persons to whom the substances may be supplied or administered;
- (iv) other particulars about the form, strength, dosage and frequency of administration of the substances the CHO considers appropriate; and
- (c) is subject to the conditions stated in the notice.

## 252 Declared places

The CHO may, by *Gazette* notice, declare a health centre or clinic to be a place to which Part 2.6 applies.

### *Example of declared place*

*A health clinic at a custodial correctional facility as defined in section 11(1)(a) of the Correctional Services Act 2014.*

## 253 Approval for pharmacist to supply Schedule 8 substance or restricted Schedule 4 substances on interstate prescription

- (1) The CHO may, by *Gazette* notice, approve a pharmacist supplying a Schedule 8 substance or restricted Schedule 4 substance to persons living in a stated area or community on the prescription of an interstate prescriber for the substance.
- (2) The CHO may give the approval for a substance only if satisfied the persons would not otherwise be able to readily obtain the substance because of the remoteness of the area or community.
- (3) The CHO may give the approval subject to conditions.
- (4) A pharmacist must not engage in conduct that results in a contravention of a condition of the approval.

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

## 254 Approval of Scheduled substance treatment protocol

- (1) The CHO may, by *Gazette* notice, approve a protocol for possessing, supplying or administering a Scheduled substance for any of the following places (a ***Scheduled substance treatment protocol***):
  - (a) a hospital;
  - (b) a ward or department of a hospital;
  - (c) a residential facility;
  - (d) a declared place;
  - (e) a doctor's surgery or consulting room;
  - (f) a pharmacy;
  - (fa) an ambulance station;

- (fb) an ambulance vehicle or a class of ambulance vehicles;
  - (g) another place prescribed by regulation.
- (2) A regulation may provide for the matters that must be included in a Scheduled substance treatment protocol.
- (3) In this section:

***ambulance vehicle*** means a motor vehicle used solely for giving emergency treatment and pre-hospital patient care to, and the transport of, sick or injured persons by an ambulance service.

*Note for section 254*

*Under sections 63 to 65 and 250, an approved ATSI health practitioner, paramedic, nurse or midwife is authorised to deal with Scheduled substances in accordance with the Scheduled substance treatment protocol.*

## **Division 2 Register of authorities and information availability**

### **255 Register of authorities**

- (1) The CHO must keep a register of each type of authority.
- (2) The register may be in any form, including an electronic form.
- (3) The register must contain the particulars prescribed by regulation.

### **256 Public access to some registers**

- (1) Anyone may inspect the register for the following authorities during the Agency's normal business hours:
  - (a) certificates of registration;
  - (b) retailer licences;
  - (c) pest management technician licences.
- (2) The CHO may give a person a copy or summary of particulars in the register.
- (3) However, other registers are not open for inspection by members of the public.

### **Division 3 Other administrative powers**

#### **257 Information relating to supply and use of substances**

(1) The CHO may, by *Gazette* notice, authorise any of the following persons to be given, or disclose, substance information:

- (a) a public sector employee;
- (b) another person the CHO is satisfied is employed in a capacity requiring access to substance information.

(2) In this section:

***substance information*** means information relating to the supply or administration of a Scheduled substance to a particular person.

#### **258 Approved forms**

The CHO may approve forms for this Act.

#### **259 Delegation by CHO**

(1) The CHO may delegate any of the CHO's powers and functions under this Act to any of the following:

- (a) an authorised officer;
- (b) a public sector employee engaged in the Agency;
- (c) a health practitioner.

(2) However, the CHO cannot delegate a power or function in relation to the reconsideration of an original decision under Chapter 5.

(3) Also, the CHO may delegate a power or function to a person only if satisfied the person has appropriate qualifications or experience for the delegation.

## **Part 7.3 Scheduled Substances Clinical Advisory Committee**

### **Division 1 Establishment, functions and powers**

#### **260 Establishment**

The Scheduled Substances Clinical Advisory Committee is established.

## 261 Functions

- (1) The Committee's function is to give advice and make recommendations on issues relating to dealing with Scheduled substances.
- (2) Without limiting subsection (1), the Committee has the following functions:
  - (a) to advise the CHO about the competency required by doctors to supply Scheduled substances;
  - (b) to recommend to the CHO appropriate training programs for doctors who supply Scheduled substances;
  - (c) to advise the CHO about the treatment of persons (whether generally or a particular person) with Scheduled substances;
  - (d) to advise the CHO about issuing, varying, suspending and cancelling Schedule 4 or 8 authorisations for Scheduled substances;
  - (e) to make recommendations to the CHO about matters to be included in codes of practice;
  - (f) to advise the CHO about whether matters relating to the supply of a Scheduled substance should be referred to a National Health Practitioner Board established under the Health Practitioner Regulation National Law;
  - (g) to advise the CHO about policy issues relating to the issue of prescriptions for the supply of, or the supply or use of, Scheduled substances;
  - (h) to give other advice about Scheduled substances as conferred on it under this or another Act.

- (3) In this section:

**Scheduled substance** means:

- (a) a restricted Schedule 4 substance; or
- (b) a Schedule 8 substance.

## 262 Powers

The Committee has the powers necessary to perform its functions.

### **263 Delegation**

- (1) The Committee may delegate any of its powers or functions to the chairperson or an authorised officer.
- (2) The delegation must be signed by a majority of Committee members.

## **Division 2 Provisions about membership**

### **264 Membership**

- (1) The Committee consists of the following:
  - (a) at least 6 members appointed by the CHO (***appointed members***);
  - (b) an authorised officer nominated by the CHO.
- (2) An appointed member may be reappointed.

### **265 Qualifications and nominations for appointment**

An appointed member must be qualified or nominated for appointment as prescribed by regulation.

### **266 Duration of appointment**

An appointed member holds office for the period, not exceeding 2 years, stated in the instrument of appointment.

### **267 Conditions of appointment**

An appointed member holds office on the conditions stated in the instrument of appointment.

### **268 Chairperson and deputy chairperson**

- (1) The chairperson of the Committee is:
  - (a) the appointed member appointed by the CHO to be the chairperson; or
  - (b) if the CHO does not appoint the chairperson – the member appointed by the Committee.
- (2) The Committee must appoint a member, other than the chairperson, as deputy chairperson of the Committee.

- (3) The deputy chairperson must act in the office of chairperson during any period when the chairperson:
- (a) is absent from the Territory; or
  - (b) is unable for any reason to perform the duties of office.

**269 When member ceases to hold office**

- (1) An appointed member ceases to hold office if:
- (a) the member resigns by giving written notice of resignation to the CHO; or
  - (b) the member's term of office comes to an end and the member is not reappointed; or
  - (c) the member is convicted of an indictable offence or sentenced to imprisonment for an offence; or
  - (d) the member is absent, except on leave granted by the Committee, from 3 consecutive meetings of the Committee; or
  - (e) the member is removed from office under subsection (2).
- (2) The CHO may remove a member from office for:
- (a) mental or physical incapacity to perform the duties of office satisfactorily; or
  - (b) neglect of duty; or
  - (c) breach of a condition of appointment; or
  - (d) dishonest or dishonourable conduct.

**Division 3 Conduct of business**

**270 Meetings**

- (1) The Committee must meet as often as is necessary for the exercise of its powers and the performance of its functions.
- (2) However, the Committee must meet at least twice in each year.

**271 Presiding member at meetings**

The chairperson must preside at all meetings of the Committee at which he or she is present.

## **272 Procedure at meetings**

- (1) A quorum of the Committee consists of the chairperson and at least one third of the other members in office.
- (2) A question arising for decision at a Committee meeting must be resolved according to the opinion of a majority of the members present at the meeting and, if they are equally divided in opinion, the chairperson has a casting vote.
- (3) The Committee must keep proper minutes of its proceedings and decisions.
- (4) Subject to this Division, the Committee may decide its own procedures.

## **273 Disclosure of interest**

- (1) If a member of the Committee has a direct or indirect interest in a matter being considered or about to be considered by the Committee, the member must disclose the nature of the interest at a Committee meeting as soon as practicable after the relevant facts come to the member's knowledge.
- (2) The disclosure must be recorded in the Committee's minutes.
- (3) The member must not, while having that interest:
  - (a) take part in any deliberation or decision of the Committee relating to that matter; or
  - (b) form part of the quorum of the Committee in any deliberation or decision of the Committee relating to that matter.
- (4) However, subsection (3) does not apply to the member if the Committee resolves the subsection does not so apply.
- (5) Despite the resolution, the member may refuse to take part in any deliberation or decision of the Committee relating to the matter.

## **Part 7.4 Authorised officers**

### **274 Who is *authorised officer***

- (1) An ***authorised officer*** is:
  - (a) the CHO; or
  - (b) a person appointed under subsection (2) as an authorised officer; or

- (c) a police officer of or above the rank of sergeant.
- (2) The CHO may appoint as an authorised officer:
  - (a) a public sector employee engaged in the Agency; or
  - (b) a public sector employee engaged in another Agency under an arrangement with the Chief Executive Officer of that Agency; or
  - (c) another person if:
    - (i) the CHO is satisfied the person has appropriate qualifications or experience to exercise powers and perform functions of an authorised officer; and
    - (ii) the person agrees to the appointment.
- (3) The CHO has all the powers and functions of an authorised officer.
- (4) An authorised officer appointed under subsection (2) has the powers and functions of an authorised officer stated in the appointment.
- (5) A police officer mentioned in subsection (1)(c) has all the powers and functions of an authorised officer.

#### **275 Identity cards**

- (1) The CHO must give each authorised officer (other than a police officer) an identity card stating the person's name and that the person is an authorised officer.
- (2) The identity card must:
  - (a) show a recent photograph of the officer; and
  - (b) state the card's date of expiry.
- (3) This section does not prevent the issue of a single identity card to a person for this and another Act.

#### **276 Production of identity card**

An authorised officer (other than a police officer in uniform) exercising a power or performing a function under this Act in relation to a person must, if asked by the person, produce for the person's inspection:

- (a) for an authorised officer who is a police officer – the officer's police identification; or

(b) for another authorised officer – the officer's identity card.

**277 Return of identity card**

(1) A person who ceases to be an authorised officer (other than a police officer) must return the person's identity card to the CHO within 21 days after the cessation.

Maximum penalty: 20 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the person establishes a reasonable excuse.

## **Chapter 8 Miscellaneous matters**

### **278 Acquisition on just terms**

If the operation of this Act would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:

- (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

### **279 Protection of health practitioners and veterinarians from liability**

- (1) This section applies if:
  - (a) a health practitioner or veterinarian:
    - (i) gives notice to the CHO about the supply of a Scheduled substance as required under this Act; or
    - (ii) applies for a Schedule 4 or 8 authorisation or prohibited substance authorisation; and
  - (b) in good faith, the health practitioner or veterinarian discloses private or confidential information about a person in giving the notice or making the application.
- (2) The health practitioner or veterinarian is not civilly or criminally liable for the disclosure.
- (3) Without limiting subsection (2), making the disclosure does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.

### **280 Protection of persons administering Act from liability**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:
  - (a) a member of the Committee;
  - (b) an authorised officer;

- (c) a person assisting an authorised officer under Chapter 4.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) In this section:

**exercise**, of a power, includes the purported exercise of the power.

**performance**, of a function, includes the purported performance of the function.

## **281 Regulations**

- (1) The Administrator may make regulations under this Act.
- (2) A regulation may provide for any the following:
  - (a) holders of authorities and others dealing with Scheduled substances, including authorising others to deal with Scheduled substances;
  - (ab) storage, transport and destruction of Scheduled substances;
  - (b) keeping of records by holders of authorities and others dealing with Scheduled substances;
  - (c) reporting requirements of holders of authorities and others dealing with Scheduled substances;
  - (d) applying, adopting or incorporating (with or without changes) the whole or part of a document as in force or existing at a particular time or from time to time;
  - (e) exempting a person, place, Scheduled substance, dealing with a Scheduled substance or other activity from the application of this Act, or a provision of this Act, either conditionally or unconditionally;
  - (f) prescribing fees payable under this Act;
  - (g) an offence against a regulation to be an offence of strict or absolute liability.
- (3) A regulation may authorise a matter to be decided, applied or regulated by the CHO (whether or not from time to time).

## Chapter 9 Repeals and transitional matters

### Part 9.1 Repeal of Acts

#### 282 Repeals

The Acts mentioned in Schedule 3 are repealed.

### Part 9.2 Transitional matters for Medicines, Poisons and Therapeutic Goods Act 2012

#### 283 Definitions

In this Part:

**commencement day** means the day on which section 282 commences.

**corresponding authority**, for an old authority, means the type of authority under this Act that authorises its holder to deal with a Scheduled substance in the same way as the old authority.

*Examples*

- 1 *The corresponding authority for an authorisation under section 28(6) of the repealed Act for possessing and using a Schedule 8 substance is a Schedule 8 authorisation for possessing and using the substance.*
- 2 *The corresponding authority for an authorisation issued under section 31G of the repealed Act for supplying a restricted Schedule 8 substance is a Schedule 8 authorisation for supplying the substance.*
- 3 *The corresponding authority for an authorisation under section 78 of the repealed Act is:*
  - (a) *for manufacturing the substance – a manufacturer certificate of registration for the substance; or*
  - (b) *for using the substance for research purposes – a research authorisation for the substance; or*
  - (c) *for administering the substance – a prohibited substance authorisation for administering the substance.*

**old authority** means:

- (a) a certificate of registration of premises under Part II of the repealed Act for manufacturing a poison; or
- (b) a certificate of registration of premises under Part III of the repealed Act for storage for wholesale supplying a poison; or

- (c) a licence under Part IV of the repealed Act for supplying a poison by retail; or
- (d) an authorisation under section 28(6) of the repealed Act for obtaining, possessing and using a Schedule 4 or 8 substance; or
- (e) an authorisation under Part VA, Division 3, of the repealed Act for the supply, as defined for that Part, under section 31F of a non-restricted Schedule 8 substance; or
- (f) an authorisation under Part VA, Division 3, of the repealed Act for the supply, as defined for that Part, under section 31G of a restricted Schedule 8 substance; or
- (g) an authorisation under Part VIII of the repealed Act for possessing and administering a Schedule 4 or 8 substance; or
- (h) an authorisation under section 53 of the repealed Act for possessing and using a Schedule 7 substance; or
- (i) a pest control operator licence under Part XI of the repealed Act for possessing and using a pesticide; or
- (j) an authorisation under section 78 of the repealed Act for possessing, producing, preparing, manufacturing, supplying, administering or using the prohibited substance mentioned in that section.

***repealed Act*** means the *Poisons and Dangerous Drugs Act 1983* as in force immediately before the commencement day.

## **284 Prescriptions and directions for dealing with Scheduled substances**

- (1) Subsection (2) applies to a prescription:
  - (a) issued under the repealed Act for the supply of a Schedule 4 or 8 substance; and
  - (b) that would have remained in force on the commencement day had the repealed Act not been repealed.
- (2) The prescription:
  - (a) is taken to have been issued under this Act; and
  - (b) continues in force until it would have ended had the repealed Act not been repealed.

- (3) Subsection (4) applies to a direction:
  - (a) given under section 39(4) of the repealed Act for the administration of a Schedule 4 or 8 substance; and
  - (b) that would be in force on the commencement day had the repealed Act not been repealed.
- (4) The direction:
  - (a) is taken to be a supply order for the substance; and
  - (b) continues in force until it would have ended had the repealed Act not been repealed.

### **285 Old authority**

- (1) An old authority in force immediately before the commencement day is taken to be the corresponding authority for it under this Act.
- (2) Subsection (1) applies even if the CHO had suspended the old authority under the repealed Act.
- (3) For subsection (1), a certificate of registration of premises under the repealed Act is taken to have been issued to the person carrying out the activity to which the certificate relates.
- (4) The corresponding authority has effect subject to the conditions applying to it under Part 3.2, Division 3.
- (5) In addition, subject to subsection (4), the conditions applying to the old authority immediately before the commencement day continue to apply to the corresponding authority.
- (6) The corresponding authority ends when the old authority would have ended had the repealed Act not been repealed.

### **286 Pending application relating to authority**

- (1) This section applies to an application made under the repealed Act for, or the renewal or transfer of, an old authority that had not been decided before the commencement day (the ***pending application***).
- (2) The pending application must be treated as if it were an application under this Act for, or the renewal or transfer of, the corresponding authority for the old authority.
- (3) For subsection (2), an application relating to a certificate of registration of premises is taken to have been made by the person carrying out the activity to which the certificate relates.

## **287 Pending action to vary, suspend or revoke authorisation**

- (1) This section applies if:
  - (a) the CHO had given notice under section 31J of the repealed Act to a doctor stating proposed action in relation to an authorisation held by the doctor; and
  - (b) immediately before the commencement day, the action had not been finalised.
- (2) The CHO must decide whether to take action under that section as if the repealed Act had not been repealed.
- (3) However, if the CHO decides to vary, suspend or cancel the authorisation, the decision is taken to be an original decision to vary, suspend or cancel the authorisation under Part 3.5 or 3.6.

*Note for section 287*

*Under section 284, the authorisation is taken to be a Schedule 8 authorisation.*

## **288 Suspended authorisation**

- (1) This section applies if, before the commencement day, the CHO had:
  - (a) under section 31J of the repealed Act, suspended an authorisation under Part VA, Division 3 of the repealed Act; or
  - (b) under section 59 of the repealed Act, suspended an authorisation or pest control operator licence under Part XI of the repealed Act.
- (2) The suspension ends on the date it would have ended had the repealed Act not been repealed.

## **289 Provisions relating to employment involving pesticides**

- (1) A requirement made under section 59(1) of the repealed Act to undergo a medical examination is taken to be a notice given under section 172(2).
- (2) An order under section 59(1)(f) of the repealed Act is taken to be an order under section 172(4)(c).

**290 Directions under section 30 of repealed Act**

- (1) This section applies if:
  - (a) under section 30 of the repealed Act, the CHO directed a pharmacist not to hold a Schedule 8 substance on premises stated in the direction; and
  - (b) had the repealed Act not been repealed, the direction would be in force on the commencement day.
- (2) The direction has effect as if it were a prohibition notice issued under section 116(2) and continues in force until it would have ended had the repealed Act not been repealed.

**291 Prohibitions under sections 31 and 31N of repealed Act**

- (1) Subsections (2) and (3) apply if:
  - (a) under section 31(1) or 31N(1) of the repealed Act, the CHO gave notice to a dentist, veterinarian or doctor proposing the dentist, veterinarian or doctor be prohibited from possessing, supplying, administering or prescribing a Schedule 8 substance; and
  - (b) the period stated in the notice for making submissions on the proposed prohibition had not ended.
- (2) The CHO must decide the matter under the repealed Act as if it had not been repealed.
- (3) If the CHO gives a notice under section 31(2) or 31N(2) of the repealed Act prohibiting the dentist, veterinarian or doctor from possessing, supplying, administering or prescribing a Schedule 8 substance, the notice is taken to be a prohibition notice given under section 116(2).
- (4) Subsection (5) applies if:
  - (a) before the commencement day, the CHO gave notice under section 31(2) or 31N(2) of the repealed Act to a dentist, veterinarian or doctor prohibiting the dentist, veterinarian or doctor from possessing, supplying, administering or prescribing a Schedule 8 substance; and
  - (b) had the repealed Act not been repealed, the prohibition would be in force on the commencement day.

- (5) The notice has effect as if it were a prohibition notice issued under section 116(2) and continues in force until it would have ended had the repealed Act not been repealed.

## **292 Registers of manufacturer and wholesaler premises**

- (1) This section applies to the following registers kept by the CHO under the repealed Act:
- (a) the register of premises registered under Part II of the repealed Act (the **Part 2 register**);
  - (b) the register of premises registered under Part III of the repealed Act (the **Part 3 register**).
- (2) For section 255:
- (a) the Part 2 register is taken to be the register of manufacturer certificates of registration; and
  - (b) the Part 3 register is taken to be the register of wholesaler certificates of registration.

## **293 Interpretation Act not affected**

This Part does not limit Part III of the *Interpretation Act 1978*.

## **Part 9.3 Transitional matters for Statute Law Amendment (Directors' Liability) Act 2015**

### **295 Offences – before and after commencement**

- (1) Section 215, as amended by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 23 of that Act (the **commencement**) only if:
- (a) all the conduct constituting the relevant offence occurred after the commencement; and
  - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 215, as in force before the commencement:
- (a) continues to apply in relation to offences committed by a body corporate before the commencement; and

- (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

## Schedule 1 Declared provisions

section 212  
definition ***declared provision***

Part 2.2, other than sections 44(1) and 48(1)

Part 2.7, other than sections 107, 108 and 114(1)

Sections 147, 165(1) and 170(1)

Part 3.7, other than section 172(3)

Sections 190(3), 202(1), 203(2) and 205(4)

Part 4.6, other than section 210(1)

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**Schedule 2 Original decisions and affected persons**

section 220

<b>Original decision</b>	<b>Affected person</b>
Notice prohibiting authorised health practitioner or veterinarian dealing with Schedule 8 substance (section 116(2))	Person who receives notice
Refusing to issue authority (section 134(3) or (4))	Applicant
Imposing conditions on authority (section 143(2))	Holder of authority
Refusing to renew authority (section 134(3) or (4)) as applied by section 152(2))	Holder of authority
Refusing to transfer certificate of registration (section 134(3) as applied by section 154(2))	Holder of authority
Varying conditions of authority (section 157)	Holder of authority
Refusing to vary conditions of authority (section 160)	Holder of authority
Suspending or cancelling authority (section 169(2) or 171(2))	Holder of authority
Notice to cease employment involving Schedule 7 substances or pesticides (section 172(4)(d))	Employer and employee to whom notice relates
Amount of compensation for forfeited thing (section 200)	Applicant
Giving compliance notice (section 201)	Person who receives notice

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**Schedule 3 Repealed Acts**

section 282

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<i>Poisons and Dangerous Drugs Act 1983</i>	Act No. 4 of 1983
<i>Poisons and Dangerous Drugs (Criminal Code) Amendment Act 1983</i>	Act No. 67 of 1983
<i>Poisons and Dangerous Drugs Amendment Act 1985</i>	Act No. 75 of 1985
<i>Poisons and Dangerous Drugs Amendment Act 1987</i>	Act No. 29, 1987
<i>Poisons and Dangerous Drugs Amendment Act 1989</i>	Act No. 28, 1989
<i>Poisons and Dangerous Drugs Amendment Act 1990</i>	Act No. 18, 1990
<i>Poisons and Dangerous Drugs Amendment Act 1995</i>	Act No. 33, 1995
<i>Poisons and Dangerous Drugs Amendment Act (No. 2) 1995</i>	Act No. 58, 1995
<i>Poisons and Dangerous Drugs Amendment Act 2003</i>	Act No. 52, 2003
<i>Poisons and Dangerous Drugs Amendment Act 2004</i>	Act No. 61, 2004
<i>Poisons and Dangerous Drugs Amendment Act 2006</i>	Act No. 37, 2006
<i>Therapeutic Goods and Cosmetics Act 1986</i>	Act No. 46 of 1986

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**ENDNOTES**
**1 KEY**

Key to abbreviations

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

**2 LIST OF LEGISLATION*****Medicines, Poisons and Therapeutic Goods Act 2012 (Act No. 13, 2012)***

Assent date	27 April 2012
Commenced	1 May 2014 ( <i>Gaz S22</i> , 30 April 2014, p 12)

***Medicines, Poisons and Therapeutic Goods Amendment Act 2014 (Act No. 12, 2014)***

Assent date	16 April 2014
Commenced	16 April 2014

***Correctional Services (Related and Consequential Amendments) Act 2014 (Act No. 27, 2014)***

Assent date	4 September 2014
Commenced	9 September 2014 ( <i>Gaz S80</i> , 9 September 2014, p 2)

***Statute Law Amendment (Directors' Liability) Act 2015 (Act No. 26, 2015)***

Assent date	18 September 2015
Commenced	14 October 2015 ( <i>Gaz G41</i> , 14 October 2015, p 3)

***Local Court (Related Amendments) Act 2016 (Act No. 8, 2016)***

Assent date	6 April 2016
Commenced	1 May 2016 (s 2, s 2 <i>Local Court (Repeals and Related Amendments) Act 2016</i> (Act No. 9, 2016) and <i>Gaz S34</i> , 29 April 2016)

***Justice Legislation Amendment (Drug Offences) Act 2016 (Act No. 17, 2016)***

Assent date	8 June 2016
Commenced	s 17 (to ext ins new s 15): 10 October 2016; rem: 18 July 2016 ( <i>Gaz S67</i> , 18 July 2016)

***Statute Law Revision Act 2017 (Act No. 4, 2017)***

Assent date	10 March 2017
Commenced	12 April 2017 ( <i>Gaz G15</i> , 12 April 2017, p 3)

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**Health Practitioner Regulation (National Uniform Legislation) and Other Legislation Amendment Act 2018 (Act No. 28, 2018)**

Assent date 30 November 2018  
Commenced 1 December 2018 (s 2)

**Medical Services Amendment Act 2019 (Act No. 17, 2019)**

Assent date 30 May 2019  
Commenced 31 May 2019 (s 2)

**Hemp Industry Act 2019 (Act No. 25, 2019)**

Assent date 2 September 2019  
Commenced 6 May 2020 (Gaz G18, 6 May 2020, p 2)

### 3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 5, 19, 24, 32, 43, 44, 80, 89, 92, 121, 125, 127, 128, 129, 183, 207, 232, 251, 252, 283 and 293.

### 4 LIST OF AMENDMENTS

ss 3 – 4	amd No. 4, 2017, s 21
s 5	amd No. 12, 2014, s 3; No. 4, 2017, s 21; No. 28, 2018, s 12; No. 17, 2019, s 14
s 6	rep No. 4, 2017, s 20
s 7	amd No. 4, 2017, s 21
s 12	amd No. 4, 2017, s 21
s 13	rep No. 4, 2017, s 20
ch 1	
pt 1.2, div 2	
sdiv 3 hdg	amd No. 4, 2017, s 21
s 17	amd No. 4, 2017, s 21
s 19	amd No. 12, 2014, s 4
ss 20 – 22	amd No. 4, 2017, s 21
ch 1	
pt 1.2, div 2	
sdiv 4 hdg	amd No. 4, 2017, s 21
s 23	amd No. 4, 2017, s 21
s 26	amd No. 12, 2014, s 5
s 25	amd No. 28, 2018, s 12
s 28	sub No. 12, 2014, s 6
s 28A	ins No. 12, 2014, s 6 sub No. 28, 2018, s 10
s 31	amd No. 4, 2017, s 21
s 31A	ins No. 25, 2019, s 46
ss 32 – 33	amd No. 4, 2017, s 21
ch 2 hdg	amd No. 4, 2017, s 21
s 34	amd No. 12, 2014, s 7; No. 4, 2017, s 21
s 35	amd No. 12, 2014, s 8; No. 4, 2017, s 21
ch 2	
pt 2.2 hdg	amd No. 4, 2017, s 21
s 57	amd No. 4, 2017, s 21
s 59A	ins No. 12, 2014, s 9
s 62	sub No. 12, 2014, s 10

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s 63	sub No. 12, 2014, s 11
s 64	amd No. 28, 2018, s 12
s 65	amd No. 12, 2014, s 12
s 67	amd No. 12, 2014, s 13
ch 2	
pt 2.3, div 1	
sdiv 4 hdg	amd No. 12, 2014, s 14
s 70	rep No. 12, 2014, s 15
s 71	amd No. 12, 2014, s 16
s 72	amd No. 12, 2014, s 17
s 73	amd No. 4, 2017, s 21
ss 79 – 80	amd No. 4, 2017, s 21
s 86	amd No. 4, 2017, s 21
s 92	amd No. 12, 2014, s 18
pt 2.6 hdg	amd No. 4, 2017, s 21
s. 98	amd No. 4, 2017, s 21
s 99	amd No. 12, 2014, s 19
s 100	amd No. 12, 2014, s 20
ch 2	
pt 2.7 hdg	amd No. 4, 2017, s 21
ss 101 – 105	amd No. 4, 2017, s 21
s 109	rep No. 12, 2014, s 21
s 110	amd No. 12, 2014, s 22
s 113	amd No. 4, 2017, s 21
ch 3 hdg	amd No. 4, 2017, s 21
ss 118 – 119	amd No. 4, 2017, s 21
s 121	amd No. 17, 2016, s 46; No. 4, 2017, s 21
s 122	amd No. 4, 2017, s 21
ss 127 – 128	amd No. 17, 2016, s 46
s 129	amd No. 12, 2014, s 23; No. 17, 2016, s 46
ss 134 – 136	amd No. 4, 2017, s 21
ss 142 – 143	amd No. 4, 2017, s 21
s 144	amd No. 12, 2014, s 24; No. 4, 2017, s 21
s 182	amd No. 8, 2016, s 45
s 203	amd No. 4, 2017, s 21
s 206	amd No. 4, 2017, s 21
s 215	amd No. 26, 2015, s 75
s 219	amd No. 4, 2017, s 21
ch 7	
pt 7.2	
div 1 hdg	amd No. 4, 2017, s 21
s 249	amd No. 12, 2014, s 25
s 250	amd No. 12, 2014, s 26; No. 28, 2018, s 12
s 251	amd No. 4, 2017, s 21
s 252	amd No. 27, 2014, s 57
s 254	amd No. 12, 2014, s 27; No. 28, 2018, s 11
s 257	amd No. 4, 2017, s 21
s 261	amd No. 12, 2014, s 28
s 279	amd No. 4, 2017, s 21
s 281	amd No. 12, 2014, s 29; No. 4, 2017, s 21
s 283	amd No. 12, 2014, s 30; No. 4, 2017, s 21
s 294	exp No. 13, 2012, s 294(5)
ch 9	
pt 9.3 hdg	ins No. 26, 2015, s 76
s 295	exp No. 13, 2012, s 305
	ins No. 26, 2015, s 76
ch 10 hdg	exp No. 13, 2012, s 305

## ENDNOTES

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ch 10	
pt 10.1 hdg	exp No. 13, 2012, s 305
ss 296 – 303	exp No. 13, 2012, s 305
ch 10	
pt 10.2 hdg	exp No. 13, 2012, s 305
s 304	exp No. 13, 2012, s 305
ch 10	
pt 10.3 hdg	exp No. 13, 2012, s 305
s 305	exp No. 13, 2012, s 305
sch 1	amd No. 12, 2014, s 31
sch 4	exp No. 13, 2012, s 305