

NORTHERN TERRITORY OF AUSTRALIA
MISUSE OF DRUGS AMENDMENT ACT 2002

Act No. 32 of 2002

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 32 of 2002

AN ACT

to amend the *Misuse of Drugs Act*

[Assented to 16 July 2002]
[Second reading 15 May 2002]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Misuse of Drugs Amendment Act 2002*.

2. Commencement

This Act comes into operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

3. Principal Act

The *Misuse of Drugs Act* is in this Act referred to as the Principal Act.

4. Interpretation

Section 3 of the Principal Act is amended –

- (a) by omitting from the definition of "analyst" in subsection (1) "an analyst" and substituting "an analyst and includes a person who is authorised under a law of the Commonwealth or of a State or another Territory of the Commonwealth to issue a certificate or other document relating to a dangerous drug or other substance that is prima facie evidence of the facts alleged in the document";

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- (b) by inserting after the definition of "possession" in subsection (1) the following:

" 'precursor' means a substance prescribed by the Regulations as a precursor;"

- (c) by omitting subsection (2)(a)(ii) and substituting the following:

"(ii) a preparation or mixture of that dangerous drug (which may include a substance that is not a dangerous drug) that contains any proportion of that dangerous drug; or"; and

- (d) by omitting subsections (3) and (3A) and substituting the following:

"(3) Subject to subsection (3A), for the purposes of determining under this Act whether an amount of a preparation or mixture of substances that contains a dangerous drug is equal to or more than the traffickable quantity or commercial quantity of the dangerous drug, the amount is to be determined as if all of the preparation or mixture were comprised of the dangerous drug.

"(3A) If the preparation or mixture contains more than one dangerous drug, subsection (3B) applies.

"(3B) If –

- (a) all dangerous drugs found in the preparation or mixture are specified in Schedule 1 –

(i) the amount for a traffickable quantity is to be determined as if all of the preparation or mixture were comprised of the dangerous drug that, of all the dangerous drugs found, has the least quantity specified opposite it in column 2 of Schedule 1; and

(ii) the amount for a commercial quantity is to be determined as if all of the preparation or mixture were comprised of the dangerous drug that, of all the dangerous drugs found, has the least quantity specified opposite it in column 3 of Schedule 1;

- (b) all dangerous drugs found in the preparation or mixture are specified in Schedule 2 –

(i) the amount for a traffickable quantity is to be determined as if all of the preparation or mixture were comprised of the dangerous drug that, of all the dangerous drugs found, has the least quantity specified opposite it in column 2 of Schedule 2; and

- (ii) the amount for a commercial quantity is to be determined as if all of the preparation or mixture were comprised of the dangerous drug that, of all the dangerous drugs found, has the least quantity specified opposite it, in column 3 of Schedule 2; or
- (c) one or more of the dangerous drugs found in the preparation or mixture is specified in Schedule 1 and one or more of the other dangerous drugs found in the preparation or mixture are specified in Schedule 2 –
 - (i) the amount for a traffickable quantity is to be determined as if all of the preparation or mixture were comprised of the dangerous drug that, of all the dangerous drugs found, has the least quantity specified opposite it in column 2 of Schedule 1; and
 - (ii) the amount for a commercial quantity is to be determined as if all of the preparation or mixture were comprised of the dangerous drug that, of all the dangerous drugs found, has the least quantity specified opposite it in column 3 of Schedule 1."

5. New sections

The Principal Act is amended by inserting after section 8 the following:

"8A. Possession of precursors of dangerous drugs

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

Penalty: Imprisonment for 7 years.

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

- (a) is authorised under this Act to possess the precursor and possesses and uses the precursor in accordance with the conditions, if any, of the authorisation; or
- (b) is registered, licensed or otherwise authorised under another Act of the Territory, the Commonwealth, or a State or another Territory of the Commonwealth, to possess the precursor and possesses and uses the precursor in accordance with the conditions, if any, of the registration, licence or authorisation.

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"(3) Proof of possession of a precursor by a person is evidence that the person intended the precursor to be used in the manufacture or production by that person or another person of a dangerous drug.

"(4) The Chief Health Officer may in writing authorise a person to possess a precursor for the purposes of research.

"(5) An authorisation under subsection (4) is subject to the conditions, if any, specified in the authorisation.

"(6) The Regulations may provide for the prohibition or regulation of the cash sale of precursors.

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

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

Penalty: Imprisonment for 7 years.

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

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

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

Penalty: Imprisonment for 7 years.

"(4) It is a defence to a charge of an offence against subsection (1) if the person –

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

"(5) Proof of possession by a person –

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

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

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

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

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

"(1) A person must not have possession of equipment, or an implement or other article (other than a document), that –

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

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

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

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

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

Penalty: Imprisonment for 7 years.

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

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

6. New Division

Part II of the Principal Act is amended by inserting after Division 1 the following:

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"Division 1A – Drug premises orders

"Subdivision 1 – Preliminary

"11A. Definitions

"In this Division –

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

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

'court' means the Local Court;

'drug premises' means premises in relation to which a drug premises order is in force;

'drug premises order' means an order made under section 11K or 11L;

'landlord' –

- (a) in relation to residential premises to which the *Residential Tenancies Act* applies – has the same meaning as in the *Residential Tenancies Act*; and
- (b) in relation to commercial premises or liquor licence premises – has the same meaning as 'lessor' in the *Commercial Tenancies Act*,

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

'licensee' has the same meaning as 'licensee' in the *Liquor Act*;

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

'resident', in relation to residential premises, means –

- (a) a person who is a tenant in respect of the premises; or

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

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

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

'tenant' –

- (a) in relation to residential premises – has the same meaning as in the *Residential Tenancies Act*; and
- (b) in relation to commercial premises or liquor licence premises – has the same meaning as 'lessee' in the *Commercial Tenancies Act*,

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

"11B. Service of notices under this Division

"(1) A notice under this Division may be served on a person by –

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

"(2) A notice under this Division is taken to be served on a person although it is not addressed to a named person if –

- (a) it is addressed 'to the owner', 'to the landlord', 'to the tenant' or 'to the resident';
- (b) it is posted to or left at a place of residence or business; and
- (c) the person is an owner, landlord, tenant or resident at that place of residence or business.

"11C. Indications that premises used to supply dangerous drugs

"(1) For the purposes of this Division, the indications that a dangerous drug has been supplied at or from residential premises include the following:

- (a) that a member of the Police Force was prevented, obstructed or delayed from entering or re-entering the premises;
- (b) the presence on the premises or in sight of the premises of a person acting as a lookout;
- (c) the presence on the premises of things used in the supply, manufacture or use of a dangerous drug;
- (d) the presence on the premises, or in the possession of a person on the premises, of a firearm within the meaning of the *Firearms Act*;
- (e) the presence on the premises of documents or records used in connection with the supply or manufacture of a dangerous drug;
- (f) amounts of money on the premises that cannot be satisfactorily accounted for by a resident of, or an owner or landlord of, the premises;
- (g) the presence at the premises of a person or persons who are, or who appear to be, under the influence of a dangerous drug;
- (h) excessive, frequent or suspicious vehicular or pedestrian traffic to or from the premises;

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- (i) the presence on the premises, or in the vicinity of the premises, of persons known to be involved in the sale or distribution of a dangerous drug;
- (j) the presence on the premises of property reasonably suspected of being stolen or of being exchanged in return for a dangerous drug;
- (k) that a dangerous drug has been found on the premises on one or more occasions;
- (l) if there are other indications – the construction of the premises, or an internal or external door on the premises, involved a device for preventing, delaying or obstructing entry or for giving alarm.

"(2) For the purposes of this Division, the indications that a dangerous drug has been supplied at or from commercial or liquor licence premises include the following:

- (a) that a member of the Police Force was prevented, obstructed or delayed from entering or re-entering the premises by an owner, landlord or tenant of the premises or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises;
- (b) the presence of a thing that is used in the supply, manufacture or use of a dangerous drug and that is –
 - (i) in the possession of an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises; or
 - (ii) in a room in the premises to which only an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises, has access;
- (c) the presence of a firearm within the meaning of the *Firearms Act* –
 - (i) in the possession of an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises; or
 - (ii) in a room in the premises to which only an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises, has access;
- (d) the presence on the premises of documents or records used in connection with the supply or manufacture of a dangerous drug;

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- (e) amounts of money –
 - (i) in the possession of an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises, that cannot be satisfactorily accounted for by the person; or
 - (ii) found in a room in the premises to which only an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises, has access, that cannot be satisfactorily accounted for by such a person;
- (f) property reasonably suspected of being stolen, or of being exchanged in return for a dangerous drug, being property found –
 - (i) in the possession of an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises; or
 - (ii) in a room in the premises to which only an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises, has access;
- (g) that a dangerous drug has been found on the premises on one or more occasions –
 - (i) in the possession of an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises; or
 - (ii) in a room in the premises to which only an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises, has access;
- (h) if there are other indications – the construction of the premises, or an internal or external door on the premises, involved a device for preventing, delaying or obstructing entry or for giving alarm.

"(3) For the purposes of Subdivision 3, in determining whether a dangerous drug has been supplied at or from residential, commercial or liquor licence premises, the court may take into account indications that do not occur on the premises but that relate to the premises.

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

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

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

- (a) an owner, landlord or resident of the premises; or
- (b) a person employed by or acting for and on behalf of an owner, landlord or resident of the premises.

"(3) The Commissioner of Police may apply to the court for a drug premises order if –

- (a) a dangerous drug is found at residential premises on 2 or more separate occasions within 12 months after a record is made under section 11E(1) in relation to the premises; and
- (b) he or she is satisfied that dangerous drugs have been supplied at or from the premises to which the application relates.

"(4) The Commissioner of Police may apply to the court for a drug premises order if –

- (a) a dangerous drug is found at commercial or liquor licence premises –
 - (i) apparently in the possession of an owner, landlord or tenant of commercial or liquor licence premises or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises; or
 - (ii) in a room in the premises to which only an owner, landlord or tenant of the premises or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises has access,

on 2 or more separate occasions within 12 months after a record is made under section 11E(3) in relation to the premises; and

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- (b) he or she is satisfied that dangerous drugs have been supplied at or from the premises to which the application relates.

"Subdivision 2 – Record of finding of drugs and warning that order may be made

"11E. Record and warning of first finding of dangerous drugs on premises

"(1) A member of the Police Force may make a record in the prescribed form of a dangerous drug being found by him or her at residential premises.

"(2) A member of the Police Force may serve notice in the prescribed form on each owner, landlord and tenant of residential premises in relation to which a record has been made under subsection (1) if the member has a reasonable belief that a dangerous drug has been supplied at or from the premises.

"(3) A member of the Police Force may make a record in the prescribed form of a dangerous drug being found by him or her at commercial or liquor licence premises –

- (a) apparently in the possession of an owner, landlord or tenant of the commercial or liquor licence premises or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises; or
- (b) in a room in the premises to which only an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises, has access.

"(4) A member of the Police Force may serve notice in the prescribed form on –

- (a) the licensee of liquor licence premises in relation to which a record has been made under subsection (3) or a person who is taken under the *Liquor Act* to be a licensee of the premises for the purpose of that Act; and
- (b) each owner, landlord and tenant of premises in relation to which a record has been made under subsection (3),

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

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

"(1) A member of the Police Force may make a record in the prescribed form of a dangerous drug being found by him or her at residential premises on a

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separate occasion within 12 months after a record is made under section 11E(1) in relation to the premises (the second finding of a dangerous drug).

"(2) A member of the Police Force may serve notice in the prescribed form on each owner, landlord or tenant of residential premises in relation to which a record has been made under subsection (1) if the member has a reasonable belief that a dangerous drug has been supplied at or from the premises.

"(3) A member of the Police Force may make a record in the prescribed form of a dangerous drug being found by him or her at commercial or liquor licence premises on a separate occasion within 12 months after a record is made under section 11E(3) in relation to the premises (the second finding of a dangerous drug).

"(4) A member of the Police Force may serve notice in the prescribed form on –

- (a) the licensee of liquor licence premises in relation to which a record has been made under subsection (3) or a person who is taken under the *Liquor Act* to be a licensee of the premises for the purpose of that Act; and
- (b) each owner, landlord and tenant of commercial premises or liquor licence premises in relation to which a record has been made under subsection (3),

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

"(5) The form prescribed for the purposes of subsection (2) or (4) is to contain a warning of the second finding of a dangerous drug on the premises to which the form relates and that if a dangerous drug is found –

- (a) in those residential premises; or
- (b) at those commercial or liquor licence premises–
 - (i) apparently in the possession of an owner, landlord or tenant of commercial or liquor licence premises or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises; or
 - (ii) in a room in the premises to which only the owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises, has access,

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

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

"(1) A member of the Police Force may make a record in the prescribed form of a dangerous drug being found by him or her at residential premises on the second or any subsequent separate occasion within 12 months after a record is made under section 11E(1) in relation to the premises (the third or subsequent finding of a dangerous drug).

"(2) A member of the Police Force may serve notice in the prescribed form on each owner, landlord or tenant of residential premises in relation to which a record has been made under subsection (1) if he or she has a reasonable belief that a dangerous drug has been supplied at or from the premises.

"(3) A member of the Police Force may make a record in the prescribed form of a dangerous drug being found by him or her at commercial or liquor licence premises on the second or any subsequent separate occasion within 12 months after a record is made under section 11E(3) in relation to the premises (the third or subsequent finding of a dangerous drug).

"(4) A member of the Police Force may serve notice in the prescribed form on –

- (a) the licensee of liquor licence premises in relation to which a record has been made under subsection (3) or a person who is taken under the *Liquor Act* to be a licensee of the premises for the purpose of that Act; and
- (b) each owner, landlord and tenant of commercial premises, or liquor licence premises, in relation to which a record has been made under subsection (3),

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

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

"Subdivision 3 – Making and revocation of drug premises orders

"11H. No notice to be given of application for drug premises order

"(1) No notice is to be given of an application under section 11D to an owner, landlord, tenant, licensee or resident of the premises in respect of which the application is made.

"(2) A court is to determine an application under section 11D in the absence of the owner, landlord, tenants or licensee of the premises to which the application relates.

"11J. Hearing of applications for orders and revocation of orders

"(1) For the purposes of this Division, the Local Court is to be constituted by a magistrate.

"(2) Evidence in proceedings relating to an application under this Division may be given by way of affidavit.

"(3) The hearing of an application under section 11D is to be in camera.

"(4) The Commissioner of Police must, at the hearing of an application under section 11D, disclose to the court all matters that are within his or her knowledge that he or she, on reasonable grounds, believes would support an argument against the granting of the application.

"(5) A deponent of an affidavit is to be available for cross-examination at a hearing of the making or revocation of a drug premises order.

"(6) Section 16 of the *Local Court Act* does not apply in relation to an application under section 11D or 11P of this Act.

"(7) For the purposes of this Subdivision, the court may make a finding that a dangerous drug has been supplied at or from premises although there has not been a finding of guilt made by the court in relation to the possession or supply of drugs that are found on the premises.

"(8) The court may dispense with compliance with a rule of the court if it is of the opinion that it is desirable to do so to expedite the hearing of an application under this Subdivision.

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

"(1) On receiving an application under section 11D(1) in relation to residential premises, the court may make a drug premises order declaring the premises to be drug premises if the court is satisfied that the evidence of the indications of supply is sufficient to establish on the balance of probabilities that a dangerous drug has been supplied at or from the premises.

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

"(3) The court must specify in a drug premises order the area of the premises, specified in the application for the order, to which the order relates.

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

"(1) The court must make a drug premises order declaring residential premises to which an application under section 11D(3) relates to be drug premises if the court is satisfied that –

- (a) a dangerous drug has been found at the premises on 2 or more separate occasions within 12 months after a record is made under section 11E(1) in relation to the premises; and
- (b) a dangerous drug has been supplied at or from the premises.

"(2) On receiving an application under section 11D(4) in relation to commercial premises or liquor licence premises, the court must make a drug premises order declaring the premises to be drug premises if the court is satisfied that –

- (a) a dangerous drug has been found –
 - (i) apparently in the possession of an owner, landlord or tenant of commercial or liquor licence premises or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises; or
 - (ii) in a room in the premises to which only an owner, landlord or tenant of the premises, or a person employed by or acting for and on behalf of an owner, landlord or tenant of the premises, has access,

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

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

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

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- (a) records have been made under sections 11E, 11F and 11G of the finding of a dangerous drug on the premises on not less than 3 separate occasions; and
- (b) the notices required under those sections to be served on each owner, landlord and tenant of the premises were served on those persons.

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

"11M. Duration of drug premises order

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

"11N. Notice of drug premises order to be given within 7 days

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

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

- (a) a copy of the order; and
- (b) a notice in accordance with the prescribed form,

on –

- (c) each owner, landlord and tenant of the premises to which the order relates; and
- (d) if the premises are liquor licence premises – the licensee of the premises.

"(3) A notice under subsection (2)(b) is to specify that a drug premises notice under section 11Q will be affixed to the premises within 7 days after the date on which the notice under subsection (2)(b) is served, unless notice of an application is served under section 11P(2) on the Commissioner by an owner, landlord or tenant of the premises.

"(4) Sections 11V and 11W, sections 88A of the *Residential Tenancies Act* and section 42AA of the *Commercial Tenancies Act* do not apply in relation to drug premises until this section and section 11Q(1) have been complied with.

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

"(1) An owner, landlord or tenant of drug premises may apply to the court for the order to be revoked.

"(2) A person who applies to the court under subsection (1) must serve notice of the application on the Commissioner of Police.

"(3) The Commissioner of Police may be heard in relation to an application under subsection (1).

"(4) The court may revoke a drug premises order if it is satisfied –

- (a) on the balance of probabilities that the premises are no longer premises at or from which dangerous drugs are being, or are likely to be, supplied; or
- (b) that in the circumstances of the case, including circumstances arising after the making of the order, it would be unjust to keep the order in force.

"(5) In determining whether to revoke an order under subsection (4), the court is to have regard to (but is not limited to having regard to) whether or not the residents of the premises have been served with notice to quit under section 88A of the *Residential Tenancies Act* or section 42AA of the *Commercial Tenancies Act*.

"(6) An appeal under section 19 of the *Local Court Act* to the Supreme Court against the making of a drug premises order may not be lodged unless an application under this section in relation to the premises has been made and has been refused.

"11Q. Notice to be affixed to drug premises

"(1) A member of the Police Force must affix a notice in the prescribed form and size to the exterior of the premises as close to each entrance to the premises as is practicable.

"(2) The notice may only be affixed under subsection (1) –

- (a) after 7 days after a drug premises order is served under section 11N(2) in relation to the premises; or
- (b) if, within 7 days after a drug premises order is served under section 11N(2) in relation to the premises, notice of an application is served under section 11P(2) on the Commissioner by an owner, landlord or tenant of the premises – after the application is determined by the court.

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"(3) A person must not tamper with, deface, remove, damage or alter a notice affixed to drug premises in accordance with subsection (1).

Penalty for an offence against subsection (3): 200 penalty units or imprisonment for 2 years.

"Subdivision 4 – Effect of drug premises order

"11R. Search of drug premises without warrant

"(1) A member of the Police Force may, without a warrant –

- (a) enter into or upon and search drug premises on or in which the member believes, on reasonable grounds, that any object connected with an offence against this Act is situated; and
- (b) search the person of, the clothing that is being worn by, and property in the immediate control of, a person on drug premises who is reasonably suspected by the member to be carrying anything connected with an offence against this Act.

"(2) A member of the Police Force may seize any object found by the member on the premises or a person in the course of a search under subsection (1) if he or she believes on reasonable grounds that the object is connected with an offence against this Act and it is necessary to do so in order to prevent the loss or destruction of the object.

"(3) The power to search conferred under subsection (1) authorises a member –

- (a) to use the reasonable force necessary to break into, enter and search the drug premises;
- (b) to use the reasonable force necessary to open any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, found on or in the drug premises; and
- (c) to use the reasonable force necessary to carry out a search of a person under subsection (1)(b).

"(4) A search of a female person under subsection (1)(b) must be carried out only –

- (a) by a female member of the Police Force;
- (b) by a medical practitioner authorised by a member to carry out the search; or

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- (c) if there is neither a female member nor a medical practitioner available – by a female person authorised by a member to carry out the search.

"(5) If a medical practitioner or a female person is authorised under subsection (4) to carry out a search of a female person, the medical practitioner or female person carrying out the search has, for the purposes of that search, the same powers, and is subject to the same protection, as a member of the Police Force.

"(6) The powers given by this section are in addition to, and do not derogate from, any other powers of a member of the Police Force.

"11S. Offences in premises to which drug premises order relates

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

Penalty: 200 penalty units or imprisonment for 2 years.

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

Penalty: 200 penalty units or imprisonment for 2 years.

"(3) A person who is –

- (a) on drug premises or within 200 metres of drug premises; and
(b) a person that a member of the Police Force believes on reasonable grounds to be associated with the premises,

must not fail to inform the member of his or her name and address when requested by the member to do so.

Penalty: 200 penalty units or imprisonment for 2 years.

"11T. Restraining orders if breach of the peace

"(1) A person must not commit a breach of the peace on drug premises.

Penalty: 50 penalty units or imprisonment for 6 months.

"(2) A member of the Police Force may apply to the court of summary jurisdiction for a restraining order in relation to a person found by a member of the Police Force on drug premises if the member reasonably believes the person has committed a breach of the peace on the premises.

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"(3) A copy of an application under subsection (2) is to be served on the person to whom the application relates.

"(4) The court of summary jurisdiction may issue a restraining order in relation to a person if it is satisfied on the balance of probabilities that –

- (a) the person was on drug premises; and
- (b) the person has breached the peace, or caused a breach of the peace, on the premises.

"(5) The court of summary jurisdiction may order the person in relation to whom a restraining order is made to enter into a recognizance, with or without sureties, to keep the peace, or be of good behaviour, for the period (of not more than 6 months) that is specified in the order.

"(6) The court of summary jurisdiction may order that, if the person in relation to whom the order is made contravenes or fails to comply with an order under this section, the person is to be imprisoned for the period (of not more than 6 months) that is specified in the order.

"(7) A person committed to gaol because he or she has failed to find a surety under subsection (6) may, in person, or by a person acting on his or her behalf, apply for an order varying the order under which he or she was committed.

"(8) The court of summary jurisdiction may, if it appears just, upon new evidence produced or upon proof of a change of circumstances having regard to all the circumstances of the case, make an order –

- (a) reducing the amount for which it is proposed the sureties should be bound; or
- (b) dispensing with the sureties or surety or otherwise dealing with the case as the court thinks just.

"11U. Tenants and residents may be evicted

"(1) Section 88A of the *Residential Tenancies Act* applies to a tenancy agreement within the meaning of that Act in respect of residential premises that are drug premises.

"(2) Section 88A of the *Residential Tenancies Act* applies to an agreement to permit a person to reside on residential premises that are drug premises as if the agreement were a tenancy agreement within the meaning of that Act.

"(3) Section 42AA of the *Commercial Tenancies Act* applies in relation to an owner or landlord of commercial or liquor licence premises.

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

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

"11W. Commissioner of Police may apply for suspension of liquor licence

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

7. Obtaining dangerous drug or precursor by deception

Section 17 of the Principal Act is amended –

- (a) by omitting "dangerous drug" and substituting "dangerous drug or precursor"; and
- (b) by omitting "or veterinary surgeon" and substituting ", veterinary surgeon or a lawful supplier of a dangerous drug or precursor to such persons".

8. Repeal and substitution

Sections 19B, 19C and 19D of the Principal Act are repealed and the following substituted:

"19B. Suspected drug or precursor may be destroyed

"(1) Subject to this Part, a member of the Police Force who is of or above the rank of Commander may order the destruction by a member of the Police Force of –

- (a) a dangerous drug, or a precursor, seized by a member of the Police Force; or
- (b) a substance seized by a member of the Police Force that the member who orders the destruction believes on reasonable grounds to be a dangerous drug or precursor.

"(2) Subsection (1) applies whether or not a person has been or is to be charged with an offence in relation to the dangerous drug, precursor or substance.

"(3) Property that is a dangerous drug, precursor or substance may only be destroyed under subsection (1) if –

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- (a) a sample, or samples, that provide a true representation of the nature of the property have been taken by or on behalf of a member of the Police Force;
- (b) a sample, or samples, that provide a true representation of the nature of the property are kept for the purpose of enabling at least one person who is, or is to be, charged with an offence in relation to the property to have the samples analysed or examined under section 19C; and
- (c) a sample is kept by the Commissioner of Police or a member of the Police Force who is of or above the rank of Commander and is nominated by the Commissioner of Police.

"(4) A member of the Police Force must make all reasonable attempts to serve on each person who is, or is to be, charged with an offence in relation to the property written notice of his or her entitlement under section 19C to have a sample or samples of the property analysed or examined.

"(5) Section 19C and subsections (3) and (4) do not apply if an analyst has issued a certificate in relation to a dangerous drug, precursor or substance specifying that it may be too dangerous to the health or safety of persons to take or keep samples of it.

"(6) Section 19C and subsections (3) and (4) do not apply in relation to a dangerous drug, precursor or substance if a member of the Police Force of or above the rank of Commander is satisfied on reasonable grounds that –

- (a) there is no lawful owner of the dangerous drug, precursor or substance; and
- (b) it is not intended to charge any person with an offence in respect of the dangerous drug, precursor or substance.

"(7) A dangerous drug, precursor or substance may be destroyed under subsection (1) at the place at which it was seized or at any other place that a member of the Police Force who is of or above the rank of Commander thinks fit.

"(8) The Commissioner of Police must ensure that a member of the Police Force retains control of the possession of the sample or samples of the property taken under subsection (3).

"(9) This Part does not apply to the destruction of part or all of property if the destruction occurs as part of the process of analysing or examining the property.

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

"(1) A person who has been or is to be charged with an offence in relation to property that is, or may be, a dangerous drug or a precursor is entitled to have a sample or samples that provide a true representation of the nature of the property analysed or examined by a person if there is sufficient quantity of the property at the time an application is made by the person under subsection (2) to enable the sample or samples to be analysed or examined.

"(2) A person may apply in the prescribed form to the Commissioner of Police for the release, into the custody of a person specified in the application, of a sample or samples of property that is or may be a dangerous drug or a precursor.

"(3) The Commissioner of Police may authorise the release of a sample or samples of the property that is or may be a dangerous drug or a precursor into the custody of a person specified in an application under subsection (2) if –

- (a) the property is sought for the purpose of conducting an analysis or examination to determine the nature of the property; and
- (b) the Commissioner is satisfied the person is authorised under this Act, another Act of the Territory or an Act of the Commonwealth, a State or another Territory to have possession of the dangerous drug or precursor."

9. Adjournment

Section 19G of the Principal Act is amended –

- (a) by omitting from subsection (1) "the hearing of an application under section 19D or"; and
- (b) by omitting from subsection (1)(b) "hearing or".

10. Use of dangerous drugs for research etc.

Section 19K of the Principal Act is amended –

- (a) by omitting "Where" and substituting "(1) If";
- (b) by omitting "drug" (all references) and substituting "drug or precursor"; and
- (c) by adding at the end the following:

"(2) The Commissioner of Police may comply with a request made in accordance with subsection (1) by giving the dangerous drug or precursor to a person or body specified in the request if the Commissioner is satisfied –

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- (a) samples of the drug or precursor are retained in accordance with section 19B(3); and
- (b) if notice is required to be given in accordance with section 19B(4) in relation to the drug or precursor – the notice has been given."

11. Order on committal for trial

Section 19M of the Principal Act is amended by inserting in subsection (1) "destroyed under section 19B or" before "ordered".

12. Order on initial hearing of trial

Section 19N of the Principal Act is amended by inserting "destroyed under section 19B or" before "ordered".

13. Repeal and substitution

Section 19P of the Principal Act is repealed and the following substituted:

"19P. Seized substances may be destroyed or disposed of

"(1) If a member of the Police Force of or above the rank of Commander thinks that a substance seized under this Act, other than a dangerous drug or a precursor, is –

- (a) dangerous to the health or safety of humans or property; or
- (b) toxic, flammable or corrosive,

he or she may order the destruction or disposal of the substance by a member of the Police Force.

"(2) This section applies to and in relation to a substance whether or not a person has been or is to be charged with an offence in relation to the substance or a dangerous drug or precursor seized under this Act.

"(3) A substance may only be destroyed under subsection (1) if –

- (a) a sample, or samples, that provide a true representation of the nature of the property have been taken by or on behalf of a member of the Police Force;
- (b) a sample, or samples, that provide a true representation of the nature of the property are kept for the purpose of enabling at least one person who is, or is to be, charged with an offence in relation to the property to have the samples analysed or examined under section 19PA; and

- (c) a sample is kept by the Commissioner of Police or a member of the Police Force who is of or above the rank of Commander and is nominated by the Commissioner of Police.

"(4) A member of the Police Force must make all reasonable attempts to serve on each person who is, or is to be, charged with an offence in relation to the property written notice of his or her entitlement under section 19PA to have a sample or samples of the substance analysed or examined.

"(5) Subsections (3) and (4) do not apply if an analyst has issued a certificate in relation to the substance specifying that the substance may be too dangerous to the health or safety of persons to take or keep samples of it.

"(6) Section 19PA and subsections (3) and (4) do not apply in relation to a substance or thing if a member of the Police Force of or above the rank of Commander is satisfied on reasonable grounds that –

- (a) there is no lawful owner of the substance or thing; and
- (b) if the substance was seized in circumstances that relate to a dangerous drug or a precursor – it is not intended to charge any person with an offence in relation to the dangerous drug or precursor.

"(7) A substance may be destroyed or disposed of under this section at the place at which it was seized or another place that a member of the Police Force who is of or above the rank of Commander thinks fit.

"(8) This Part does not apply to the destruction of part or all of a substance if the destruction occurs as part of the process of analysing or examining the substance.

"19PA. Entitlement to have substance analysed or examined

- "(1) A person who is the owner of a seized substance that –
 - (a) is to be destroyed under section 19P; and
 - (b) has been analysed or examined by an analyst under this Act,

is entitled to have a sample or samples that provide a true representation of the nature of the substance analysed or examined by a person if, after the analysis or examination referred to in paragraph (b), there is a sufficient quantity of the substance remaining to enable a sample or samples of the substance to be further analysed or examined.

"(2) A person to whom subsection (1) applies who is the owner of a seized substance may apply in the prescribed form to the Commissioner of Police

for the release, into the custody of a person specified in the application, of a sample or samples of the substance.

"(3) A member of the Police Force of or above the rank of Commander may, on the application of a person under subsection (2), authorise the release, into the custody of a person specified in the application, of a sample or samples of the substance to which the application relates for the purpose of conducting an analysis or examination to determine the nature of the substance.

"19PB. Contaminated objects may be cleaned or disposed of

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

"(2) An analyst may issue a certificate specifying that the destruction, disposal or dealing referred to in subsection (1) is required because the instrument, device equipment or thing contains or is contaminated with a substance (which may include a dangerous drug or a precursor) that is –

- (a) dangerous to the health or safety of a person or property; or
- (b) toxic, flammable or corrosive.

"(3) A substance or thing may be destroyed, disposed of or dealt with under this section at the place at which it was seized or another place.

"(4) This section applies to and in relation to a substance or thing whether or not a person has been or is to be charged with an offence in relation to the substance or thing or a dangerous drug or precursor seized under this Act.

"(5) This Part does not apply to the destruction of part or all of a substance or thing if the destruction occurs as part of the process of analysing or examining the substance or thing."

14. Order on appeal

Section 19Q of the Principal Act is amended by omitting "or dangerous drug" (all references) and substituting ", dangerous drug or precursor".

15. Presumption on appeal

Section 19R of the Principal Act is amended –

- (a) by omitting from paragraph (a) "or dangerous drug" and substituting ", dangerous drug or precursor"; and

- (b) by omitting all the words after paragraph (b) and substituting the following:

"(c) before the appeal is heard –

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

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

16. Return of dangerous drug or precursor to lawful owner

Section 19S of the Principal Act is amended by omitting from subsections (1) and (2) "dangerous drug" (all references) and substituting "dangerous drug or precursor".

17. Regulations

Section 19T of the Principal Act is amended by omitting "or dangerous drugs" (all references) and substituting ", dangerous drugs or precursors".

18. New section

The Principal Act is amended by inserting after section 19T in Part IIA the following:

"19TA. Service of notices

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

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

19. Possession by member of Police Force etc.

Section 31 of the Principal Act is amended by omitting from subsections (1), (2) and (3) "dangerous drug" (all references) and substituting "dangerous drug or precursor".

20. Undercover operations

Section 32 of the Principal Act is amended –

- (a) by omitting from subsections (1) and (2) "dangerous drug" and substituting "dangerous drug or precursor"; and
- (b) by omitting from subsection (3) "dangerous drug" and "the drug" and substituting "dangerous drug or precursor" and "the drug or precursor" respectively.

21. Repeal and substitution

Section 33 is repealed and the following substituted:

"33. Authorisation to possess, cultivate or manufacture dangerous drug or precursor

"(1) The Chief Health Officer may, in writing, authorise a person to possess or manufacture a dangerous drug or precursor, or cultivate a prohibited plant, for the purpose of research, instruction, analysis or study.

"(2) An authorisation under subsection (1) is subject to the conditions, if any, specified in the authorisation.

"(3) A person may lawfully possess or manufacture a dangerous drug or precursor, or cultivate a prohibited plant, in accordance with an authorisation under subsection (1).

"(4) If an authorisation is given under subsection (1) to a body corporate, a person who is directly involved in the research, instruction, analysis or study to which the authorisation relates may lawfully possess or manufacture the dangerous drug or precursor, or cultivate the prohibited plant, in accordance with the authorisation."

22. Forfeiture of drugs, precursors etc.

Section 34 of the Principal Act is amended by omitting from subsections (1), (2) and (13)(c) and (d) "dangerous drug" (all references) and substituting "dangerous drug, precursor".

23. Return of seized items

Section 35 of the Principal Act is amended –

- (a) by inserting in subsection (1) ", is not destroyed under section 19B, 19P or 19PB" after "under this Act"; and

- (b) by omitting from subsection (2) "dangerous drug" and substituting "dangerous drug, precursor".

24. New section

The Principal Act is amended by inserting after section 35 the following:

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

"(1) If a member of the Police Force has a reasonable suspicion that a person has swallowed a dangerous drug, or may be concealing a dangerous drug on or in his or her person, the member may apply to a judge of the Supreme Court for an order under subsection (2).

"(2) A judge of the Supreme Court may order that a person be detained for the purpose of enabling an intimate procedure specified in paragraph (a), (b), (c) or (k) of the definition of 'intimate procedure' under the *Police Administration Act* to be performed under section 145 of that Act for the purpose of locating the presence of the drug, if he or she is satisfied that the member has reasonable grounds for the suspicion referred in subsection (1).

"(3) An application may be made under subsection (1) in relation to a person although the person has not been charged with an offence against this Act or any other Act.

"(4) An order made under subsection (2) in relation to a person is taken to be an approval under section 145(4) of the *Police Administration Act* in relation to the person and subsections (7) to (14) (inclusive) of that section apply accordingly.

"(5) For the purposes of this section and section 145 of the *Police Administration Act* in relation to an order under this section, a reference in paragraph (k) of the definition of 'intimate procedure' in that Act to the taking of an X-ray is taken to include a reference to taking an ultrasound, or an electromagnetic radiation or radiography recording, scan or test."

25. Penalty guidelines

Section 37 of the Principal Act is amended by inserting after paragraph (a) of the definition of "aggravated circumstance" in subsection (1) the following:

"(aa) an offence against Part II of this Act that was committed on drug premises;"

26. Evidentiary

Section 40 of the Principal Act is amended –

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- (a) by omitting from subsection (1)(a) and (b) "dangerous drug" (all references) and substituting "dangerous drug or precursor"; and
- (b) by omitting from subsection (1)(c) "dangerous drug" and "the drug" (all references) and substituting "dangerous drug or precursor" and "the drug or precursor" respectively.

27. New section

The Principal Act is amended by inserting after section 42 the following:

"42A. Acquisition

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

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

28. Transitionals

(1) An application may be made under section 11D(1) or (2) of the Principal Act as amended by this Act in relation to an indication of supply of a dangerous drug at or from premises found before the commencement of Part II, Division 1A of the Principal Act as amended by this Act.

(2) An application may not be made under section 11D(3) or (4) of the Principal Act as amended by this Act in relation to a dangerous drug found before the commencement of Part II, Division 1A of the Principal Act as amended by this Act.