

Serial 247
Poisons and Dangerous Drugs Amendment Bill 2004
Dr Toyne

**A BILL
for
AN ACT**

to amend the *Poisons and Dangerous Drugs Act*

NORTHERN TERRITORY OF AUSTRALIA
POISONS AND DANGEROUS DRUGS AMENDMENT ACT 2004

No. of 2004

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SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

No. of 2004

AN ACT

to amend the *Poisons and Dangerous Drugs Act*

[Assented to 2004]

[Second reading: 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Poisons and Dangerous Drugs Amendment Act 2004*.

2. Commencement

This Act comes into operation on the day on which, but immediately after, the *Poisons and Dangerous Drugs Amendment Act 2003* commences.

3. Principal Act

The *Poisons and Dangerous Drugs Act* is in this Act referred to as the Principal Act.

4. Interpretation

Section 6 of the Principal Act is amended –

- (a) by omitting from subsection (1) the definitions of "dentist", "nurse" and "pharmacist";

(b) by inserting in subsection (1) in alphabetical order the following:

" 'addiction' means a state of physiological or psychological dependence on or increased tolerance to the habitual and excessive use of a substance and includes pain and other symptomatic indications arising specifically from withdrawal of that substance;

'approved form' means a form approved under section 90B;

'Chairperson' means the chairperson of the Committee and includes an acting Chairperson and an alternate Chairperson selected under section 31S(7);

'Committee' means the Schedule 8 and Restricted Schedule 4 Substances Clinical Advisory Committee established by section 31Q;

'dentist' means a person who is registered under the *Health Practitioners Act* in the category of registration of dentist or dental specialist;

'Guidelines' means Schedule 8 and Restricted Schedule 4 Substances Policy and Clinical Practice Guidelines published under section 31W;

'medical practitioner' means a person who is registered under the *Health Practitioners Act* in the category of registration of medical practitioner and practises medicine in the Territory;

'member' means a member of the Committee;

'non-restricted Schedule 4 substance' means a Schedule 4 substance that is not a restricted Schedule 4 substance;

'non-restricted Schedule 8 substance' means a Schedule 8 substance that is not a restricted Schedule 8 substance;

'nurse' means a person who is registered or enrolled under the *Health Practitioners Act* in the category of registration of registered nurse or in the category of enrolment of enrolled nurse;

'pharmacist' means a person who is registered under the *Health Practitioners Act* in the category of registration of pharmacist;

'restricted Schedule 8 substance' means a Schedule 8 substance in respect of which a declaration under section 31B is in force;"; and

(c) by omitting from the definition of "Chief Poisons Inspector" in subsection (1) "31P" and substituting "9A".

5. New section 9A

The Principal Act is amended by inserting after section 9 in Part I the following:

"9A. Chief Poisons Inspector

"(1) The Chief Health Officer may appoint an inspector appointed under section 8 to be the Chief Poisons Inspector.

"(2) The Chief Health Officer may appoint an inspector appointed under section 8 to act in the office of Chief Poisons Inspector –

(a) during a vacancy in that office; or

(b) during a period or all periods when the Chief Poisons Inspector is absent from duty or is expected to be absent from duty, is unable to exercise his or her powers or perform his or her functions, or is performing other duties.

"(3) The Chief Poisons Inspector has the functions conferred on him or her under this or any other Act.

"(4) The Chief Poisons Inspector has the powers necessary or convenient for performing his or her functions."

6. Display of certificate

Section 20 of the Principal Act is amended by inserting at the foot of the section the following:

"Penalty: If the offender is a natural person – 20 penalty units or imprisonment for 2 years.

If the offender is a body corporate – 100 penalty units."

7. Display of licence

Section 25 of the Principal Act is amended by inserting at the foot of the section the following:

"Penalty: If the offender is a natural person – 20 penalty units or imprisonment for 2 years.

If the offender is a body corporate – 100 penalty units."

8. Supply by pharmacists

Section 28 of the Principal Act is amended –

- (a) by omitting from subsection (1)(c) "Schedule 4 or 8" and substituting "non-restricted Schedule 4";
- (b) by omitting from subsection (1)(c)(i) all the words from and including "(including" to and including "Commonwealth)" and substituting "(including an interstate medical practitioner)";
- (c) by omitting from subsection (1)(c)(iii) "substance; or" and substituting "substance;";
- (d) by inserting after subsection (1)(c) the following:
 - "(ca) a restricted Schedule 4 substance or a Schedule 8 substance –
 - (i) to, or in accordance with a written prescription of, a medical practitioner, dentist or veterinarian;
 - (ii) to a person authorised in writing by the Chief Health Officer to possess and use the substance; or
 - (iii) to the master of a ship who is required or permitted, under the Navigation (Orders) Regulations of the Commonwealth, to possess and use the substance; or";
- (e) by inserting at the foot of subsection (1) the following:

"Penalty: 500 penalty units or imprisonment for 2 years.";
- (f) by inserting at the foot of subsection (2) the following:

"Penalty: 500 penalty units or imprisonment for 2 years.";
- (g) by inserting in subsection (3) "(including an interstate medical practitioner)" after "practitioner";
- (h) by inserting at the foot of subsection (3) the following:

"Penalty: 500 penalty units or imprisonment for 2 years.";
- (i) by omitting subsection (4); and

- (j) by inserting after subsection (6) the following:

"(7) In this section –

'interstate medical practitioner' means a person who is entitled to practise as a medical practitioner under a law in force in a State or another Territory of the Commonwealth."

9. Supply of substances for therapeutic use

Section 29 of the Principal Act is amended –

- (a) by omitting from subsection (1) "section and section 31" and substituting "Act";
- (b) by inserting in subsection (1) "respectively" after "animal";
- (c) by inserting at the foot of subsection (1) the following:
"Penalty: 500 penalty units or imprisonment for 2 years.";
- (d) by omitting from subsection (2) "section 31" and substituting "this Act";
- (e) by inserting at the foot of subsection (2) the following:
"Penalty: 500 penalty units or imprisonment for 2 years.";
- (f) by inserting at the foot of subsection (4) the following:
"Penalty: 500 penalty units or imprisonment for 2 years.";
- (g) by omitting from subsection (4A) "*Nursing*" and substituting "*Health Practitioners*";
- (h) by omitting from subsection (4A)(b) "notice" and substituting "notice, as in force at a particular time or as in force from time to time";
- (i) by inserting at the foot of subsection (4A) the following:
"Penalty: 500 penalty units or imprisonment for 2 years.";
- (j) by omitting from subsection (4B) "registered dental therapist within the meaning of the *Dental Act*" and substituting "person who is registered under the *Health Practitioners Act* in the category of registration of dental therapist";
- (k) by inserting at the foot of subsection (4B) the following:
"Penalty: 500 penalty units or imprisonment for 2 years.";

- (l) by omitting subsection (4C) and substituting the following:

"(4C) A person who is registered under the *Health Practitioners Act* in the category of registration of Aboriginal health worker who is approved, or is a member of a class of Aboriginal health workers approved, by the Chief Health Officer by notice in the *Gazette* may possess and supply a Schedule 1, 2, 3 or 4 substance –

- (a) in the course of his or her duties; and
(b) in accordance with any Scheduled substance treatment protocol specified in the notice, as in force at a particular time or as in force from time to time.

Penalty: 500 penalty units or imprisonment for 2 years."; and

- (m) by inserting at the foot of subsection (4D) the following:

"Penalty: 20 penalty units or imprisonment for 2 years.".

10. Repeal and substitution of section 31A

Section 31A of the Principal Act is repealed and the following substituted:

"31A. Definitions

"In this Part, unless the contrary intention appears –

'authorisation' means an authorisation under Division 3;

'prescribed' means prescribed by the Guidelines;

'supply' includes prescribe, administer and having in possession for the purpose of supply, prescription or administration.".

11. Supply of restricted Schedule 4 substances

Section 31D of the Principal Act is amended –

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

"(2) A medical practitioner who supplies a restricted Schedule 4 substance must notify the Chief Health Officer of the supply in accordance with the Guidelines.

Penalty: 20 penalty units.";

- (b) by omitting from subsection (3) "prescribed particulars" and substituting "the Chief Health Officer of the supply"; and

- (c) by omitting subsection (4).

12. Repeal and substitution of sections 31F and 31G

The Principal Act is amended by repealing sections 31F and 31G and substituting the following:

"31F. Supply of non-restricted Schedule 8 substances

"(1) Subject to this Act and any other law in force in the Territory, a medical practitioner may, without an authorisation, supply non-restricted Schedule 8 substances for the therapeutic use of not more than the prescribed number of persons.

Penalty: 100 penalty units.

"(2) Unless exempted under section 31P, a medical practitioner may supply non-restricted Schedule 8 substances for the following uses only if the medical practitioner holds an authorisation under this section:

- (a) the therapeutic use of more than the prescribed number of persons;
- (b) the use of a particular person for the treatment of an addiction.

Penalty: 100 penalty units.

"(3) The Chief Health Officer may grant a medical practitioner an authorisation to supply a non-restricted Schedule 8 substance for a use referred to in subsection (2) only after the Chief Health Officer has considered the Committee's advice on the matter.

"(4) For this section, the prescribed number of persons does not include any of the following:

- (a) a person receiving palliative care exclusively or partially from a recognised specialist provider of palliative care (whether an individual or a body);
- (b) a person admitted to a hospital for treatment as an in-patient;
- (c) a person receiving emergency medical treatment that requires the administration of a non-restricted Schedule 8 substance;
- (d) a person excluded by the Chief Health Officer by notice in writing;
- (e) a person who belongs to a class of persons excluded by the Chief Health Officer by notice in the *Gazette*.

"(5) In this section –

'therapeutic use' does not include use for the treatment of an addiction.

"31G. Supply of restricted Schedule 8 substances

"(1) Unless exempted under section 31P, a medical practitioner may supply a restricted Schedule 8 substance for the therapeutic use of a particular person only if the medical practitioner holds an authorisation under this section.

Penalty: 500 penalty units.

"(2) If the prescribed conditions apply, the Chief Health Officer may, without first considering the Committee's advice on the matter, grant a medical practitioner an authorisation to supply a restricted Schedule 8 substance.

"(3) If the prescribed conditions do not apply, the Chief Health Officer may grant a medical practitioner an authorisation to supply a restricted Schedule 8 substance only after the Chief Health Officer has considered the Committee's advice on the matter.

"(4) The Chief Health Officer may grant a medical practitioner an authorisation to supply restricted Schedule 8 substances to more than the prescribed number of persons only after the Chief Health Officer has considered the Committee's advice on the matter.

"(5) In this section –

'therapeutic use' includes use for the treatment of an addiction."

13. Applications for and granting authorisations

Section 31H of the Principal Act is amended by inserting after subsection (2) the following:

"(2A) If the Chief Health Officer has already granted an authorisation under section 31G(2), the Chief Health Officer may vary or revoke the authorisation after he or she has considered the Committee's advice."

14. Variation, suspension and revocation of authorisations

Section 31J of the Principal Act is amended –

(a) by omitting from subsection (2) all the words from and including "Officer –" to and including "warranted," and substituting the following:

"Officer receives no submissions within the specified period, or has considered and rejected the submissions made by the medical practitioner,"; and

(b) by omitting subsections (4) and (5) and substituting the following:

"(4) After taking action under subsections (1) and (2), the Chief Health Officer must provide the Committee with all information relevant to the variation, suspension or revocation, including any submissions made by the medical practitioner.

"(5) The Committee may give the Chief Health Officer advice in relation to the action taken and the Chief Health Officer may, after considering any advice given, vary or revoke the action.

"(6) The Chief Health Officer may, if it is practicable to do so, obtain the advice of the Committee before taking any action under subsection (1) or (2).

"(7) The Chief Health Officer may, if he or she thinks fit, notify the Medical Board of the Northern Territory of a variation, suspension or revocation of an authorisation."

15. Supply to be in accordance with authorisation

Section 31K of the Principal Act is amended by omitting "and the Guidelines".

16. Repeal and substitution of section 31L

Section 31L of the Principal Act is repealed and the following substituted:

"31L. Notification of supply of Schedule 8 substances

"A medical practitioner who supplies a Schedule 8 substance must notify the Chief Health Officer of the supply in accordance with the Guidelines.

Penalty: 20 penalty units."

17. Heading to Part VA, Division 4

The Principal Act is amended by omitting the heading to Part VA, Division 4.

18. Repeal and substitution of section 31P

The Principal Act is amended by repealing section 31P and substituting the following:

"31P. Exemptions from requirement to hold authorisation

"(1) After considering the advice of the Committee on the matter, the Chief Health Officer may exempt a medical practitioner or class of medical practitioners from a requirement to hold an authorisation.

- "(2) An exemption must be –
- (a) by notice in writing directed to the medical practitioner; or
 - (b) by notice in the *Gazette* if the exemption relates to a class of medical practitioners.
- "(3) The notice of exemption may include conditions.

"PART VAA – COMMITTEE AND GUIDELINES".

19. Committee

Section 31Q of the Principal Act is amended –

- (a) by inserting in subsection (1) "and Restricted Schedule 4 Substances" after "8";
- (b) by omitting subsection (2)(a) and substituting the following:
 - "(a) the Chief Poisons Inspector;" and
- (c) by inserting after subsection (4) the following:

"(5) The Chief Health Officer may appoint one of the members appointed under subsection (2)(b) to be the Chairperson of the Committee during the member's period of appointment.

"(6) If the Chief Health Officer does not appoint the Chairperson, the Chief Poisons Inspector is the Chairperson.

"(7) If the Chief Health Officer appoints the Chairperson, the Chief Poisons Inspector must act in that office during any period when the Chairperson is absent from the Territory or is unable for any reason to carry out the duties of the office.

"(8) The role of the Committee is to provide expert advice and make recommendations on a range of issues relating to the supply of Schedule 8 substances and restricted Schedule 4 substances."

20. Functions and powers of Committee

Section 31R of the Principal Act is amended –

- (a) by inserting in subsection (1)(a), (b) and (c) "or restricted Schedule 4 substances" after "substances";
- (b) by inserting in subsection (1)(d) "under Part VA, Division 3" after "authorisations";

- (c) by omitting subsection (1)(e) and substituting the following:
 - "(e) to make recommendations to the Minister about matters to be included in the Guidelines;"
- (d) by inserting in subsection (1)(g) "and restricted Schedule 4 substances" after "substances"; and
- (e) by omitting subsection (1)(h) and (i) and substituting the following:
 - "(h) any other advisory functions in relation to Schedule 8 substances or restricted Schedule 4 substances conferred on the Committee by or under this or any other Act;
 - (i) any other advisory functions in relation to Schedule 8 substances or restricted Schedule 4 substances conferred on the Committee in writing by the Chief Health Officer."

21. Meetings of Committee

Section 31S of the Principal Act is amended –

- (a) by omitting from subsection (2) "2 other members" and substituting "not less than one third of the other members then in office";
- (b) by omitting subsection (4) and substituting the following:
 - "(4) Questions arising at a meeting must be decided by majority vote of the members present and voting (including the Chairperson) and the Chairperson has the casting vote if the votes are divided equally."; and
- (c) by omitting subsection (7) and substituting the following:
 - "(7) If the Chairperson at a meeting is the Chief Poisons Inspector, the members at the meeting may select another member to be the alternate Chairperson if the majority of those members agree it is desirable in order to ensure the independence of the Committee's advice or recommendation on a matter to be decided at the meeting.
 - "(8) The Regulations may provide for the procedure to be followed at meetings of the Committee but otherwise, subject to this Part, the procedures of the Committee are within its discretion."

22. Repeal and substitution of sections 31W and 31X

The Principal Act is amended by repealing sections 31W and 31X and substituting the following:

"31W. Guidelines

"(1) After consultation with the Chief Health Officer and the Committee, the Minister may issue Schedule 8 and Restricted Schedule 4 Substances Policy and Clinical Practice Guidelines.

"(2) The Guidelines may provide for matters in connection with the supply and use of the following substances:

- (a) restricted Schedule 4 substances;
- (b) restricted Schedule 8 substances;
- (c) non-restricted Schedule 8 substances.

"(3) The Guidelines may confer powers and functions on any of the following persons:

- (a) the Chief Health Officer;
- (b) the Chief Poisons Inspector;
- (c) persons from time to time occupying specified positions in the Agency administering this Act.

"(4) The Guidelines may refer to or incorporate (with or without modification) a document published by a body referred to in the Guidelines as in force at the time the Guidelines are issued or as in force from time to time.

"(5) The Minister must give notice in the *Gazette* of the issuing of Guidelines, and of each subsequent amendment, and must publish with the notice a copy of the Guidelines as issued or amended.

"(6) The Guidelines and any amendments of the Guidelines are of no effect until they are published in the *Gazette*.

"31X. Offence to contravene Guidelines

"A person who supplies a restricted Schedule 4 substance or a Schedule 8 substance must comply with and not contravene the Guidelines.

Penalty: 500 penalty units."

23. Contents of prescriptions

Section 33 is amended –

- (a) by omitting subsection (1)(ea) and substituting the following:

"(ea) where it is issued by a medical practitioner under section 34(2A) – bear on its face the endorsement required by that section;"

- (b) by omitting from subsection (1)(i) "Regulations" and substituting "Guidelines";

- (c) by inserting at the foot of subsection (1) the following:

"Penalty: If the offender is a natural person – 20 penalty units or imprisonment for 2 years.

If the offender is a body corporate – 100 penalty units."; and

- (d) by inserting at the foot of subsection (2) the following:

"Penalty: If the offender is a natural person – 20 penalty units or imprisonment for 2 years.

If the offender is a body corporate – 100 penalty units."

24. Period of effect of prescription and permissible supply

Section 34 of the Principal Act is amended –

- (a) by omitting from subsection (1)(a) "6 months" and substituting "2 months or, if the Guidelines prescribe a different period, the prescribed period";

- (b) by omitting subsections (2) and (2A) and substituting the following:

"(2) Subject to subsection (2A), a prescription for the supply of a Schedule 8 substance must not provide for more than 2 months supply of the substance or, if the Guidelines prescribe a different period for the supply, the prescribed period.

Penalty: 500 penalty units or imprisonment for 6 months.

"(2A) A medical practitioner may issue a prescription for the supply of a Schedule 8 substance that exceeds the permissible period under subsection (2) only if the medical practitioner has obtained the approval of the Chief Health Officer to do so and has endorsed on the prescription the date and details of that approval.

Penalty: 500 penalty units or imprisonment for 6 months."; and

- (c) by omitting from the penalty provision at the foot of subsection (3) "500 penalty units" and substituting "500 penalty units or imprisonment for 6 months".

25. Endorsement on prescriptions

Section 35 is amended –

- (a) by inserting at the foot of subsection (1) the following:

"Penalty: If the offender is a natural person – 20 penalty units or imprisonment for 2 years.

If the offender is a body corporate – 100 penalty units."; and

- (b) by inserting at the foot of subsection (2) the following:

"Penalty: If the offender is a natural person – 20 penalty units or imprisonment for 2 years.

If the offender is a body corporate – 100 penalty units.".

26. Supply in an emergency

Section 37 of the Principal Act is amended –

- (a) by omitting from subsection (1) "4, 7, or 8" and substituting "unrestricted Schedule 4 or Schedule 7";

- (b) by inserting after subsection (1) the following:

"(1A) Subject to this section, a pharmacist may supply a restricted Schedule 4 or a Schedule 8 substance to a person without a prescription where the pharmacist –

- (a) believes on reasonable grounds that the situation requires urgent supply;
- (b) has been requested by telephone by a medical practitioner, dentist or veterinarian to supply that substance to that person; and
- (c) if the request is by a medical practitioner – is satisfied on reasonable grounds that –
- (i) the medical practitioner is permitted by this Act to prescribe the substance;
- (ii) the supply is permitted by this Act; and

(iii) if the request is for the supply of a restricted Schedule 4 substance – the supply will be in accordance with any restriction imposed by Appendix D or the relevant declaration under section 90A."; and

(c) by inserting in subsection (2) "or (1A)" after "(1)".

27. Definitions for Part VII

Section 38A of the Principal Act is amended by inserting after the definition of "health centre" the following:

" 'nurse' includes a person who is registered under the *Health Practitioners Act* in the category of registration of midwife."

28. Repeal and substitution of section 52

Section 52 of the Principal Act is repealed and the following substituted:

"52. Storage of Schedule 8 substances

"(1) A person who lawfully has in his or her possession a Schedule 8 substance that is supplied other than on the prescription of a medical practitioner, dentist or veterinarian must store the substance in accordance with the Regulations except when it is in actual use.

"(2) A pharmacist who has in his or her possession a Schedule 8 substance must store the substance in accordance with the Regulations."

29. New sections 72 and 73

The Principal Act is amended by inserting after section 71 the following:

"72. No self-prescription of Schedule 8 or restricted Schedule 4 substances

"A medical practitioner, dentist or veterinarian must not issue to himself or herself a prescription for the supply of a Schedule 8 substance or restricted Schedule 4 substance.

Penalty: 500 penalty units.

"73. No self-administration of Schedule 8 or restricted Schedule 4 substances

"(1) A person permitted by this Act to possess or supply a Schedule 8 substance or restricted Schedule 4 substance must not administer the substance to himself or herself unless the substance has been lawfully supplied to the person by another person.

Penalty: 500 penalty units or imprisonment for 2 years.

"(2) A person permitted by this Act to possess or supply a Schedule 8 substance or restricted Schedule 4 substance may supply and administer that substance to himself or herself –

- (a) for a genuine therapeutic use in an emergency when the person has no access to any other person who may lawfully supply or administer the substance to him or her; or
- (b) under any other circumstance specified by the Regulations."

30. Chief Health Officer may declare restricted Schedule 4 substances

Section 90A of the Principal Act is amended –

- (a) by inserting after subsection (2) the following:

"(2A) The Chief Health Officer must not make the declaration until he or she has considered the advice of the Committee on the matters proposed to be specified in the declaration.";

- (b) by inserting in subsection (3) "and may apply the Guidelines as in force at a particular time or as in force from time to time" after "substance"; and
- (c) by omitting from subsection (5)(b) "Act" and substituting "Act, the Guidelines".

31. New section 90B

The Principal Act is amended by inserting after section 90A the following:

"90B. Chief Health Officer may approve forms

"The Chief Health Officer may approve forms to be used under this Act."

32. New section 94

The Principal Act is amended by inserting after section 93 the following:

"94. Regulations may be limited or provide for exemptions

"(1) The Regulations may –

- (a) be of general application or limited in application according to the persons, areas, times or circumstances to which they are expressed to apply; and
- (b) provide that a matter in respect of which regulations may be made is to be determined, regulated or prohibited according to the discretion of the Minister or Chief Health Officer.

"(2) The Regulations may contain provisions for or in relation to exemptions (whether or not subject to conditions) from compliance with all or any specified regulations, including provisions authorising the Minister or the Chief Health Officer to grant an exemption."

33. Further amendments

The Principal Act is amended as set out in the Schedule.

SCHEDULE

Section 33

Section	Amendment	
	omit	substitute
Section 11	200 penalty units	200 penalty units or imprisonment for 12 months
Sections 12(6)(a) and 13(2)(a)	prescribed	approved
Section 17(1)	200 penalty units	200 penalty units or imprisonment for 12 months
Sections 18(6)(a) and 19(2)(a)	prescribed	approved
Section 23(1)	500 penalty units	500 penalty units or imprisonment for 12 months
Section 24(6)(a)	prescribed	approved
Section 30	500 penalty units	500 penalty units or imprisonment for 12 months
Sections 31(3), 31E(1) and 31N(3)	units	units or imprisonment for 2 years
Section 41(1)	units	units or imprisonment for 2 years
Section 54(1)	100 penalty units	100 penalty units or imprisonment for 12 months
Section 61	units	units or imprisonment for 3 months
Section 65(1)	500 penalty units	500 penalty units or imprisonment for 5 years

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Section 65(2)	200 penalty units	200 penalty units or imprisonment for 2 years
Section 81A	28, 29, 52,	
Section 86	100 penalty units	100 penalty units or imprisonment for 3 months
Section 87	100 penalty units	100 penalty units or imprisonment for 6 months

ALTERATION TO SECTION HEADING

On the day on which the *Poisons and Dangerous Drugs Act* is amended by this Act, the heading to section 65 of the *Poisons and Dangerous Drugs Act* is altered by omitting "Use, etc." and substituting "Use etc. of hazardous substance".