

Queensland



ANNO TRICESIMO QUINTO

ELIZABETHAE SECUNDAE REGINAE

No. 36 of 1986

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

[ASSENTED TO 5TH SEPTEMBER, 1986]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short Title. This Act may be cited as the *Drugs Misuse Act 1986*.

2. Commencement. (1) This section and section 1 shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act or such of them as are specified in the Proclamation shall commence on a day or days to be appointed by Proclamation for the commencement of those provisions.

3. Arrangement of Act. This Act is arranged in Parts as follows:—

PART I—PRELIMINARY (ss. 1-4);

PART II—DRUG TRAFFICKING (ss. 5-13);

PART III—POWERS OF SEARCH, ETC. (ss.14-23);

PART IV—TRACKING AND LISTENING DEVICES (ss. 24-29);

PART V—FORFEITURE AND RESTRAINT (ss. 30-43);

PART VI—MISCELLANEOUS (ss. 44-60);

SCHEDULES.

4. Interpretation. (1) In this Act, unless the contrary intention appears—

“analyst” means a person appointed by the Minister by notification published in the Gazette to be an analyst for the purpose of this Act;

“dangerous drug” means—

(a) a thing specified in the First or Second Schedule or, where the thing so specified is a plant, any part of the thing;
and

(b) a thing being a salt, derivative or stereoisomer of a thing referred to in paragraph (a) or any salt of such a derivative or stereoisomer,

and includes a thing referred to in paragraph (a) or (b) that is contained in a natural substance or in any preparation, solution or admixture;

“drug dependent person” means a person—

(a) who, as a result of repeated administration to him of dangerous drugs—

(i) demonstrates impaired control;

or

(ii) exhibits drug-seeking behaviour that suggests impaired control,

over his continued use of dangerous drugs;

and

(b) who, when the administration to him of dangerous drugs ceases, suffers or is likely to suffer mental or physical distress or disorder;

“place” includes a vehicle;

“police officer” means a member of the Police Force appointed under the *Police Act 1937-1985* except a special constable appointed under Part III of that Act;

“produce” means—

(a) prepare, manufacture, cultivate, package or produce;

(b) offering to do any act specified in paragraph (a);

(c) doing or offering to do any act preparatory to, in furtherance of, or for the purpose of, any act specified in paragraph (a);

“supply” means—

(a) give, distribute, sell, administer, transport or supply;

(b) offering to do any act specified in paragraph (a);

(c) doing or offering to do any act preparatory to, in furtherance of, or for the purpose of, any act specified in paragraph (a);

“unlawfully” means without authorization, justification or excuse by law;

“vehicle” includes any aircraft or vessel.

(2) It is hereby declared that—

(a) a thing specified in the First or Second Schedule;

and

(b) a dangerous drug specified in the Third, Fourth or Fifth Schedule,

includes any salt, derivative or stereoisomer of that thing and any salt of such derivative or stereoisomer.

(3) In—

(a) this Act the term “an offence defined in Part II”;

and

(b) sections 10, 11 and 12 the term “a crime defined in this Part”,

shall be read and construed as including any attempt or conspiracy to commit such offence or crime.

(4) The provisions of sections 5, 8 and 9 providing that a person is liable to imprisonment with hard labour for life which cannot be mitigated or varied by a court shall be read and construed subject to the *Children's Services Act 1965-1982*.

PART II—DRUG TRAFFICKING

5. Trafficking in dangerous drugs. A person who carries on the business of unlawfully trafficking in a dangerous drug is guilty of a crime.

Penalty:

- (a) If the dangerous drug is a thing specified in the First Schedule, imprisonment with hard labour for life which cannot be mitigated or varied by a court.
- (b) If the dangerous drug is a thing specified in the Second Schedule, imprisonment with hard labour for life.

6. Supplying dangerous drugs. A person who unlawfully supplies a dangerous drug to another, whether or not such other person is in Queensland, is guilty of a crime.

Penalty:

- (a) If the dangerous drug is a thing specified in the First Schedule and the offender is an adult and the person to whom the thing is supplied is a minor, imprisonment with hard labour for life which cannot be mitigated or varied by a court.
- (b) If the dangerous drug is a thing specified in the First Schedule and the provisions of paragraph (a) do not apply, imprisonment with hard labour for life.
- (c) If the dangerous drug is a thing specified in the Second Schedule and the offender is an adult and the person to whom the thing is supplied is a minor, imprisonment with hard labour for life.
- (d) If the dangerous drug is a thing specified in the Second Schedule and the provisions of paragraph (c) do not apply, imprisonment with hard labour for 15 years.

7. Receiving or possessing property obtained from trafficking or supplying. (1) A person who receives or possesses property (other than a dangerous drug) obtained, directly or indirectly, from the commission of—

- (a) an offence defined in section 5 or 6;
or
- (b) an act done at a place not in Queensland which if it had been done in Queensland would have constituted an offence defined in section 5 or, as the case may be, 6, and which

is an offence under the laws in force in the place where it was done,

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

Penalty: Imprisonment with hard labour for life.

(2) Where the property so obtained has been—

(a) mortgaged, pledged or exchanged for other property;
or

(b) converted into other property in any manner whatever,
any person who knowing or believing—

(i) that the other property is wholly or in part the property for which the property so obtained has been mortgaged, pledged or exchanged or into which the same has been converted;
and

(ii) that the property so obtained was obtained under such circumstances as to constitute a crime under subsection (1), receives or possesses the whole or any part of the other property for which the property so obtained has been mortgaged, pledged or exchanged or into which the property so obtained has been converted, is guilty of a crime.

Penalty: Imprisonment with hard labour for life.

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

8. Producing dangerous drugs. A person who unlawfully produces a dangerous drug is guilty of a crime.

Penalty:

(a) If the dangerous drug is a thing specified in the First Schedule and the quantity of the thing is of or exceeds the quantity specified in the Fourth Schedule in respect of that thing, imprisonment with hard labour for life, which cannot be mitigated or varied by a court.

(b) If the dangerous drug is a thing specified in the First Schedule and the quantity of the thing is of or exceeds the quantity specified in the Third Schedule but less than the quantity specified in the Fourth Schedule in respect of that thing and the person convicted—

(i) satisfies the judge constituting the court before which he is convicted that when he committed the offence he was

a drug dependent person, imprisonment with hard labour for life;

- (ii) does not so satisfy the judge constituting the court before which he is convicted, imprisonment with hard labour for life, which cannot be mitigated or varied by a court.
- (c) If the dangerous drug is a thing specified in the First Schedule and the quantity of the thing is less than the quantity specified in the Third Schedule in respect of that thing, imprisonment with hard labour for life.
- (d) If the dangerous drug is a thing specified in the Second Schedule and the quantity of the thing is of or exceeds the quantity specified in the Third Schedule in respect of that thing, imprisonment with hard labour for life.
- (e) If the dangerous drug is a thing specified in the Second Schedule and the quantity of the thing is less than the quantity specified in the Third Schedule in respect of that thing, imprisonment with hard labour for 15 years.

9. Possessing dangerous drugs. A person who unlawfully has possession of a dangerous drug is guilty of a crime.

Penalty:

- (a) If the dangerous drug is a thing specified in the First Schedule and the quantity of the thing is of or exceeds the quantity specified in the Fourth Schedule in respect of that thing, imprisonment with hard labour for life, which cannot be mitigated or varied by a court.
- (b) If the dangerous drug is a thing specified in the First Schedule and the quantity of the thing is of or exceeds the quantity specified in the Third Schedule but is less than the quantity specified in the Fourth Schedule in respect of that thing and the person convicted—
 - (i) satisfies the judge constituting the court before which he is convicted that when he committed the offence he was a drug dependent person, imprisonment with hard labour for life;
 - (ii) does not so satisfy the judge constituting the court before which he is convicted, imprisonment with hard labour for life, which cannot be mitigated or varied by a court.
- (c) If the dangerous drug is a thing specified in the Second Schedule and the quantity of the thing is of or exceeds the quantity specified in the Third Schedule in respect of that thing, imprisonment with hard labour for life.
- (d) If the dangerous drug is a thing specified in the First or Second Schedule and the quantity of the thing is less than the quantity specified in the Third Schedule in respect of that thing, imprisonment with hard labour for 15 years.

10. Possessing things. (1) A person who has in his possession any thing—

(a) for use in connexion with the commission of a crime defined in this Part;

or

(b) that he has used in connexion with such a purpose, is guilty of a crime.

Penalty: Imprisonment with hard labour for 15 years.

(2) A person who unlawfully has in his possession any thing—

(a) for use in connexion with the administration, consumption or smoking of a dangerous drug;

or

(b) that he has used in connexion with such a purpose, commits an offence against this Act.

Penalty: Imprisonment with hard labour for 2 years.

A person found committing an offence defined in this subsection may be arrested without warrant by a police officer.

11. Permitting use of place. A person who, being the occupier or concerned in the management or control of a place, permits the place to be used for the commission of a crime defined in this Part is guilty of a crime.

Penalty: Imprisonment with hard labour for 15 years.

12. Parties to offences committed outside Queensland. A person who, in Queensland, is a party to an act done at a place not in Queensland which if it had been done in Queensland would have constituted a crime defined in this Part and which is an offence under the laws in force in the place where it was done is guilty of a crime and is liable to the same punishment and forfeiture as if the act had been done in Queensland.

13. Certain offences may be dealt with summarily. Where a person charged with the commission of a crime defined in section 6, 8, 9, 10 (1), 11 or 12 is liable upon conviction to imprisonment with hard labour for 15 years proceedings for the commission of the offence may be taken summarily, in which case the person, upon conviction, is liable to imprisonment with hard labour for 2 years.

PART III—POWERS OF SEARCH, ETC.

14. Power to stop, search, seize and remove vehicles, etc. (1) If a police officer reasonably suspects a vehicle, or any thing in it—

(a) may afford evidence as to the commission of an offence defined in Part II;

or

(b) may be liable to forfeiture under Part V,
the police officer may stop and detain the vehicle and search it and any
thing in it.

(2) A police officer who stops and detains a vehicle pursuant to
subsection (1) and reasonably believes that it is not practicable to carry
out a search of the vehicle or any thing in it at the place where he
stops the vehicle may remove it and any thing in it to another place
for the purpose of carrying out the search.

(3) A vehicle shall not be detained longer or taken further than is
reasonable in the circumstances for the purpose of carrying out the
search authorized by subsection (1).

(4) Where a police officer carries out a search pursuant to subsection
(1) (a) he may seize any thing found as a result of the search, including
the vehicle, that he reasonably suspects may afford evidence as to the
commission of an offence defined in Part II so as to examine it or have
it examined to determine if it will afford such evidence.

(5) Where a police officer has seized any thing pursuant to subsection
(4) he may retain it if he reasonably believes it will afford evidence as
to the commission of an offence defined in Part II so as to use it as
such evidence.

(6) Where a police officer carries out a search pursuant to subsection
(1) (b) he may seize any thing found as a result of the search, including
the vehicle, that he reasonably suspects may be liable to forfeiture under
Part V.

(7) Any thing seized pursuant to subsection (6) shall be returned
to the owner of the thing at the expiration of 14 days from the date of
seizure unless—

(a) a forfeiture or restraining order in respect of that thing is
made under Part V within that period;

or

(b) the owner consents to retention of that thing beyond that
period by a police officer.

15. Power to detain and search persons. (1) If a police officer
reasonably suspects a person to have in his possession any thing that—

(a) may afford evidence as to the commission of an offence
defined in Part II;

or

(b) may be liable to forfeiture under Part V,
the police officer may detain that person.

(2) Where a person is detained pursuant to subsection (1) a police officer may search or direct a search of—

(a) the person of that person;

or

(b) any thing in the possession of that person.

(3) A police officer who detains a person pursuant to subsection (1) and reasonably believes that it is not practicable to carry out a search pursuant to subsection (2) at the place where the person is detained, may take the person and any thing in the possession of the person to another place for the purpose of carrying out the search.

(4) A person shall not be detained longer or taken further than is reasonable in the circumstances for the purpose of carrying out the search pursuant to subsection (2).

(5) Where a person is detained pursuant to subsection (1) (a) a person who carries out a search pursuant to subsection (2), or the police officer directing it, may seize any thing found as a result of the search that he reasonably suspects may afford evidence as to the commission of an offence defined in Part II so as to examine it or have it examined to determine if it will afford such evidence.

(6) Where a police officer has seized any thing pursuant to subsection (5) he may retain it if he reasonably believes it will afford evidence as to the commission of an offence defined in Part II so as to use it as such evidence.

(7) Where a person is detained pursuant to subsection (1) (b) a person who carries out a search authorized by subsection (2), or the police officer directing it, may seize any thing found as a result of the search that he reasonably suspects may be liable to forfeiture under Part V.

(8) Any thing seized pursuant to subsection (7) shall be returned to the owner of the thing at the expiration of 14 days from the date of seizure unless—

(a) a forfeiture or restraining order in respect of that thing is made under Part V within that period;

or

(b) the owner consents to retention of that thing beyond that period by a police officer.

(9) Where a police officer has seized clothing worn by the person searched pursuant to subsection (5) that person shall be left with or given reasonably suitable clothing.

16. Who may conduct personal searches. A search of the person of a person or of that person's clothing while it is being worn shall be carried out by a police officer of the same sex as the person searched or by a medical practitioner.

17. Internal and body cavity searches. (1) A police officer of or above the rank of inspector who reasonably suspects that a person has secreted within his body or in any of his body cavities a dangerous drug, may require the person to permit a medical practitioner, nominated by the police officer, and a person acting in aid of the medical practitioner, to conduct—

(a) an examination of any internal part of the person's body;
or

(b) an examination of any cavity of the person's body,
by any means whatever, whether or not associated with or facilitated by the use of any machine, instrument or device.

(2) Where a person required to permit an examination referred to in subsection (1) refuses his permission, the examination may nevertheless be conducted with the use of such force as is reasonably necessary.

(3) Where a medical practitioner is requested to conduct an examination referred to in subsection (1) it shall be lawful for the medical practitioner and a person acting in aid of him to conduct the examination by such means as are necessary, and it shall not be necessary to enquire whether or not the person to be examined has permitted the conduct of the examination: Provided that a medical practitioner shall not be obliged to conduct an examination if he reasonably believes that to do so would be prejudicial to the health of the person concerned.

(4) A medical practitioner or a person acting in aid of him is not liable in any proceedings, whether civil or criminal, for any act done, without negligence, in the course of carrying out an examination of a person pursuant to a request made to the medical practitioner by a police officer under subsection (1).

18. Power to search. (1) Upon complaint on oath before a justice by a police officer, that such officer believes that any thing that may afford evidence of the commission of an offence defined in Part II is, or is in possession of a person, in, on or about a place the justice may issue a warrant in the form prescribed by regulation directed to a police officer.

(2) Upon complaint on oath before a stipendiary magistrate by a police officer, that such officer believes that a search of a place may reveal property that is liable to forfeiture under Part V, the stipendiary magistrate may issue a warrant in the form prescribed by regulation directed to a police officer.

(3) A warrant issued under subsection (1) shall be, for the period stipulated in the warrant, authority for a police officer executing the warrant to—

(a) enter or re-enter at any time the place specified in the warrant;

(b) search the place so entered or re-entered;

(c) pass through, from, over and along any other place for the purpose of making that entry or re-entry;

(d) seize any thing found by him in, on or about the place that he reasonably suspects may afford evidence as to the

commission of an offence defined in Part II so as to examine it or have it examined to determine if it will afford such evidence;

- (e) retain any thing seized by him pursuant to paragraph (d) if he reasonably believes it will afford evidence as to the commission of an offence defined in Part II so as to use it as such evidence.

(4) A warrant issued under subsection (2) shall be, for the period stipulated in the warrant, sufficient authority for any police officer executing the warrant to—

- (a) enter or re-enter at any time the place specified in the warrant;
- (b) search the place so entered or re-entered;
- (c) pass through, from, over and along any other place for the purpose of making that entry or re-entry;
- (d) seize property found by him that he reasonably suspects is liable to forfeiture under Part V.

(5) Property seized in pursuance of a warrant issued under subsection (2) shall be returned to the owner of the property at the expiration of 14 days from the date of seizure unless—

- (a) a forfeiture or restraining order in respect of that property is made under Part V within that period;
- or
- (b) the owner consents to retention of the property beyond that period by a police officer.

(6) For the purpose of obtaining a warrant under subsection (1) or (2)—

- (a) an application for the warrant and submissions concerning the application may be made;
- (b) any information concerning the application may be furnished; and
- (c) an oath may be administered and made,

in whole or in part by telephone, telex, radio or other similar facility.

(7) Where an application for the issue of a search warrant is made pursuant to subsection (6) the following provisions apply—

- (a) the application shall only be made to a stipendiary magistrate;
- (b) the applicant shall inform the stipendiary magistrate of his name, rank and number (if any) in the Police Force, and the stipendiary magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant is a police officer;
- (c) the applicant shall inform the stipendiary magistrate of the facts on which he seeks the issue of the search warrant;
- (d) if it appears to the stipendiary magistrate from the information furnished by the applicant that there are proper

grounds for the issue of a search warrant, he shall inform the applicant of the facts on which he relies as grounds for the issue of the warrant, and shall not proceed to issue the warrant unless the applicant undertakes to make a complaint in writing under oath verifying those facts;

- (e) if the applicant gives such an undertaking, the stipendiary magistrate may make out, and sign, a search warrant, noting on the warrant the facts on which he relies as grounds for the issue of the warrant;
- (f) the search warrant shall be deemed to have been issued, and shall come into force, when signed by the stipendiary magistrate;
- (g) the stipendiary magistrate shall inform the applicant of the terms of the warrant;
- (h) the applicant shall, as soon as practicable after the issue of the search warrant, forward to the stipendiary magistrate a complaint in writing under oath verifying the facts referred to in paragraph (d).

(8) When a warrant is issued by a stipendiary magistrate as the result of an application made pursuant to subsection (6), the stipendiary magistrate shall, unless otherwise requested by the applicant, send the warrant, within 7 days of its issue, to the Commissioner of Police.

(9) When it is necessary for a police officer to satisfy any person that a warrant under this section was issued authorizing him to search a person, or as the case may be, enter and search a place and, for reasonable cause, that member cannot at the time produce the warrant, he may produce a form of the warrant completed and endorsed in accordance with subsection (10) and that production shall be deemed to be a production of the warrant.

(10) To comply with subsection (9), a police officer—

- (a) shall complete a form of warrant substantially in the terms of the warrant issued by the stipendiary magistrate;
and
- (b) shall write on that form of warrant a statement that a warrant in those terms was issued giving—
 - (i) the name of the stipendiary magistrate who issued the warrant;
 - (ii) the date on which and time and place at which the warrant was issued;
and
 - (iii) the date on which and time at which the warrant expires.

(11) The police officer who executes a warrant issued under this section shall endorse on the reverse side of the warrant or form of warrant such of the following particulars as are applicable—

- (a) the date and time of execution;
- (b) the description of any thing seized;
- (c) the name, rank, number (if any) in the Police Force of the police officer and his signature.

(12) Notwithstanding the provisions of subsection (1) or (2), when a police officer reasonably believes that—

- (a) any thing that—
 - (i) may afford evidence of the commission of an offence defined in Part II;
 - or
 - (ii) is liable to forfeiture under Part V, is, or is in possession of a person, in, on or about any place; and
- (b) it will be concealed or destroyed unless that place is entered and searched immediately,

the police officer may enter that place and exercise any of the powers he would be permitted to exercise if a warrant had been issued to him pursuant to the provisions of subsection (1) or, as the case may be, (2).

19. Police officers to supply information. (1) Where a police officer—

- (a) stops a vehicle;
- (b) detains a person;
- or
- (c) enters a place,

pursuant to the provisions of this Part he shall supply his name, rank, station and number (if any) in the Police Force to the person in charge of the vehicle, person detained or, as the case may be, occupier of the place.

(2) Where a police officer removes, seizes or retains any thing pursuant to the provisions of this Part he shall inform the person from whose possession it is removed, seized or retained, of the place to which the thing is to be taken.

(3) Where a police officer removes a vehicle pursuant to section 14 (2) he shall, if practicable, inform the person in charge and the owner of the vehicle or an agent of that person or owner that he is entitled to be present when the vehicle is searched.

That police officer and any person carrying out the search of the vehicle shall permit that person, owner or agent to be present during the time the vehicle is searched.

20. Register of searches. (1) Where a police officer—

- (a) stops a vehicle;
- (b) detains a person;
- or
- (c) enters a place,

pursuant to the provisions of this Part (other than in pursuance of a warrant issued under section 18), he shall at the first reasonable opportunity record in a register kept in a form prescribed by regulation the matters following—

- (d) in the case of the stoppage of a vehicle—
 - (i) the place at which the vehicle was stopped;
 - (ii) the reason for the stoppage;
 - (iii) if the vehicle or any thing in it is searched, the date, time and place of the search;
- (e) in the case of the detention of a person—
 - (i) the name of the person or, if it is unknown, a description of the person;
 - (ii) the place at which the person was detained;
 - (iii) the date, time and length of detention;
 - (iv) the reason for the detention;
 - (v) if the person is searched, where the search took place;
- (f) in the case of the entry of a place—
 - (i) the identification of the place;
 - (ii) the date and time of entry;
 - (iii) the reason why a warrant was not obtained;
- (g) in the case of the search of a vehicle, person or, as the case may be, place—
 - (i) who or what was searched;
 - (ii) the reason for the search;
 - (iii) a description of any thing that was taken away;
- (h) in any such case, the name, rank and number (if any) in the Police Force of the police officer and his signature.

(2) Any entries made in the register shall be available for inspection by—

- (a) the owner of the vehicle or thing;
- (b) the person;
- or
- (c) the occupier of the place,

to which or, as the case may be, to whom they relate or his agent.

(3) Failure to make the entries referred to in subsection (1) in relation to the stoppage of a vehicle, the detention of a person or, as

the case may be, the entry of a place or to make them available for inspection as required by subsection (2) shall be prima facie evidence that the stoppage, detention or, as the case may be, entry and any search made pursuant to the stoppage, detention or entry were unlawful.

21. Persons arrested may be taken to places for investigation. Notwithstanding any other law to the contrary or the terms of the warrant upon which he was arrested, when a person is arrested on a charge of having committed an offence defined in Part II he may, within the period of 48 hours from the time of his arrest with his consent in writing (witnessed by a justice), be taken to a place for the purpose of investigating such offence.

22. Power to require name, address. (1) A police officer who reasonably suspects that an offence defined in Part II has been committed and reasonably requires to know the name and address of a person in order to assist him to investigate the offence, may require that person to give his name and address and, if he reasonably suspects that the name or address given is false, may require evidence as to the correctness thereof.

(2) A person who, when required under subsection (1) to give his name, address or evidence of the correctness thereof—

- (a) refuses or fails to give his name or address;
- (b) states a false name or address;
- (c) without reasonable excuse refuses or fails to produce that evidence;

or

(d) produces false evidence with respect to his name or address, commits an offence against this Act.

Penalty: Imprisonment for one month.

(3) A police officer may arrest without warrant a person who has or whom he suspects on reasonable grounds has committed an offence defined in subsection (2) provided he first warns that person of his intention to so do and gives him a further opportunity of giving his name and address or producing evidence to prove that the name or address given is correct.

23. Finger prints, etc. (1) Where a person is arrested on a charge of having committed an offence defined in this Act a police officer may take or cause to be taken from him all such particulars as he considers necessary for the identification of that person or the investigation of an offence including his voice print, photograph, finger prints, palm prints, foot prints, toe prints and handwriting and, except in the case of voice prints and handwriting, he may use such force as is reasonably necessary to obtain such particulars.

(2) Where a person is acquitted of an offence defined in this Act, or the charge against him is withdrawn or dismissed, any particulars

obtained pursuant to subsection (1), at the request of the person from whom they were taken, shall be destroyed in his presence except where—

- (a) they are, in the opinion of the Director of Prosecutions, required as evidence in respect of any other offence;
- or
- (b) proceedings in respect of any other offence have been commenced at the time of such acquittal, withdrawal or dismissal and the particulars are required as evidence in respect of that other offence.

PART IV—TRACKING AND LISTENING DEVICES

24. Use of tracking devices by police. (1) A police officer who reasonably suspects—

- (a) that a crime defined in Part II has been, is being or is about to be committed;
- and
- (b) that—
 - (i) the dangerous drug with which the offence is concerned is in or on any thing that is moveable (other than an aircraft);
 - or
 - (ii) a person involved or suspected to be involved in the commission of the offence is in or on any vehicle (other than an aircraft),

may place a tracking device in or on that thing or vehicle.

(2) A police officer who exercises the power conferred by subsection (1), at the first reasonable opportunity, shall furnish a written report upon the exercise of the power and the circumstances in which it was exercised to the Commissioner of Police and the Commissioner shall at the first reasonable opportunity, bring the report to the notice of the Minister.

25. Interception warrant. Upon application made to him by a police officer of or above the rank of inspector a judge of the Supreme Court may order that there be issued an interception warrant authorizing a police officer to—

- (a) put a listening device in the place specified in the interception warrant;
- and
- (b) intercept private conversations by means of the listening device,

if the judge is satisfied there are reasonable grounds for suspecting that a person has committed, is committing or is about to commit a crime defined in Part II for which an offender is liable to the punishment of imprisonment with hard labour for life.

26. Emergency permit. (1) If, upon personal application made to him by a police officer of or above the rank of inspector, a judge of the Supreme Court is satisfied that there exist circumstances that would justify the issue of an interception warrant, but that the interception of private conversations should commence before an interception warrant could, with all practical diligence, be obtained under section 25 the judge may order, orally or in writing, that there be issued an emergency permit authorizing a police officer to—

- (a) put a listening device in a place specified in the emergency permit;
- and
- (b) intercept private conversations by means of the listening device.

(2) An emergency permit shall remain in force for a period of 48 hours or such shorter period as the judge orders.

27. Power of entry. For the purpose of putting or servicing a listening device in or retrieving it from the place specified in the interception warrant or emergency permit the interception warrant or emergency permit may authorize a police officer to exercise any of the powers of entry he would be permitted to exercise if a warrant to search the place referred to in the interception warrant or emergency permit had been issued by a justice pursuant to section 18.

28. Applications subject to certain provisions, conditions, etc. (1) An application for an interception warrant or emergency permit shall be subject to the following provisions—

- (a) the application shall be made as prescribed by Rules of Court or, if no procedure is so prescribed, as a judge of the Supreme Court directs;
- (b) the application shall be heard *ex parte* in the judge's chambers in the presence of such person as the judge permits and no other person;
- (c) the judge may receive and act on such information as he thinks fit;
- (d) no transcript shall be made of the information received by the judge;
- (e) no notice or report relating to the application shall be published and no record of the application or of any order made thereon shall be available for search by a person except by direction of the judge hearing the application or, in the case of his absence or incapacity, some other judge of the Supreme Court.

(2) In considering an application for an interception warrant or emergency permit a judge shall have regard to—

- (a) the gravity of the matter being investigated;
- (b) the extent to which the privacy of a person is likely to be interfered with if the application is granted;
- (c) the extent to which the prevention or detection of the offence being investigated is likely to be assisted if the application is granted,

and may grant the application and issue an interception warrant or, as the case may be, emergency permit subject to such conditions, limitations and restrictions as are in his opinion necessary in the public interest.

29. Application of the Invasion of Privacy Act. (1) A listening device used for the interception of private conversations under the authority of an interception warrant or an emergency permit—

- (a) for the purposes of the application of section 45 (2) or 47 of the *Invasion of Privacy Act 1971-1981*, shall be deemed to have been used pursuant to an authorization given under section 43 (2) (c) (i) of that Act;
- and

- (b) for the purposes of the application of the provisions of Part IV of the *Invasion of Privacy Act 1971-1981*, other than those referred to in paragraph (a), shall not be taken to have been used in contravention of section 43 of that Act.

(2) For the purposes of this Part the terms “listening device” and “private conversations” have the same meanings, respectively, as are ascribed to those terms by section 4 of the *Invasion of Privacy Act 1971-1981*.

PART V—FORFEITURE AND RESTRAINT

30. Interpretation. (1) In this Part, unless the contrary intention appears—

“court” means—

- (a) the Supreme Court;
- or
- (b) in relation to an application for the forfeiture or restraint of personal property (other than an estate or interest in land) not exceeding \$25 000—
 - (i) a Magistrates Court within the meaning of the *Justices Act 1886-1985*;
- or
- (ii) if the offender is a child within the meaning of the *Children's Services Act 1965-1982*, a Children's Court constituted under that Act.

constituted by a stipendiary magistrate;

“proceeds” of an offence means property derived directly or indirectly from the commission of the offence.

(2) For the purposes of this Part, a person shall be deemed to have been convicted of an offence defined in Part II if—

- (a) that person has been found guilty of the offence by a court, or has pleaded that he is guilty of the offence, but is discharged, absolutely or conditionally, without conviction; or
- (b) a court, at the request of that person, takes the offence into account in determining the penalty for some other offence.

(3) Where pursuant to this Part, real property, or an estate or interest in land other than real property, vests in the Crown it shall, where the Minister so directs, be held upon trust by The Public Trustee of Queensland for and on behalf of the Crown.

31. Jurisdiction. Jurisdiction is conferred on a court to hear and determine applications under this Part and to make orders authorized by this Part.

32. Forfeiture of dangerous drugs. (1) Upon application made to it a court may, where any thing that is alleged to be a dangerous drug is produced before it, upon being satisfied beyond reasonable doubt that the thing or any part of the thing is a dangerous drug, order the whole or any part of the thing be forfeited to the Crown.

(2) Where an order is made pursuant to subsection (1), the court shall, in its order, make a finding of fact—

- (a) as to—
 - (i) the identity and quantity of the thing produced;
 - (ii) the quantity ordered to be forfeited;
 - (iii) the quantity remaining;and
- (b) that what remains is part of what was produced.

(3) Production in proceedings in respect of a charge against a person of having committed an offence defined in Part II of an order made pursuant to subsection (1) shall be conclusive evidence of the matters contained therein.

(4) Where a person is convicted of an offence defined in Part II—

- (a) any thing that is alleged to be a dangerous drug in respect of which an order was not made under subsection (1); or
- (b) the remainder of any thing produced pursuant to subsection (1),

and in respect of which the offence was committed shall by virtue of such conviction be forfeited to the Crown.

(5) Where a person charged with an offence defined in Part II is not convicted of any offence on that charge the court before which he was charged may order—

- (a) that any thing that is alleged to be a dangerous drug in respect of which an order was not made under subsection (1);
- or
- (b) that the remainder of any thing produced pursuant to subsection (1),

and in respect of which the offence was alleged to have been committed, be forfeited to the Crown and any such thing or remainder of such thing shall thereby be forfeited accordingly.

33. Liability of property (other than a dangerous drug) to forfeiture.

(1) Property (other than a dangerous drug) is liable to forfeiture under this Part if the property is—

- (a) acquired for the purpose of committing an offence defined in Part II;
- (b) used in connexion with the commission of such an offence;
- (c) furnished or intended to be furnished for the purpose of committing such an offence;
- (d) the proceeds of such an offence;
- (e) acquired with the proceeds of such an offence;
- or
- (f) property into which the proceeds of such an offence have, in some other manner, been converted.

(2) Where—

- (a) there has been an accretion to a person's property in consequence of the commission of an offence defined in Part II (either by that person or some other person);
- and
- (b) identification of specific property as being liable to forfeiture under subsection (1) is not possible (either because the property has been dissipated or for any other reason),

the whole of the person's property is liable to forfeiture under this Part but, on an application for forfeiture, only so much of the property as is necessary to realize a sum equal to the value of the accretion shall be forfeited.

(3) Where a person charged with the commission of an offence defined in Part II was in possession of property at or immediately after the commission of the offence the court hearing an application made under section 34 (1) shall presume that the property is liable to forfeiture unless that person proves to the contrary.

34. Forfeiture orders. (1) Where a court is satisfied, upon application made to it—

- (a) that property is liable to forfeiture in consequence of the commission of an offence defined in Part II;
and
- (b) that a person—
 - (i) has been convicted of such an offence;
or
 - (ii) is dead, cannot be found or is for any other reason not amenable to justice,

the court may order that the property be forfeited to the Crown and shall specify in any such order, other than an order in respect of money, the amount that it considers is the value of the property.

(2) Where property that is liable to forfeiture under section 33 is received or acquired by a person who was not a party to the commission of the offence by virtue of which the property is liable to forfeiture, an order for forfeiture of the property may be made unless that person proves—

- (a) that he gave valuable consideration for the property;
and
- (b) that at the time of receiving or acquiring the property he neither knew nor had reason to suspect the circumstances by virtue of which the property is liable to forfeiture.

(3) In considering whether it is appropriate to make a forfeiture order under subsection (1) or (2) the court may have regard to—

- (a) any extreme hardship that may be likely to be caused to any person by the operation of such an order;
and
- (b) the use that is ordinarily made of the property.

(4) A court that makes a forfeiture order in respect of property may also, if it is satisfied—

- (a) that it would not be contrary to the public interest for the property to be returned to the person in whom the property was vested immediately before the making of the forfeiture order;
and
- (b) that there is no other reason why the property should not be returned to that person,

by order declare that the forfeiture order may be discharged as provided by section 39 (1).

(5) Subject to subsection (6), any question of fact to be decided by a court on an application for forfeiture shall be decided on the balance of probabilities.

(6) Where, on an application for forfeiture, a person is alleged to have committed an offence defined in Part II of which he has not been convicted, a court shall be satisfied, in relation to that allegation, that the evidence adduced before it—

- (a) if the offence is a crime defined in that Part, is sufficient to put the person upon his trial for that crime;
or
- (b) if the offence is an offence defined in section 10 (2), is sufficient for a court to hold that the person has a case to answer.

35. Interested parties entitled to notice and appearance. Where an application for forfeiture of property is made under section 34 a person who has an interest in the property is entitled—

- (a) to such notice of the application as may be determined by the court to which the application is made;
and
- (b) to appear and be heard on the application.

36. Effect of forfeiture. (1) Upon the making of a forfeiture order under section 34 the property to which it relates shall divest from the person in whom it is vested at that time and vest in the Crown and, subject to any further order made in relation to that property by a court, shall be destroyed or disposed of in accordance with the Minister's directions.

(2) A person who is in possession of property forfeited to the Crown under section 34 or of documents of title to such property shall deliver the property or the documents of title to a person authorized in that behalf by the Minister, upon demand of that authorized person.

(3) Where a person has delivered property or documents of title to property in compliance with subsection (2) he shall thereby be discharged from any duty or obligation had by him to any other person in relation to the disposition of the property or documents of title and from all liability that, but for this subsection, might have arisen by reason of such delivery.

(4) The Registrar of Titles, Registrar of Dealings and any other person charged with the keeping of registers relating to property forfeited to the Crown pursuant to this Part shall, upon request in that regard and upon production to him of sufficient evidence of the forfeiture record—

- (a) the forfeiture to and vesting in the Crown of the property;
or
- (b) where the Minister so directs, The Public Trustee of Queensland as being the holder upon trust for and on behalf of the Crown of the property,

in the register in his keeping and may do so notwithstanding—

(c) any other Act to the contrary;

or

(d) that any relevant document of title to the property is not produced to him.

(5) In all proceedings and for all purposes a certificate purporting to be by—

(a) the registrar or a deputy registrar of the Supreme Court where that court makes the order;

or

(b) the clerk of the court at the place where a Magistrates Court or Children's Court makes the order,

as to the making of the order and the property to which the order relates shall be conclusive evidence of the matters contained therein.

(6) Where a certificate referred to in subsection (5) is duly produced to the registrar of the Supreme Court for registration he shall, upon payment of the appropriate fee, register the certificate in the court and thereupon the certificate shall be a record of the court and the order to which it refers shall be deemed to be a judgment of the court, duly entered, obtained by the Crown as plaintiff in an action for the recovery of possession of the property to which the order relates against the person from whom the property has been divested under subsection (1), and all such proceedings may be taken to recover the property as could be taken if the judgment had been given by the court in favour of the Crown.

37. Effect of forfeiture order on third parties. (1) Where an application for forfeiture of property has been made under section 34, any person who claims an estate or interest in the property may apply to the court for an order under subsection (2).

(2) Where—

(a) a person has made an application under subsection (1);

and

(b) a forfeiture order has been made in respect of property, whether before or after the making of the application,

the court hearing the application may, if it is satisfied on the balance of probabilities that the person was not a party to the commission of the offence, make an order—

(c) declaring the nature, extent and value of the person's estate or interest in the property (including accruing interest (if any));

and

(d) declaring that there is payable by the Crown to the person an amount equal to the value of the person's estate or interest in the property as declared by the court pursuant to paragraph (c).

(3) Where, on application by a person, a court makes an order under subsection (2) in respect of property, the court may also, if it is satisfied—

(a) that it would not be contrary to the public interest for the property to be transferred to the person;

and

- (b) that there is no other reason why the property should not be transferred to the person,

make an order declaring that the person is entitled to discharge the forfeiture order as provided by section 39.

(4) An application under subsection (1) in respect of property may be made—

- (a) at the hearing of the application for a forfeiture order in respect of the property;
- (b) at any time after the making of a forfeiture order in respect of the property, by a person who was not given notice by the prosecution of the making of the application for the forfeiture order and who did not appear at the hearing of the lastmentioned application;

or

- (c) at any time after the making of a forfeiture order in respect of the property, if the court is satisfied that there are special grounds for permitting the making of such an application.

(5) Without limiting the generality of subsection (4) (c), special grounds for permitting the making of an application by a person under subsection (1) after the making of a forfeiture order include—

- (a) that the person was unable to appear at the hearing of the application for the forfeiture order;
- (b) that the person, for a good reason, did not appear at the hearing of the application for the forfeiture order;
- (c) that particular evidence proposed to be adduced by the person in connexion with the application under subsection (1) was not available to the person at the time of the hearing of the application for the forfeiture order.

(6) A person who makes an application under subsection (1) in respect of property, otherwise than at the hearing of an application for a forfeiture order in respect of the property, shall give notice to the Minister of the making of the application and of the date, time and place for the hearing of the application.

38. Discharge of forfeiture. (1) Where—

- (a) property has been forfeited to the Crown by order made under section 34 in reliance on the conviction of a person of an offence defined in Part II;

and

- (b) that person has appealed against the conviction.

a court hearing the appeal, if it allows the appeal, may order that the forfeiture order be quashed.

(2) Subject to section 41 (2), where a forfeiture order in respect of property is quashed as provided by subsection (1) or by a court hearing

an appeal against the making of the forfeiture order, the person whose property it was immediately before forfeiture or his legal personal representative may, by application in writing, request the Minister to return the property.

- (3) The Minister by his certificate shall certify whether or not—
- (a) the property is still in specie and still vested in the Crown;
 - or
 - (b) the property has been disposed of or destroyed.

(4) Where the Minister certifies pursuant to subsection (3) (a), the property shall thereby divest from the Crown and vest in the applicant.

(5) Where the Minister certifies pursuant to subsection (3) (b), there is payable to the applicant by the Crown the amount specified in the forfeiture order as the value of the property.

(6) Where—

- (a) a person applies to the Minister under subsection (2) for the return of property that is still vested in the Crown; and
- (b) pursuant to an order made under section 37 (2), an amount has been paid by the Crown to another person in respect of that other person's interest in the property,

then, notwithstanding subsections (4) and (5), the Minister shall inform the firstmentioned person that the property will be returned to the firstmentioned person on payment to the Crown of an amount equal to the amount mentioned in paragraph (b) and, where that amount is paid to the Crown, the Minister shall arrange for the property to be returned to the firstmentioned person.

(7) Where—

- (a) a person applies to the Minister under subsection (2) for the return of property that is not still vested in the Crown; and
- (b) pursuant to an order made under section 37 (2), an amount has been paid by the Crown to another person in respect of that other person's interest in the property,

then, notwithstanding subsections (4) and (5), there is payable to the firstmentioned person the amount specified in the forfeiture order as the value of the property, reduced by an amount equal to the amount mentioned in paragraph (b).

(8) Where—

- (a) a person applies to the Minister under subsection (2) for the return of the property that is not still vested in the Crown; and
- (b) the property has been transferred to another person pursuant to section 39 (4),

there is payable to the firstmentioned person the amount specified in the forfeiture order as the value of the property, reduced by the amount specified in an order made under section 37 (2) as the value of the other person's interest in the property.

39. Discharge of forfeiture order by payment to Crown. (1) Where a court that has made a forfeiture order in respect of property makes an order under section 34 (4) in respect of the forfeiture order, the payment to the Crown, while the property is still vested in the Crown, of the amount specified in the forfeiture order as the value of the property operates to discharge the forfeiture order.

(2) Where—

- (a) a forfeiture order has been made in respect of property;
and
- (b) on application by a person, a court makes an order under section 37 (2) in respect of the property and an order under section 37 (3) in respect of the forfeiture order,

the person may, while the property is still vested in the Crown pay to the Crown—

- (c) if the Crown has already made a payment to the person in accordance with the order made under section 37 (2)—the amount specified in the forfeiture order as to the value of the property;
or
- (d) in any other case—the amount specified in the forfeiture order as the value of the property, reduced by the amount specified in the order made under section 37 (2) as the value of the person's interest in the property,

and the making of that payment by the person operates to discharge the forfeiture order.

(3) Where a forfeiture order in respect of property is discharged as provided by subsection (1), the Minister shall arrange for the property to be returned to the person in whom it was vested immediately before the making of the forfeiture order.

(4) Where a forfeiture order in respect of property is discharged as provided by subsection (2), the Minister shall arrange for the property to be transferred to the person who made the payment to the Crown in accordance with that subsection.

40. Certain instruments exempt from stamp duty and fees. Where it is necessary to make any instrument or to correct registers kept in respect of property transferred from the Crown or, as the case may be, The Public Trustee of Queensland—

- (a) the instrument shall be exempt from stamp duty under the *Stamp Act 1894-1986*;
and
- (b) no fees shall be payable in respect of the instrument in any office in which such registers are kept.

41. Restraining order. (1) Where a court is satisfied, upon application made to it—

- (a) that property may be liable to forfeiture in consequence of the commission of an offence defined in Part II;
- and
- (b) that proceedings have been, or are about to be, commenced against a person in respect of such offence,

it may make a restraining order in respect of that property, and such other ancillary order as it thinks fit.

(2) Where a court hearing an appeal quashes a forfeiture order it may make a restraining order in respect of the property to which the order relates, and such other ancillary order as it thinks fit.

(3) Upon the making of a restraining order—

- (a) the management and control of the property to which it relates shall pass to the person named in the order as manager of the property and remain in that person while the order remains in force;
- (b) the person whose property it is is incompetent in law to pass title of property to which it relates while the order remains in force;
- (c) a person who holds property to which it relates on account of the person whose property it is shall hold that property on account of the person named in the order as manager of the property while the order remains in force and shall deal with that property as directed by the manager.

(4) The manager named in a restraining order is empowered to deal with and dispose of property of which he is manager in and for the purposes of his management as if he were the absolute owner thereof subject always to his being prudent and diligent in his management thereof and to his complying with conditions specified in the order as regulating his management thereof.

(5) Where a restraining order has been made the applicant therefor shall cause a copy of the order to be given to every person who, to his knowledge, is holding property affected by the order on account of the person to whose property the order relates.

In the case of property held by a bank or body corporate it shall be sufficient compliance with the preceding paragraph if a copy of the order is given to the manager, branch manager or other person charged with the control of the property on account of the person to whose property the order relates and a copy of an order so given, or given to any other person who is holding property to which the order relates shall be deemed to have been given to every person employed in the service of that bank, body corporate or such lastmentioned other person.

(6) A person—

(a) to whose property a restraining order relates;
or

(b) to whom a copy of a restraining order has been given or is deemed to have been given,

shall not attempt to do or purport to do any act in disobedience to or wilful disregard of the order, while it remains in force.

(7) A person who contravenes subsection (6) in respect to an order made by a stipendiary magistrate commits an offence against this Act.

Penalty: Imprisonment with hard labour for 2 years or, if the offender is a body corporate, a fine of 500 penalty units.

(8) A person who contravenes subsection (6) in respect to an order made by a judge is guilty of a crime.

Penalty: Imprisonment with hard labour for 5 years or, if the offender is a body corporate, a fine of 2000 penalty units.

(9) Upon production to him of a copy of a restraining order made under this section, the Registrar of Titles, Registrar of Dealings and any other person charged with the keeping of registers relating to property referred to in the order shall not register any dealing with respect to that property until the order has been revoked or discharged.

42. Procedure upon application for restraining order. (1) Upon an application for a restraining order, the court may require notice of the application to be given to such person as it considers should be informed of the proceedings.

(2) Every person to whom notice of an application has been given shall be entitled to be heard with respect to the matter of the application.

(3) Where notice of an application is given to a person in respect of whose property a restraining order is sought or to a bank or other person holding property on account of a person in respect of whose property a restraining order is sought, the notice shall have effect as if it were a copy of a restraining order duly made in respect of that person's property, until the matter of the application has been disposed of.

43. Variation, revocation, discharge of order. (1) A restraining order made under section 41 (1) is discharged—

(a) if at the expiration of the period ordered by the court in that regard, proceedings against a person have not been commenced in respect of an offence defined in Part II;

(b) upon the making of a forfeiture order in respect of property to which the restraining order relates;

(c) if the person charged with committing the offence, by reason of which charge the restraining order was made, has been acquitted of the charge or the charge has been withdrawn;

(d) if the person charged with committing the offence, by reason of which the restraining order was made, having been

convicted of the charge, has had his conviction quashed on appeal, unless the court hearing the appeal otherwise orders.

(2) A restraining order made under section 41 (1) or (2) may, upon application made to a court of like jurisdiction to the court that made the order, be varied or revoked at any time for any reason appearing to the court to be sufficient.

(3) Upon an application for revocation of a restraining order, the applicant shall cause notice of the application to be given to—

(a) the manager of property to which the restraining order relates;

and

(b) such other person as the court considers should be informed of the proceedings,

and the manager and such other person shall be entitled to be heard with respect to the matter of the application.

PART VI—MISCELLANEOUS

44. Criminal Code to be read with Act. *The Criminal Code* shall, with all necessary adaptations, be read and construed with this Act.

45. Proceedings for offences. (1) Proceedings with a view to the summary conviction of a person for an offence defined in this Act or an examination of witnesses in relation to an indictable offence defined in this Act shall be before a stipendiary magistrate.

(2) Where an offence may be prosecuted on indictment or summarily the proceedings before a stipendiary magistrate shall be proceedings with a view to the committal of the defendant for trial or sentence unless the prosecution elects that they shall be proceedings with a view to summary conviction.

(3) Notwithstanding that more than one year has elapsed from the time of the commission of a crime defined in Part II, where a person is arrested on a charge of having committed that offence proceedings with a view to the summary conviction of the person on that charge may be brought before a stipendiary magistrate, and the stipendiary magistrate shall have jurisdiction to so deal summarily.

(4) Where proceedings are taken with a view to summary conviction of a defendant and the stipendiary magistrate forms the opinion that the offence ought to be prosecuted on indictment, he shall abstain from determining the charge summarily and shall instead deal with the proceedings as proceedings with a view to the committal of the defendant for trial or sentence.

(5) Where, pursuant to subsection (4), the stipendiary magistrate abstains from determining a charge summarily, the plea of the defendant taken at the outset of the summary proceedings shall be disregarded and, before committing the defendant for trial or sentence, he shall address the defendant in accordance with the provisions of section 104 of the *Justices Act 1886-1985*.

46. Protection of informers. (1) Where an informer supplies information to a police officer in respect of the commission of an offence defined in Part II the informer's identity at all times shall be kept confidential.

(2) A person who discloses the name of an informer, or any other particular that may be likely to lead to his identification, is guilty of a crime.

Penalty: Imprisonment with hard labour for 5 years.

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

47. Source of information not to be disclosed. (1) In any proceedings arising out of a charge of having committed an offence defined in Part II—

- (a) the prosecutor;
- (b) a person who appears as a witness for the prosecution;
or
- (c) where a police officer appears as a witness for the defence,
that police officer,

shall not be compelled to disclose the name of an informer, or other particular that may be likely to lead to his identification, or the fact that in respect of the offence he received information from an informer or he furnished information to an informer or the nature of the information.

(2) In any proceedings arising out of a charge of having committed an offence defined in Part II a police officer appearing as a prosecutor or witness shall not be compelled to produce any reports or documents, made or received by him in his official capacity or containing confidential information in relation to such offence, or to make any statement in relation to such reports, documents or information.

48. Power to prohibit publication of proceedings. (1) In any proceedings arising out of a charge of having committed an offence defined in Part II—

- (a) a stipendiary magistrate hearing and determining the matter summarily or conducting the examination of witnesses;
or
- (b) the judge presiding at the court to which a person has been committed for trial or sentence,

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

(2) An application for an order under subsection (1) may be made in chambers in the presence of such person as the stipendiary magistrate or judge permits and no other person.

(3) On the hearing of the application the stipendiary magistrate or judge may receive and act upon such information as he thinks fit.

(4) When considering an application to prohibit publication regard shall be had to—

- (a) the safety of any person;
- (b) the extent to which the detection of offences of a like nature may be affected;
- and
- (c) the need to guarantee the confidentiality of information given by an informer.

(5) A person who acts in contravention of an order made by a stipendiary magistrate under subsection (1) commits an offence against this Act.

Penalty: Imprisonment with hard labour for 2 years or, if the offender is a body corporate, a fine of 500 penalty units.

(6) A person who acts in contravention of an order made by a judge under subsection (1) is guilty of a crime.

Penalty: Imprisonment with hard labour for 5 years or, if the offender is a body corporate, a fine of 2000 penalty units.

(7) The provisions of this section are in addition to and not in substitution for the provisions of section 138 of the *Children's Services Act 1965-1982*.

49. Certain proceedings relating to sentence may be determined in chambers. (1) A court before which a person is convicted of an offence defined in Part II (other than an offence punishable by imprisonment with hard labour for life which punishment cannot be mitigated or varied by a court) may, with the consent of the prosecution and the defendant, adjourn the proceedings to chambers so as to determine the question of sentence.

(2) An application to adjourn proceedings to chambers may be made in chambers.

(3) In determining the question of sentence pursuant to this section the following provisions shall apply—

- (a) the proceedings shall be as prescribed by Rules of Court or, if no procedure is so prescribed, as the court directs;
- (b) the proceedings shall be heard in chambers in the presence of such person as the court permits and no other person;
- (c) the court may receive and act on such information as it thinks fit;
- (d) no transcript shall be made of the proceedings unless directed by the court;
- (e) no notice or report relating to the proceedings shall be published and no record of the proceedings (other than the

order as to the sentence to be imposed) shall be available for search by a person except by direction of the court or, in the absence or incapacity of the judge or stipendiary magistrate who constituted the court, another judge of the Supreme Court or, as the case may be, another stipendiary magistrate.

50. Summary conviction for indictable offences. The provisions of section 659 of *The Criminal Code* shall have no application when a person has been summarily convicted of a crime defined in this Act.

51. Defence of supply of lawfully prescribed drug in a small quantity.

(1) A person is not criminally responsible for an offence defined in section 6 if the dangerous drug is one specified in the Fifth Schedule and if he proves that—

- (a) it was prescribed for him by a medical practitioner for a condition with which he was suffering at the time it was prescribed;
- (b) it was given by him to a person whom he reasonably believed to be suffering from the same or a similar condition;
- (c) the quantity given was no greater than a single dosage prescribed for him;
and
- (d) it was immediately consumed in his presence by the person to whom it was given.

(2) A person is not criminally responsible for an offence defined in section 9 if the dangerous drug is one specified in the Fifth Schedule and if he proves that—

- (a) it was given to him by a person to whom he reasonably believed it had been prescribed by a medical practitioner for the same or a similar condition with which he was suffering at the time it was given to him;
- (b) the quantity received by him was no greater than a single dosage prescribed for that person;
and
- (c) it was immediately consumed by him in that person's presence.

52. Police officer permitted to destroy certain property. It is lawful for a police officer acting in good faith, or any person acting in good faith and at the officer's direction, to destroy property if—

- (a) the property is a dangerous drug or was used in the commission of an offence defined in Part II;
- (b) it is not reasonably practicable to take possession of the property or to take it to a police station or to keep it there;
and

- (c) the officer believes that unless it is destroyed there is a risk it may be used in the commission of an offence defined in Part II.

53. Police may use assistants and employ reasonable force. (1) In any case in which a police officer is authorized by this Act to do any thing he may use such assistants, animals, vehicles and equipment as he considers necessary to do that thing.

(2) In any case in which a police officer is authorized by this Act to do any thing he may use, or direct to be used, such force as is reasonably necessary to do that thing.

(3) If, in doing any thing referred to in subsection (2) a police officer proposes to use force against a person, or the property of a person then present, he shall, if practicable, first warn that person that he proposes to use that force.

54. Power to fine. (1) A person liable to imprisonment for an offence defined in this Act may, if the imprisonment to which he is liable is—

- (a) imprisonment with hard labour for life which cannot be mitigated or varied by a court, be ordered to pay a fine in addition to the imprisonment to which he is liable;
- (b) imprisonment other than imprisonment with hard labour for life which cannot be mitigated or varied by a court, be ordered to pay a fine in addition to or instead of the imprisonment to which he is liable.

(2) A fine to which a person is liable under subsection (1) shall not exceed—

- (a) 5000 penalty units where the offence is one for which the person is liable to imprisonment with hard labour for life (whether or not it can be mitigated or varied by a court);
- (b) 3000 penalty units where the offence is any other crime of which the person is convicted on indictment;
- or
- (c) 100 penalty units where the offence is one of which the person is convicted in summary proceedings.

(3) Where pursuant to this section, a person is ordered to pay a fine the court may, on the application of the prosecution, instead of ordering the person to be imprisoned in default of payment of the fine or that the amount of the fine be recovered by levy and distress, order that the amount of the fine be recovered in accordance with the following provisions of this section.

(4) Where an order referred to in subsection (3) is made—

- (a) the registrar or deputy registrar of the Supreme Court where that court makes the order;
- or

- (b) the clerk of the court at the place where a Magistrates Court or Children's Court makes the order,

shall furnish to the Attorney-General a certificate of the order and that certificate may be registered in a court having jurisdiction in civil proceedings in which the amount claimed is the amount required by the order to be paid.

(5) The registrar of a court to whom a certificate referred to in subsection (4) is duly produced for registration shall, upon payment of the appropriate fee register the certificate in the court and thereupon the certificate shall be a record of the court in which it is registered and the order to which it refers shall be deemed to be a judgment of that court, duly entered, obtained by the Crown as plaintiff against the person in default as defendant for the payment to the Crown of money comprising—

- (a) the amount of the fine;
- and

- (b) costs of registration of the certificate in the court,

and all such proceedings (including proceedings in bankruptcy) may be taken to recover the amount of the judgment as if the judgment had been given by the court in favour of the Crown.

55. No costs to be awarded. No costs shall be awarded with respect to any proceedings arising out of a charge of having committed an offence defined in this Act.

56. Analyst's certificate. In any proceedings for an offence defined in this Act the production of a certificate purporting to be signed by an analyst with respect to an analysis or examination made by him shall, without proof of the analyst's signature or that he is an analyst, be evidence of—

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

and, in the absence of evidence to the contrary, shall be conclusive such evidence.

57. Evidentiary provisions. In respect of a charge against a person of having committed an offence defined in Part II—

- (a) it is not necessary to particularize the dangerous drug in respect of which the offence is alleged to have been committed;
- (b) that person shall be liable to be convicted as charged notwithstanding that the identity of the dangerous drug to which the charge relates is not proved to the satisfaction of the court that hears the charge if the court is satisfied that

the thing to which the charge relates was at the material time a dangerous drug;

- (c) proof that a dangerous drug was at the material time in or on a place of which that person was the occupier or concerned in the management or control of is conclusive evidence that the drug was then in his possession unless he shows that he then neither knew nor had reason to suspect that the drug was in or on that place;
- (d) the operation of section 24 of *The Criminal Code* is excluded unless that person shows his honest and reasonable belief in the existence of any state of things material to the charge;
- (e) the burden of proving any authorization to do any act or make any omission lies on that person.

58. Receiving or possessing some only of the property alleged. If in respect of a charge against a person of having committed an offence defined in section 7, the jury finds specially that the person committed the offence in respect of some, but not all, of the property alleged by the prosecution that person shall not by reason only of that finding be entitled to be acquitted, and the judge shall enter a conviction for that offence in respect of the property so found by the jury.

59. Regulations. The Governor in Council may make regulations not inconsistent with this Act for or with respect to all matters required or permitted by this Act to be prescribed and all matters that, in the opinion of the Governor in Council, are necessary or expedient for achieving the objects and purposes of this Act or that may be convenient for the proper administration of this Act.

60. Amendments. (1) The *Health Act 1937-1984* is amended as and to the extent indicated in the Sixth Schedule.

That Act as so amended may be cited as the *Health Act 1937-1986*.

(2) The *Bail Act 1980-1984* is amended as and to the extent indicated in the Sixth Schedule.

That Act as so amended may be cited as the *Bail Act 1980-1986*.

FIRST SCHEDULE

[ss. 4, 5, 6, 8, 9]

Heroin
Cocaine
Phencyclidine
Lysergide

SECOND SCHEDULE

[ss. 4, 5, 6, 8, 9]

Acetorphine

Acetyldihydrocodeine, except where it is compounded with one or more other medicaments in such a way that it cannot be readily extracted and where it is contained—

(a) in divided preparations containing 100 mg or less of acetyldihydrocodeine per dosage unit; or

(b) in undivided preparations containing 2.5% or less of acetyldihydrocodeine.

Acetylmethadol

Acetylmorphines

Alfentanil

Alkoxyamphetamines and bromo-substituted alkoxyamphetamines except where separately specified

Alkoxyphenethylamines and alkyl-substituted alkoxyphenethylamines except where separately specified

Allylprodine

Alphacetylmethadol

Alphameprodine

Alphamethadol

Alphaprodine

Amphetamine

Anileridine

Barbituric acid and any 5,5 disubstituted derivatives of barbituric acid, whether or not further substituted at position 1 of the ring

Benzethidine

Benzylmorphine

Betacetylmethadol

Betameprodine

Betamethadol

Betaprodine

Beziramide

4-Bromo-2,5-dimethoxyamphetamine

Bufotenine

Buprenorphine

Cannabinoids except tetrahydrocannabinols

Cannabis sativa

Clonitazene

Coca leaf

Codeine, except where it is compounded with one or more other medicaments in such a way that it cannot be readily extracted and where it is contained—

(a) in divided preparations containing 30 mg or less of codeine per dosage unit; or

(b) in undivided preparations containing 1% or less of codeine

Codeine-N-oxide

Codoxime

4-Cyano-2-Dimethylamino-4,4-Diphenylbutane

4-Cyano-1-Methyl-4-Phenylpiperidine

Desomorphine

Diampromide

Diethylthiambutene

N,N-Diethyltryptamine

Difenoxin except in preparations containing 0.5 mg or less of difenoxin and a quantity of atropine sulphate equivalent to not less than 5% of the dose of difenoxin per dosage unit

Dihydrocodeine except where it is compounded with one or more other medicaments in such a way that it cannot be readily extracted and where it is contained—

(a) in divided preparations containing 100 mg or less of dihydrocodeine per dosage unit; or

(b) in undivided preparations containing 2.5% or less of dihydrocodeine

Dihydromorphine

Dimenoxadol

Dimepheptanol

2,5-Dimethoxyamphetamine

2,5-Dimethoxy-4-Methylamphetamine

Dimethylamino-1,2-Diphenylethane

3-(1,2-Dimethylheptyl)-1-Hydroxy-7,8,9,10-Tetrahydro-6,6,9-Trimethyl-6H-Dibenzo(b,d)Pyran

Dimethylthiambutene

N,N-Dimethyltryptamine

Dioxaphetyl butyrate

Diphenoxylate except in preparations containing 2.5 mg or less of diphenoxylate and a quantity of atropine sulphate equivalent to not less than 1% of the dose of diphenoxylate per dosage unit

Dipipanone

Drotebanol

Ecgonine, its esters and derivatives which are convertible to ecgonine and cocaine

Ethylmethylthiambutene

Ethylmorphine except where it is compounded with one or more other medicaments in such a way that it cannot be readily extracted and where it is contained—

- (a) in divided preparations containing 100 mg or less of ethylmorphine per dosage unit; or
- (b) in undivided preparations containing 2.5% or less of ethylmorphine

N-Ethyl-1-Phencyclohexylamine

Etonitazine

Etorphine

Etoxadine

Fentanyl

Furethidine

Hydrocodone

Hydromorphanol

Hydromorphone

Hydroxypethidine

Isomethadone

Ketobemidone

Levophenacymorphan

Lysergamide and N-alkyl derivatives of lysergamide other than lysergide

Lysergic acid

Mecloqualone

Mescaline (3,4,5-Trimethoxyphenethylamine)

Metazocine

Methadone

Methaqualone

Methylamphetamine

Methyldesorphine

Methyldihydromorphone

3,4-Methylenedioxyamphetamine

2-Methyl-3-Morpholino-1,1-Diphenylpropane Carboxylic acid

Methylphenidate

1-Methyl-4-Phenylpiperidine-4-Carboxylic acid

Metopon

Moramide

Morpheridine

Morphine

Morphine methobromide

Morphine-N-oxide

Myrophine

Nabilone

Nicocodine, except where it is compounded with one or more other medicaments in such a way that it cannot be readily extracted and where it is contained—

- (a) in divided preparations containing 100 mg or less of nicocodine per dosage unit; or
- (b) in undivided preparations containing 2.5% or less of nicocodine

Nicodicodine, except where it is compounded with one or more other medicaments in such a way that it cannot be readily extracted and where it is contained—

- (a) in divided preparations containing 100 mg or less of nicodicodine per dosage unit; or
- (b) in undivided preparations containing 2.5% or less of nicodicodine

Nicomorphine

Noracymethadol

Norcodeine, except where it is compounded with one or more other medicaments in such a way that it cannot be readily extracted and where it is contained—

- (a) in divided preparations containing 100 mg or less of norcodeine per dosage unit; or
- (b) in undivided preparations containing 2.5% or less of norcodeine

Norlevorphanol

Normethadone

Normorphine

Norpipanone

Opium

Oxycodone

Oxymorphone

Papaver orientale

Papaver setigerum

Papaver somniferum L. except the seed thereof which seed has been rendered sterile

Parahexyl

Pentazocine

Pethidine

Phenadoxone

Phenampromide

Phenazocine

Phendimetrazine

Phenmetrazine

Phenomorphane

Phenoperidine

1-(1-Phenylcyclohexyl)pyrrolidine

4-Phenylpiperidine-4-Carboxylic acid ethyl ester

Pholcodine, except where it is compounded with one or more other medicaments in such a way that it cannot be readily extracted and where it is contained—

(a) in divided preparations containing 100 mg or less of pholcodine per dosage unit; or

(b) in undivided preparations containing 2.5% or less of pholcodine

Piminodine

Piritramide

Proheptazine

Properidine

Propiram

Psilocin

Psilocybin

Racemethorphan

Racemoramide

Racemorphan

Sufentanil

Tetrahydrocannabinols including their alkyl homologues except where separately specified; and their corresponding carboxylic acids

Thebacon

Thebaine

1-(1-(2-thienyl)cyclohexyl)piperidine

Tilidine

Trimeperidine

 THIRD SCHEDULE

[ss. 8, 9]

<i>Dangerous Drug</i>	<i>Quantity of Dangerous Drug</i>
Amphetamine	2.0 grams
Barbituric Acid and any 5,5 disubstituted derivative of barbituric acid whether or not further substituted at position 1 of the ring	50.0 grams
4 Bromo 2,5 Dimethoxyamphetamine	0.5 grams
Cannabis sativa	500.0 grams or, if the dangerous drug consists of plants the aggregate weight of which is less than 500.0 grams, 100 plants
Cocaine	2.0 grams
Codeine	10.0 grams
N,N Diethyltryptamine	2.0 grams
2,5 Dimethoxy-4 Methyl Amphetamine	2.0 grams
N,N Dimethyltryptamine	2.0 grams
Fentanyl	0.01 grams
Heroin	2.0 grams
Hydromorphone	2.0 grams
Lysergide	0.004 grams
Methadone	2.0 grams
Methylamphetamine	2.0 grams
Moramide	2.0 grams
Morphine	2.0 grams
Opium	20.0 grams
Pethidine	10.0 grams
Phencyclidine	0.5 grams
Psilocin	0.10 grams
Psilocybin	0.10 grams
Tetrahydrocannabinols	2.0 grams

FOURTH SCHEDULE

[ss. 8, 9]

<i>Dangerous Drug</i>	<i>Quantity of Dangerous Drug</i>
Heroin	200.0 grams
Cocaine	200.0 grams
Phencyclidine	50.0 grams
Lysergide	0.4 grams

FIFTH SCHEDULE

[s. 51]

Barbituric acid and any 5,5 disubstituted derivatives of barbituric acid, whether or not further substituted at position 1 of the ring

Buprenorphine

Codeine, except where it is compounded with one or more other medicaments in such a way that it cannot be readily extracted and where it is contained—

(a) in divided preparations containing 30 mg or less of codeine per dosage unit; or

(b) in undivided preparations containing 1% or less of codeine

Difenoxin except in preparations containing 0.5 mg or less of difenoxin and a quantity of atropine sulphate equivalent to not less than 5% of the dose of Difenoxin per dosage unit

Dihydrocodeine, except where it is compounded with one or more other medicaments in such a way that it cannot be readily extracted and where it is contained—

(a) in divided preparations containing 100 mg or less of dihydrocodeine per dosage unit; or

(b) in undivided preparations containing 2.5% or less of dihydrocodeine

Diphenoxylate except in preparations containing 2.5 mg or less of diphenoxylate and a quantity of atropine sulphate equivalent to not less than 1% of the dose of diphenoxylate per dosage unit

Ethylmorphine, except where it is compounded with one or more other medicaments in such a way that it cannot be readily extracted and where it is contained—

(a) in divided preparations containing 100 mg or less of ethylmorphine per dosage unit; or

(b) in undivided preparations containing 2.5% or less of ethylmorphine

Hydrocodone

Hydromorphone

Methadone

Methylphenidate

Moramide

Morphine

Nicocodine, except where it is compounded with one or more other medicaments in such a way that it cannot be readily extracted and where it is contained—

- (a) in divided preparations containing 100 mg or less of nicocodine per dosage unit; or
- (b) in undivided preparations containing 2.5% or less of nicocodine

Nicodicodine, except where it is compounded with one or more other medicaments in such a way that it cannot be readily extracted and where it is contained—

- (a) in divided preparations containing 100 mg or less of nicodicodine per dosage unit; or
- (b) in undivided preparations containing 2.5% or less of nicodicodine

Norcodeine, except where it is compounded with one or more other medicaments in such a way that it cannot be readily compounded and where it is contained—

- (a) in divided preparations containing 100 mg or less of norcodeine per dosage unit; or
- (b) in undivided preparations containing 2.5% or less of norcodeine

Normethadone

Oxycodone

Pentazocine

Pethidine

Phenazocine

Phendimetrazine

Phenmetrazine

Pholcodine except where it is compounded with one or more other medicaments in such a way that it cannot be readily compounded and where it is contained—

- (a) in divided preparations containing 100 mg or less of pholcodine per dosage unit; or
- (b) in undivided preparations containing 2.5% or less of pholcodine

Racemethorphan

Racemoramide

Racemorphan

SIXTH SCHEDULE

[s. 60]

PART I

AMENDMENTS OF THE HEALTH ACT 1937-1984

Provision Amended	Amendment
Section 3	Omit the heading "Division IV—Dangerous Drugs, Prohibited Plants and Poisons (ss. 130-131B)," and substitute the heading "Division IV—Drug Dependent Persons and Poisons (ss. 130B-131),".
Section 5	Omit the definition "Prohibited Plant".
Part IV	In the heading "DIVISION IV—DANGEROUS DRUGS, PROHIBITED PLANTS AND POISONS" appearing between sections 129C and 130 omit the words "DANGEROUS DRUGS, PROHIBITED PLANTS" and substitute the words "DRUG DEPENDENT PERSONS";
Part IV	Repeal sections 130, 130A, 130I, 130J, 130K, 130L, 130LA, 130M, 130N, 131B;
Section 130B	<p>(a) in subsection (1), in the first paragraph—</p> <p>(i) omit the words "against any provision of section 130 of this Act" and substitute the words "defined in Part II of the <i>Drugs Misuse Act 1986</i>";</p> <p>(ii) omit the words "it is desirable that the offender receive treatment in respect of his smoking, consumption or administration to himself of dangerous drugs" and substitute the words "the offender is a drug dependent person";</p> <p>(b) omit subsection (5).</p>
Section 130O	<p>(a) omit paragraph (a) and substitute the following paragraph:—</p> <p>"(a) "drug dependent person" when used in section 130B of this Act means a person—</p> <p>(i) who, as a result of repeated administration to him of dangerous drugs—</p> <p>(A) demonstrates impaired control;</p> <p>or</p> <p>(B) exhibits drug-seeking behaviour that suggests impaired control,</p> <p>over his continued use of dangerous drugs; and</p> <p>(ii) who, when the administration to him of dangerous drugs ceases, suffers or is likely to suffer mental or physical distress or disorder.";</p>

SIXTH SCHEDULE—*continued*AMENDMENTS OF THE HEALTH ACT 1937-1984—*continued*

Provision Amended	Amendment
Section 131A . . .	<p>(b) in paragraph (c), omit the expression “130A,”.</p> <p>(a) in the note appearing in and at the beginning of the section omit the words “dangerous drugs and”;</p> <p>(b) in the first paragraph omit all words from and including the expression “that—” to and including the words “compound of cyanogen” and substitute the words “that any cyanide of potassium or any poisonous compound of cyanogen”;</p> <p>(c) in the second paragraph, omit the words “dangerous drug,” where twice occurring and the words “section 130M, or as the case may be,”.</p>
Section 146	<p>(a) in the note appearing in and at the beginning of the section omit the words “and State botanist’s”;</p> <p>(b) omit subsection (5).</p>
Section 148 (1)	Omit all words from and including the words “incidental to—” to and including the words “prohibited plant,” and substitute the words “incidental to the analysis of any drug or article (including an analysis made under section 147)”.
Section 152 (1)	<p>(a) in paragraph (xvii) omit the words “, prohibited plants,” “, or prohibited plants,” and “, prohibited plants” wherever occurring;</p> <p>(b) in paragraph (xx) (c), omit the words “or the examination of an article by a State botanist”.</p>
Section 178	<p>in paragraph (7)—</p> <p>(a) omit subparagraph (e) and the expression “; or” immediately preceding that subparagraph;</p> <p>(b) omit from provision (i) the expression “, (d) or (e)” and substitute the expression “or (d)”.</p>

PART II
AMENDMENT OF THE BAIL ACT 1980-1984

Provision Amended	Amendment
Section 13 (1) (b)	Omit the words "section 130 (2) or 130 (2A) of the <i>Health Act 1937-1978</i> " and substitute the words "section 5, 6, 7, 8, 9, 10, 11, or 12 of the <i>Drugs Misuse Act 1986</i> ".