



# **Drugs Misuse Act 1986**

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Queensland

# Drugs Misuse Act 1986

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# Drugs Misuse Act 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**

## Part 1 Preliminary

### 1 Short title

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

### 4 Definitions

In this Act—

*analogue*, of a dangerous drug, see section 4A.

*analyst* means a person who, under section 4C, is appointed as, or declared to be, an analyst.

*approved form* means a form approved by the chief executive under section 133.

*Australian Crime Commission* means the Australian Crime Commission established under the *Australian Crime Commission Act 2002* (Cwlth), section 7.

*cannabis*, for part 5B, see section 46.

*category 1 researcher*, for part 5B, see section 46.

*category 1 researcher licence*, for part 5B, see section 46.

*category 2 researcher*, for part 5B, see section 46.

*category 2 researcher licence*, for part 5B, see section 46.

*certified cannabis seed*, for part 5B, see section 46.

**challenge notice** means a written notice that informs the prosecution that a person intends to challenge a claim intended to be made by the prosecution and of which the person has been informed in a prosecution information notice.

**chief executive for health** means the chief executive of the department in which the *Health Act 1937* is administered.

**class A research cannabis plant**, for part 5B, see section 46.

**class A research cannabis seed**, for part 5B, see section 46.

**class B research cannabis plant**, for part 5B, see section 46.

**class B research cannabis seed**, for part 5B, see section 46.

**close associate**, for part 5B, see section 46.

**compliance notice**, for part 5B, see section 46.

**controlled substance** means—

- (a) a substance specified in the *Drugs Misuse Regulation 1987*, schedule 6; or
- (b) a salt, derivative or stereo-isomer of a substance specified in the *Drugs Misuse Regulation 1987*, schedule 6; or
- (c) a salt of a derivative or stereo-isomer of a substance specified in the *Drugs Misuse Regulation 1987*, schedule 6;

but does not include a compound consisting of a substance specified in the *Drugs Misuse Regulation 1987*, schedule 6 and of a substance not specified in the *Drugs Misuse Regulation 1987*, schedule 6.

**controlled thing**, for part 5A, see section 43A.

**court**, for part 5, see section 30(1).

**criminal history**, for part 5B, see section 46.

**dangerous drug** means—

- (a) a thing stated in the *Drugs Misuse Regulation 1987*, schedule 1 or 2; or

- 
- (b) any part of a plant that is a thing stated in the *Drugs Misuse Regulation 1987*, schedule 1 or 2; or
  - (c) a derivative or stereo-isomer of a thing mentioned in paragraph (a) or (b); or
  - (d) a salt of a thing mentioned in any of paragraphs (a) to (c); or
  - (e) an analogue of a thing mentioned in any of paragraphs (a) to (d); or
  - (f) a thing that has, or is intended to have, a pharmacological effect of a thing mentioned in any of paragraphs (a) to (e); or

*Note—*

See also section 4BA for when a thing is intended to have a pharmacological effect of a thing mentioned in any of paragraphs (a) to (e).

- (g) a thing mentioned in any of paragraphs (a) to (f) that is contained in—
  - (i) a natural substance; or
  - (ii) a preparation, solution or admixture.

***denatured***, for part 5B, see section 46.

***drug dependent person*** means a person—

- (a) who, as a result of repeated administration to the person of dangerous drugs—
  - (i) demonstrates impaired control; or
  - (ii) exhibits drug-seeking behaviour that suggests impaired control;over the person's continued use of dangerous drugs; and
- (b) who, when the administration to the person of dangerous drugs ceases, suffers or is likely to suffer mental or physical distress or disorder.

***educational institution*** means—

- (a) a State instructional institution or non-State school within the meaning of the *Education (General Provisions) Act 2006*; or
- (b) any other similar institution that may from time to time be established;

but does not include an educational institution conducting only tertiary or adult education.

***environmental health officer*** means a person who is appointed as an inspector under the *Health Act 1937*, section 137.

***executive officer***—

- (a) for part 5A, see section 43A; or
- (b) for part 5B, see section 46.

***grower***, for part 5B, see section 46.

***grower licence***, for part 5B, see section 46.

***industrial cannabis fibre***, for part 5B, see section 46.

***industrial cannabis plant***, for part 5B, see section 46.

***industrial cannabis seed***, for part 5B, see section 46.

***information notice***, for part 5B, see section 46.

***inspector***, for part 5B, see section 46.

***intellectually impaired person*** means a person who has a disability that—

- (a) is attributable to an intellectual, psychiatric, cognitive or neurological impairment or a combination of these; and
- (b) results in—
  - (i) a substantial reduction of the person's capacity for communication, social interaction or learning; and
  - (ii) the person needing support.

***licence***, for part 5B, see section 46.

***licensee***, for part 5B, see section 46.

***obstruct***, for part 5A, see section 43A.

***official identity card***, of an environmental health officer, means an identity card issued by the chief executive for health containing a recent photograph of the officer and identifying the officer as an inspector under the *Health Act 1937*, section 137.

***pharmacist*** means a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession, other than as a student.

***place*** includes a vehicle.

***police officer*** includes a person mentioned in the *Australian Crime Commission Act 2002* (Cwlth), section 49, whose services are made available to the Australian Crime Commission.

***prescribed documents***, for part 5A, see section 43A.

***prescribed photograph***, for part 5B, see section 46.

***proceeds***, for part 5, see section 30(1).

***processed cannabis***, for part 5B, see section 46.

***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).

***prosecution information notice*** means a written notice that informs a person that—

- (a) the prosecution intends to claim that—
  - (i) for an offence to which section 130 applies—a substance was a controlled substance; or
  - (ii) for an offence to which section 131 applies—specified equipment was used in the production of a relevant dangerous drug; or

- (iii) for an offence to which section 131A applies—a substance was a medicine or poison or veterinary chemical product; and
- (b) if the person wants to challenge the claim, the defendant must give a challenge notice to—
  - (i) if the proceedings have been brought by a police officer—the commissioner of the police service; or
  - (ii) if the proceedings have been brought by an environmental health officer—the chief executive for health; and
- (c) a challenge notice must be given within 28 days after the prosecution information notice is served on the person.

**register**, for part 5A, see section 43A.

**relevant authority**, for part 5B, see section 46.

**relevant position**, for part 5B, see section 46.

**relevant power**, for part 5B, see section 46.

**relevant transaction**, for part 5A, see section 43A.

**smoke** includes inhale.

**supply**—

- (a) for part 5A—see section 43A; or
- (b) otherwise, means—
  - (i) give, distribute, sell, administer, transport or supply; or
  - (ii) offering to do any act specified in subparagraph (i); or
  - (iii) doing or offering to do any act preparatory to, in furtherance of, or for the purpose of, any act specified in subparagraph (i).

**THC** means tetrahydrocannabinol.

**treatment order** means a drug and alcohol treatment order under the *Penalties and Sentences Act 1992*, part 8A.

***unlawfully*** means without authorisation, justification or excuse by law.

***vehicle*** includes any aircraft or vessel.

***whole weight***, of a dangerous drug, means the total weight of the drug and any other substance with which it is mixed or in which it is contained.

#### **4A Meaning of *analogue***

- (1) A thing is an ***analogue*** of a dangerous drug if it is any of the following in relation to the dangerous drug, regardless of how the thing is made—
- (a) a structural isomer with the same constituent groups;
  - (b) an alkaloid;
  - (c) a structural modification that is any of the following—
    - (i) the replacement of up to 2 carbocyclic or heterocyclic ring structures with different carbocyclic or heterocyclic ring structures;
    - (ii) the addition of hydrogen atoms to 1 or more unsaturated bonds;
    - (iii) the replacement of 1 or more of the groups or atoms stated in subsection (2) with 1 or more of the other groups or atoms stated in that subsection;
  - (d) any other homologue.
- (2) For subsection (1)(c)(iii), the following groups and atoms are stated—
- (a) alkoxy, cyclic diether, acyl, acyloxy, mono-amino or dialkylamino groups with up to 6 carbon atoms in any alkyl residue;
  - (b) alkyl, alkenyl or alkynyl groups with up to 6 carbon atoms in the group, where the group is attached to oxygen, nitrogen, sulphur or carbon;

*Example—*

an ester or ether group attached to oxygen

- (c) halogen, hydroxy, nitro or amino groups;
- (d) hydrogen atoms;
- (e) carbonyl, ester or amide groups.

(3) In this section—

*addition* has its ordinary meaning.

*replacement* has its ordinary meaning.

#### **4AA Salts, derivatives and stereo-isomers of particular dangerous drugs**

A dangerous drug stated in the *Drugs Misuse Regulation 1987*, schedule 3, 4 or 5 includes—

- (a) a salt, derivative or stereo-isomer of the drug; and
- (b) a salt of a derivative or stereo-isomer of the drug.

#### **4B Construction of particular terms**

In—

- (a) this Act the term ‘an offence defined in part 2’; and
- (b) sections 10, 11 and 12 the term ‘a crime defined in this part’;

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

#### **4BA Provision about s 4, definition *dangerous drug*, paragraph (f)**

- (1) This section applies if, in a proceeding for an offence against this or another Act, it is relevant to prove that a thing is a dangerous drug under section 4, definition *dangerous drug*, paragraph (f).
- (2) The thing is a dangerous drug if it is intended, by the accused person, to have a pharmacological effect of a thing mentioned



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in section 4, definition *dangerous drug*, paragraphs (a), (b), (c), (d) or (e).

#### 4C Analysts

- (1) The Minister may, by gazette notice, appoint as an analyst for this Act, a person the Minister is satisfied has the qualifications, standing and experience necessary to be an analyst for this Act.
- (2) Also, a regulation may declare a person who holds a stated appointment, qualification or other recognition under the law of another State or the Commonwealth as an analyst, whether that or another term is used, to be an analyst for this Act.
- (3) The Minister may delegate the Minister's function under subsection (1) to—
  - (a) the chief executive; or
  - (b) an officer of the department who the Minister is satisfied has the qualifications, experience or standing necessary to perform the function.

*Example of standing—*

the officer's classification or level in the department

- (4) In this section—  
*function* includes power.

#### 4D Non-application of ss 5, 6, 8 and 9 to particular manufactured products

- (1) Sections 5, 6, 8 and 9 do not apply to a manufactured product.
- (2) In this section—

*administered*, in relation to a manufactured product, means administered, by any means, for any purpose that includes the alteration of a person's behaviour, mood or perception.

*Examples of means by which a manufactured product may be administered—*

injection by syringe or inhalation of a vapour

*industrial cannabis plant* has the same meaning as in section 46.

*manufactured product* means a product that—

- (a) is made from, or partly from, processed cannabis that—
  - (i) is harvested from industrial cannabis plants; and
  - (ii) has a concentration of THC in it of not more than 0.1%; and
- (b) is in a form that stops it from being smoked or administered.

*processed cannabis* has the same meaning as in section 46.

#### **4E Notes**

A note in the text of this Act is part of this Act.

## **Part 2 Drug offences**

### **5 Trafficking in dangerous drugs**

- (1) A person who carries on the business of unlawfully trafficking in a dangerous drug is guilty of a crime.  
Maximum penalty—25 years imprisonment.
- (2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.
- (3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

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## 6 Supplying dangerous drugs

- (1) A person who unlawfully supplies a dangerous drug to another, whether or not such other person is in Queensland, is guilty of a crime.

Maximum penalty—

- (a) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 and the offence is one of aggravated supply under subsection (2)(a)—life imprisonment; or
  - (b) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 and the offence is one of aggravated supply under subsection (2)(aa), (b), (c), (d) or (e)—25 years imprisonment; or
  - (c) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 and paragraphs (a) and (b) do not apply—20 years imprisonment; or
  - (d) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2 and the offence is one of aggravated supply under subsection (2)(a)—25 years imprisonment; or
  - (e) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2 and the offence is one of aggravated supply under subsection (2)(aa), (b), (c), (d) or (e)—20 years imprisonment; or
  - (f) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2 and paragraphs (d) and (e) do not apply—15 years imprisonment.
- (2) For the purposes of this section, an offence is one of aggravated supply if the offender is an adult and—
- (a) the person to whom the thing is supplied is a minor under 16 years; or
  - (aa) the person to whom the thing is supplied is a minor who is 16 years or more; or

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- (b) the person to whom the thing is supplied is an intellectually impaired person; or
  - (c) the person to whom the thing is supplied is within an educational institution; or
  - (d) the person to whom the thing is supplied is within a correctional facility; or
  - (e) the person to whom the thing is supplied does not know he or she is being supplied with the thing.
- (3) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.
- (4) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

## **7 Receiving or possessing property obtained from trafficking or supplying**

- (1) A person who receives or possesses property, other than a dangerous drug, (*offence property*) 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.
- Maximum penalty—20 years imprisonment.
- (2) Where the offence property has been—
- (a) mortgaged, pledged or exchanged for other property; or
  - (b) converted into other property in any manner whatever;

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any person who knowing or believing—

- (c) that the other property is wholly or in part the property for which the offence property has been mortgaged, pledged or exchanged or into which the same has been converted; and
- (d) that the offence property 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 offence property has been mortgaged, pledged or exchanged or into which the offence property has been converted, is guilty of a crime.

Maximum penalty—20 years imprisonment.

- (2A) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.
- (2B) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.
- (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**

- (1) A person who unlawfully produces a dangerous drug is guilty of a crime.

Maximum penalty—

- (a) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 and the quantity of the thing is of or exceeds the quantity specified in the *Drugs Misuse Regulation 1987*, schedule 4 in respect of that thing—25 years imprisonment; or

- (b) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 and the quantity of the thing is of or exceeds the quantity specified in the *Drugs Misuse Regulation 1987*, schedule 3 but less than the quantity specified in the *Drugs Misuse Regulation 1987*, schedule 4 in respect of that thing and the person convicted—
    - (i) satisfies the judge constituting the court before which the person is convicted that when the person committed the offence the person was a drug dependent person—20 years imprisonment;
    - (ii) does not so satisfy the judge constituting the court before which the person is convicted—25 years imprisonment; or
  - (c) in any other case where the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1—20 years imprisonment; or
  - (d) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2 and the quantity of the thing is of or exceeds the quantity specified in the *Drugs Misuse Regulation 1987*, schedule 3 in respect of that thing—20 years imprisonment; or
  - (e) in any other case where the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2—15 years imprisonment.
- (2) For a dangerous drug that is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1, part 2 (a **part 2 drug**), a reference in subsection (1) to the quantity of the thing is a reference to the whole weight of all the part 2 drugs (whether of the same or different types) that the person is convicted of unlawfully producing.
- (3) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.
- (4) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and*

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*Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

## 8A Publishing or possessing instructions for producing dangerous drugs

- (1) A person who unlawfully publishes instructions, or unlawfully has possession of a document containing instructions, about the way to produce a dangerous drug commits a crime.

Maximum penalty—

- (a) if the dangerous drug to which the instructions relate is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1—25 years imprisonment; or
- (b) if the dangerous drug to which the instructions relate is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2—20 years imprisonment.
- (2) It is a defence to a charge of an offence against subsection (1) of unlawfully publishing instructions, or unlawfully possessing a document containing instructions, about the way to produce cannabis as a commercial fibre or seed crop, for a person to prove that the person published the instructions, or possessed the document containing the instructions, for a purpose authorised under part 5B.
- (3) In this section—

**document** containing instructions about the way to produce a dangerous drug includes anything designed to enable electronic access specifically to the instructions.

*Example of a thing designed to enable electronic access to instructions—*

a document containing a computer password specifically designed to give access through a computer to the instructions

**publish** includes publish to any person and supply, exhibit and display to any person, whether the publication is made orally or in written, electronic or another form.

## 9 Possessing dangerous drugs

- (1) A person who unlawfully has possession of a dangerous drug is guilty of a crime.

Maximum penalty—

- (a) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 and the quantity of the thing is of or exceeds the quantity specified in the *Drugs Misuse Regulation 1987*, schedule 4 in respect of that thing—25 years imprisonment; or
- (b) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 and the quantity of the thing is of or exceeds the quantity specified in the *Drugs Misuse Regulation 1987*, schedule 3 but is less than the quantity specified in the *Drugs Misuse Regulation 1987*, schedule 4 in respect of that thing and the person convicted—
- (i) satisfies the judge constituting the court before which the person is convicted that when the person committed the offence the person was a drug dependent person—20 years imprisonment; or
- (ii) does not so satisfy the judge constituting the court before which the person is convicted—25 years imprisonment; or
- (c) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2 and the quantity of the thing is of or exceeds the quantity specified in the *Drugs Misuse Regulation 1987*, schedule 3 in respect of that thing—20 years imprisonment; or
- (d) in any other case where the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 or 2—15 years imprisonment.
- (2) For a dangerous drug that is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1, part 2 (a **part 2 drug**), a reference in subsection (1) to the quantity of the thing is a reference to the whole weight of all the part 2 drugs (whether



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of the same or different types) that the person is convicted of unlawfully possessing.

## **9A Possessing relevant substances or things**

- (1) A person who unlawfully possesses a relevant substance or thing commits a crime.

Maximum penalty—15 years imprisonment.

- (1A) It is a defence to a charge of an offence against subsection (1) for a person to prove that the person has a reasonable excuse for possessing the relevant substance or thing.

- (2) In this section—

*relevant substance or thing* means—

- (a) a substance that is, or contains, a controlled substance and the gross weight of the relevant substance is of, or exceeds, the gross weight specified in the *Drugs Misuse Regulation 1987*, schedule 8A in respect of the relevant substance; or
- (b) substances that together are, or contain, a controlled substance and the total gross weight of the relevant substances is of, or exceeds, the total of the gross weights specified in the *Drugs Misuse Regulation 1987*, schedule 8A in respect of the relevant substances; or
- (c) a thing specified in the *Drugs Misuse Regulation 1987*, schedule 8B.

## **9B Supplying relevant substances or things**

- (1) A person who unlawfully supplies a relevant substance or thing as defined under section 9A(2) to another, whether or not the other person is in Queensland, for use in connection with the commission of a crime under section 8, commits a crime.

Maximum penalty—15 years imprisonment.

- (2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.
- (3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

### **9C Producing relevant substances or things**

- (1) A person who unlawfully produces a relevant substance or thing as defined under section 9A(2), for use in connection with the commission of a crime under section 8, commits a crime.

Maximum penalty—15 years imprisonment.

- (2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.
- (3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

### **9D Trafficking in relevant substances or things**

- (1) A person who carries on the business of unlawfully trafficking in a relevant substance or thing as defined under section 9A(2), for use in connection with the commission of a crime under section 8, commits a crime.

Maximum penalty—20 years imprisonment.

- (2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.
- (3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and*

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*Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

## 10 Possessing things

- (1) A person who has in his or her possession anything—
- (a) for use in connection with the commission of a crime defined in this part; or
  - (b) that the person has used in connection with such a purpose;

is guilty of a crime.

Maximum penalty—15 years imprisonment.

- (2) A person who unlawfully has in his or her possession anything (not being a hypodermic syringe or needle)—
- (a) for use in connection with the administration, consumption or smoking of a dangerous drug; or
  - (b) that the person has used in connection with such a purpose;

commits an offence against this Act.

Maximum penalty—2 years imprisonment.

- (3) A person (other than a medical practitioner, pharmacist or person or member of a class of persons authorised so to do by the Minister administering the *Health Act 1937*) who supplies a hypodermic syringe or needle to another, whether or not such other person is in Queensland, for use in connection with the administration of a dangerous drug commits an offence against this Act.

Maximum penalty—2 years imprisonment.

- (4) A person who has in his or her possession a thing being a hypodermic syringe or needle who fails to use all reasonable care and take all reasonable precautions in respect of such thing so as to avoid danger to the life, safety or health of another commits an offence against this Act.

Maximum penalty—2 years imprisonment.

(4AA) For subsection (4), it is immaterial whether the hypodermic syringe or needle was for use, or had been used, in connection with the administration of a dangerous drug.

(4A) A person who has in his or her possession a hypodermic syringe or needle that has been used in connection with the administration of a dangerous drug who fails to dispose of such hypodermic syringe or needle in accordance with the procedures prescribed by regulation commits an offence against this Act.

Maximum penalty—2 years imprisonment.

(6) For subsection (1), the dangerous drug to which the commission of a crime relates is the dangerous drug directly or indirectly involved and in relation to which proof is required to establish the commission of the crime.

*Example—*

Suppose a person is guilty of a crime against this section because he or she has in his or her possession equipment for use in connection with the commission of a crime defined in section 8 of unlawfully producing a dangerous drug. That dangerous drug is the dangerous drug referred to in the penalty for subsection (1).

## **10A Possessing suspected property**

- (1) A person who has in his or her possession any property (other than a dangerous drug, hypodermic syringe or needle) reasonably suspected of—
- (a) having been acquired for the purpose of committing an offence defined in this part; or
  - (b) having been used in connection with the commission of such an offence; or
  - (c) having been furnished or intended to be furnished for the purpose of committing such an offence; or
  - (d) being the proceeds of such an offence; or
  - (e) having been acquired with the proceeds of such an offence; or

(f) being property into which the proceeds of such an offence have, in some other manner, been converted;

who does not give an account satisfactory to the court of how the person lawfully came by or had such property in the person's possession commits an offence against this Act.

Maximum penalty—2 years imprisonment.

(2) Where the person declares that he or she received the property from some other person or that he or she was employed as a carrier, agent or servant to convey the property to some other person, the court may cause every such person and also, if necessary, every other person through whose possession the property has passed to be brought to the same or another court and examined concerning the property.

(3) A person brought to the court pursuant to subsection (2) who appears to the court to have had possession of the property and to have had reasonable cause to believe the same—

(a) to have been acquired for the purpose of committing an offence defined in this part; or

(b) to have been used in connection with the commission of such an offence; or

(c) to have been furnished or intended to be furnished for the purpose of committing such an offence; or

(d) to be the proceeds of such an offence; or

(e) to have been acquired with the proceeds of such an offence; or

(f) to be property into which the proceeds of such an offence have, in some other manner, been converted;

commits an offence against this Act.

Maximum penalty—2 years imprisonment.

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

## **10B Possession of a prohibited combination of items**

- (1) A person who unlawfully possesses a prohibited combination of items commits a crime.

Maximum penalty—25 years imprisonment.

- (2) To remove any doubt, it is declared that a person who unlawfully possesses a prohibited combination of items commits an offence against subsection (1) even if the items are separate or at different places.

*Example for subsection (2)—*

A combination of chemical A, chemical B and chemical C is a prohibited combination of items. John Smith unlawfully possesses chemical A, chemical B and chemical C. John Smith commits a crime under subsection (1) even though chemical A is in his garage, chemical B is in his storage shed and chemical C is in his utility room.

- (3) In this section—

*prohibited combination of items* means a combination of items that is prescribed under the *Drugs Misuse Regulation 1987*, schedule 8C.

## **11 Permitting use of place**

- (1) 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.

Maximum penalty—15 years imprisonment.

- (2) For subsection (1), the dangerous drug to which the commission of a crime relates is the dangerous drug directly or indirectly involved and in relation to which proof is required to establish the commission of the crime.

*Example—*

Suppose a person is guilty of a crime against this section because, being the occupier of a place, he or she permitted another person to use the place for the commission of a crime defined in section 8A of publishing instructions about the way to produce a dangerous drug. That dangerous drug is the dangerous drug referred to in the penalty for subsection (1).

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## 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

- (1) Where a person charged with the commission of a crime defined in section 6, 8, 9, 9A, 9B, 9C, 10(1), 11 or 12 or an attempt to commit any such crime is liable upon conviction to not more than 15 years imprisonment, proceedings in respect of a charge of the offence may be taken summarily.
- (2) Where a person is charged with the commission of a crime defined in section 7 or an attempt to commit any such crime in respect of property obtained from the commission of—
  - (a) an offence defined in section 6; or
  - (b) an act referred to in section 7(1)(b) which if it had been done in Queensland would have constituted an offence defined in section 6;

which offence or act is of such a nature, or is committed under such circumstances, that the person who committed the offence or act—

- (c) upon conviction is liable, pursuant to section 6, to not more than 15 years imprisonment; or
- (d) might be summarily convicted under the laws in force in the place where it was committed;

proceedings in respect of a charge of the crime or an attempt to commit any such crime may be taken summarily.

- (2A) Despite subsections (1) and (2), proceedings may not be taken summarily in relation to a charge of an offence defined in section 6, 7, 8, 9B or 9C if the prosecution alleges the offence

was committed with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q.

- (3) If a person is charged with the commission of a crime, or an attempt to commit a crime, defined in section 8A, proceedings in relation to the charge may be taken summarily.
- (4) A person against whom proceedings are taken summarily under this section is liable, on conviction, to not more than—
  - (a) if a treatment order is made for the person—4 years imprisonment; or
  - (b) otherwise—3 years imprisonment.

### **13A Offences that may be dealt with summarily if treatment order is sought**

- (1) If a person is charged with the commission of an offence mentioned in subsection (3), or an attempt to commit the offence, proceedings in relation to the charge may be taken summarily.
- (2) However, the proceedings may be taken summarily only if both the person and prosecution agree to a treatment order being made for the offence.
- (3) For subsection (1), the offences are—
  - (a) an offence mentioned in section 6(1), if the person is liable on conviction to not more than the penalty mentioned in paragraph (c) of the maximum penalty for that section; or
  - (b) an offence mentioned in section 8(1), if the person is liable on conviction to not more than the penalty mentioned in paragraph (b)(i), (c) or (d) of the maximum penalty for that section; or
  - (c) an offence defined in section 9(1), if—
    - (i) the person is liable on conviction to a penalty mentioned in paragraph (b)(i) or (c) of the maximum penalty for that section; and



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- (ii) the offence can not be dealt with summarily under section 14.
- (4) Despite subsection (1), proceedings may not be taken summarily in relation to a charge of an offence mentioned in subsection (3) if the prosecution alleges the offence was committed with the circumstances of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q.
- (5) A person against whom proceedings are taken summarily under this section is liable, on conviction, to not more than 4 years imprisonment.

#### **14 Other offences that may be dealt with summarily if no commercial purpose alleged**

- (1) Subject to subsection (2), if a person charged with the commission of a crime defined in section 9, or an attempt to commit the crime, is liable on conviction to more than 15 years imprisonment, proceedings for a charge of the offence may be taken summarily.

*Editor's note—*

section 9 (Possessing dangerous drugs)

*Note—*

It is open to the director of public prosecutions to issue guidelines for deciding whether to take proceedings summarily under subsection (1). (See the *Director of Public Prosecutions Act 1984*, section 11 (Powers of director).)

- (2) Proceedings may not be taken summarily if the prosecution alleges that the possession the subject of the charge was for a commercial purpose.
- (3) A person against whom proceedings are taken summarily under this section is liable, on conviction, to not more than—
- (a) if a treatment order is made for the person under the *Penalties and Sentences Act 1992*, part 8A—4 years imprisonment; or
- (b) otherwise—3 years imprisonment.

## Part 5 Forfeiture and restraint

### 30 Interpretation

(1) In this part—

*court* means—

- (a) the Supreme Court; or
- (b) the District Court; or
- (c) in relation to an application for the forfeiture of dangerous drugs to any value, or for the forfeiture or restraint of personal property (other than an estate or interest in land) with a value of not more than \$25,000 or to both these applications—
  - (i) a Magistrates Court constituted by a magistrate; or
  - (ii) if the offender is a child—the Childrens Court constituted by a Childrens Court judge, Childrens Court magistrate or 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 2 if—

- (a) that person has been found guilty of the offence by a court, or has pleaded that he or she 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 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 authorised by this part.

### **32 Forfeiture of dangerous drugs**

- (1) If a court is satisfied beyond reasonable doubt that a thing, or any part of it, is any of the following, the court may, on application made to it, order that all or any part of the thing be forfeited to the State—
  - (a) a dangerous drug;
  - (b) a chemical used or intended to be used in or for manufacturing a dangerous drug;
  - (c) property contaminated by a chemical used in or for manufacturing a dangerous drug.
- (2) The application may be made in the absence of any other party.
- (3) If, in a proceeding against a person for a charge of an offence against a provision of part 2, the person admits to a court either of the following in relation to a thing the charge alleges is or contains a dangerous drug, the court may order that the thing be forfeited to the State—
  - (a) the identity and quantity of the dangerous drug;
  - (b) the quantity, but not the identity of the thing alleged to be a dangerous drug.
- (4) If the court makes an order on an application under subsection (1) or (3), in relation to a thing that is or contains a dangerous drug, the court must, in its order, make a finding of fact as to—
  - (a) the identity of the dangerous drug; and
  - (b) the quantity of the thing ordered to be forfeited.

- (5) However, the court may not make an order of fact as to the identity of a dangerous drug unless, under subsection (3), the person charged admits the identity of the dangerous drug.
- (6) Production in proceedings in respect of a charge against a person of having committed an offence defined in part 2 of an order made under subsection (1) or (3) is, unless the contrary is proved, conclusive evidence of the matters contained therein.
- (7) Subsection (6) applies in relation to an order made under subsection (1) on or after the commencement of this subsection only if a representative sample of the thing forfeited is retained for analysis and, if required, production before a court in a proceeding for a charge of an offence to which the thing relates.
- (8) If a court finds a person guilty of an offence against a provision of part 2, whether or not a conviction is recorded for the offence, any of the following that is alleged to be involved in the offence is forfeited to the State—
  - (a) a dangerous drug for which an order was not made under subsection (1) or (3);
  - (b) a chemical used or intended to be used in or for manufacturing a dangerous drug;
  - (c) property contaminated by a chemical used in or for manufacturing a dangerous drug.
- (9) Where a person charged with an offence defined in part 2 is not convicted of any offence on that charge the court before which the person was charged may order—
  - (a) that anything 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 anything 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.

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**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 2; or
  - (b) used in connection with the commission of such an offence; or
  - (c) furnished or intended to be furnished for the purpose of committing such an offence; or
  - (d) the proceeds of such an offence; or
  - (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 2 (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 realise 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 2 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 2; and
  - (b) that a person—
    - (i) has been convicted of such an offence; or
    - (ii) is dead, can not 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 the person gave valuable consideration for the property; and
  - (b) that at the time of receiving or acquiring the property the person 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

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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 2 of which the person 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 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 authorised in that behalf by the Minister, upon demand of that authorised person.
- (3) Where a person has delivered property or documents of title to property in compliance with subsection (2) the person shall thereby be discharged from any duty or obligation had by him or her 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 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 or her 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 as being the holder upon trust for and on behalf of the Crown of the property;in the register in his or her 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 or her.
- (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 if that court makes the order; or
  - (b) the registrar of the Childrens Court constituted by a judge if that court makes the order; or



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- (c) the clerk of the court at the place where—
- (i) the Childrens Court constituted by a Childrens Court magistrate or a magistrate; or
  - (ii) a Magistrates Court constituted by a magistrate;

is the court making 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 the registrar 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; or
  - (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 last mentioned 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 the following—

- 
- (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 connection 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 2; 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 the person's legal personal representative may, by application in writing, request the Minister to return the property.
- (3) The Minister by 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 first mentioned person that the property will be returned to the first mentioned 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 first mentioned 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 first mentioned 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 first mentioned 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 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, 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 2; 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; and

- (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; and
  - (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 or she is manager in and for the purposes of the management as if the manager were the absolute owner thereof subject always to the manager being prudent and diligent in the management thereof and to the manager complying with conditions specified in the order as regulating the 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 the applicant's knowledge, is holding property affected by the order on account of the person to whose property the order relates.
- (5A) In the case of property held by a financial institution or body corporate it shall be sufficient compliance with subsection (5) 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 financial institution, body corporate or such last mentioned 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 magistrate commits an offence against this Act.

Maximum penalty—2 years imprisonment.

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

Maximum penalty—5 years imprisonment.

- (9) Upon production of a copy of a restraining order made under this section, the registrar of titles 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 financial institution 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 2; or
  - (b) upon the making of a forfeiture order in respect of property to which the restraining order relates; or
  - (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; or
  - (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 or her 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 5A**                      **Information requirements for controlled substances and controlled things**

### **43A**    **Definitions**

In this part—

***controlled thing*** means a thing specified in the *Drugs Misuse Regulation 1987*, schedule 8B.

***executive officer***, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

***obstruct*** includes hinder, resist and attempt to obstruct.

***prescribed documents*** means the documents prescribed by regulation mentioned in section 43D(1).

***register*** means the register mentioned in section 43D(1)(c).

***relevant transaction*** see section 43C.

***supply*** means give, distribute, sell or supply.

### **43B Application of part**

This part applies to the supply of a controlled substance, or a controlled thing, under a relevant transaction.

### **43C What is a *relevant transaction***

A ***relevant transaction*** for the supply of a controlled substance or a controlled thing is—

- (a) a transaction for the supply of the substance or thing by a person to anyone else in the ordinary course of the person's business; or
- (b) another act, prescribed by regulation, by which the substance or thing is supplied.

### **43D Requirements for supply of controlled substance or controlled thing under relevant transactions**

- (1) A person who supplies a controlled substance, or controlled thing, under a relevant transaction to anyone else (a ***recipient***) must—

- 
- (a) obtain, as prescribed by regulation, from the recipient the documents, including the evidence of the recipient's identity, prescribed by regulation; and
  - (b) keep, as prescribed by regulation—
    - (i) the documents mentioned in paragraph (a); and
    - (ii) any other document about the supply of the controlled substance, or controlled thing, under the relevant transaction; and
  - (c) keep, as prescribed by regulation, a relevant transactions register (a *register*) showing the details of—
    - (i) the relevant transactions; and
    - (ii) if the person has to report the loss or theft of a controlled substance, or controlled thing, under section 43E—the reporting of the loss or theft to a police officer; and
  - (d) give, as prescribed by regulation, to the commissioner of the police service the documents mentioned in paragraph (a) or (b) prescribed by regulation.

Maximum penalty—

- (a) for a first offence—20 penalty units; or
  - (b) for a second or later offence—40 penalty units.
- (2) This section applies subject to section 43F, which deals with the liability of employees.

### **43E Requirement to report loss or theft of controlled substance or controlled thing**

- (1) This section applies to a person who—
- (a) owns a controlled substance or controlled thing; or
  - (b) has possession of a controlled substance or controlled thing for the purpose of supplying the substance or thing under a relevant transaction.

- (2) If the substance or thing is lost or stolen, the person must report the loss or theft of the substance or thing to a police officer within 2 days after the person finds out about it.

Maximum penalty—

- (a) for a first offence—20 penalty units; or
- (b) for a second or later offence—40 penalty units.
- (3) This section applies subject to section 43F, which deals with the liability of employees.

### **43F Employee's liability**

- (1) In this section—

*information requirements* means the requirements under the following sections—

- section 43D
- section 43E.

- (2) This section applies to an employee who in the ordinary course of employment has the task of complying with the information requirements for the employee's employer.
- (3) If the employee intentionally or recklessly fails to comply with the information requirements, the employee commits an offence.

Maximum penalty—

- (a) for a first offence—20 penalty units; or
- (b) for a second or later offence—40 penalty units.
- (4) In a proceeding, evidence that an employee supplied, or helped in the supply of, a controlled substance or controlled thing under a relevant transaction is evidence that the employee had the task mentioned in subsection (2).

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**43G False name or address**

A person must not obtain, or attempt to obtain, a controlled substance or controlled thing from someone else under a relevant transaction by giving the other person—

- (a) an order for the supply of a controlled substance or controlled thing stating a false name or address; or
- (b) false evidence of the identity of the person to be supplied.

Maximum penalty—20 penalty units.

**43H Production or display of officer's official identity card**

- (1) An environmental health officer may exercise a power under this part in relation to someone else (the *other person*) only if the officer—
  - (a) first produces the officer's official identity card for the other person's inspection; or
  - (b) has the official identity card displayed so that it is clearly visible to the other person.
- (2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the environmental health officer must produce the official identity card for the other person's inspection at the first reasonable opportunity.

**43I Environmental health officer may enter person's premises and inspect register and documents**

- (1) If an environmental health officer suspects on reasonable grounds a person has supplied a controlled substance or controlled thing to anyone else under a relevant transaction, the environmental health officer may enter—
  - (a) a part of the person's business premises open to the public when the part is open to the public; or
  - (b) any part of the premises with the person's consent.

- (2) An environmental health officer who is lawfully on another person's business premises and suspects on reasonable grounds that the person has supplied a controlled substance or controlled thing to anyone else under a relevant transaction may—
- (a) require the person or the person's employee or agent (the *supplier*) to produce the register and the prescribed documents; and
  - (b) inspect, take extracts from and make copies of the register or prescribed documents; and
  - (c) inspect, examine, photograph or film anything stored at the premises that may be a controlled substance or controlled thing; and
  - (d) require the supplier to give the environmental health officer reasonable help to exercise the powers mentioned in paragraphs (b) and (c).

*Example of paragraph (d)—*

An environmental health officer may make a reasonable requirement of the supplier to take an extract from and make copies of the register or prescribed documents for the officer.

- (3) The supplier must—
- (a) produce the register and prescribed documents the environmental health officer has asked for; and
  - (b) comply with a requirement under subsection (2)(d), unless the supplier has a reasonable excuse for not complying with it.

Maximum penalty for subsection (3)—

- (a) for a first offence—20 penalty units; or
- (b) for a second or later offence—40 penalty units.

### **43J Power to seize evidence**

An environmental health officer who is lawfully on someone else's business premises may seize a thing if the officer

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believes on reasonable grounds the thing is evidence of the commission of an offence against this part.

### **43K Receipt for seized things**

- (1) As soon as practicable after an environmental health officer seizes a thing the officer must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the officer must leave the receipt in a conspicuous position and in a reasonably secure way at the place of seizure.
- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the notice required by the section (given the thing's nature, condition and value).

### **43L Procedure after thing seized**

- (1) If a thing is seized by an environmental health officer under section 43J, the officer must allow a person who would be entitled to the seized thing if it were not in the officer's possession to inspect it and, if it is a document, to take extracts from or make copies of it.
- (2) If the seized thing is a document, an environmental health officer may take extracts from or make copies of it.
- (3) The environmental health officer must return the seized thing to the person at the end of—
  - (a) 6 months; or
  - (b) if a prosecution for an offence involving it is started within the 6 months—the prosecution for the offence and any appeal from the prosecution.
- (4) Despite subsection (3), the environmental health officer must return the seized thing to the person immediately the officer stops being satisfied its retention as evidence is necessary.

### **43M Forfeiture on conviction**

- (1) Despite section 43L, if the owner of the seized thing is convicted of an offence for which the thing was retained as evidence under section 43J, the court may order its forfeiture to the State.
- (2) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

### **43N Dealing with forfeited things**

On the forfeiture of a thing to the State under section 43M, the thing becomes the State's property and may be destroyed or disposed of as directed by the commissioner of the police service.

### **43O Power to require name and address**

- (1) An environmental health officer may require a person to state the person's name and address if the environmental health officer—
  - (a) finds the person committing an offence against this part; or
  - (b) finds the person in circumstances that lead, or has information that leads, the environmental health officer to suspect, on reasonable grounds, the person—
    - (i) has committed an offence against section 43G; or
    - (ii) has just committed an offence against another provision of this part; or
  - (c) finds the person on business premises entered by the environmental health officer under section 43I and, after exercising a power under section 43I(2)(b) or (c) on the premises, suspects on reasonable grounds the person has committed an offence against either or both of the following provisions—
    - section 43D



- 
- section 43F(3).
- (2) When making the requirement, the environmental health officer must warn the person it is an offence to fail to state the person's name and address, unless the person has a reasonable excuse.
  - (3) The environmental health officer may require the person to give evidence of the correctness of the person's stated name or address if the officer suspects, on reasonable grounds, the stated name or address is false.
  - (4) A person must comply with a requirement under subsection (1) or (3), unless the person has a reasonable excuse for not complying with it.

Maximum penalty—20 penalty units.

- (5) The person does not commit an offence against this section if—
  - (a) the environmental health officer required the person to state the person's name and address on suspicion of the person having committed an offence against this part; and
  - (b) the person is not proved to have committed the offence.

### **43Q Obstruction of environmental health officers**

A person must not obstruct an environmental health officer in the exercise of a power under this part, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

### **43R Responsibility for acts or omissions of representatives**

- (1) In this section—

*representative* means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or

(b) of an individual—an employee or agent of the individual.

*state of mind* of a person includes—

(a) the person’s knowledge, intention, opinion, belief or purpose; and

(b) the person’s reasons for the intention, opinion, belief or purpose.

(2) Subsections (3) and (4) apply in a proceeding for an offence against this part.

(3) If it is relevant to prove a person’s state of mind about a particular act or omission, it is sufficient to show—

(a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and

(b) the representative had the state of mind.

(4) An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

### **43T Compensation**

(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise by an environmental health officer of a power under this part.

(2) Payment of compensation may be claimed and ordered in a proceeding for—

(a) compensation brought in a court of competent jurisdiction; or

(b) an offence against this part brought against the person making the claim for compensation.

- 
- (3) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

### 43U Confidentiality of information

- (1) A person must not, directly or indirectly, disclose information obtained under section 43D to anyone else.

Maximum penalty—20 penalty units.

- (2) Subsection (1) does not apply to—

- (a) an act done for the purposes of an Act; or

*Examples of an act done for the purposes of an Act—*

- giving documents to the commissioner of the police service under section 43D(1)(d) of this Act
  - producing documents to an environmental health officer under section 43I(2)(a) of this Act
- (b) disclosure of information to a police officer to enable the police officer to perform his or her functions as a police officer; or
- (c) disclosure of information to a member of the staff of the Australian Crime Commission to enable the member to perform his or her functions as a member of the staff of the Australian Crime Commission; or
- (d) disclosure of information in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or
- (e) disclosure of information in a way that conceals the identity of the recipient of a controlled substance or controlled thing, or if the recipient purports to obtain the substance or thing for another person, the identity of the other person.

- (3) In this section—

***recipient*** means recipient as defined under section 43D(1).

## Part 5B                      Commercial production of    industrial cannabis

### Division 1                      Preliminary

#### 44            Object of pt 5B

- (1) The object of this part is to facilitate—
- (a) the processing and marketing of, and trade in, industrial cannabis fibre and fibre products; and
  - (b) the processing and marketing of, and trade in, industrial cannabis seed and seed products for purposes that—
    - (i) include supplying industrial cannabis seed to people who hold cannabis research licences or medicinal cannabis licences under the *Narcotic Drugs Act 1967 (Cwlth)* to use as allowed under that Act; but
    - (ii) otherwise, do not include, directly or indirectly, producing anything for administration to, or smoking by, a person.

- (2) In this section—

***administration***, of industrial cannabis seed or seed product, means administration, by any means, for any purpose that includes the alteration of a person's behaviour, mood or perception.

*Examples of means by which industrial cannabis seed or seed products may be administered—*

injection by syringe or inhalation of a vapour

#### 45            Ways of achieving part's objects

- (1) The ways of achieving this part's objects include enabling the following activities to be carried out under controlled conditions—

- 
- (a) commercial production of industrial cannabis fibre and seed;
  - (b) research into the use of industrial cannabis as a commercial fibre and seed crop;  
*Example of research for paragraph (b)—*
    - field trials using fertilisers or irrigation and different planting rates
  - (c) plant breeding programs using class A or class B research cannabis plants and seed, but only for developing new or improved strains of cannabis for use by growers for the commercial production of industrial cannabis fibre and seed.
- (2) Another way of achieving this part's objects is to enable research to be carried out into—
- (a) how cannabis seed may be denatured; and
  - (b) how processed cannabis may be used.

## 46 Definitions for pt 5B

In this part—

*cannabis* means *Cannabis sativa*.

*category 1 researcher* means a person who holds a category 1 researcher licence that is in force.

*category 1 researcher licence* means a category 1 researcher licence issued under section 49.

*category 2 researcher* means a person who holds a category 2 researcher licence that is in force.

*category 2 researcher licence* means a category 2 researcher licence issued under section 49.

*certified cannabis seed* means seed certified, in the way prescribed under a regulation, by any of the following as seed that will produce cannabis plants with a THC concentration in their leaves and flowering heads of not more than 0.5%—

- (a) a grower;

- (b) a category 1 or category 2 researcher;
- (c) a person authorised under a regulation under section 48 to supply industrial cannabis seed.

***class A research cannabis plant*** means a cannabis plant that has a THC concentration in its leaves and flowering heads of 3% or more.

***class A research cannabis seed*** means—

- (a) seed harvested from a class A research cannabis plant;  
or
- (b) seed that, if grown, will produce a class A research cannabis plant.

***class B research cannabis plant*** means a cannabis plant that has a THC concentration in its leaves and flowering heads of more than 1% but less than 3%.

***class B research cannabis seed*** means—

- (a) seed harvested from a class B research cannabis plant;  
or
- (b) seed that, if grown, will produce a class B research cannabis plant.

***close associate***, of an applicant or licensee, means any of the following—

- (a) a person who—
  - (i) holds or will hold any relevant financial interest in the business of the applicant or licensee; and
  - (ii) because of the interest, is or will be able to exercise a significant influence over or in relation to the conduct of that business;
- (b) a person who—
  - (i) is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the applicant or licensee; and

- (ii) because of the power, is or will be able to exercise a significant influence over or in relation to the conduct of that business;
- (c) a person who holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the applicant or licensee.

**compliance notice** see section 110A(2).

**criminal history**, of a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

**denatured**, for seed harvested from industrial cannabis plants, means that the seed will not grow because it has been cracked, de-hulled, heated, or treated in another way that prevents growth.

**executive officer**, of a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation.

**grower** means a person who holds a grower licence that is in force.

**grower licence** means a grower licence issued under section 49.

**industrial cannabis fibre** means fibre from industrial cannabis plants.

**industrial cannabis plant** means a cannabis plant with a THC concentration in its leaves and flowering heads of not more than 1%.

**industrial cannabis seed** means—

- (a) cannabis seed harvested from an industrial cannabis plant; or
- (b) certified cannabis seed.

**information notice** means a notice complying with the QCAT Act, section 157(2).

***inspector*** means a person appointed under this part as an inspector.

***licence*** means a licence issued under section 49.

***licensee*** means the holder of a licence that is in force.

***prescribed photograph***, of a person, means a recent colour photograph of the person of a size prescribed under a regulation and certified as a photograph of the person in the way prescribed under a regulation.

***processed cannabis*** means—

- (a) industrial cannabis plants that—
  - (i) have been harvested or chemically or mechanically treated or artificially treated in another way; and
  - (ii) have no leaf, flowers or seed; or
- (b) seed from industrial cannabis plants grown by a holder of a grower licence under part 5B and denatured—
  - (i) on the place stated in the licence; or
  - (ii) by a person authorised under a regulation under section 48 to denature the seed at another place.

***relevant authority*** means—

- (a) a licence; or
- (b) an authority under section 48.

***relevant position***, in relation to a business, means a position whose holder participates in the management of the business (whether in the capacity of a director, manager or secretary or in another capacity).

***relevant power***, in relation to a business, means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—

- (a) to participate in any managerial or executive decision for the business; or
- (b) to elect or appoint any person to any relevant position in the business.



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#### **47 Authorisations for licensees**

- (1) A licensee is authorised to perform the activities stated in sections 50, 51 or 52 for the licensee's licence.
- (2) The activities are lawful for the purposes of sections 5, 6, 8, 8A and 9.
- (3) However, the activities are lawful only while the licensee performs the activities—
  - (a) in accordance with this Act and the conditions of the licence; and
  - (b) for a purpose consistent with the purposes of this part.
- (4) Subsection (3) is subject to section 81(2).

#### **48 Authorisations for persons other than licensees**

- (1) A regulation may authorise a person other than a licensee to perform activities stated under a regulation for the person for the time and on the conditions stated in the regulation.
- (2) Without limiting subsection (1), a regulation may, for example, authorise a person other than a licensee to possess lawfully obtained cannabis seed that will produce industrial cannabis plants or class A or class B research cannabis plants.
- (3) However, a regulation made for this section must be for a purpose consistent with the purposes of this part.
- (4) The activities mentioned in subsections (1) and (2) are lawful for the purposes of sections 5, 6, 8, 8A and 9.
- (5) Subsection (4) applies only if the conditions stated in the regulation are complied with.

### **Division 2 Licences generally**

#### **49 Categories of licences**

The chief executive may issue the following licences—

- (a) category 1 researcher licences;
- (b) category 2 researcher licences;
- (c) grower licences.

## **50 What category 1 researcher licences authorise**

- (1) A category 1 researcher licence authorises the licensee, in accordance with the licence—
- (a) to possess for research purposes—
    - (i) industrial cannabis plants and seed; and
    - (ii) class A and class B research cannabis plants and seed; and
  - (b) to produce, for use in plant breeding programs for developing new commercial strains of industrial cannabis—
    - (i) industrial cannabis plants and seed; and
    - (ii) class A and class B research cannabis plants and seed; and
  - (c) to supply—
    - (i) class A and class B research cannabis plants and seed to a category 1 researcher or a person authorised under a regulation under section 48 to possess class A and class B research cannabis plants and seed; or
    - (ii) class B research cannabis plants and seed to a category 2 researcher; and
  - (d) to supply class A and class B research cannabis seed to a grower for use, under the licensee's supervision, as part of a field trial the licensee is conducting on land owned or leased by the grower; and
  - (e) to supply industrial cannabis plants or seed to—
    - (i) a category 1 or category 2 researcher; or
    - (ii) a grower; or

- (iii) a person authorised under a regulation under section 48 to possess industrial cannabis plants or seed; and
  - (f) to supply class A or class B research cannabis seed or industrial cannabis seed to—
    - (i) a person who holds a cannabis research licence or a medicinal cannabis licence under the *Narcotic Drugs Act 1967* (Cwlth); or
    - (ii) a person in another State who is authorised under the law of that State to possess cannabis seed that, if grown, will produce cannabis plants with a THC concentration in their leaves and flowering heads that the person in the other State may possess; and
  - (g) if the licensee holds a licence under the *Customs Act 1901* (Cwlth) authorising the licensee to export cannabis—to supply class A or class B research cannabis seed or industrial cannabis seed to a person in another country who is authorised under the law of that country to possess the seed; and
  - (h) to supply processed cannabis to a person authorised under a regulation under section 48 to possess processed cannabis.
- (2) In this section—
- State* includes an external territory.

## 51 What category 2 researcher licences authorise

- (1) A category 2 researcher licence authorises the licensee, in accordance with the licence—
  - (a) to possess for research purposes—
    - (i) industrial cannabis plants and seed; and
    - (ii) class B research cannabis plants and seed; and

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- (b) to produce, for use in plant breeding programs for developing new commercial strains of industrial cannabis—
  - (i) industrial cannabis plants and seed; and
  - (ii) class B research cannabis plants and seed; and
- (c) to supply class B research cannabis plants or seed to—
  - (i) a category 1 or category 2 researcher; or
  - (ii) a person authorised under a regulation under section 48 to possess class B research cannabis plants or seed; and
- (d) to supply industrial cannabis plants or seed to—
  - (i) a category 1 or category 2 researcher; or
  - (ii) a grower; or
  - (iii) a person authorised under a regulation under section 48 to possess industrial cannabis plants or seed; and
- (e) to supply class B research cannabis seed to a grower for use, under the licensee's supervision, as part of a field trial the licensee is conducting on land owned or leased by the grower; and
- (f) to supply class B research cannabis seed or industrial cannabis seed to—
  - (i) a person who holds a cannabis research licence or a medicinal cannabis licence under the *Narcotic Drugs Act 1967* (Cwlth); or
  - (ii) a person in another State who is authorised under the law of that State to possess cannabis seed that, if grown, will produce cannabis plants with a THC concentration in their leaves and flowering heads that the person in the other State may possess; and
- (g) if the licensee holds a licence under the *Customs Act 1901* (Cwlth) authorising the licensee to export cannabis—to supply class B research cannabis seed or

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industrial cannabis seed to a person in another country who is authorised under the law of that country to possess the seed; and

- (h) to supply processed cannabis to a person authorised under a regulation under section 48 to possess processed cannabis.

(2) In this section—

*State* includes an external territory.

## 52 What grower licences authorise

A grower licence authorises the licensee, in accordance with the licence—

- (a) to possess industrial cannabis plants and seed; and
- (b) to produce industrial cannabis plants and seed from certified cannabis seed; and

*Note*—

Certified cannabis seed is seed certified to produce plants with a THC concentration in their leaves and flowering heads of not more than 0.5%. However, industrial cannabis plants may have a THC concentration in their leaves and flowering heads of not more than 1%. The difference recognises that the leaves and flowering heads of plants grown using certified cannabis seed may have more than 0.5% THC because of environmental conditions beyond a grower's control.

- (c) to supply industrial cannabis seed to—
  - (i) a category 1 or category 2 researcher; or
  - (ii) a grower; or
  - (iii) a person authorised under a regulation under section 48 to possess the seed; and
- (d) to possess class A or class B research cannabis seed for use under the supervision of a category 1 or category 2 researcher, as part of a field trial the category 1 or category 2 researcher is conducting on land owned or leased by the grower; and

- (e) to produce class A or class B research cannabis plants and seed under the supervision of a category 1 or category 2 researcher, as part of a field trial the category 1 or category 2 researcher is conducting on land owned or leased by the grower; and
- (f) to supply to a category 1 or category 2 researcher class A or class B research cannabis plants and seed produced on land owned or leased by the grower as part of a field trial conducted under the supervision of the category 1 or category 2 researcher; and
- (g) to supply industrial cannabis seed to—
  - (i) a person who holds a cannabis research licence or a medicinal cannabis licence under the *Narcotic Drugs Act 1967* (Cwlth); or
  - (ii) a person in another State who is authorised under the law of that State to possess cannabis seed that, if grown, will produce cannabis plants with a THC concentration in their leaves and flowering heads that the person in the other State may possess; and
- (h) if the licensee holds a licence under the *Customs Act 1901* (Cwlth) authorising the licensee to export cannabis—to supply industrial cannabis seed to a person in another country who is authorised under the law of that country to possess the seed; and
- (i) to supply processed cannabis to a person authorised under a regulation under section 48 to possess processed cannabis.

## **Division 3                      Licence applications**

### **53            Applying for a licence**

- (1) A person who wishes to obtain a licence must be a fit and proper person to hold the licence.
- (2) The person must apply for the licence by—

- (a) submitting an application showing, among other things, the person is eligible to obtain the licence; and
  - (b) paying the fee prescribed under a regulation; and
  - (c) giving the chief executive the other information required under section 54 or 56.
- (3) The chief executive decides the person's application after having regard, among other things, to whether the person is a fit and proper person to hold the licence.

## **54 Application for licence**

- (1) An applicant for a licence must—
- (a) apply to the chief executive in the approved form; and
  - (b) state the licence being applied for; and
  - (c) give the chief executive information for establishing the applicant's eligibility to hold the licence; and
  - (d) state the names and addresses of—
    - (i) the applicant's close associates; and
    - (ii) if the applicant is a corporation—its executive officers; and
  - (e) provide any information the chief executive reasonably requires to decide whether the applicant is a fit and proper person to hold a licence.
- (2) The application must be accompanied by—
- (a) the application fee prescribed under a regulation; and
  - (b) for an applicant who is an individual, 2 prescribed photographs of the applicant; and
  - (c) for an applicant that is a corporation, 2 prescribed photographs of the chief executive officer of the corporation.

## **55 Application must state address**

The applicant must also specify in the application—

- (a) the place or places in Queensland where the applicant proposes to carry on activities under the licence; and
- (b) an address where a document can be served personally.

*Example—*

A post office box is not a place the applicant may specify as a place or an address for this division.

## **56 Requirement to give information or material about application**

- (1) The chief executive may, by written notice given to the applicant for a licence, require the applicant to give the chief executive, within a stated reasonable time, information or material the chief executive reasonably considers is needed to consider the applicant's application for the licence.
- (2) The applicant is taken to have withdrawn the application if, within the stated reasonable time, the applicant fails to comply with the chief executive's requirement.

# **Division 4 Eligibility and suitability to hold licence**

## **57 Fit and proper person to hold licence**

- (1) In deciding whether a person is a fit and proper person to hold a licence, the chief executive must have regard to the following—
  - (a) whether the person held a licence or permit that was suspended or cancelled under—
    - (i) this part; or
    - (ii) the *Narcotic Drugs Act 1967* (Cwlth); or



- (iii) a law of another State that corresponds, or substantially corresponds, to this part;
  - (b) if the person is an individual—the criminal history of the person;
  - (c) if the person is a corporation—whether each executive officer of the corporation is a fit and proper person to hold a licence;
  - (d) in relation to an applicant for, or holder of, a category 1 or category 2 researcher licence—
    - (i) whether the person has the necessary educational or other qualifications and experience to engage in plant breeding or other research involving the use of industrial cannabis or class A or class B research cannabis; or
    - (ii) if the person is a corporation—whether a person employed by the corporation to carry out plant breeding under the licence has the necessary educational or other qualifications and experience to engage in plant breeding or other research involving the use of industrial cannabis or class A or class B research cannabis; or
    - (iii) whether a close associate of the person held a licence or permit that was suspended or cancelled under—
      - (A) this part; or
      - (B) the *Narcotic Drugs Act 1967* (Cwlth); or
      - (C) a law of another State that corresponds, or substantially corresponds, to this part; or
    - (iv) if the person is an individual—the criminal history of any close associate of the person.
- (2) Without limiting subsection (1), in deciding whether a person is a fit and proper person to hold a licence, the chief executive may have regard to any other matter the chief executive considers relevant.

## **61 Investigation about the suitability of applicant or licensee**

- (1) The chief executive may make investigations about any of the following persons to help the chief executive decide whether an applicant or licensee is a fit and proper person to hold a licence—
  - (a) the applicant or licensee;
  - (b) if the applicant or licensee is a corporation—the corporation’s executive officers;
  - (c) a person stated by the applicant or licensee to be a close associate of the applicant or licensee.
- (2) Without limiting subsection (1), the chief executive may ask the commissioner of the police service for a written report about the criminal history of any of the persons.
- (3) For subsection (2), the chief executive must give the commissioner any particulars the chief executive advises the commissioner are relevant for each application for a licence or renewal of a licence.
- (4) On receiving particulars of the application, the commissioner—
  - (a) must make inquiries about the criminal history of a person mentioned in subsection (1)(a) to (c); and
  - (b) may make any other inquiries about a person mentioned in subsection (1)(a) to (c) the commissioner considers appropriate.
- (5) For subsection (4)(a), the applicant or licensee must consent to the person’s fingerprints being taken by a police officer.
- (6) The chief executive must refuse to consider the applicant’s or licensee’s application if the person refuses to consent to the person’s fingerprints being taken.
- (7) The commissioner must report to the chief executive after receiving the results of the inquiries.
- (8) The commissioner’s report must include disclosure of convictions of the person mentioned in the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6.

- (9) Fingerprints taken under this section—
- (a) may be used only for the purposes of subsection (4)(a); and
  - (b) must be destroyed as soon as practicable after the commissioner reports to the chief executive under subsection (7).

## **62 Criminal history is confidential document**

- (1) An officer, employee or agent of the department must not, directly or indirectly, disclose to anyone else a report about a person's criminal history, or information contained in the report, given under section 61.

Maximum penalty—100 penalty units.

- (2) However, the person does not contravene subsection (1) if—
- (a) disclosure of the report or information to someone else is authorised by the chief executive for the performance of a function under or in relation to this part; or
  - (b) the disclosure is otherwise required or permitted by law.
- (3) The chief executive must destroy the report as soon as practicable after considering the person's suitability to hold a licence.

## **Division 5 Decision-making for licence issue**

### **63 Chief executive may issue or refuse to issue licence**

- (1) The chief executive may issue or refuse to issue a licence to an applicant.
- (2) The chief executive may issue a licence to an applicant only if the chief executive is satisfied that—
- (a) the applicant is a fit and proper person to hold a licence; and

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- (b) if the applicant intends performing activities under the licence in partnership or in conjunction with others—each member of the partnership, or each person with whom the applicant intends performing activities in conjunction, is a fit and proper person to hold a licence; and
  - (c) if the applicant is a corporation—each executive officer of the corporation is a fit and proper person to hold a licence; and
  - (d) the application is properly made.
- (3) For subsection (2)(d), an application is properly made only if the applicant complies with section 54.
- (4) If the chief executive decides to refuse to issue the licence, the chief executive must give the applicant an information notice for the decision within 14 days after the decision is made.

## **64 Term and conditions**

- (1) The chief executive may issue a licence for the term, of not more than 3 years, and on the conditions, the chief executive considers necessary or desirable for the proper performance of the activities authorised by the licence.
- (2) Without limiting subsection (1), it is a condition of every licence—
- (a) that the licensee must not contravene this Act; and
  - (b) that the licensee must notify the chief executive of any change of address or close associates as soon as practicable after the change happens.
- (3) A regulation may prescribe additional conditions a licensee must comply with.
- (4) If the chief executive decides to issue a licence on a condition mentioned in subsection (1), the chief executive must give the applicant an information notice for the decision within 14 days after the decision is made.

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## **Division 6                      Licence renewals and decision-making for renewals**

### **65            Application for renewal**

- (1) A licensee may apply for renewal of the licensee's licence.
- (2) The application must—
  - (a) be made to the chief executive in the approved form; and
  - (b) be made before the licence expires; and
  - (c) state the names and addresses of—
    - (i) the licensee's close associates; and
    - (ii) if the licensee is a corporation—its executive officers; and
  - (d) be accompanied by—
    - (i) the licence renewal fee prescribed under a regulation; and
    - (ii) for a licensee who is an individual—2 prescribed photographs of the licensee; and
    - (iii) for a licensee that is a corporation—2 prescribed photographs of the chief executive officer of the corporation.
- (3) The chief executive may, by written notice given to the licensee, require the licensee to give to the chief executive, within a stated reasonable time, information or material the chief executive considers is needed to consider the licensee's application for renewal of the licence.
- (4) The licensee is taken to have withdrawn the application if, within the stated reasonable time, the licensee fails to comply with the chief executive's requirement.

## **66 Chief executive may renew or refuse to renew licence**

- (1) The chief executive must consider a renewal application made under section 65 and may renew or refuse to renew the licence.
- (2) The chief executive may renew the licence only if the chief executive is satisfied—
  - (a) the licensee is a fit and proper person to hold a licence; and
  - (b) if the licensee carries on business in partnership or in conjunction with others—each member of the partnership, or each person with whom the licensee carries on business in conjunction, is a fit and proper person to hold a licence; and
  - (c) if the licensee is a corporation—each executive officer of the corporation is a fit and proper person to hold a licence; and
  - (d) the application is properly made.
- (3) For subsection (2)(d), an application is properly made only if it complies with section 65(2).
- (4) If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice for the decision within 14 days after the decision is made.

## **67 Licence taken to be in force while application for renewal is considered**

If an application is made under section 65, the licensee's licence is taken to continue in force from the day that it would, apart from this section, have expired until the licensee's application for renewal is—

- (a) decided under section 66; or
- (b) withdrawn by the licensee; or
- (c) taken to have been withdrawn under section 65(4).

*Note—*

For what happens to cannabis plants and seed in the licensee's possession if the chief executive decides to refuse to renew a licence, see sections 82 and 83.

## **68 Return of licence if renewal refused**

A person whose application for renewal of a licence has been refused must return the licence to the chief executive within 14 days after the refusal, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

## **Division 7 Dealing with licences**

### **69 Transfer of licence prohibited**

A licence may not be transferred.

### **70 Amendment of licence or licence conditions**

- (1) The chief executive may amend a licence or the conditions of a licence—
  - (a) on the licensee's application; or
  - (b) on the chief executive's own initiative.
- (2) An application under subsection (1)(a) must be made in the approved form and be accompanied by the application fee prescribed under a regulation.
- (3) Before making an amendment under subsection (1)(a), the chief executive must be satisfied the licensee meets the eligibility requirements the chief executive specifies as relevant to the amendment and advises to the applicant.
- (4) Before making an amendment under subsection (1)(b), the chief executive must—
  - (a) give written notice to the licensee—

- (i) of the particulars of the proposed amendment; and
  - (ii) that the licensee may make written submissions to the chief executive about the proposed amendment before a stated day, not later than 14 days after the notice is given to the licensee; and
- (b) have regard to submissions made to the chief executive by the licensee before the stated day.
- (5) Subsection (4) does not apply if the chief executive decides that the amendment must be made urgently to ensure compliance with this Act.
- (6) If the chief executive decides to make an amendment under subsection (1)(b), the chief executive must give written notice of the amendment to the licensee and an information notice for the decision within 14 days after the decision is made.
- (7) The amendment takes effect—
  - (a) on the day the written notice of the amendment is given to the licensee; or
  - (b) if a later day is stated in the notice—the stated day.
- (8) If the chief executive decides to refuse to make an amendment requested under subsection (1)(a), the chief executive must give the applicant an information notice for the decision within 14 days after the decision is made.

## **71 Return of licence for amendment of conditions**

- (1) If the chief executive amends the conditions of a licence under section 70, the chief executive may ask the licensee to produce the licence for amendment within a stated period of not less than 14 days.
- (2) The licensee must comply with a request under subsection (1), unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.



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## **72 Surrender of licence**

- (1) A licensee may surrender the licensee's licence by giving written notice to the chief executive and returning the licence.
- (2) Before the licensee surrenders the licence, the licensee must destroy or otherwise lawfully dispose of all cannabis plants and seed the licensee possesses.

*Note—*

Unless otherwise authorised, continued possession of the plants and seed after the surrender takes effect will be unlawful.

- (3) A licence surrendered under this section stops having effect at the end of the day it is surrendered.

## **Division 8                      Suspension and cancellation of licences**

### **73 Grounds for suspension action or cancellation**

- (1) A ground for suspending or cancelling a licence exists if the licensee—
  - (a) is not, or is no longer, a fit and proper person to hold the licence; or
  - (b) contravenes a provision of this Act or a condition of the licence; or
  - (c) does not pay a fee imposed on the licensee under this part.
- (2) Also, a ground for suspending or cancelling a licence exists if the licence was issued because of a materially false or misleading representation or declaration.

### **74 Show cause notice**

- (1) This section applies if the chief executive considers a ground exists to suspend or cancel a licence.

- (2) The chief executive must give the licensee a written notice (a *show cause notice*) stating the following—
  - (a) the action (the *proposed action*) the chief executive proposes taking under this division;
  - (b) the grounds for the proposed action;
  - (c) an outline of the facts and circumstances forming the basis for the grounds;
  - (d) if the proposed action is suspension of the licence, the proposed suspension period;
  - (e) an invitation to the licensee to show cause within a stated period (the *show cause period*) why the proposed action should not be taken.
- (3) The show cause period must be a period ending at least 21 days after the show cause notice is given to the licensee.
- (4) The licensee may make written representations about the proposed action to the chief executive in the show cause period.

## **75 Consideration of representations**

The chief executive must consider all written representations (the *accepted representations*) made in the show cause period by the licensee.

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

- (1) This section applies if, after considering the accepted representations for the show cause period, the chief executive no longer believes a ground exists to suspend or cancel a licence.
- (2) The chief executive must not take further action about the show cause notice.
- (3) The chief executive must, immediately after making the decision, give the licensee written notice that no further action about the show cause notice is to be taken.

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## **77 Suspension and cancellation of licences**

- (1) This section applies if, after considering the accepted representations for the show cause notice, the chief executive—
  - (a) still believes a ground exists to suspend or cancel a licence; and
  - (b) believes suspension or cancellation of the licence is warranted.
- (2) This section also applies if there are no accepted representations for the show cause notice.
- (3) The chief executive may—
  - (a) if the proposed action stated in the show cause notice was to suspend the licence for a stated period—suspend the licence for not longer than the stated period; or
  - (b) if the proposed action stated in the show cause notice was to cancel the licence—either cancel the licence or suspend it for a period.
- (4) The chief executive must immediately give an information notice for the decision to the licensee.
- (5) The decision takes effect—
  - (a) on the day the information notice is given to the licensee; or
  - (b) if a later day is stated in the notice—the later day.

## **78 Immediate suspension**

- (1) This section applies if the chief executive considers, on reasonable grounds, that a licensee—
  - (a) has contravened or is contravening this Act; or
  - (b) is likely or is proposing to engage in conduct that would contravene this Act.
- (2) The chief executive may suspend the licensee's licence with immediate effect.

- (3) The licence may be suspended for the period, of not more than 28 days, and on the conditions, the chief executive decides.
- (4) The chief executive must give the licensee an information notice for the decision to suspend within 3 days after suspending the licensee's licence.

## **80 Return of licence if suspended or cancelled**

A person whose licence has been suspended or cancelled must return the licence to the chief executive within 14 days after the suspension or cancellation, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

## **Division 9 Action after suspension or cancellation of licence**

### **81 What happens to cannabis plants and seed if licence suspended**

- (1) This section applies if the chief executive suspends a licensee's licence under section 77 or 78.
- (2) While the licence is suspended, the licensee may, despite the suspension—
  - (a) continue to possess the cannabis plants and seed in the person's possession on the day the licence is suspended (the *suspension day*); and
  - (b) for cannabis plants in the licensee's possession on the suspension day—
    - (i) do anything reasonably necessary to help the plants continue to grow; and
    - (ii) harvest the plants and any seed on the plants; and
  - (c) supply harvested cannabis seed to a person lawfully entitled to possess them.

- (3) Subsection (2) does not authorise the doing of anything other than a thing mentioned in that subsection in relation to cannabis plants and seed in the licensee's possession on the suspension day.
- (4) No compensation is payable by the State because of the suspension.

## **82 What happens to cannabis plants if licence cancelled**

- (1) This section applies if—
  - (a) the chief executive cancels a licensee's licence under section 77; and
  - (b) the licensee possesses cannabis plants.
- (2) If the cannabis plants can not be harvested, the chief executive may destroy the plants in the way the chief executive considers appropriate, including, for example, by ploughing them in or burning them.

### *Examples for subsection (2)—*

- 1 The plants may be too small to harvest and ploughing them in or burning them may be the most appropriate way of destroying them.
  - 2 It may be appropriate to burn plants because flooding may prevent the plants being harvested.
- (3) However, if the cannabis plants can be harvested, the chief executive may—
    - (a) harvest the plants and any seed on the plants; and
    - (b) for industrial cannabis seed—
      - (i) denature the seed; or
      - (ii) supply the seed to a person authorised under a regulation under section 48 to denature the seed at another place; or
      - (iii) supply processed cannabis to a person who may lawfully possess it; and
    - (c) for research cannabis—supply the harvested material to a person who may lawfully possess it.

- (4) For giving effect to this section, the chief executive may—
  - (a) enter and re-enter the place stated in the cancelled licence as often as is reasonably necessary; and
  - (b) bring onto the place reasonably necessary help, machinery and other equipment.
- (5) For subsections (2) to (4)—
  - (a) the chief executive is taken to hold a licence identical to the cancelled licence for the place stated in the cancelled licence; and
  - (b) cannabis plants in the possession of the former licensee immediately before the cancellation are taken to be in the chief executive's possession and not the possession of the former licensee; and
  - (c) if—
    - (i) the cancelled licence was a category 1 or category 2 researcher licence; and
    - (ii) under the cancelled licence, class A or class B research cannabis is growing on land owned or leased by a grower as part of a field trial conducted under the supervision of a category 1 or category 2 researcher;

the class A or class B cannabis plants are taken to be in the chief executive's possession and not in the possession of the grower or the former licensee.

- (6) However, sections 50(1)(b), 51(1)(b) and 52(b) and (e) do not apply to the chief executive, other than to the extent necessary to allow—
  - (a) cannabis plants already growing on land to which the cancelled licence relates; or
  - (b) for cannabis plants growing on land owned or leased by a grower, for a former licensee, cannabis plants growing on that land;

to continue to grow until they can be destroyed or harvested.

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- (7) No compensation is payable by the State because of the cancellation or because of the destruction of cannabis plants or seed under this section.

**83 What happens to cannabis seed if licence cancelled or renewal refused**

- (1) This section applies if—
- (a) the chief executive refuses to renew a licence under section 66 and the licensee possesses cannabis seed, other than harvested material under section 82; or
  - (b) the chief executive cancels a licensee’s licence under section 77.
- (2) The chief executive may—
- (a) for industrial cannabis seed—
    - (i) denature the cannabis seed; or
    - (ii) supply the seed to a person authorised under a regulation under section 48 to denature the seed at another place; or
    - (iii) supply the seed to a category 1 or category 2 researcher, a grower, or a person authorised under a regulation under section 48 to possess industrial cannabis seed; or
  - (b) for class A research cannabis seed—supply the seed to a category 1 researcher or a person authorised under a regulation under section 48 to possess class A research cannabis seed; or
  - (c) for class B research cannabis seed—supply the seed to a category 1 or category 2 researcher or a person authorised under a regulation under section 48 to possess class B research cannabis seed; or
  - (d) destroy the seed.
- (3) For subsection (2)—

- (a) the chief executive is taken to hold a licence identical to the cancelled licence for the place stated in the cancelled licence; and
- (b) the cannabis seed in the possession of the former licensee immediately before the cancellation are taken to be in the chief executive's possession and not the possession of the licensee; and
- (c) if—
  - (i) the cancelled licence was a category 1 or category 2 researcher licence; and
  - (ii) under the cancelled licence, class A or class B research cannabis seed is in the possession of a grower for use for growing class A or class B research cannabis on land owned or leased by the grower as part of a field trial conducted under the supervision of a category 1 or category 2 researcher;

the class A or class B cannabis seed are taken to be in the chief executive's possession and not in the possession of the grower or the former licensee.

- (4) For subsections (2) and (3), the chief executive may—
  - (a) enter and re-enter the place stated in the cancelled licence as often as is reasonably necessary; and
  - (b) bring onto the place reasonably necessary machinery and other equipment; and
  - (c) open anything in which the chief executive reasonably suspects cannabis seed may be kept; and
  - (d) inspect anything opened under paragraph (c) and seize any cannabis seed found.
- (5) For subsection (4), the chief executive is taken to have the powers of an inspector who enters a place.
- (6) No compensation is payable by the State because of the destruction of the seed.



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## 84 Cost recovery

- (1) The chief executive may recover the cost incurred by the chief executive under section 82 or 83 as a debt payable to the State by the former licensee.
- (2) For subsection (1), the chief executive may recover the costs from the proceeds of the sale of harvested material under section 82 or cannabis seed under section 83.
- (3) However, if the proceeds are more than the costs, the chief executive must pay any balance to the former licensee.
- (4) Despite subsection (3), if before the proceeds are paid, the chief executive becomes aware that the proceeds may be subject to an application for forfeiture of tainted property under the *Criminal Proceeds Confiscation Act 2002*, the chief executive must not pay the proceeds to the former licensee unless no order for forfeiture is made under that Act.
- (5) Also, if the chief executive becomes aware that the harvested material is subject to a security interest that has not been satisfied, the chief executive must pay any balance—
  - (a) first, in satisfaction of the security interest; and
  - (b) then, to the former licensee.
- (6) In this section—

*security interest* has the meaning given by the *Personal Property Securities Act 2009* (Cwlth), section 12.

## Division 10 Review of decisions by QCAT

### 85 Application for review

- (1) A person who is dissatisfied with a decision of the chief executive under this part may apply, as provided under the QCAT Act, to QCAT for a review of the decision.
- (2) The chief executive must give a person an information notice for a decision only if this Act so requires.

## **Division 11                      Appointment of inspectors**

### **91            Appointment and qualifications**

- (1) The chief executive may appoint any of the following as an inspector—
  - (a) a public service employee employed in the department;
  - (b) another person engaged by the chief executive for the purposes of this division.
- (2) However, the chief executive may appoint a person as an inspector only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

### **92            Appointment conditions and limit on powers**

- (1) An inspector holds office on any conditions stated in—
  - (a) the inspector's instrument of appointment; or
  - (b) a signed notice given to the inspector; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector's powers under this Act.
- (3) In this section—

*signed notice* means a notice signed by the chief executive.

### **92A          Functions of inspectors**

- (1) An inspector has the following functions—
  - (a) to investigate, monitor and enforce compliance with this part;
  - (b) to investigate or monitor whether an occasion has arisen for the exercise of powers under this part;

- (c) to facilitate the exercise of powers under this part.
- (2) Subject to this part, an inspector may exercise the powers under this part for the purpose of these functions.

### **93 Issue of identity card**

- (1) The chief executive must issue an identity card to each inspector.
- (2) The identity card must—
  - (a) contain a recent photo of the inspector; and
  - (b) contain a copy of the inspector's signature; and
  - (c) identify the person as an inspector under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

### **94 Production or display of identity card**

- (1) In exercising a power under this Act in relation to a person, an inspector must—
  - (a) produce the inspector's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 98(1)(b) or (2).

## **95 When inspector ceases to hold office**

- (1) An inspector ceases to hold office if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the inspector ceases to hold office;
  - (c) the inspector's resignation under section 96 takes effect.
- (2) Subsection (1) does not limit the ways an inspector may cease to hold office.
- (3) In this section—

*condition of office* means a condition on which the inspector holds office.

## **96 Resignation**

- (1) An inspector may resign by signed notice given to the chief executive.
- (2) However, if holding office as an inspector is a condition of the inspector holding another office, the inspector may not resign as an inspector without resigning from the other office.

## **97 Return of identity card**

A person who ceases to be an inspector must return the person's identity card to the chief executive within 21 days after ceasing to be an inspector unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

# **Division 12 Powers of inspectors**

## **98 Power of entry**

- (1) An inspector may enter and stay at a place if—

- (a) its occupier consents to the entry; or
  - (b) the inspector reasonably suspects any delay in entering the place will result in the concealment or destruction of anything at the place that is—
    - (i) evidence of an offence against this Act; or
    - (ii) being used to commit, continue or repeat, an offence.
- (2) For the purpose of asking the occupier of a place for consent to enter, an inspector may, without the occupier's consent—
- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
  - (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

## **99 Procedure for entry with consent**

- (1) This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 98(1)(a).
- (2) Before asking for the consent, the inspector must tell the occupier—
  - (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent.
- (3) If the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent.
- (4) The acknowledgement must state—
  - (a) the occupier has been told—
    - (i) the purpose of the entry; and
    - (ii) that the occupier is not required to consent; and
  - (b) the purpose of the entry; and

- (c) the occupier gives the inspector or another inspector consent to enter the place and exercise powers under this part; and
  - (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgement, the inspector must promptly give a copy to the occupier.
- (6) If—
- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgement complying with subsection (4) for the entry is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

## **100 Procedure for other entries**

- (1) This section applies if—
- (a) an inspector is intending to enter, under section 98(1)(b), a place; and
  - (b) the occupier of the place is present at the place.
- (2) Before entering the place, the inspector must do, or make a reasonable attempt to do, the following things—
- (a) tell the occupier the purpose of the entry;
  - (b) tell the occupier the inspector is permitted under this Act to enter the place without the occupier's consent.

## **101 General powers**

The inspector may do any of the following at a place entered under this part—

- (a) examine or inspect, or film, photograph, videotape or otherwise record an image of, a document or other thing at the place;

- (b) take a sample of or from a thing at the place for analysis or testing;
- (c) copy a document at the place;
- (d) take into the place the equipment, materials or persons the inspector reasonably requires for exercising a power under this part;
- (e) take a necessary step to allow a power under paragraphs (a) to (d) to be exercised.

## **102 Power to require reasonable help**

- (1) The inspector may require (*help requirement*) a person at a place entered under this part to give the inspector reasonable help to exercise a power under this part, including, for example to produce a document or give information.
- (2) When making a help requirement, the inspector must warn the person it is an offence to fail to comply with the requirement and the penalty for the offence.

## **103 Failure to comply with help requirement**

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.  
Maximum penalty—100 penalty units.
- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying with the requirement might tend to incriminate the person.
- (3) However, subsection (2) does not apply if the requirement is to produce a document required to be held or kept by the person under this Act.

## **104 Power to require information about contravention**

- (1) This section applies if an inspector reasonably suspects—

- (a) this Act has been contravened; and
  - (b) a person may be able to give information about the contravention.
- (2) The inspector may require (*information requirement*) the person to give information in the person's knowledge about the contravention in a stated reasonable time and in a stated reasonable way.
- (3) When making an information requirement, the inspector must tell the person it is an offence to fail to comply with the requirement and the penalty for the offence.

### **105 Failure to comply with information requirement**

- (1) A person of whom an information requirement has been made must comply with the requirement unless the person has a reasonable excuse.
- Maximum penalty—50 penalty units.
- (2) It is a reasonable excuse—
- (a) for an individual not to give information if giving the information might tend to incriminate the person; or
  - (b) if the information sought by the requirement is not in fact relevant to the contravention for which it was made.

### **106 False or misleading statements**

- (1) A person must not state anything to an inspector that the person knows is false or misleading in a material particular.
- Maximum penalty—50 penalty units.
- (2) Subsection (1) applies even if the statement was not made in response to, or in purported compliance with, an information requirement or another specific requirement under a specific power.



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## **107 Power to require production of documents**

- (1) An inspector may require (*document production requirement*) a person to make available for inspection by an inspector, or produce to the inspector for inspection, at a stated reasonable time and place, a document—
  - (a) required to be held or kept by the person under this Act; or
  - (b) in the person's possession and about a stated matter relating to this Act.
- (2) The inspector may keep the document to copy it.
- (3) The inspector must return the document to the person as soon as practicable after copying it.

## **108 Failure to comply with document production requirement**

- (1) A person of whom a document production requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.
- (2) It is a reasonable excuse for an individual not to comply with a document production requirement if complying with the requirement might tend to incriminate the person.
- (3) However, subsection (2) does not apply if the document is required to be held or kept by the person under this Act.

## **109 False or misleading documents**

- (1) A person must not give an inspector a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.
- (2) Subsection (1) applies even if the document was not given in response to, or in purported compliance with, a document production, information or another specific requirement under another specific power.

## 110 Obstruction of inspectors

A person must not obstruct an inspector in the exercise of a power under this part, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

## Division 12A Compliance notices

### 110A Giving a compliance notice

- (1) This section applies if the chief executive or an inspector reasonably believes—
  - (a) a person (the *contravener*) has contravened a condition of a relevant authority in circumstances that make it likely the contravention will continue or be repeated; and
  - (b) a matter relating to the contravention is reasonably capable of being rectified; and
  - (c) it is appropriate to give the contravener an opportunity to rectify the matter.
- (2) The chief executive or inspector may give the contravener a notice (a *compliance notice*) requiring the contravener to rectify the matter.

*Note—*

Failure to comply with a compliance notice is an offence under section 110C.

### 110B Content of compliance notice

- (1) The compliance notice must state the following—
  - (a) that the chief executive or inspector reasonably believes the contravener has contravened a condition of a relevant authority in circumstances that make it likely the contravention will continue or be repeated;

- (b) the condition the chief executive or inspector believes has been contravened;
  - (c) briefly, how it is believed the condition has been contravened;
  - (d) the matter relating to the contravention that the chief executive or inspector believes is reasonably capable of being rectified;
  - (e) the reasonable steps the contravener must take to rectify the matter;
  - (f) that the contravener must take the steps within a stated period that is reasonable;
  - (g) that it is an offence to fail to comply with the compliance notice unless the contravener has a reasonable excuse.
- (2) The compliance notice must be accompanied by, or include, an information notice for the decision of the chief executive or inspector to give the compliance notice.

### **110C Offence for failure to comply with compliance notice**

A person given a compliance notice must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

## **Division 13 Other provisions**

### **110D Offence for failure to comply with conditions**

The holder of a relevant authority must comply with the conditions of the authority, unless the holder has a reasonable excuse.

Maximum penalty—100 penalty units.

### **110E Record requirements**

- (1) A regulation, a condition of a relevant authority, or the chief executive by notice given to the holder of a relevant authority, may require (a *record requirement*) the holder of a relevant authority to do any of the following—
  - (a) record stated information (the *required information*) relating to activities conducted by the holder under the relevant authority;
  - (b) keep the required information in a stated way or at a stated place or for a stated period;
  - (c) give the chief executive or another stated person the required information in a stated way or at stated intervals or times.
- (2) The holder of a relevant authority must comply with the requirement unless the holder has a reasonable excuse.

Maximum penalty—50 penalty units.

- (3) A holder of a relevant authority who is required to create a record under a record requirement must ensure the record does not contain information the holder knows or ought reasonably to know is false, misleading or incomplete in a material particular, unless the holder has a reasonable excuse.

Maximum penalty—50 penalty units.

### **110F Notification requirements**

- (1) A regulation, a condition of a relevant authority, or the chief executive by notice given to the holder of a relevant authority, may require (a *notification requirement*) the holder to notify the chief executive or another stated person, in a stated way or at stated intervals or times, of stated information relating to activities conducted by the holder under the relevant authority.
- (2) The holder of a relevant authority must comply with the requirement unless the holder has a reasonable excuse.

Maximum penalty—50 penalty units.

- (3) For subsection (2), it is a reasonable excuse for an individual not to comply with a notification requirement if the stated information might tend to incriminate the person.
- (4) However, subsection (3) does not apply if a record, containing the stated information, is required to be held or kept by the person under this Act.
- (5) A holder of a relevant authority who is required to notify the chief executive or another person under a notification requirement must not give the chief executive or the other person information the holder knows or ought reasonably to know is false, misleading or incomplete in a material particular, unless the holder has a reasonable excuse.

Maximum penalty—50 penalty units.

### **111 Requirement to report loss or theft of controlled substance**

- (1) This section applies to a licensee who—
  - (a) owns a cannabis plant or cannabis seed; or
  - (b) has possession of a cannabis plant or cannabis seed for a purpose authorised under this part.
- (2) If the cannabis plant or cannabis seed is lost or stolen, the person must report the loss or theft of the plant or seed to a police officer within 2 days after the person finds out about it.

Maximum penalty—

- (a) for a first offence—20 penalty units; or
- (b) for a second or later offence—40 penalty units.

### **112 Responsibility for acts or omissions of representatives**

- (1) Subsections (2) and (3) apply in a proceeding for an offence against this part.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is sufficient to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—
- representative* means—
- (a) of a corporation—an executive officer, employee or agent of the corporation; or
  - (b) of an individual—an employee or agent of the individual.
- state of mind* of a person includes—
- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

## 114 Delegation

The chief executive may delegate powers of the chief executive under this part to an officer of the department.

## Part 6 Miscellaneous

### 116 Criminal Code to be read with Act

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

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## 117 Attempt to commit offence

- (1) In lieu of the Criminal Code, sections 535 and 536 the following provision shall apply—

‘A person who attempts to commit a crime defined in part 2 is deemed to be guilty of the intended crime and is liable to the same punishment and forfeiture as a person who commits the intended crime.’.
- (2) Where a person is charged summarily with a crime defined in part 2 that person may be convicted in those summary proceedings of attempting to commit that crime.

## 118 Proceedings for offences

- (1) Proceedings with a view to the summary conviction of a person upon a charge of an offence defined in this Act or for an examination of witnesses in relation to an indictable offence defined in this Act shall be before a magistrate.
- (1A) However, any justice may adjourn such proceedings and may grant or refuse bail.
- (2) Where an offence may be prosecuted on indictment or summarily the proceedings before a magistrate shall be proceedings with a view to the committal of the defendant for trial or sentence unless the prosecution elects that they shall be proceedings with a view to summary conviction.
- (3) Where proceedings have been commenced against a person upon a charge of a crime defined in part 2 a magistrate has jurisdiction to hear and determine the proceedings with a view to the summary conviction of the person upon the charge, notwithstanding that the proceedings have commenced more than 1 year after the matter to which the charge relates arose.
- (3A) Proceedings with a view to the summary conviction of a person upon a charge of an offence defined in this Act may be heard and determined at a place appointed for the holding of Magistrates Courts in any district appointed for the purpose of Magistrates Courts under the *Justices Act 1886* or in any

division deemed to be such a district, regardless of where the offence was committed.

- (3B) Subsection (3A) shall not be construed to confer jurisdiction in a case to which the *Justices Act 1886*, section 139(3) or the *Bail Act 1980*, section 33A applies except in accordance with whichever of those sections is applicable.
- (4) Where proceedings are taken with a view to summary conviction of a defendant and the magistrate forms the opinion that the charge ought to be prosecuted on indictment, the magistrate 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 magistrate abstains from determining summarily proceedings in respect of a charge—
- (a) the plea of the defendant taken at the outset of the hearing shall be disregarded; and
  - (b) the evidence adduced in the proceedings before the magistrate's decision to abstain shall be deemed to be evidence in the proceedings with a view to the committal of the defendant for trial or sentence; and
  - (c) before committing the defendant for trial or sentence the magistrate shall address the defendant in accordance with the *Justices Act 1886*, section 104.

## 119 Protection of informers

- (1) Where an informer supplies information to a police officer in respect of the commission of an offence defined in part 2 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 the informer's identification, is guilty of a crime.

Maximum penalty—5 years imprisonment.



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

## **120 Source of information not to be disclosed**

- (1) Where an informer supplies information to a police officer in respect of the commission of an offence defined in part 2 then in any proceedings whether under this Act or otherwise—
- (a) the prosecutor; or
  - (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 asked and if asked shall not be compelled to disclose the name of an informer, or other particular that may be likely to lead to the informer's identification, or the fact that in respect of the offence he or she received information from an informer or he or she 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 2 a police officer appearing as a prosecutor or witness shall not be compelled to produce any reports or documents, made or received by the police officer in the police officer's official capacity or containing confidential information in relation to such offence, or to make any statement in relation to such reports, documents or information.

## **121 Power to prohibit publication of proceedings**

- (1) In any proceedings arising out of a charge of having committed an offence defined in part 2—
- (a) a magistrate hearing and determining the matter summarily or conducting the examination of witnesses; or

- (b) the judge presiding at the court to which a person has been committed for trial or sentence;

may make an order (which shall remain in force for such time as the magistrate or judge 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 magistrate or judge permits and no other person.
- (3) On the hearing of the application the magistrate or judge may receive and act upon such information as the magistrate or judge thinks fit.
- (4) When considering an application to prohibit publication regard shall be had to—
- (a) the safety of any person; and
- (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 magistrate under subsection (1) commits an offence against this Act.

Maximum penalty—2 years imprisonment.

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

Maximum penalty—5 years imprisonment.

- (7) This section is in addition to and not in substitution for the *Child Protection Act 1999*, sections 192 and 193 and the *Youth Justice Act 1992*.

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**122 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 2 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 magistrate who constituted the court, another judge of the Supreme Court or, as the case may be, another magistrate.

**122A Particular proceedings for minor drugs offences**

- (1) This section applies to a proceeding for an offence against this Act that is a minor drugs offence as defined in the *Police Powers and Responsibilities Act 2000*, schedule 6.
- (2) However, this section applies only if the person charged with having committed the minor drugs offence pleads guilty to the offence.

- (3) The court may, if the person is eligible under the *Police Powers and Responsibilities Act 2000*, section 379 to be offered an opportunity to attend a drug diversion assessment program, order the person to attend, and complete, a drug diversion assessment program as directed by a police officer.
- (4) Before making the order, the court must inform the defendant that if the court makes the order and the defendant fails to attend and complete the drug diversion assessment program, the defendant will be dealt with by the court as if the order had not been made.
- (5) The court may also make any other order the court considers appropriate for ensuring the defendant's attendance at the drug diversion assessment program, including an order requiring the provider of the drug diversion assessment program to give the court a report about the defendant's attendance at and completion of the drug diversion assessment program.
- (6) On the making of the orders under this section the proceeding against the defendant is adjourned until a date fixed by the court or a date to be fixed.

## **122B Provision of information to court**

- (1) If the court makes an order under section 122A and a police officer arranges for the defendant to attend a drug diversion assessment program, the police officer must inform the provider of the drug diversion assessment program that the provider must, as required by the court's order under section 122A, give the court a written report about—
  - (a) the person's attendance at, and completion of, the program; or
  - (b) if the person failed to attend or complete the program—the person's failure to attend or complete the program.
- (2) The provider of the drug diversion program may give the court the report by filing the report with the court and giving a copy of the report to the commissioner.

- (3) The commissioner must ensure a copy of the report is given to the prosecuting authority and the person's lawyer.
- (4) In this section—  
*prosecuting authority* means the entity responsible for prosecuting the charge of the minor drugs offence.

### **122C Further consideration of charge of minor drugs offence**

- (1) If, after considering a report filed under section 122B, the court is satisfied the defendant attended and completed the drug diversion assessment program as required under section 122A, the court must strike out the proceeding for the charge of the minor drugs offence.
- (2) However, if the court is satisfied the defendant did not attend and complete the drug diversion assessment program as required under section 122A, the court may continue to hear the charge of the minor drugs offence and may make any order in relation to the offence the court considers appropriate.

### **123 Summary conviction for indictable offences**

The provisions of the Criminal Code, section 659 shall have no application when a person has been summarily convicted of a crime defined in this Act.

### **124 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 *Drugs Misuse Regulation 1987*, schedule 5 and if the person proves that—
  - (a) it was prescribed for the person by a medical practitioner for a condition with which the person was suffering at the time it was prescribed; and

- (b) it was given by the person to a person whom the person reasonably believed to be suffering from the same or a similar condition; and
  - (c) the quantity given was no greater than a single dosage prescribed for the person; and
  - (d) it was immediately consumed in the person's presence by the person to whom it was given.
- (1A) However, subsection (1) does not apply if—
- (a) the person is charged with an offence mentioned in subsection (1) (the *current charge*); and
  - (b) the person relied on the defence mentioned in subsection (1) in relation to a previous charge of an offence mentioned in subsection (1) (the *previous charge*); and
  - (c) the prosecution proves that—
    - (i) the drug given under the current charge was the same as the drug given under the previous charge; and
    - (ii) the person to whom the drug was given under the current charge was the same person to whom the drug was given under the previous charge.
- (2) A person is not criminally responsible for an offence defined in section 9 if the dangerous drug is one specified in the *Drugs Misuse Regulation 1987*, schedule 5 and if the person proves that—
- (a) it was given to the person by a person to whom the person reasonably believed it had been prescribed by a medical practitioner for the same or a similar condition with which the person was suffering at the time it was given to the person; and
  - (b) the quantity received by the person was no greater than a single dosage prescribed for that person; and
  - (c) it was immediately consumed by the person in that person's presence.

- (2A) However, subsection (2) does not apply if—
- (a) the person is charged with an offence mentioned in subsection (2) (the *current charge*); and
  - (b) the person relied on the defence mentioned in subsection (2) in relation to a previous charge of an offence mentioned in subsection (2) (the *previous charge*); and
  - (c) the prosecution proves that—
    - (i) the drug given under the current charge was the same as the drug given under the previous charge; and
    - (ii) the person who gave the drug under the current charge is the same person who gave the drug under the previous charge.
- (3) For subsections (1A) and (2A), it does not matter whether the alleged offence relating to the current charge happened before or after the alleged offence relating to the previous charge.

## **125 Prescribed persons permitted to receive and dispose of dangerous drugs**

- (1) It is lawful for a person, authorised by the Minister administering the *Health Act 1937*, acting in good faith and in the proper discharge of the person's professional duties, to receive from any person anything which the person reasonably believes to be a dangerous drug provided that—
- (a) in the case of a dangerous drug specified in the *Drugs Misuse Regulation 1987*, schedule 3—the quantity of such thing is reasonably believed to be less than the quantity specified in that schedule in respect of that thing; and
  - (b) it is forthwith disposed of in accordance with the procedure prescribed by regulation.
- (2) It is lawful for a person who—

(a) as an officer or employee of the department within which the *Health Act 1937* is administered, performs duties that include duties as a property officer for the police service; and

(b) is authorised under that Act;

to possess a dangerous drug while actually performing the duties.

(3) It is lawful for a person who—

(a) as a staff member within the meaning of the *Police Service Administration Act 1990*, section 1.4, is performing the duties of a property officer in the police service; or

(b) as a public service employee employed in the Public Safety Business Agency (the *PSBA*) established under the *Public Safety Business Agency Act 2014*, is performing functions similar to the duties of a property officer in the police service;

to possess a dangerous drug while actually performing the duties or functions.

(4) It is lawful for a person who—

(a) as a drug control officer within the meaning of the *Police Powers and Responsibilities Act 2000*, section 726, is performing the functions of a drug control officer in the police service; or

(b) as a public service employee employed in the PSBA, is performing functions similar to the duties of a drug control officer in the police service;

to possess a dangerous drug while actually performing the functions.

(5) It is lawful for a person who, as a drug control officer within the meaning of the *Corrective Services Act 2006*, section 344B, is performing the functions of a drug control officer in the department in which the *Corrective Services Act 2006* is administered, to possess a dangerous drug while actually performing the functions.



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## 126 Power to fine

- (1) A person liable to imprisonment for an offence defined in this Act may be ordered to pay a fine in addition to or instead of the imprisonment to which the person is liable.
- (2) A fine to which a person is liable under subsection (1) shall not exceed—
  - (a) 5,000 penalty units where the offence is one of which the person is convicted on indictment; or
  - (b) 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 a deputy registrar of the Supreme Court if that court makes the order; or
  - (b) the registrar of the court if the court making the order is the District Court or the Childrens Court constituted by a judge; or
  - (c) the clerk of the court at the place where—
    - (i) the Childrens Court constituted by a Childrens Court magistrate or a magistrate; or
    - (ii) a Magistrates Court constituted by a magistrate;

is the court making 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.

## **127 No costs to be awarded**

- (1) No costs shall be awarded with respect to any proceedings arising out of a charge of having committed an offence defined in this Act.
- (2) Subsection (1) does not apply to costs awarded under a relevant provision in relation to a failure to comply with a direction about disclosure.
- (3) In this section—
- relevant provision* means—
- (a) the Criminal Code, section 590AAA; or
  - (b) the *Justices Act 1886*, section 83B.

## **128 Analyst's certificate**

- (1) 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 shall, without proof of the analyst's signature or that the analyst is

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an analyst, be evidence of any of the following stated in the certificate—

- (a) the identity of the thing analysed or examined;
- (b) the quantity of the thing;
- (c) the result of the analysis or examination and of the matters relevant to the proceedings;
- (d) the laboratory at which the thing was analysed or examined;
- (e) that the analyst examined the laboratory's records about the analysis or examination of the thing, including the records about any analysis or examination done by someone other than the analyst;

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

(2) In subsection (1)—

*proceedings*, for an offence, include an application made under section 32(1).

## 129 Evidentiary provisions

- (1) In respect of a charge against a person of having committed an offence defined in part 2—
  - (a) it is not necessary to particularise the dangerous drug in respect of which the offence is alleged to have been committed; and
  - (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; and
  - (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 the person's possession unless the person shows that he or she then neither knew nor had reason to suspect that the drug was in or on that place; and
- (d) the operation of the Criminal Code, section 24 is excluded unless that person shows an honest and reasonable belief in the existence of any state of things material to the charge; and
  - (e) the burden of proving any authorisation to do any act or make any omission lies on that person.
- (2) In a proceeding against a person who may produce cannabis under a licence or another authority under part 5B for an offence against part 2 involving the production of unauthorised cannabis plants, it is a defence for the person to prove—
- (a) that the plants were grown from lawfully obtained cannabis seed; and
  - (b) that although the person acted with reasonable diligence to prevent the contravention, the contravention was beyond the person's control.
- (3) In a proceeding against a person who may possess cannabis under a licence or another authority under part 5B for a charge of an offence against part 2 involving the possession of unauthorised cannabis plants, it is a defence for the person to prove—
- (a) that the plants were grown from lawfully obtained cannabis seed; and
  - (b) that although the person acted with reasonable diligence to prevent the contravention, the contravention was beyond the person's control.
- (4) A certificate signed by the chief executive and stating any of the following is evidence of the matter stated—
- (a) a stated person was, on a stated day, the holder of a stated licence under part 5B;

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- (b) a licence held by a stated person was, on a stated day, surrendered or cancelled under part 5B.
- (5) In this section—
- unauthorised cannabis plants* means cannabis plants with a higher concentration of THC in their leaves and flowering heads than a person may possess under a licence or other authorisation under part 5B.

### **130 Evidence of controlled substance by label**

- (1) This section applies if, in a proceeding for an offence against this Act, it is relevant to prove that a substance owned or supplied by, or in the possession of, a person was a controlled substance.
- (2) The substance is proved to have been a controlled substance if—
- (a) there is evidence that the container containing the substance had a label indicating the substance was a controlled substance; and
  - (b) a police officer or environmental health officer gives evidence that the police officer or environmental health officer believes the container contained a controlled substance; and
  - (c) the defendant was served with a prosecution information notice specifying the controlled substance; and
  - (d) a challenge notice has not been received from the person summonsed or charged by—
    - (i) if the proceedings have been brought by a police officer—the commissioner of the police service; or
    - (ii) if the proceedings have been brought by an environmental health officer—the chief executive for health; and
  - (e) the court considers the belief mentioned in paragraph (b) to be reasonably held; and

- (f) there is no evidence to the contrary.

**131 Evidence of equipment being used to produce particular dangerous drugs**

- (1) This section applies if, in a proceeding for an offence against this Act, it is relevant to prove that particular equipment was used in the production of a relevant dangerous drug.
- (2) In the absence of proof to the contrary, the equipment is proved to have been used in the production of the relevant dangerous drug if—
- (a) a police officer gives evidence that the police officer believes the equipment was used in the production of the relevant dangerous drug; and
  - (b) the court considers that belief to be reasonably held by the police officer; and
  - (c) the defendant was served with a prosecution information notice specifying the equipment; and
  - (d) the defendant has not given the commissioner of police a challenge notice.
- (3) In this section—

*equipment* includes apparatus, items and other things.

*relevant dangerous drug* means a dangerous drug specified in the *Drugs Misuse Regulation 1987*, schedule 8D.

**131A Evidence of medicine or poison or veterinary chemical product by container**

- (1) This section applies if, in a proceeding for an offence against this Act, it is relevant to prove that a substance owned or supplied by, or in the possession of, a person was—
- (a) a medicine or poison; or
  - (b) a veterinary chemical product.

- (2) In the absence of proof to the contrary, the substance is proved to have been the medicine or poison or veterinary chemical product shown on the label of the container in which it is contained if—
- (a) there is evidence that the container containing the substance was a sealed medicine or poison container; and
  - (b) a police officer or environmental health officer gives evidence that the police officer or environmental health officer believes the sealed medicine or poison container contained a medicine or poison or veterinary chemical product; and
  - (c) the court considers that belief to be reasonably held by the police officer or environmental health officer; and
  - (d) the defendant was served with a prosecution information notice specifying the medicine or poison or veterinary chemical product; and
  - (e) the defendant has not given a challenge notice to—
    - (i) if the proceedings have been brought by a police officer—the commissioner of the police service; or
    - (ii) if the proceedings have been brought by an environmental health officer—the chief executive for health.

- (3) In this section—

***medicine or poison*** means a medicine or poison that is registered or exempt under the *Therapeutic Goods Act 1989* (Cwlth).

***sealed medicine or poison container*** is a container—

- (a) that appears to contain—
  - (i) a medicine or poison; or
  - (ii) a veterinary chemical product; and

[s 131B]

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- (b) that has a label indicating that the substance is a medicine or poison or a veterinary chemical product; and
- (c) that has an indicator or barrier to entry—
  - (i) that can reasonably be expected to provide visible or audible evidence to consumers that tampering may have occurred; and
  - (ii) that is not breached or missing.

***veterinary chemical product*** means a veterinary chemical product within the meaning of the code set out in the schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* (Cwlth).

### **131B Evidence for ss 130, 131 and 131A—notice of challenge**

- (1) This section applies if an originating step for a proceeding for an offence to which section 130, 131 or 131A applies is taken.
- (2) Within 28 days after the originating step is taken, the defendant in the proceeding may be served with a prosecution information notice.
- (3) The prosecution information notice may be served on the defendant, and the service may be proved, in the same way as a summons under the *Justices Act 1886*, section 56.
- (4) If the defendant wants to challenge a claim of which notice has been given in the prosecution information notice, the defendant must, within 28 days after the prosecution information notice is served on the defendant, give a challenge notice to—
  - (a) if the proceedings have been brought by a police officer—the commissioner of the police service; or
  - (b) if the proceedings have been brought by an environmental health officer—the chief executive for health.
- (5) A magistrates court may extend the 28 day period mentioned in subsection (4) if the court considers it appropriate.



(6) In this section—

*originating step*, for a proceeding, means—

- (a) the arrest of the defendant in the proceeding; or
- (b) the making of a complaint under the *Justices Act 1886*, section 42 in relation to the defendant in the proceeding; or
- (c) the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 382.

### **132 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 or magistrate 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 or have the charge dismissed, and the judge or magistrate shall enter a conviction for that offence in respect of the property so found by the jury or magistrate.

### **133 Chief executive may approve forms**

The chief executive may approve forms for use under this Act.

### **134 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about the following matters—
  - (a) specifying where, and the time for which, the register and the prescribed documents mentioned in part 5A must be kept;
  - (b) exempting a person from compliance with the whole, or part, of part 5A with or without conditions;

- (c) prescribing in the *Drugs Misuse Regulation 1987*, schedules 1 to 5 a thing as a dangerous drug for this Act;
- (d) prescribing in the *Drugs Misuse Regulation 1987*, schedules 1 to 5 quantities of a dangerous drug for this Act;
- (e) prescribing in the *Drugs Misuse Regulation 1987*, schedule 6 a substance as a controlled substance for this Act;
- (f) prescribing in the *Drugs Misuse Regulation 1987*, schedule 8A, quantities of substances mentioned in the *Drugs Misuse Regulation 1987*, schedule 6 that are unlawful for this Act;
- (g) prescribing in the *Drugs Misuse Regulation 1987*, schedule 8B, things that are unlawful for this Act;
- (h) prescribing in the *Drugs Misuse Regulation 1987*, schedule 8C, a combination of items that is a prohibited combination of items for this Act;
- (i) prescribing in the *Drugs Misuse Regulation 1987*, schedule 8D, the dangerous drugs to which section 131 applies;
- (j) prescribing offences for contraventions of a regulation and fixing a maximum penalty of a fine of not more than 20 penalty units.

### **134A Recommendation of Minister**

- (1) In deciding whether to recommend the prescription of a thing as a dangerous drug for the *Drugs Misuse Regulation 1987*, schedules 1 to 5, the Minister must consider the following—
  - (a) the likelihood or evidence of abuse of the drug, including, for example, the prevalence of the drug, consumption levels of the drug, the potential appeal of the drug to vulnerable populations and drug seizure trends;

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- (b) the specific effects of the drug, including, for example, the pharmacological, psychoactive and toxicological effects;
  - (c) the risks, if any, of the drug to public health and safety;
  - (d) the therapeutic value, if any, of the drug;
  - (e) the potential for use of the drug to cause death;
  - (f) the ability of the drug to create physical or psychological dependence;
  - (g) the classification and experience of the drug in other jurisdictions;
  - (h) any other matters the Minister considers appropriate.
- (2) However, the Minister may decide to recommend the prescription of a thing without complying with subsection (1) if the Minister is satisfied it is necessary to recommend the prescription of the thing as a matter of urgency having regard to 1 or more of the matters listed in subsection (1).

## **Part 7                      Transitional and validating provisions**

### **Division 1                      Provision for Drugs Misuse Amendment Act 1996 No. 49**

#### **135      Transitional—offences committed before the enactment of Drugs Misuse Amendment Act 1996**

- (1) To prevent doubt, it is declared that the *Drugs Misuse Amendment Act 1996* (the **amending Act**) does not affect proceedings for an offence against this Act committed before the commencement of the amending Act.
- (2) The proceedings may be continued or started as if the amending Act had not been passed.

## **Division 2**                      **Provision for Drugs Misuse Amendment Act 2002 No. 35**

### **136**      **Transitional provision for regulation provisions in force under repealed part 5B**

- (1) Until the end of 18 December 2002, the relevant provisions of the regulation continue to have effect as if the repealed part 5B had not been repealed.

- (2) In this section—

*amending Act* means the *Drugs Misuse Amendment Act 2002*.

*regulation* means the *Drugs Misuse Regulation 1987*.

*relevant provisions*, of the regulation, means the provisions of the regulation that were in force immediately before the commencement of this section for the purposes of the repealed part 5B.

*repealed part 5B* means part 5B of this Act as repealed by section 7 of the amending Act.

## **Division 3**                      **Provision for Drug Legislation Amendment Act 2006**

### **137**      **Transitional provision for ss 130–131B**

- (1) This section applies if—

- (a) before the commencement an originating step for a proceeding for an offence to which section 130, 131 or 131A applies was taken; and
- (b) before the commencement, a committal hearing or summary hearing had not been held in relation to the defendant for the proceeding for the offence; and
- (c) the committal hearing or summary hearing is not listed for hearing during the relevant period.

- (2) On the commencement—

- (a) section 130, 131 or 131A applies to a proceeding against the defendant for the offence; and
  - (b) section 131B applies to the defendant, subject to subsection (3).
- (3) For applying section 131B(2) to a proceeding against the defendant, the originating step for the proceeding is taken to have been taken on the commencement and a prosecution information notice may be served on the defendant within 28 days after the commencement.
- (4) In this section—
- commencement* means the commencement of this section.
- relevant period* means the period—
- (a) starting on the day this section commences; and
  - (b) ending on the day that is 56 days later.

## **Division 4                      Provision for Primary Industries Legislation Amendment Act 2006**

### **138      Provision about particular applications**

- (1) This section applies if, before the commencement, a person has applied for, or for renewal of, a licence under section 54 or 65 and the application has not been decided.
  - (2) Sections 54 and 65 as in force immediately before the commencement continue to apply to the application.
  - (3) In this section—
- commencement* means the day this section commences.

## **Division 5**                      **Provision for Drugs Misuse Amendment Act 2008**

### **139**      **Transitional provision for offences committed before the enactment of Drugs Misuse Amendment Act 2008**

- (1) This section applies to the sentencing of a person convicted of an offence committed against section 5, 6(1), 7, 8, 8A(1), 9, 10(1) or 11(1) before the commencement of this section even if the conviction happens after the commencement.
- (2) The Act as in force immediately before the commencement continues to apply to the sentencing.

## **Division 6**                      **Provision for Criminal Code and Other Acts Amendment Act 2008**

### **141**      **Reference in schedule to Criminal Code offence**

The schedule applies as if the reference to the Criminal Code, section 415 included a reference to the Criminal Code, section 415 as in force at any time before its repeal by the *Criminal Code and Other Acts Amendment Act 2008*.

## **Division 7**                      **Provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010**

### **142**      **New summary disposition provisions apply only to prosecutions commenced after commencement**

- (1) Section 14, as inserted by the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*, applies in relation to a charge for an offence only if an originating step for the proceeding for the charge is taken on or after the commencement of this section.

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- (2) For subsection (1), it does not matter when the offence was committed.
- (3) In this section—  
*originating step*, for a proceeding, means—
- (a) the arrest of the defendant in the proceeding; or
  - (b) the making of a complaint under the *Justices Act 1886*, section 42 in relation to the defendant in the proceeding; or
  - (c) the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 382.

## **Division 8                      Provision for Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Act 2013**

### **143      Validation of orders for forfeiture or restraint made by District Court before commencement**

- (1) This section applies to an order made before the commencement of this section by the District Court under part 5.
- (2) The order is taken to be, and always to have been, as valid and effective as it would have been if section 30(1), definition *court* included a reference to the District Court at the relevant time.

## **Division 9**                      **Provision for Justice and Other Legislation Amendment Act 2013**

### **145**      **Transitional provision for offence of trafficking in dangerous drugs**

Section 5(2) applies to an offence against that section only if the act or omission constituting the offence occurred wholly on or after 13 August 2013.

## **Division 10**                      **Provision for Criminal Law Amendment Act 2017**

### **146**      **Validation of analysts' certificates signed before commencement**

- (1) This section applies to a certificate signed by an analyst under section 128 before the commencement.
- (2) The certificate is taken to be, and to have always been, as valid and effective as it would have been if it were signed after the commencement.

## **Division 11**                      **Provision for Hospital Foundations Act 2018**

### **147**      **Existing application for licence**

- (1) This section applies if an application for a licence under part 5B was made, but not decided, before the commencement.
- (2) This Act, as in force immediately before the commencement, continues to apply in relation to the application.