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Poisons Act 1971

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Poisons Act 1971

[Long Title Amended by No. 27 of 1984, s. 4] **An Act to make provision with respect to the regulation, control, and prohibition of the importation, making, refining, preparation, sale, supply, use, possession, and prescription of certain substances and plants and matters incidental thereto, and to repeal certain enactments**

[Royal Assent 14 December 1971]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART I - Preliminary

1. Short title and commencement

- (1) This Act may be cited as the Poisons Act 1971 .
- (2) Subsection (1) of section 2 shall commence on the day on which Part III commences and subsection (2) of that section shall commence on the day on which Part V commences.
- (3) The remaining provisions of this Act (other than this section, Division 1 of Part II , and section 14) shall commence on such days respectively as are fixed by proclamation in relation to each of those provisions.

2.

[Section 2 Repealed by No. 15 of 2017, s. 4, Applied:13 Jun 2017]

3. Interpretation

[Section 3 Subsection (1) amended by No. 43 of 1982, s. 66 and Sched. 3][Section 3 Subsection (1) amended by No. 99 of 1982, s. 3 and Sched. 2][Section 3 Subsection (1) amended by No. 27 of 1984, s. 5][Section 3 Subsection (1) amended by No. 51 of 1985, s. 4 and Sched. 2][Section 3 Subsection (1) amended by No. 5 of 1990, s. 3 and Sched. 1][Section 3 Subsection (1) amended by No. 4 of 1991, s. 39 and Sched. 4][Section 3 Subsection (1) amended by No. 68 of 1994, s. 3 and Sched. 1][Section 3 Subsection (1) amended by No. 100 of 1995, s. 97 and Sched. 7][Section 3 Subsection (1) amended by No. 2 of 1996, s. 87 and Sched. 7]

- (1) *[Section 3 Subsection (1) amended by No. 95 of 1973, s. 2]*In this Act, unless the contrary intention appears –

aircraft includes a helicopter, a hovercraft, and an autogiro;

[Section 3 Subsection (1) amended by No. 40 of 2016, s. 4, Applied:17 Oct 2016] ***alkaloid poppy*** means a plant of the species *Papaver somniferum* or *Papaver bracteatum*;

[Section 3 Subsection (1) amended by No. 40 of 2016, s. 4, Applied:17 Oct 2016] ***alkaloid poppy material*** means a part or product of an alkaloid poppy;

[Section 3 Subsection (1) amended by No. 73 of 2013, Sched. 1, Applied:01 Jul 2014] ***ambulance officer*** means an officer of the Ambulance Service as defined in the Ambulance Service Act 1982 ;

[Section 3 Subsection (1) amended by No. 73 of 2013, Sched. 1, Applied:01 Jul 2014] ***ambulance services*** has the same meaning as in the Ambulance Service Act 1982 ;

analysis, in relation to a substance, includes any bacteriological, biochemical, electrical, electrochemical, microscopical, pathological, or other examination or test of or applied to the substance;

analyst means a person appointed as an analyst under section 19 , and includes the Government Analyst;

[Section 3 Subsection (1) amended by No. 15 of 2017, s. 5, Applied:13 Jun 2017] ***authorised health professional*** means a person who is a member of a class of health professionals –

(a) that is prescribed for the purposes of this definition; or

(b) in respect of whom an order has been made under section 25D(1)(a) –

except in section 36 and Parts V and VA in which case the authorised health professional must be present in Tasmania and acting in the course of the practice of his or her profession in Tasmania;

[Section 3 Subsection (1) amended by No. 78 of 2007, s. 4, Applied:01 Jul 2008] ***authorised nurse practitioner*** means a nurse practitioner authorised under section 25B ;

automatic machine means a machine or mechanical device that is used or capable of being used for the purpose of selling or supplying goods without the personal manipulation or attention of the seller or supplier or his employee or agent at the time of the sale or supply;

[Section 3 Subsection (1) amended by No. 40 of 2016, s. 4, Applied:17 Oct 2016] ***Board*** means the Poppy Advisory and Control Board established under section 59H(1) ;

boat includes a vessel or water craft of any description;

coca leaves means the leaves of any plant of the genus *erythroxylacae* from which cocaine may be extracted either directly or by chemical transformation;

[Section 3 Subsection (1) amended by No. 73 of 2013, Sched. 1, Applied:01 Jul 2014] **Commissioner of Ambulance Services** means the Commissioner as defined in the Ambulance Service Act 1982 ;

container, used in relation to a substance, means a vessel, bottle, tube, capsule, tin, box, case, wrapper, cover, envelope, or other like receptacle that immediately contains the substance;

[Section 3 Subsection (1) amended by No. 9 of 2003, Sched. 1, Applied:16 Apr 2003] **court** includes the Supreme Court or a judge, a magistrate, and 2 or more justices in petty session;

dangerous poison means a substance that is, for the time being, specified in Schedule 7 to the Poisons List;

[Section 3 Subsection (1) amended by No. 20 of 2001, Sched. 6, Applied:03 Oct 2001] [Section 3 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010]

[Section 3 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010] **dentist** means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the dental profession as a dentist, except in section 36 and Parts V and VA in which case the dentist must be present in Tasmania and acting in the course of dental practice in Tasmania;

domestic poison means a substance that is, for the time being, specified in Schedule 5 to the Poisons List;

[Section 3 Subsection (1) amended by No. 29 of 2009, s. 5, Applied:01 Sep 2009]

[Section 3 Subsection (1) amended by No. 29 of 2009, s. 5, Applied:01 Sep 2009] **drug** means a substance –

- (a) that is designed or intended for therapeutic use; or
- (b) the sole or principal use of which is, or ordinarily is, a therapeutic use or use as an ingredient or component in the preparation or manufacture of a substance for therapeutic use;

[Section 3 Subsection (1) amended by No. 29 of 2009, s. 5, Applied:01 Sep 2009] **drug-dependent person** means a person who –

- (a) has acquired, as a result of the repeated administration of drugs of dependence, an overpowering desire for their continued administration; or
- (b) has a condition such that the cessation of the administration of a drug of dependence, or the inability to obtain such a drug, is likely to cause him or her to exhibit signs of mental or physical distress or disorder; or
- (c) exhibits drug-seeking behaviour that suggests impaired control as a result of the person's continued use of drugs of dependence; or
- (d) consumes or uses a drug of dependence contrary to the prescribing practitioner's instructions;

[Section 3 Subsection (1) amended by No. 29 of 2009, s. 5, Applied:01 Sep 2009] **drug of dependence** means a substance listed in Schedule 8 or Schedule 9 to the Poisons List and includes any substance or class of substances that the Minister declares by order to be a drug of dependence but does not include any substance or class of substances that the Minister declares by order not to be a drug of dependence;

[Section 3 Subsection (1) amended by No. 29 of 2009, s. 5, Applied:01 Sep 2009] **drug-seeking behaviour** has the meaning given by section 4 ;

[Section 3 Subsection (1) amended by No. 21 of 2021, s. 4, Applied:17 Dec 2021] **emergency order** means an order made and in force under section 38J ;

[Section 3 Subsection (1) amended by No. 42 of 2010, s. 4, Applied:01 Jan 2011] [Section 3 Subsection (1) amended by No. 15 of 2017, s. 5, Applied:13 Jun 2017]

[Section 3 Subsection (1) amended by No. 15 of 2017, s. 5, Applied:13 Jun 2017] **endorsed midwife** means a midwife who is endorsed by the Nursing and Midwifery Board of Australia under section 94 of the Health Practitioner Regulation National Law (Tasmania) to prescribe scheduled substances;

[Section 3 Subsection (1) amended by No. 40 of 2016, s. 4, Applied:17 Oct 2016] **grow** includes the following:

- (a) plant a seed, seedling or cutting;
- (b) graft, divide or transplant a plant;
- (c) nurture, tend, grow, cultivate or harvest a plant;

hazardous poison means a substance that is, for the time being, specified in Schedule 1 to the Poisons List;

[Section 3 Subsection (1) amended by No. 40 of 2016, s. 4, Applied:17 Oct 2016] **improvement notice** means an improvement notice issued and served under section 69AA ;

Indian hemp means –

- (a) any plant or part of a plant of the genus *cannabis*;
- (b) the resin, whether crude or purified, obtained from any plant or part of a plant of the genus *cannabis*; or
- (c) any preparation containing any such resin –

by whatever name that plant, part, resin, or preparation may be called, and includes the achene or seed of any such plant but does not include any fibre of any such plant from which the resin has been extracted;

industrial or agricultural poison means a substance that is, for the time being, specified in Schedule 6 to the Poisons List;

inspector means a person appointed and holding office under section 23 ;

[Section 3 Subsection (1) amended by No. 73 of 2013, Sched. 1, Applied:01 Jul 2014] **interstate ambulance officer** means a person providing ambulance services in this State in accordance with an interstate arrangement within the meaning of section 38A of the Ambulance Service Act 1982 ;

label includes a tag, brand, mark, or statement in writing on or attached to or used in connection with a container or package containing a scheduled substance, and **labelled** has a corresponding meaning;

[Section 3 Subsection (1) amended by No. 40 of 2016, s. 4, Applied:17 Oct 2016] **licence** means a licence that is granted under this Act and is in force;

licensed manufacturing chemist means a person who holds a subsisting licence under section 16 (1) (a) ;

licensed wholesale chemist means a person who holds a subsisting licence under section 16 (1) (b) ;

[Section 3 Subsection (1) amended by No. 29 of 2009, s. 5, Applied:01 Sep 2009] [Section 3 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010]

[Section 3 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010] **medical practitioner** means a medical practitioner, except in section 36 and Parts V and VA in which case the medical practitioner must be present in Tasmania and acting in the course of medical practice in Tasmania;

medicinal opium means raw opium that has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the *British Pharmacopoeia*, whether it is in the form of powder or is granulated or is in any other form, and whether it is or is not mixed with a neutral substance;

medicinal poison means a substance that is, for the time being, specified in Schedule 2 to the Poisons List;

[Section 3 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010] **midwife** means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the midwifery

profession;

[Section 3 Subsection (1) amended by No. 42 of 2010, s. 4, Applied:01 Jan 2011] **midwifery narcotic substance** means a narcotic substance that is declared by the Minister, by order, to be a midwifery narcotic substance for the purposes of this Act;

[Section 3 Subsection (1) amended by No. 42 of 2010, s. 4, Applied:01 Jan 2011] **midwifery restricted substance** means a restricted substance that is declared by the Minister, by order, to be a midwifery restricted substance for the purposes of this Act;

[Section 3 Subsection (1) amended by No. 21 of 2021, s. 4, Applied:17 Dec 2021] **monitored medicines** means –

- (a) narcotic substances; and
- (b) substances that are prescribed to be monitored medicines; and
- (c) substances that are in a class of substances that are prescribed to be monitored medicines;

[Section 3 Subsection (1) amended by No. 21 of 2021, s. 4, Applied:17 Dec 2021] **monitored medicines database** means the electronic database established and maintained under section 38B ;

narcotic substance means a substance that is, for the time being, specified in Schedule 8 to the Poisons List;

[Section 3 Subsection (1) amended by No. 78 of 2007, s. 4, Applied:01 Jul 2008] *[Section 3 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010]*

[Section 3 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010] **nurse practitioner** means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the nursing profession who is endorsed by the Nursing and Midwifery Board of Australia to practise as a nurse practitioner, except in section 36 and Parts V and VA in which case the nurse practitioner must be present in Tasmania and acting in the course of nurse practitioner practice in Tasmania;

[Section 3 Subsection (1) amended by No. 7 of 2012, s. 5, Applied:01 Jul 2012] *[Section 3 Subsection (1) amended by No. 40 of 2016, s. 4, Applied:17 Oct 2016]*

package, used in relation to a substance, includes any means by which the substance may, for transport, for carriage, for storage, or for sale, be cased, covered, enclosed, contained, or packed;

[Section 3 Subsection (1) amended by No. 73 of 2013, Sched. 1, Applied:01 Jul 2014] *[Section 3 Subsection (1) amended by No. 23 of 2022, s. 20, Applied:24 Oct 2022]*

[Section 3 Subsection (1) amended by No. 23 of 2022, s. 20, Applied:24 Oct 2022] **pharmacist** means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the pharmacy profession but does not include a person who is a provisionally registered pharmacist, or who holds student or non-practising registration in that profession;

[Section 3 Subsection (1) amended by No. 90 of 2001, Sched. 6, Applied:01 Apr 2002] *[Section 3 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010]*

poison means a substance that is, for the time being, specified in Schedules 1, 2, 3, 5, 6 or 7 to the Poisons List;

poisons book means the poisons book as defined in section 28 ;

[Section 3 Subsection (1) amended by No. 7 of 2012, s. 5, Applied:01 Jul 2012] *[Section 3 Subsection (1) amended by No. 15 of 2019, Sched. 1, Applied:28 Jun 2019]* *[Section 3 Subsection (1) amended by No. 3 of 2025, s. 11, Applied:16 Apr 2025]*

[Section 3 Subsection (1) amended by No. 3 of 2025, s. 11, Applied:16 Apr 2025] **Poisons List** means the Uniform Standard, or such part of the Uniform Standard, adopted under section 14 , as amended in its application to Tasmania under that section from time to time;

[Section 3 Subsection (1) amended by No. 40 of 2016, s. 4, Applied:17 Oct 2016] **poppy grower's licence** means a poppy grower's licence that is granted under section 54D and is in force;

[Section 3 Subsection (1) amended by No. 40 of 2016, s. 4, Applied:17 Oct 2016] **poppy research licence** means a poppy research licence that is granted under section 54 and is in force;

potent substance means a substance that is, for the time being, specified in Schedule 3 to the Poisons List;

[Section 3 Subsection (1) amended by No. 40 of 2016, s. 4, Applied:17 Oct 2016] **premises** includes an area of land, a farm, and any part of premises;

[Section 3 Subsection (1) amended by No. 40 of 2016, s. 4, Applied:17 Oct 2016] **primary industries Minister** means the Minister administering the Primary Industry Activities Protection Act 1995 ;

prohibited plant means –

- (a) *[Section 3 Subsection (1) amended by No. 40 of 2016, s. 4, Applied:17 Oct 2016]* any alkaloid poppy;
- (b) coca leaves;
- (c) Indian hemp; and
- (d) *[Section 3 Subsection (1) amended by No. 3 of 2025, s. 11, Applied:16 Apr 2025]* any other plant or fungus, or part of a plant or fungus, that is declared by the Minister, by order, to be a prohibited plant for the purposes of this Act;

[Section 3 Subsection (1) amended by No. 7 of 2012, s. 5, Applied:01 Jul 2012] *[Section 3 Subsection (1) amended by No. 1 of 2013, s. 4, Applied:17 Apr 2013]*

[Section 3 Subsection (1) amended by No. 1 of 2013, s. 4, Applied:17 Apr 2013] **prohibited substance** means a substance or prohibited plant (other than Indian hemp) that is, for the time being, specified in Schedule 9 to the Poisons List;

[Section 3 Subsection (1) amended by No. 23 of 2022, s. 20, Applied:24 Oct 2022] **provisionally registered pharmacist** means a person who holds provisional registration under the Health Practitioner Regulation National Law (Tasmania) in the pharmacy profession;

[Section 3 Subsection (1) amended by No. 13 of 1997, Sched. 4, Applied:01 Jul 1997]

[Section 3 Subsection (1) amended by No. 13 of 1997, Sched. 4, Applied:01 Jul 1997] **public hospital** means a hospital maintained and operated by or on behalf of the State;

public institution means –

- (a) a State authority;
- (b) a public hospital;
- (c) the University of Tasmania;
- (d) *[Section 3 Subsection (1) amended by No. 47 of 2016, s. 18, Applied:10 Jul 2017]* *[Section 3 Subsection (1) amended by No. 32 of 2021, Sched. 4, Applied:01 Jul 2022]* TasTAFE, as continued by the TasTAFE (Skills and Training Business) Act 2021 ; and
- (e) *[Section 3 Subsection (1) amended by No. 47 of 2016, s. 18, Applied:10 Jul 2017]*
- (f) any other institution or establishment that is not carried on for private gain or reward and is declared by the Minister, by order, to be a public institution for the purposes of this Act;

raw narcotic means –

- (a) raw opium; and
- (b) any other substance that is declared by the Minister, by order, to be a raw narcotic for the purposes of this Act;

raw opium includes powdered or granulated opium but does not include medicinal opium;

[Section 3 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010]

the regulations means regulations made and in force under this Act;

[Section 3 Subsection (1) amended by No. 40 of 2016, s. 4, Applied: 17 Oct 2016] **responsible licensing authority**, in relation to a licence or authorisation, means –

- (a) the Board, if an application for the grant or renewal of the licence may be made to the Board or the licence has been granted or renewed by the Board; or
- (b) [Section 3 Subsection (1) amended by No. 15 of 2017, s. 5, Applied: 13 Jun 2017] the Minister, if an application for the grant or renewal of the licence or authorisation may be made to the Minister or the licence or authorisation has been granted or renewed by the Minister; or
- (c) [Section 3 Subsection (1) amended by No. 15 of 2017, s. 5, Applied: 13 Jun 2017] the Secretary, if an application for the grant of the authorisation may be made to the Secretary or the authorisation has been granted by the Secretary;

[Section 3 Subsection (1) amended by No. 40 of 2016, s. 4, Applied: 17 Oct 2016] **responsible officer**, in relation to a licence, means the person who is appointed as the responsible officer in relation to the licence under section 12 ;

restricted substance means a substance that is, for the time being, specified in Schedule 4 to the Poisons List;

scheduled substance means a substance that is, for the time being, specified in any of the schedules to the Poisons List;

Secretary means the Secretary of the Department;

sell means sell, whether by wholesale or retail, and includes –

- (a) offer or expose for sale;
- (b) keep or have in possession for sale;
- (c) barter or exchange;
- (d) deal in or agree to sell;
- (e) send, forward, deliver, or receive for sale or on sale; and
- (f) [Section 3 Subsection (1) amended by No. 23 of 2022, s. 20, Applied: 24 Oct 2022] authorise, direct, cause, permit, or suffer any of those acts or things to be done–

and **sale** and **sold** have corresponding meanings;

State authority means a person or body of persons constituted, established, or appointed under an Act or in the exercise of the prerogative rights of the Crown to administer or control any department, business, undertaking, or institution on behalf of the State;

substance includes a preparation, an admixture, and a salt or derivative of a substance;

supply, in relation to a substance, includes –

- (a) administer a substance, whether orally, subcutaneously, or by any other means;
- (b) dispense a substance on prescription; and
- (c) offer or agree to supply a substance;

therapeutic use means a use for the purpose of or in connection with –

- (a) preventing, diagnosing, curing, or alleviating a disease, ailment, defect, or injury in persons or animals;
- (b) influencing, inhibiting, or modifying a physiological process in persons or animals;
- (c) testing the susceptibility of persons or animals to a disease or ailment; or
- (d) destroying or inhibiting micro-organisms that may be harmful to persons or animals;

traffic includes keep or have in possession for trafficking, and **trafficking** has a corresponding meaning;

[Section 3 Subsection (1) amended by No. 29 of 2009, s. 5, Applied:01 Sep 2009] [Section 3 Subsection (1) amended by No. 30 of 2021, s. 6, Applied:01 Mar 2022]

[Section 3 Subsection (1) amended by No. 30 of 2021, s. 6, Applied:01 Mar 2022] **treatment centre** means a place that is approved under section 59AB as a treatment centre;

[Section 3 Subsection (1) amended by No. 7 of 2012, s. 5, Applied:01 Jul 2012] **Uniform Standard** means –

- (a) the Standard for the Uniform Scheduling of Medicines and Poisons, of the Commonwealth, published by the Australian Government under the Therapeutic Goods Act 1989 of the Commonwealth; or
- (b) any similar standard published in substitution for that standard; or
- (c) if the standard, or a standard published in substitution for that standard, has been amended under that Act, that standard as so amended;

vehicle means any mode of transport, other than an aircraft or a boat;

[Section 3 Subsection (1) amended by No. 15 of 2017, s. 5, Applied:13 Jun 2017] **veterinary surgeon** means a registered veterinary surgeon as defined in the Veterinary Surgeons Act 1987, except in section 36 and Parts V and VA in which case the veterinary surgeon must be present in Tasmania and acting in the course of veterinary practice in Tasmania;;

[Section 3 Subsection (1) amended by No. 73 of 2013, Sched. 1, Applied:01 Jul 2014] **volunteer ambulance officer** has the same meaning as in the Ambulance Service Act 1982 ;

wholesale dealing –

- (a) *[Section 3 Subsection (1) amended by No. 9 of 2003, Sched. 1, Applied:16 Apr 2003] [Section 3 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010] [Section 3 Subsection (1) amended by No. 23 of 2022, s. 20, Applied:24 Oct 2022]* means the sale or supply by a wholesale dealer in the ordinary course of his business to persons authorised by or under this Act to be in possession of or to sell a scheduled substance; and
- (b) includes the sale or supply to other persons in wholesale quantities in the ordinary course of that business for use in a public institution or in connection with a prescribed profession, business, trade, or industry carried on by a person who requires any such substance for use, but not for resale, in connection with his profession, business, trade, or industry.

(1A) *[Section 3 Subsection (1A) inserted by No. 27 of 1984, s. 5]* In this Act, a reference to an analysis or examination of a plant is a reference to such an analysis or examination for the purpose of determining whether or not the plant is a prohibited plant.

(2) *[Section 3 Subsection (2) omitted by No. 29 of 2009, s. 5, Applied:01 Sep 2009] [Section 3 Subsection (2) inserted by No. 7 of 2012, s. 5, Applied:01 Jul 2012]* In this Act –

- (a) a reference to a scheduled substance is a reference to the substance as specified in the Uniform Standard; and
- (b) a reference to a substance by reference to a Schedule of a particular number is taken to be a reference to the substance as specified in the Schedule of that number to the Poisons List.

(3) Without restricting the generality of the expression "possession", a substance or plant shall, for the purposes of this Act, be deemed to be in the possession of a person so long as it is on any land or premises occupied by him or is enjoyed or controlled by him in any place or is in his order and disposition unless he proves that he had no knowledge of the substance or plant.

(4) In this Act, the expression **this Part** includes the regulations made under or for the purposes of the Part of this Act in which the expression occurs.

(5) [Section 3 Subsection (5) amended by No. 7 of 2012, s. 5, Applied:01 Jul 2012] For the purposes of the Poisons List or of any order made under section 14 a substance may be described—

(a) by reference to any one or more of the following matters, namely:

- (i) the common or scientific name of the substance;
- (ii) any class of substances;
- (iii) the composition of the substance;
- (iv) the purposes for which the substance may be used;
- (v) the manner in which the substance is packed;
- (vi) such other factor or circumstance as may be specified in relation to the substance in the Poisons List or in any such order; or

(b) in any other manner so specified.

(6) In this Act, a reference to a Commonwealth Act cited by its short title includes a reference to that Act as amended from time to time and to any Commonwealth Act passed in substitution for that Act.

(7) [Section 3 Subsection (7) omitted by No. 15 of 2017, s. 5, Applied:13 Jun 2017]

(8) [Section 3 Subsection (8) inserted by No. 1 of 2013, s. 4, Applied:17 Apr 2013] The definition of *prohibited substance* substituted by section 4 of the Poisons Amendment Act 2013 is taken to have had effect on and from 1 July 2012.

3A. Matters to be taken into account in deciding whether a natural person is a fit and proper person

[Section 3A Inserted by No. 40 of 2016, s. 5, Applied:17 Oct 2016]

(1) Without limiting the matters to which the responsible licensing authority may have regard in deciding whether a natural person is a fit and proper person to hold a licence, the responsible licensing authority may have regard to the following:

- (a) any conviction of the person for an indictable offence;
- (b) any civil penalty (however described) imposed upon the person under a law of the Commonwealth, a State or a Territory;
- (c) any revocation or suspension of a licence or permit (however described) held by the person under a law of the Commonwealth, a State, a Territory or another country, being a law relating to the prohibition or regulation of drugs;
- (d) the connections and associations that the person has with other persons (including but not limited to the person's relatives);
- (e) the person's previous business experience;
- (f) the capacity of the person to comply with conditions of the licence;
- (g) whether the person has a sound and stable financial background or is in financial circumstances that may significantly limit the person's capacity to comply with his or her obligations under a licence;
- (h) whether the person is of good repute, having regard to matters going to their character, honesty and professional and personal integrity;
- (i) the person's history of compliance with this Act.

(2) Subsection (1)(d) , (e) , (g) and (h) does not apply in relation to a poppy research licence or a poppy grower's licence.

3B. Matters to be taken into account in deciding whether a body corporate is a fit and proper person

[Section 3B Inserted by No. 40 of 2016, s. 5, Applied:17 Oct 2016]

(1) Without limiting the matters to which the responsible licensing authority may have regard in deciding whether a body corporate is a fit and proper person to hold a licence, the responsible licensing authority may have regard to the following:

- (a) any conviction of the body corporate for an offence against a law of the Commonwealth, a State or a Territory;
- (b) any civil penalty (however described) imposed upon the body corporate under a law of the Commonwealth, a State or a Territory;
- (c) if there is such a conviction or imposition of a civil penalty upon the body corporate –
 - (i) whether the offence concerned was committed, or the conduct to which the civil penalty relates occurred, at a time when any person who is presently a director or officer of the body corporate was such a director or officer; and
 - (ii) whether the offence concerned was committed, or the conduct to which the civil penalty relates occurred, at a time when any shareholder of the body corporate who is presently in a position to influence the management of the body corporate was such a shareholder;
- (d) any revocation or suspension of a licence or permit (however described) held by the body corporate under a law of the Commonwealth, a State, a Territory or another country, being a law relating to the prohibition or regulation of drugs;
- (e) whether a person who is, or is to be, the responsible officer in relation to the licence is a fit and proper person;
- (f) whether –
 - (i) each director of the corporation is a fit and proper person; or
 - (ii) more than 10% of the corporation is owned by a person who is not a fit and proper person;
- (g) the connections and associations that the body corporate, and its directors and officers, have with other persons (including but not limited to relatives of such directors and officers);
- (h) the previous business experience of the directors and officers of the body corporate, and of the shareholders of the body corporate who are presently in a position to influence the management of the body corporate;
- (i) whether the body corporate has a sound and stable financial background or is in financial circumstances that may significantly limit the capacity of the body corporate to comply with its obligations under a licence;
- (j) the capacity of the body corporate to meet the conditions of the licence;
- (k) whether the directors and officers of the body corporate are of good repute, having regard to matters going to their character, honesty and professional and personal integrity;
- (l) the body corporate's history of compliance with this Act.

(2) Subsection (1)(g), (h), (i) and (k) does not apply in relation to a poppy research licence or a poppy grower's licence.

4. Meaning of drug-seeking behaviour

[Section 4 Repealed by No. 27 of 1984, s. 6] [Section 4 Inserted by No. 29 of 2009, s. 6, Applied: 01 Sep 2009] For the purposes of this Act, a person is taken to exhibit drug-seeking behaviour in respect of a drug of dependence if there is reason to believe that –

- (a) he or she is seeking to obtain a drug of dependence for the purpose of selling or supplying it to another person; or
- (b) he or she is seeking to obtain a drug of dependence for a non-medical purpose; or
- (c) as a result of the administration to him or her of the drug, he or she exhibits –

- (i) impaired ability to manage properly the use of any such drug; or
- (ii) behaviour which suggests such impaired ability; or
- (d) failure to obtain drugs of dependence for a non-medical purpose is likely to cause the person to exhibit signs of mental or physical distress or disorder.

5. Construction of Act

*[Section 5 Amended by No. 97 of 1987, s. 9][Section 5 Amended by No. 68 of 1994, s. 3 and Sched. 1][Section 5 Amended by No. 8 of 1996, s. 3 and Sched. 1]*The provisions of this Act are in addition to, and not in derogation of, the provisions of –

(a) *[Section 5 Amended by No. 90 of 2001, Sched. 6, Applied:01 Apr 2002] [Section 5 Amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010]* the Health Practitioner Regulation National Law (Tasmania);

(b) the Fertilizers Act 1993 ;

(ba)

(c) *[Section 5 Amended by No. 8 of 2003, Sched. 2, Applied:15 Oct 2003]* the Public Health Act 1997 ; and

(ca) *[Section 5 Amended by No. 8 of 2003, Sched. 2, Applied:15 Oct 2003]* the Food Act 2003 ; and

(d) the Agricultural and Veterinary Chemicals (Control of Use) Act 1995 –

but the provisions of those Acts shall be read subject to the express provisions of this Act, and, where a provision of any of those Acts is inconsistent with a provision of this Act, the last-mentioned provision, to the extent of the inconsistency, prevails.

PART 1A - General Provisions Relating to Licences

[Part 1A Inserted by No. 40 of 2016, s. 6, Applied:17 Oct 2016]

6. Applications for licences or renewal of licences

[Section 6 Repealed by No. 27 of 1984, s. 7][Section 6 Inserted by No. 40 of 2016, s. 6, Applied:17 Oct 2016]

- (1) An application under this Act for a licence, or for the renewal of a licence, must –
 - (a) except in the case of a licence referred to in section 16 , be in a form approved by the responsible licensing authority; and
 - (b) except in the case of a poppy research licence or a poppy grower's licence, be accompanied by the prescribed fee, if any; and
 - (c) contain the information, and be accompanied by the records, that the responsible licensing authority requires to determine the application.
- (2) An application under this Act for the renewal of a licence must be lodged not less than 30 days before the expiration of the licence.
- (3) Despite subsection (2) , the responsible licensing authority, in its discretion, may accept an application for the renewal of a licence lodged less than 30 days before the expiration of the licence.
- (4) If an application for renewal of a licence is lodged, or is accepted, under this section, the licence continues in force until the licence is renewed or the responsible licensing authority refuses to renew the licence.
- (5) The renewal of a licence takes effect, or is taken to have taken effect, from the date on which the licence was due to expire.

7. Investigation of application

[Section 7 Repealed by No. 27 of 1984, s. 7][Section 7 Inserted by No. 40 of 2016, s. 6, Applied:17 Oct 2016]

- (1) On receipt of an application for a licence or the renewal of a licence, the responsible licensing authority may carry out the investigations and inquiries that the responsible licensing authority considers necessary to determine the application.
- (2) The responsible licensing authority may, by notice in writing to a person who has applied for a licence, or for the renewal of a licence, require the person to –
 - (a) provide the information, and produce the records, that are relevant to the investigation of the application and are specified in the notice; and
 - (b) provide the responsible licensing authority with the authorities and consents that the responsible licensing authority requires in order to obtain from other persons financial or other confidential information concerning the applicant.
- (3) Despite subsection (2) , a responsible licensing authority may not require a person who has applied for a poppy research licence or a poppy grower's licence, or for the renewal of such a licence, to –
 - (a) provide information, or produce records, that relate to financial matters or the connections or associations that the person has with other persons; or
 - (b) provide an authority or consent so as to enable the authority to obtain, from other persons, financial information concerning the person or information as to the connections or associations that the person has with other persons.
- (4) If a requirement made under this section is not complied with, the responsible licensing authority may refuse to determine the application.

8. Suitability of applicant

[Section 8 Repealed by No. 27 of 1984, s. 7][Section 8 Inserted by No. 40 of 2016, s. 6, Applied:17 Oct 2016]

- (1) The responsible licensing authority must not grant a licence to a person, or renew a licence granted to a person, unless satisfied that the person is a fit and proper person to hold the licence.
- (2) The responsible licensing authority must not grant a licence to a person, or renew a licence granted to a person, if the responsible licensing authority must, under the regulations, refuse to grant or to renew, respectively, the licence.
- (3) The responsible licensing authority may refuse to grant to a person a licence, or to renew a licence granted to a person, if –
 - (a) the person has been found guilty of an offence that, in the opinion of the responsible licensing authority, makes the person unsuitable to be involved in any activity authorised by, or associated with, the licence; or
 - (b) the responsible licensing authority may, under the regulations, refuse to grant or to renew, respectively, the licence.
- (4) The regulations may make further provision for the circumstances in which the responsible licensing authority may refuse, or is required to refuse, to grant a licence to a person or to renew, or to refuse to renew, a licence granted to a person.
- (5) A relevant licensing authority is to give to the applicant for a licence or the renewal of a licence, written notice of the decision of the authority to grant or renew, or to refuse to grant or renew, the licence and, if the authority refuses to grant or to renew the licence, written reasons for the refusal.

9. Conditions and restrictions of licence

[Section 9 Repealed by No. 27 of 1984, s. 7][Section 9 Inserted by No. 40 of 2016, s. 6, Applied:17 Oct 2016]

- (1) A responsible licensing authority may grant or renew a licence on the conditions and restrictions it thinks fit and specifies in the licence.
- (2) A licence granted or renewed under this Act is subject to –
 - (a) the conditions and restrictions that are imposed on the licence by this Act or the regulations; and
 - (b) the conditions and restrictions that are specified in the licence under subsection (1) at the time it is granted or renewed, or as varied at any other time under this section.
- (3) If the responsible licensing authority, either on receipt of an application for the renewal of a licence granted under this section or at any time while the licence is in force, considers it necessary or desirable in the public interest to do so, the authority may vary the conditions or restrictions to which the licence is subject under subsection (2)(b) –
 - (a) by amending the existing conditions or restrictions; or
 - (b) by substituting new conditions or restrictions for existing conditions or restrictions; or
 - (c) by imposing additional conditions or restrictions; or
 - (d) by amending a list or schedule of substances which forms part of those conditions or restrictions.
- (4) If the responsible licensing authority varies the conditions or restrictions of a licence as provided by subsection (3) , the authority is to do one of the following:
 - (a) cause the licence to be appropriately amended to record the variation of the conditions or restrictions and to be returned to its holder;
 - (b) issue a new licence in place of the existing licence, specifying in the new licence the conditions or restrictions of the licence as so varied;
 - (c) serve on the holder of the licence a notice in writing specifying the variation of the conditions or restrictions.

(5) A variation of the conditions or restrictions of a licence does not have effect until the licence is returned to its holder, the new licence is issued to its holder, or the notice specifying the variation of the conditions or restrictions is served on the holder of the licence, as the case may be.

10. Suspension or cancellation of licence

[Section 10 Repealed by No. 27 of 1984, s. 7][Section 10 Inserted by No. 40 of 2016, s. 6, Applied:17 Oct 2016]

(1) The responsible licensing authority may, by written notice served on the holder of a licence granted under this Act, suspend or cancel the licence –

(a) if satisfied that –

- (i) the licence holder has breached a condition or restriction of the licence; or
- (ii) the licence holder is no longer a fit and proper person to hold the licence; or
- (iii) except in the case of a poppy research licence or a poppy grower's licence – the licence holder has failed to pay a fee in relation to the licence by the date on which the licence holder is required under this Act to pay the fee; or
- (iv) the licence holder has become bankrupt, applied for relief of bankrupt or insolvent debtors, compounded with creditors or made an assignment of his or her remuneration for their benefit; or
- (v) if the licence holder is a corporation – a receiver or manager has been appointed or the licence holder is being wound up or is under official management; or
- (vi) the licence holder has ceased to carry on business; or
- (vii) the revocation or suspension is required because there is an imminent risk of harm to the public if the licence continues in force; or
- (viii) the premises used for the purposes of the licence are unfit for use; or
- (ix) the licence was obtained on the basis of incorrect or misleading information; or

(b) if the licence holder requests the suspension or cancellation of the licence; or

(c) *[Section 10 Subsection (1) amended by No. 23 of 2022, s. 21, Applied:24 Oct 2022]* if the licence is a licence granted under section 27 – because, since the licence was granted or last renewed, a pharmacist has commenced business at a pharmacy which is situated within 10 kilometres, by the nearest practicable route, of the place where the shop of the holder of the licence is situated; or

(d) for any other prescribed reason.

(2) *[Section 10 Subsection (2) amended by No. 15 of 2017, s. 6, Applied:13 Jun 2017]* Before suspending or cancelling a licence under this section (other than at the licence holder's request), the responsible authority is to –

(a) give to the licence holder notice in writing specifying that the licence holder may, within 30 days from the date of the notice, make representations to the authority as to why the licence should not be suspended or cancelled; and

(b) give consideration to any representations that the licence holder makes under paragraph (a) .

(3) The suspension or cancellation under this section of a licence takes effect –

(a) on and from the day specified in the notice under subsection (1) ; and

(b) in the case of a suspension, until the suspension is revoked, if at all.

11. Immediate suspension of licence

[Section 11 Repealed by No. 27 of 1984, s. 7][Section 11 Inserted by No. 40 of 2016, s. 6, Applied:17 Oct 2016]

(1) The responsible licensing authority may, by verbal or written notice to the licence holder, immediately suspend a licence if the responsible licensing authority is satisfied that –

(a) there is a high risk of a substance or plant to which the licence relates being diverted for illicit purposes; or

(b) if the licence continues in force there is likely to be an imminent risk of harm to the public.

(2) If verbal notice of the suspension of a licence is given to a licence holder, the responsible licensing authority must, as soon as practicable, confirm the suspension by written notice to the licence holder.

12. Responsible officers

[Section 12 Repealed by No. 27 of 1984, s. 7][Section 12 Inserted by No. 40 of 2016, s. 6, Applied:17 Oct 2016]

(1) A holder of a licence who is not a natural person is to appoint a natural person as the responsible officer in relation to the licence.

(2) If the holder of a licence fails to appoint under subsection (1) a responsible officer in relation to the licence, the person responsible for the direction and management of the business of the holder of the licence is taken to have been appointed as the responsible officer in relation to the licence.

(3) A holder of a licence is to ensure that a responsible officer appointed under subsection (1) has sufficient authority to perform the duties of a responsible officer under this Act.

(4) A holder of a licence must –

(a) notify in writing a person whom the holder of the licence has appointed to be the responsible officer that the person has been so appointed; and

(b) except in the case of a poppy research licence or a poppy grower's licence, notify the Secretary in writing of the appointment of the responsible officer; and

(c) except in the case of a poppy research licence or a poppy grower's licence, give notice of that appointment as far as reasonably practicable to all persons employed or engaged for the purposes of the licence.

Penalty: Fine not exceeding 20 penalty units.

13. Responsibilities of responsible officer

[Section 13 Repealed by No. 27 of 1984, s. 7][Section 13 Inserted by No. 40 of 2016, s. 6, Applied:17 Oct 2016]

(1) In this section –

responsibilities includes the duties imposed on the holder of a licence under this Act and any conditions or restrictions specified in the licence.

(2) A responsible officer must perform the responsibilities of the holder of the licence.

Penalty: Fine not exceeding 100 penalty units.

(3) A responsible officer is not to be taken to have failed to perform any responsibility of the holder of the licence, if –

(a) it was not reasonably practicable for the responsible officer to perform that responsibility; or

(b) the failure to perform the responsibility was due to causes over which the responsible officer had no control and against the happening of which it was not reasonably practicable for the responsible officer to make provision; or

(c) the responsible officer exercised due diligence to prevent the failure to perform the responsibility; or

(d) the responsible officer was unaware that he or she had been appointed, or was taken to have been appointed, as the responsible officer.

(4) Nothing in subsection (2) relieves the holder of the licence of the requirement to perform the holder's responsibilities under this Act.

(5) A responsible officer may be proceeded against and convicted of having failed to perform the responsibilities of the holder of the licence under this Act whether or not the employer of the responsible officer

has been proceeded against or has been convicted of having failed to perform the responsibility.

13A. Obstruction of responsible officer

[Section 13A Inserted by No. 40 of 2016, s. 6, Applied:17 Oct 2016] A person having authority or control over the responsible officer must not exercise that authority or control in any way to obstruct the responsible officer in the exercise of his or her responsibilities under this Act.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) a natural person, a fine not exceeding 100 penalty units.

PART II - Administration

Division 1 -

[Part II, Div. 1 Repealed by No. 27 of 1984, s. 7]

Division 2 - Classification of substances

[Part II, Div. 2 Substituted by No. 27 of 1984, s. 8]

14. Adoption and amendment of Poisons List

[Section 14 Substituted by No. 27 of 1984, s. 8] [Section 14 Subsection (2) amended by No. 78 of 2007, s. 5, Applied: 01 Jul 2008] [Section 14 Substituted by No. 7 of 2012, s. 6, Applied: 01 Jul 2012]

(1) *[Section 14 Subsection (1) amended by No. 3 of 2025, s. 12, Applied: 16 Apr 2025]* The Minister, by order, may adopt all, or a specified part, of the Uniform Standard, as amended from time to time, as the Poisons List for the purposes of this Act.

(2) The Minister may, by order, amend the Uniform Standard in its application to Tasmania –

- (a) by adding a specified substance or class of substances to, or omitting a specified substance or class of substances from, any of the Schedules contained in the Uniform Standard; and
- (b) by transferring a specified substance or class of substances from any of those Schedules to any other of those Schedules; and
- (c) by amending an item appearing in any of those Schedules; and
- (d) by omitting all or any of those Schedules and substituting a new Schedule or Schedules.

(3) In amending the Uniform Standard under subsection (2), the Minister must have regard to any relevant classification of substances made from time to time by the United Nations Organization or any of its agencies.

(4) The Uniform Standard contains the following Schedules and the substances specified in those Schedules are classified in accordance with the following provisions:

- (a) Schedule 1 substances;
- (b) Schedule 2 substances – Substances, the safe use of which may require advice from a pharmacist and which should be available from a pharmacy or, where a pharmacy service is not available, from a licensed person;
- (c) Schedule 3 substances – Substances, the safe use of which requires professional advice but which should be available to the public from a pharmacist without prescription;
- (d) Schedule 4 substances – Substances, the use or supply of which should be by or on the order of persons permitted by State or Territory legislation to prescribe and should be available from a pharmacist on prescription;
- (e) Schedule 5 substances – Substances with a low potential for causing harm, the extent of which can be reduced through the use of appropriate packaging with simple warnings and safety directions on the label;
- (f) Schedule 6 substances – Substances with a moderate potential for causing harm, the extent of which can be reduced through the use of distinctive packaging with strong warnings and safety directions on the label;
- (g) Schedule 7 substances – Substances with a high potential for causing harm at low exposure which require special precautions during manufacture, handling or use, which should be available only to specialised or authorised users who have the skills necessary to handle them safely and to which special regulations restricting their availability, possession, storage or use may apply;

(h) Schedule 8 substances – Substances which should be available for use but require restriction of manufacture, supply, distribution, possession and use to reduce abuse, misuse and physical or psychological dependence;

(i) [Section 14 Subsection (4) amended by No. 3 of 2025, s. 12, Applied:16 Apr 2025] Schedule 9 substances– Substances which may be abused or misused, the manufacture, possession, sale or use of which should be prohibited by law except when required for medical or scientific research, or for analytical, teaching or training purposes with approval of Commonwealth or State or Territory health authorities;

(j) [Section 14 Subsection (4) amended by No. 3 of 2025, s. 12, Applied:16 Apr 2025] Schedule 10 substances – Substances which are prohibited for the purpose or purposes listed for each substance.

(5) An order under subsection (1) or (2) is a statutory rule for the purposes of the Rules Publication Act 1953 .

15.

[Section 15 Substituted by No. 27 of 1984, s. 8][Section 15 Repealed by No. 7 of 2012, s. 7, Applied:01 Jul 2012]

Division 3 - Licensing of manufacturing chemists and wholesale chemists

16. Licences

(1AA) [Section 16 Subsection (1AA) inserted by No. 40 of 2016, s. 7, Applied:17 Oct 2016] A person may apply to the Minister for –

(a) the grant of a licence under subsection (1) ; or

(b) the renewal of a licence granted to the person under subsection (1) .

(1) [Section 16 Subsection (1) amended by No. 40 of 2016, s. 7, Applied:17 Oct 2016] The Minister, in his discretion, may, on the application of a person under subsection (1AA) , grant, or refuse to grant, to that person–

(a) a licence to carry on business as a manufacturing chemist; or

(b) [Section 16 Subsection (1) amended by No. 40 of 2016, s. 7, Applied:17 Oct 2016] a licence to carry on business as a wholesale chemist –

[Section 16 Subsection (1) amended by No. 40 of 2016, s. 7, Applied:17 Oct 2016] or renew, or refuse to renew, such a licence granted to the person.

(2) [Section 16 Subsection (2) amended by No. 27 of 1984, s. 9]A licence under subsection (1) (a) –

(a) [Section 16 Subsection (2) amended by No. 7 of 2012, s. 8, Applied:01 Jul 2012] is to be in a form approved by the Secretary;

(b) [Section 16 Subsection (2) amended by No. 40 of 2016, s. 7, Applied:17 Oct 2016]

(c) [Section 16 Subsection (2) amended by No. 23 of 2022, s. 22, Applied:24 Oct 2022] while in force, has effect to authorise the holder thereof, subject to compliance with the provisions of this Act and the conditions and restrictions specified in the licence, to carry on, at the place stated in the licence, the business of making or refining for sale–

(i) scheduled substances generally;

(ii) a specified class or specified classes of scheduled substances; or

(iii) scheduled substances other than a specified class or specified classes thereof–

as may be set forth in the licence.

(3) A licence under subsection (1) (b) –

(a) [Section 16 Subsection (3) amended by No. 7 of 2012, s. 8, Applied:01 Jul 2012] is to be in a form approved by the Secretary;

(b) [Section 16 Subsection (3) amended by No. 40 of 2016, s. 7, Applied:17 Oct 2016]

(c) [Section 16 Subsection (3) amended by No. 23 of 2022, s. 22, Applied:24 Oct 2022] while in force, has effect to authorise the holder thereof, subject to compliance with the provisions of this Act and the conditions and restrictions specified in the licence, to carry on, at the place stated in the licence, the business of buying and selling, in the ordinary course of wholesale dealing—

(i) scheduled substances generally;

(ii) a specified class or specified classes of scheduled substances; or

(iii) scheduled substances other than a specified class or specified classes thereof—

as may be set forth in the licence.

(4) [Section 16 Subsection (4) amended by No. 7 of 2012, s. 8, Applied:01 Jul 2012] [Section 16 Subsection (4) omitted by No. 40 of 2016, s. 7, Applied:17 Oct 2016]

(5) Where the holder of a licence under this section changes or proposes to change the place at which he carries on his business, the Minister shall, on production of the licence, amend the licence by substituting for the place of business stated therein the place to which the carrying on of that business has been or is proposed to be changed.

(6) [Section 16 Subsection (6) amended by No. 15 of 2017, s. 7, Applied:13 Jun 2017] [Section 16 Subsection (6) amended by No. 40 of 2016, s. 7, Applied:17 Oct 2016] [Section 16 Subsection (6) amended by No. 7 of 2012, s. 8, Applied:01 Jul 2012] A licence under this section, unless sooner cancelled, continues in force for a period specified in the licence of up to 24 months from the day on which it is granted.

(7) [Section 16 Subsection (7) substituted by No. 27 of 1984, s. 9] [Section 16 Subsection (7) omitted by No. 40 of 2016, s. 7, Applied:17 Oct 2016] [Section 16 Subsection (7) inserted by No. 15 of 2017, s. 7, Applied:13 Jun 2017] If a licence under this section was in force immediately before the commencement of the Poisons (Miscellaneous Amendments) Act 2017, that licence continues in force for a period of 24 months, unless sooner cancelled, from the date on which it was granted.

(8) [Section 16 Subsection (8) inserted by No. 27 of 1984, s. 9] [Section 16 Subsection (8) omitted by No. 40 of 2016, s. 7, Applied:17 Oct 2016]

(9) [Section 16 Subsection (9) added by No. 27 of 1984, s. 9] [Section 16 Subsection (9) omitted by No. 40 of 2016, s. 7, Applied:17 Oct 2016]

16A.

[Section 16A Inserted by No. 7 of 2012, s. 9, Applied:01 Jul 2012] [Section 16A Repealed by No. 40 of 2016, s. 8, Applied:17 Oct 2016]

16B.

[Section 16B Inserted by No. 7 of 2012, s. 9, Applied:01 Jul 2012] [Section 16B Repealed by No. 40 of 2016, s. 8, Applied:17 Oct 2016]

16C.

[Section 16C Inserted by No. 7 of 2012, s. 9, Applied:01 Jul 2012] [Section 16C Repealed by No. 40 of 2016, s. 8, Applied:17 Oct 2016]

17.

[Section 17 Repealed by No. 40 of 2016, s. 8, Applied:17 Oct 2016]

18. Offences

[Section 18 Subsection (1) amended by No. 43 of 1991, s. 5 and Sched. 1]

(1) [Section 18 Subsection (1) amended by No. 40 of 2016, s. 9, Applied:17 Oct 2016] [Section 18 Subsection (1) amended by No. 27 of 1984, s. 48 and Sched. 1] A person—

(a) who—

- (i) carries on the business of making or refining a scheduled substance for sale while not the holder of a licence under paragraph (a) of subsection (1) of section 16 ; or
- (ii) carries on the business of buying or selling a scheduled substance in the course of a wholesale dealing while not the holder of a licence under paragraph (b) of that subsection;
- (b) *[Section 18 Subsection (1) amended by No. 23 of 2022, s. 23, Applied:24 Oct 2022]* who, being the holder of a licence under section 16 (1) (a) , makes or refines any class of scheduled substances other than those that he is authorised by his licence to make or refine;
- (c) *[Section 18 Subsection (1) amended by No. 23 of 2022, s. 23, Applied:24 Oct 2022]* who, being the holder of a licence under section 16 (1) (b) , buys or sells any class of scheduled substances other than those that he is authorised by his licence to buy and sell;
- (d) *[Section 18 Subsection (1) amended by No. 23 of 2022, s. 23, Applied:24 Oct 2022]* who, being the holder of a licence under section 16 (1) (b) , sells a scheduled substance to a person who is not authorised under this Act to have in his possession, or to sell or supply, that particular substance; or
- (e) who carries on any business referred to in paragraph (a) at a place of business not stated in a current licence granted to him under section 16 –

is guilty of an offence and is liable on summary conviction to a fine not exceeding 100 penalty units and, in the case of a body corporate, a fine not exceeding 500 penalty units.

(2) *[Section 18 Subsection (2) amended by No. 40 of 2016, s. 9, Applied:17 Oct 2016]* *[Section 18 Subsection (2) amended by No. 27 of 1984, s. 48 and Sched. 1]* A person who–

- (a) not being the holder of a licence under section 16 (1) (a) , calls himself, or causes or allows himself to be called or known as, a manufacturing chemist; or
- (b) not being the holder of a licence under section 16 (1) (b) , calls himself, or causes or allows himself to be called or known as, a wholesale chemist–

is guilty of an offence and is liable on summary conviction to a fine not exceeding 100 penalty units and, in the case of a body corporate, a fine not exceeding 500 penalty units.

(2A) *[Section 18 Subsection (2A) inserted by No. 40 of 2016, s. 9, Applied:17 Oct 2016]* The holder of a licence granted under section 16 must not breach a condition or restriction of that licence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

(3) *[Section 18 Subsection (3) amended by No. 15 of 2017, s. 8, Applied:13 Jun 2017]* Subject to subsection (4) , nothing in the foregoing provisions of this section prohibits the making, refining, buying, or selling of scheduled substances by a person who is–

- (a) *[Section 18 Subsection (3) amended by No. 15 of 2017, s. 8, Applied:13 Jun 2017]* a medical practitioner;
- (b) *[Section 18 Subsection (3) amended by No. 15 of 2017, s. 8, Applied:13 Jun 2017]* *[Section 18 Subsection (3) amended by No. 23 of 2022, s. 23, Applied:24 Oct 2022]* a pharmacist;
- (c) *[Section 18 Subsection (3) amended by No. 15 of 2017, s. 8, Applied:13 Jun 2017]* a dentist; or
- (d) *[Section 18 Subsection (3) amended by No. 15 of 2017, s. 8, Applied:13 Jun 2017]* a veterinary surgeon; or
- (e) *[Section 18 Subsection (3) amended by No. 15 of 2017, s. 8, Applied:13 Jun 2017]* an authorised health professional.

(4) *[Section 18 Subsection (4) amended by No. 23 of 2022, s. 23, Applied:24 Oct 2022]* Subsection (3) does not authorise the making, refining, buying, or selling, by a person to whom that subsection relates, of a narcotic substance otherwise than–

- (a) as permitted by Part V and the regulations thereunder; and

- (b) in compliance in all respects with the provisions of that Part and of those regulations.

Division 3A - Licensing of first-aid providers

18A. First-aid providers licence

[Section 18A of Part II Inserted by No. 15 of 2017, s. 9, Applied:13 Jun 2017]

- (1) In this section –

first-aid provider means an organisation that provides first-aid services;

first-aid provider licence means a licence granted under subsection (3) ;

prescribed substance means a substance prescribed for the purposes of this section.

- (2) A first-aid provider may apply to the Minister for –

(a) the grant of a licence under subsection (3) ; or

(b) the renewal of such a licence.

- (3) The Minister, in his or her discretion, may, on the application of a first-aid provider –

(a) grant, or refuse to grant, to that first-aid provider a licence; or

(b) renew, or refuse to renew, a licence.

- (4) Without limiting the Minister's discretion, the Minister may refuse to grant an application if the Minister considers that the applicant does not have appropriate clinical governance arrangements in place.

- (5) A first-aid provider licence authorises the licence holder to purchase, possess and supply prescribed substances for the purposes of first-aid services, subject to compliance with the provisions of this Act and any conditions and restrictions specified in the licence.

- (6) A first-aid provider licence, unless sooner cancelled, continues in force for a period specified in the licence of up to 24 months from the day on which it is granted.

Division 4 - Analysts

19. Appointment and remuneration of analysts

- (1) *[Section 19 Subsection (1) amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001] [Section 19 Subsection (1) substituted by No. 5 of 1990, s. 3 and Sched. 1]*The Secretary may appoint State Service officers and State Service employees employed in the Department to be analysts for the purposes of this Act and those officers and employees are to hold office in conjunction with State Service employment.

- (1A) *[Section 19 Subsection (1A) amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001] [Section 19 Subsection (1A) amended by No. 5 of 1990, s. 3 and Sched. 1][Section 19 Subsection (1A) renumbered by No. 46 of 1991, s. 5 and Sched. 3]*The Secretary may, with the approval of another Head of a State Service Agency, appoint State Service officers and State Service employees employed in that Agency, who possess competent knowledge, to be analysts for the purposes of this Act, and such officers and employees may hold office as analysts in conjunction with State Service employment.

- (2) *[Section 19 Subsection (2) inserted by No. 29 of 1984, s. 3 and Sched. 1]*No person shall be appointed as an analyst who is directly or indirectly engaged or interested in the manufacture or sale of scheduled substances or any class or kind thereof.

- (3) The Minister shall cause notice to be published in the *Gazette* when an appointment is made under this section stating the address of the place of residence or laboratory of the person appointed.

20.

[Section 20 Repealed by No. 5 of 1990, s. 3 and Sched. 1].

21. Powers of the Government Analyst

The Government Analyst has and may exercise all the powers and authorities of an analyst appointed under this Division.

22. Disqualification of analysts

An analyst who offends against any of the provisions of this Act with respect to a prescribed method of analysis may, if the Minister is satisfied that the offence has been wilfully committed, be disqualified by the Minister for appointment as an analyst for such period as the Minister thinks fit.

Division 5 - General

23. Appointment of inspectors

(1) The Minister may, by notice in the *Gazette*, appoint such inspectors as he may consider necessary for the administration of this Act.

(2) *[Section 23 Subsection (2) amended by No. 29 of 1984, s. 3 and Sched. 1]* The Minister shall not appoint a person as an inspector unless the person is –

(a) *[Section 23 Subsection (2) amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001]* a State Service officer or State Service employee, in respect of whom the Head of the State Service Agency in which the officer or employee is employed has given his approval for the appointment; or

(b) *[Section 23 Subsection (2) amended by No. 76 of 2003, Sched. 1, Applied:01 Jan 2004]* a police officer; or

(c) an officer of the Public Service of the Commonwealth or of an authority of the Commonwealth.

(3) The Governor may enter into an arrangement with the Governor-General of the Commonwealth for the exercise and performance, by officers of the Commonwealth or of an authority of the Commonwealth, of the powers, duties, and functions of inspectors under this Act.

(4) An arrangement under this section may make provision for all or any matters necessary or convenient to be provided for or incidental to the carrying out of the arrangement and shall contain provisions for the variation of the arrangement and a provision to the effect that it may be terminated by the Governor at any time.

(5) While an arrangement under this section is in force, the powers, duties, and functions of an inspector under this Act may be exercised and performed by any officer of the Commonwealth or of an authority of the Commonwealth provided for by or under the arrangement, and a reference in this Act to an inspector shall be read as including a reference to such an officer.

24. Delegation of functions, &c.

[Section 24 Subsection (1) amended by No. 5 of 1990, s. 3 and Sched. 1]

(1) *[Section 24 Subsection (1) amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001]* *[Section 24 Subsection (1) amended by No. 29 of 1984, s. 3 and Sched. 1]* The Minister may, by writing under his hand, delegate to the Secretary or, on the recommendation of the Secretary, to a State Service officer or State Service employee employed in the Department all or any of the powers, duties, and functions of the Minister under this Act other than–

(a) the power to make orders under this Act; and

(b) the power of delegation.

(2) The Minister may, in pursuance of this section, delegate to different persons the powers, duties, and functions conferred or imposed on the Minister by different provisions of this Act.

(3) A delegation under this section is revocable at the will of the Minister and does not prevent the exercise or performance by the Minister of any of his powers, duties, or functions under this Act.

25. Duties of analysts and inspectors

(1) *[Section 25 Subsection (1) amended by No. 27 of 1991, s. 5 and Sched. 1]* Where, under this Act, a substance is submitted or transmitted to an analyst for analysis by –

- (a) an inspector by whom the substance has been procured or seized; or
- (b) a person who, under section 63, is entitled to have the substance analysed –

the analyst shall carry out, or arrange for and supervise the carrying out of, the analysis as soon as practicable after receiving the substance and shall, forthwith on the completion of the analysis, prepare a certificate of the result of the analysis in the prescribed form.

(1A) *[Section 25 Subsection (1A) inserted by No. 27 of 1984, s. 10]* *[Section 25 Subsection (1A) amended by No. 27 of 1991, s. 5 and Sched. 1]* Where, for the purposes of any proceedings under this Act, substances or articles are transmitted by an inspector or police officer to an analyst for examination, the analyst shall carry out, or arrange for and supervise the carrying out of, the examination as soon as practicable after receiving the substances or articles and shall, on the completion of the examination, give a certificate of the result of the examination in the prescribed form, including, where appropriate, particulars as to the identity and quantity of the substances or articles.

(2) *[Section 25 Subsection (2) amended by No. 27 of 1984, s. 10]* Where pursuant to section 90 (1) (c) and (d) an inspector inspects stocks of a substance or plant he shall forthwith after the completion of the inspection prepare a certificate of the results of the inspection in the prescribed form.

25A. Authorisation of registered nurses and midwives by Minister

[Section 25A Inserted by No. 27 of 1984, s. 11]

(1) *[Section 25A Subsection (1) amended by No. 23 of 2022, s. 24, Applied:24 Oct 2022]* *[Section 25A Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010]* Where in a particular case the Minister is satisfied that the prescribed circumstances exist, he may authorise in writing a registered nurse or midwife to be in possession of and to supply restricted substances or narcotic substances or restricted substances or narcotic substances of a class specified in the authorisation, in such circumstances and subject to such conditions as may be so specified.

(2) *[Section 25A Subsection (2) amended by No. 23 of 2022, s. 24, Applied:24 Oct 2022]* The Minister may at any time revoke an authorisation under subsection (1) or vary the class of restricted substances or narcotic substances to which such an authorisation relates or vary the circumstances in which, or the conditions subject to which, such an authorisation may be exercised.

25B. Authorisation of nurse practitioners by Secretary

[Section 25B Inserted by No. 78 of 2007, s. 6, Applied:01 Jul 2008]

(1) The Secretary may authorise in writing a nurse practitioner to do any or all of the following in such circumstances, subject to such conditions and in relation to such substances or class of substances as may be specified in the authorisation:

- (a) sell or supply –
 - (i) medicinal poisons or potent substances; or
 - (ii) medicinal poisons or potent substances of a class specified in the authorisation;
- (b) be in possession of, sell, supply or prescribe –
 - (i) restricted substances or narcotic substances; or
 - (ii) restricted substances or narcotic substances of a class specified in the authorisation.

(2) The Secretary may at any time revoke an authorisation under subsection (1) or vary the substances or class of substances to which the authorisation relates or vary the circumstances in which, or the conditions subject to which, the authorisation may be exercised.

25C. Authorisation of health professionals

[Section 25C Inserted by No. 15 of 2017, s. 10, Applied:13 Jun 2017]

(1) In this section –

[Section 25C Subsection (1) amended by No. 3 of 2025, s. 13, Applied: 16 Apr 2025] **authorised body**, in respect of a class of health professionals, means an organisation or person, including the Crown, that is –

- (a) prescribed as the authorised body for that class of health professionals for the purposes of this section; or
- (b) declared to be an authorised body for that class of health professionals under section 25D(1) (b) .

(2) An authorised health professional, who is endorsed to prescribe scheduled substances by an authorised body may only, for the purposes of his or her profession, possess, sell, supply or prescribe the scheduled substances specified in that endorsement.

(3) The Governor may make regulations authorising and regulating the possession, sale, supply or prescription of scheduled substances by authorised health professionals in such circumstances, subject to such conditions and in relation to such substances or classes of substances, as may be specified in the regulations.

25D. Interim authorisation of health professionals

[Section 25D Inserted by No. 15 of 2017, s. 10, Applied: 13 Jun 2017]

(1) The Minister, by order, may –

- (a) declare a class of health professionals to be authorised health professionals for the purposes of this Act; and
- (b) declare an organisation to be an authorised body for that class of health professionals; and
- (c) authorise that class of health professionals to possess, sell, supply or prescribe scheduled substances subject to such conditions and in relation to such substances or classes of substances as may be specified in the order.

(2) An order under subsection (1) ceases to have effect 6 months after the date on which it takes effect unless sooner revoked.

25E. Authorisation of persons by Minister to possess scheduled substance

[Section 25E Inserted by No. 15 of 2017, s. 10, Applied: 13 Jun 2017]

(1) The Minister may authorise in writing a person, or a class of persons, to be in possession of scheduled substances of a class specified in the authorisation, in such circumstances and subject to such conditions as may be specified in the authorisation.

(2) The Minister may at any time revoke an authorisation under subsection (1) or vary the class of substances to which the authorisation relates or vary the circumstances in which, or the conditions subject to which, the authorisation may be exercised.

PART III - Poisons and Restricted Substances

Division 1 - Restrictions on the sale, supply, and possession of poisons and restricted substances

26. Sale and supply of potent substances and hazardous and medicinal poisons

[Section 26 Amended by No. 43 of 1991, s. 5 and Sched. 1]

(1) *[Section 26 Subsection (1) amended by No. 42 of 2010, s. 5, Applied:01 Jan 2011] [Section 26 Subsection (1) amended by No. 55 of 2009, s. 4, Applied:12 Nov 2009] [Section 26 Subsection (1) substituted by No. 27 of 1984, s. 48 and Sched. 1] [Section 26 Subsection (1) substituted by No. 55 of 1997, s. 4, Applied:22 Dec 1997]* Subject to section 47A and section 47C , a person must not sell or supply to another person a substance to which this section applies unless the first person is –

(a) the holder of a licence in force under section 27 to sell or supply that substance; or

(b) *[Section 26 Subsection (1) amended by No. 78 of 2007, s. 7, Applied:01 Jul 2008]* a person authorised under subsection (1A) or subsection (1AB) .

Penalty: Fine not exceeding 10 penalty units.

(1A) *[Section 26 Subsection (1A) amended by No. 23 of 2022, s. 25, Applied:24 Oct 2022] [Section 26 Subsection (1A) amended by No. 15 of 2017, s. 11, Applied:13 Jun 2017] [Section 26 Subsection (1A) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010] [Section 26 Subsection (1A) inserted by No. 27 of 1984, s. 48 and Sched. 1] [Section 26 Subsection (1A) substituted by No. 55 of 1997, s. 4, Applied:22 Dec 1997]* A medical practitioner, pharmacist, licensed manufacturing chemist, licensed wholesale chemist, dentist, authorised health professional or veterinary surgeon, in the lawful practice of his or her profession or business, is authorised to sell or supply to another person a substance to which this section applies.

(1AB) *[Section 26 Subsection (1AB) inserted by No. 78 of 2007, s. 7, Applied:01 Jul 2008]* An authorised nurse practitioner in the lawful practice of his or her profession and to the extent of any authorisation conferred on him or her under section 25B is authorised to sell or supply to another person a substance to which this section applies.

(1B) *[Section 26 Subsection (1B) amended by No. 42 of 2010, s. 5, Applied:01 Jan 2011] [Section 26 Subsection (1B) amended by No. 55 of 2009, s. 4, Applied:12 Nov 2009] [Section 26 Subsection (1B) amended by No. 78 of 2007, s. 7, Applied:01 Jul 2008] [Section 26 Subsection (1B) inserted by No. 55 of 1997, s. 4, Applied:22 Dec 1997]* Subject to section 47A and section 47C , a person must not sell or supply a restricted substance to another person unless the first person is a person authorised under subsection (1C) or subsection (1D) .

Penalty: Fine not exceeding 20 penalty units.

(1C) *[Section 26 Subsection (1C) amended by No. 15 of 2017, s. 11, Applied:13 Jun 2017] [Section 26 Subsection (1C) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010] [Section 26 Subsection (1C) inserted by No. 55 of 1997, s. 4, Applied:22 Dec 1997]* A medical practitioner, dentist, authorised health professional or veterinary surgeon, in the lawful practice of his or her profession or business, is authorised to sell or supply a restricted substance to another person.

(1D) *[Section 26 Subsection (1D) inserted by No. 78 of 2007, s. 7, Applied:01 Jul 2008]* An authorised nurse practitioner in the lawful practice of his or her profession and to the extent of any authorisation conferred on him or her under section 25B is authorised to sell or supply a restricted substance to another person.

(2) *[Section 26 Subsection (2) amended by No. 15 of 2017, s. 11, Applied:13 Jun 2017] [Section 26 Subsection (2) amended by No. 78 of 2007, s. 7, Applied:01 Jul 2008] [Section 26 Subsection (2) amended by No. 27 of 1984, s. 48 and Sched. 1]* Subsections (1) and (1B) do not apply to or in relation to the supply, by way of free distribution, of clinical samples of a substance to which this section applies or of a restricted substance to medical practitioners, dentists, authorised health professionals or veterinary surgeons by persons engaged in the manufacture of, or wholesale dealing in, any such substance where the distribution is made to the medical practitioner, dentist,

authorised health professional or veterinary surgeon personally or by posting, by registered post, a letter or parcel containing the substance addressed to the medical practitioner, dentist, authorised health professional or veterinary surgeon.

(3) *[Section 26 Subsection (3) amended by No. 23 of 2022, s. 25, Applied:24 Oct 2022] [Section 26 Subsection (3) amended by No. 15 of 2017, s. 11, Applied:13 Jun 2017] [Section 26 Subsection (3) amended by No. 78 of 2007, s. 7, Applied:01 Jul 2008]* Nothing in this section authorises a medical practitioner, a dentist, an authorised health professional, an authorised nurse practitioner or a veterinary surgeon to sell or supply to another person in an open shop a substance to which this section applies unless he is the holder of a licence under section 27 authorising him to do so.

(4) *[Section 26 Subsection (4) amended by No. 95 of 1973, s. 11 and Sched. 1]* In this section, **substance to which this section applies** means a substance that is –

- (a) a hazardous poison;
- (b) a medicinal poison; or
- (c) a potent substance.

27. Licences to sell certain substances

[Section 27 Subsection (1) amended by No. 27 of 1984, s. 12] [Section 27 Subsection (6) amended by No. 43 of 1991, s. 5 and Sched. 1]

(1AA) *[Section 27 Subsection (1AA) inserted by No. 40 of 2016, s. 10, Applied:17 Oct 2016]* A person may apply to the Minister for –

- (a) the grant of a licence under subsection (1) ; or
- (b) the renewal of a licence granted to the person under subsection (1) .

(1) *[Section 27 Subsection (1) amended by No. 23 of 2022, s. 26, Applied:24 Oct 2022] [Section 27 Subsection (1) amended by No. 40 of 2016, s. 10, Applied:17 Oct 2016] [Section 27 Subsection (1) amended by No. 75 of 1973, s. 2 and Sched. 1]* The Minister may, on the application of the person under subsection (1AA) , grant or refuse to grant, a licence to sell or supply substances to which this section applies to a person (not being a pharmacist) who–

- (a) *[Section 27 Subsection (1) amended by No. 23 of 2022, s. 26, Applied:24 Oct 2022]* keeps an open shop in a place that is situated at least 10 kilometres by the nearest practicable route from a place in which a pharmacist carries on the business of a pharmacy; and
- (b) *[Section 27 Subsection (1) amended by No. 9 of 2003, Sched. 1, Applied:16 Apr 2003] [Section 27 Subsection (1) amended by No. 40 of 2016, s. 10, Applied:17 Oct 2016]* produces to the Minister a certificate from a medical practitioner, or a magistrate, or the mayor of the municipal area in which that person carries on business certifying that that person is a fit and proper person to sell, in the place where his shop is situated, substances to which this section applies –

[Section 27 Subsection (1) amended by No. 40 of 2016, s. 10, Applied:17 Oct 2016] or renew, or refuse to renew, such a licence granted to the person.

(2) *[Section 27 Subsection (2) amended by No. 27 of 1984, s. 12] [Section 27 Subsection (2) omitted by No. 40 of 2016, s. 10, Applied:17 Oct 2016]*

(3) *[Section 27 Subsection (3) amended by No. 27 of 1984, s. 12]* A licence under this section –

- (a) *[Section 27 Subsection (3) amended by No. 40 of 2016, s. 10, Applied:17 Oct 2016]*
- (b) *[Section 27 Subsection (3) amended by No. 40 of 2016, s. 10, Applied:17 Oct 2016]*
- (c) *[Section 27 Subsection (3) amended by No. 40 of 2016, s. 10, Applied:17 Oct 2016]* unless it is sooner cancelled, continues in force from the day following the day on which it is granted until the following 31st December, but, subject to Part 1A , may be renewed for further periods not exceeding 12 months at any one time; and

(d) [Section 27 Subsection (3) amended by No. 23 of 2022, s. 26, Applied:24 Oct 2022] while in force authorises the holder thereof, subject to this Act, to sell or supply to other persons in and from the shop specified in the licence substances to which this section applies, or such classes or kinds of those substances, as are specified in the licence.

(3A) [Section 27 Subsection (3A) inserted by No. 27 of 1984, s. 12] [Section 27 Subsection (3A) omitted by No. 40 of 2016, s. 10, Applied:17 Oct 2016]

(3B) [Section 27 Subsection (3B) inserted by No. 27 of 1984, s. 12] [Section 27 Subsection (3B) omitted by No. 40 of 2016, s. 10, Applied:17 Oct 2016]

(3C) [Section 27 Subsection (3C) inserted by No. 27 of 1984, s. 12] [Section 27 Subsection (3C) omitted by No. 40 of 2016, s. 10, Applied:17 Oct 2016]

(4) [Section 27 Subsection (4) substituted by No. 27 of 1984, s. 12] [Section 27 Subsection (4) omitted by No. 40 of 2016, s. 10, Applied:17 Oct 2016]

(5) [Section 27 Subsection (5) amended by No. 27 of 1984, s. 12] The holder of a licence under this section –

(a) shall keep the substances to which the licence relates in such a receptacle and in such a manner as may be prescribed or as is specified in his licence;

(b) [Section 27 Subsection (5) amended by No. 23 of 2022, s. 26, Applied:24 Oct 2022] shall not keep or place, or cause or suffer to be kept or placed, in that receptacle any articles other than substances that he is authorised by his licence to sell or supply in and from his shop;

(c) shall permit an inspector at all reasonable times to inspect that receptacle and the licensee's method of keeping substances to which this section applies;

(d) [Section 27 Subsection (5) amended by No. 23 of 2022, s. 26, Applied:24 Oct 2022] shall not sell or supply substances to which this section applies otherwise than in unopened containers bearing the name, and the address of the place of business, of a licensed manufacturing chemist, a licensed wholesale chemist, or a pharmacist, or, in the case of such a substance which was manufactured outside Tasmania, of the manufacturer of the substance; and

(e) shall comply with or not contravene, as the case requires, any condition or restriction to which the licence is subject.

(6) [Section 27 Subsection (6) amended by No. 40 of 2016, s. 10, Applied:17 Oct 2016] [Section 27 Subsection (6) amended by No. 27 of 1984, s. 48 and Sched. 1] If the holder of such a licence contravenes or fails to comply with any provision of this section that is applicable to him he is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

(7) [Section 27 Subsection (7) amended by No. 95 of 1973, s. 11 and Sched. 1] In this section, **substances to which this section applies** means substances that are –

(a) hazardous poisons;

(b) medicinal poisons; or

(c) potent substances.

28. Sale of certain substances to be entered and kept in a poisons book

[Section 28 Subsection (4) amended by No. 43 of 1991, s. 5 and Sched. 1]

(1) [Section 28 Subsection (1) amended by No. 15 of 2017, s. 12, Applied:13 Jun 2017] [Section 28 Subsection (1) amended by No. 95 of 1973, s. 11 and Sched. 1] A person (in this section referred to as "the seller") who sells or supplies a hazardous poison to another person (in this section referred to as "the buyer") must, before delivering that poison to the buyer–

(a) inquire the name, place of residence, and occupation of the buyer and the purpose for which the poison is required or stated to be required by the buyer; and

(b) forthwith after making that inquiry, make in a book to be kept for the purpose by the seller (in this Act referred to as "the poisons book") a faithful entry of the sale or supply of the poison specifying—

- (i) the poison so sold or supplied;
- (ii) the quantity of the poison so sold or supplied;
- (iii) all the particulars given by the buyer to the seller as to matters referred to in paragraph (a) ;
and
- (iv) the day of the month and the year of the sale or supply of the poison.

Penalty: *[Section 28 Subsection (1) amended by No. 15 of 2017, s. 12, Applied:13 Jun 2017]* Fine not exceeding 20 penalty units.

(2) *[Section 28 Subsection (2) substituted by No. 15 of 2017, s. 12, Applied:13 Jun 2017]* The poisons book must be kept —

- (a) in a form approved by the Secretary; and
- (b) by the seller, for a period of at least 5 years after the day on which the final entry in the book is made.

Penalty: Fine not exceeding 20 penalty units.

(3) *[Section 28 Subsection (3) omitted by No. 15 of 2017, s. 12, Applied:13 Jun 2017]*

(4) *[Section 28 Subsection (4) amended by No. 27 of 1984, s. 48 and Sched. 1]**[Section 28 Subsection (4) omitted by No. 15 of 2017, s. 12, Applied:13 Jun 2017]*

29. Sales of certain substances by correspondence

*[Section 29 Subsection (2) amended by No. 27 of 1984, s. 48 and Sched. 1]**[Section 29 Subsection (3) amended by No. 43 of 1991, s. 5 and Sched. 1]*

(1) *[Section 29 Subsection (1) amended by No. 15 of 2017, s. 13, Applied:13 Jun 2017]* *[Section 29 Subsection (1) amended by No. 95 of 1973, s. 11 and Sched. 1]* Where a person (in this subsection referred to as "the seller") sells or supplies a hazardous poison to another person (in this subsection referred to as "the buyer") as the result of a written communication received by the seller from the buyer, the seller must preserve that communication for a period of at least 5 years after the day on which it is received by him, and shall enter in the poisons book a memorandum specifying—

- (a) *[Section 29 Subsection (1) amended by No. 15 of 2017, s. 13, Applied:13 Jun 2017]* the date of that communication;
- (b) *[Section 29 Subsection (1) amended by No. 15 of 2017, s. 13, Applied:13 Jun 2017]* from whom that communication was sent; and
- (c) *[Section 29 Subsection (1) amended by No. 15 of 2017, s. 13, Applied:13 Jun 2017]* the quantity and particulars of the hazardous poison ordered in that communication.

Penalty: *[Section 29 Subsection (1) amended by No. 15 of 2017, s. 13, Applied:13 Jun 2017]* Fine not exceeding 20 penalty units.

(2) *[Section 29 Subsection (2) amended by No. 95 of 1973, s. 11 and Sched. 1]**[Section 29 Subsection (2) substituted by No. 15 of 2017, s. 13, Applied:13 Jun 2017]* A person (in this subsection referred to as "the seller") must not, unless the Secretary approves otherwise, sell or supply to another person (in this subsection referred to as "the buyer") a hazardous poison as the result of written communication received by the seller from the buyer, unless the written communication is signed by the buyer.

Penalty: Fine not exceeding 10 penalty units.

(3) *[Section 29 Subsection (3) amended by No. 27 of 1984, s. 48 and Sched. 1]**[Section 29 Subsection (3) substituted by No. 15 of 2017, s. 13, Applied:13 Jun 2017]* For the purposes of this section, a signature includes an electronic signature.

30.

[Section 30 Subsection (2) amended by No. 43 of 1991, s. 5 and Sched. 1][Section 30 Subsection (1) amended by No. 95 of 1973, s. 11 and Sched. 1][Section 30 Subsection (2) amended by No. 27 of 1984, s. 48 and Sched. 1][Section 30 Repealed by No. 15 of 2017, s. 14, Applied:13 Jun 2017]

31. Modification of section 28 in relation to certain sales, &c.

[Section 31 Amended by No. 95 of 1973, s. 11 and Sched. 1][Section 31 Subsection (4) amended by No. 43 of 1991, s. 5 and Sched. 1]

(1) *[Section 31 Subsection (1) amended by No. 15 of 2017, s. 15, Applied:13 Jun 2017]* To the extent to which the provisions of section 28 require an entry in the poisons book to be signed by the person to whom a hazardous poison is sold or supplied, those provisions do not, if the conditions referred to in subsection (2) are observed, apply to or in relation to the sale or supply of such a poison to a person (in this section referred to as "the buyer") who is a medical practitioner, dentist, authorised health professional or veterinary surgeon and who requires the poison for use for the purposes, or in the conduct, of his profession.

(2) The conditions to be observed for the purposes of subsection (1) are that the person (in this section referred to as "the seller") by whom a hazardous poison is sold or supplied as mentioned in that subsection –

(a) has received, before the sale or supply thereof, an order in writing signed by the buyer stating the name and address of the buyer and the name and quantity of the hazardous poison to be sold or supplied to him;

(b) *[Section 31 Subsection (2) amended by No. 15 of 2017, s. 15, Applied:13 Jun 2017]* is satisfied that the signature affixed to the order is in fact the signature of the person purporting to sign it and that that person is a medical practitioner, dentist, authorised health professional or veterinary surgeon;

(c) delivers the poison personally to the buyer or sends it to the buyer by registered post;

(d) enters in the poisons book, in the appropriate column, the words "Signed order", followed by the date on which the order is executed; and

(e) preserves the order for a period of at least 5 years after the day on which he receives it.

(3) Notwithstanding any other provision of this Part, if the seller is satisfied that the buyer urgently requires a hazardous poison for use for the purposes, or in the conduct, of his profession but is, by reason of some emergency, unable before delivery either to furnish to the seller an order in writing duly signed, or to attend and sign the poisons book he may send the poison to the buyer to be handed over to him either in exchange for such an order or on the undertaking by the buyer to furnish such an order to the seller within the 24 hours next following.

(4) *[Section 31 Subsection (4) amended by No. 27 of 1984, s. 48 and Sched. 1]*A person who –

(a) being the buyer, gives such an undertaking as is mentioned in subsection (3) and fails to deliver to the seller a signed order in accordance with the undertaking;

(b) whether he is the buyer or not, for the purpose of obtaining delivery of a hazardous poison under subsection (3) , makes a statement that, to his knowledge, is false; or

(c) otherwise contravenes or fails to comply with a provision of this section that is applicable to him –

is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

(5) *[Section 31 Subsection (5) inserted by No. 15 of 2017, s. 15, Applied:13 Jun 2017]* For the purposes of this section, a signature includes an electronic signature.

32. Holders of licences under section 27 to produce poisons book on demand

[Section 32 Subsection (2) amended by No. 43 of 1991, s. 5 and Sched. 1]

(1) *[Section 32 Subsection (1) amended by No. 95 of 1973, s. 11 and Sched. 1]*The holder of a licence under section 27 , immediately on demand being made to him at his shop or place of business by an inspector, shall produce to the inspector the poisons book, together with any letters, telegrams, orders, and other documents by which

hazardous poisons have been ordered from the holder and that are in his possession or under his control, and permit the inspector to examine and make copies of, or take extracts from, any entry in that book or any such letter, telegram, order, or document.

(2) *[Section 32 Subsection (2) amended by No. 27 of 1984, s. 48 and Sched. 1]* If the holder of a licence under section 27 fails to comply with a demand made pursuant to subsection (1) by an inspector or to permit an inspector to examine or make copies or take extracts from any entry, letter, telegram, order, or document referred to in that subsection he is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

33. Restrictions on the sale of hazardous poisons

[Section 33 Amended by No. 95 of 1973, s. 11 and Sched. 1] [Section 33 Amended by No. 27 of 1984, s. 48 and Sched. 1] [Section 33 Amended by No. 43 of 1991, s. 5 and Sched. 1] [Section 33 Amended by No. 68 of 1994, s. 3 and Sched. 1] A person (in this section referred to as "the seller") shall not –

- (a) sell or supply a hazardous poison to a person who is under 18 years of age;
- (b) being a person under 18 years of age, sell or supply a hazardous poison to another person; or
- (c) otherwise than as referred to in section 29 , or section 30 , or section 31 , sell or supply a hazardous poison to a person who is unknown to the seller unless –
 - (i) the sale is made in the presence of some witness who is known to the seller and knows the person to whom the poison is sold or supplied; and
 - (ii) any entry relating to the sale or supply of the poison required to be made under this Act is signed by the witness and the place of residence of the witness, as stated by him to the seller, has been stated in the entry before the poison is delivered.

Penalty: Fine not exceeding 10 penalty units.

34. Owner, &c., of hazardous poisons not to leave them about unlabelled

[Section 34 Subsection (1) amended by No. 27 of 1984, s. 48 and Sched. 1] [Section 34 Subsection (1) amended by No. 43 of 1991, s. 5 and Sched. 1]

(1) *[Section 34 Subsection (1) amended by No. 95 of 1973, s. 11 and Sched. 1]* A person, being the owner or person having possession of a hazardous poison, shall not leave it in any place (whether ordinarily accessible to other persons or not) unless the container or package in which the poison is contained –

- (a) is clearly marked with the word "Poison"; and
- (b) is otherwise labelled or marked as prescribed.

Penalty: Fine not exceeding 10 penalty units.

(2) *[Section 34 Subsection (2) amended by No. 23 of 2022, s. 27, Applied:24 Oct 2022]* This section does not apply to or in relation to a pharmacist in the conduct of his business as such.

35.

[Section 35 Amended by No. 43 of 1991, s. 5 and Sched. 1] [Section 35 Subsection (1) substituted by No. 27 of 1984, s. 13] [Section 35 Subsection (1) amended by No. 43 of 1991, s. 5 and Sched. 1] [Section 35 Subsection (1) amended by No. 68 of 1994, s. 3 and Sched. 1] [Section 35 Subsection (2) substituted by No. 27 of 1984, s. 13] [Section 35 Subsection (2) amended by No. 43 of 1991, s. 5 and Sched. 1] [Section 35 Subsection (3) inserted by No. 27 of 1984, s. 13] [Section 35 Subsection (3) amended by No. 43 of 1991, s. 5 and Sched. 1] [Section 35 Subsection (4) added by No. 27 of 1984, s. 13] [Section 35 Subsection (4) amended by No. 43 of 1991, s. 5 and Sched. 1] [Section 35 Repealed by No. 95 of 2001, Sched. 1, Applied:01 Jun 2002]

36. Offences relating to certain restricted substances

[Section 36 Subsection (1) amended by No. 43 of 1991, s. 5 and Sched. 1]

(1) *[Section 36 Subsection (1) amended by No. 73 of 2013, Sched. 1, Applied:01 Jul 2014] [Section 36 Subsection (1) amended by No. 7 of 2012, s. 10, Applied:01 Jul 2012] [Section 36 Subsection (1) amended by No. 27 of 1984, s. 14 and s.*

48 and Sched. 1][Section 36 Subsection (1) substituted by No. 55 of 1997, s. 5, Applied:22 Dec 1997] Subject to subsections (2A) and (2B) , a person must not have in his or her possession, or attempt to obtain possession of, a substance to which this section applies unless that person –

- (a) *[Section 36 Subsection (1) amended by No. 78 of 2007, s. 8, Applied:01 Jul 2008] [Section 36 Subsection (1) amended by No. 73 of 2013, Sched. 1, Applied:01 Jul 2014]* is a person authorised under subsection (1A) , (1B) or (1C) ; or
- (b) has obtained possession of the substance –
 - (i) *[Section 36 Subsection (1) amended by No. 78 of 2007, s. 8, Applied:01 Jul 2008] [Section 36 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010] [Section 36 Subsection (1) amended by No. 42 of 2010, s. 6, Applied:01 Jan 2011] [Section 36 Subsection (1) amended by No. 15 of 2017, s. 16, Applied:13 Jun 2017]* from a medical practitioner, dentist, authorised health professional, authorised nurse practitioner, endorsed midwife or veterinary surgeon acting in the course of the lawful practice of his or her profession or business; or
 - (ii) on and in accordance with a prescription for its supply to him or her issued by a person referred to in subparagraph (i) , acting in the course of the lawful practice of his or her profession or business.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years.

(1A) *[Section 36 Subsection (1A) amended by No. 23 of 2022, s. 28, Applied:24 Oct 2022] [Section 36 Subsection (1A) amended by No. 15 of 2017, s. 16, Applied:13 Jun 2017] [Section 36 Subsection (1A) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010] [Section 36 Subsection (1A) inserted by No. 55 of 1997, s. 5, Applied:22 Dec 1997]* A medical practitioner, pharmacist, licensed manufacturing chemist, licensed wholesale chemist, dentist, authorised health professional or veterinary surgeon, in the lawful practice of his or her profession or business, is authorised to have in his or her possession, or to attempt to obtain possession of, a substance to which this section applies.

(1B) *[Section 36 Subsection (1B) inserted by No. 78 of 2007, s. 8, Applied:01 Jul 2008]* An authorised nurse practitioner in the lawful practice of his or her profession and to the extent of any authorisation conferred on him or her under section 25B is authorised to have in his or her possession, or to attempt to obtain possession of, a substance to which this section applies.

(1C) *[Section 36 Subsection (1C) inserted by No. 73 of 2013, Sched. 1, Applied:01 Jul 2014]* A person is authorised, in respect of ambulance services, to have in his or her possession, or to attempt to obtain possession of, a substance to which this section applies to the extent the person is authorised under any Secretary's written authority for the use of the substance to which this section applies for ambulance services.

(2) A person is not guilty of an offence against subsection (1) by virtue of his having in his possession, or attempting to obtain possession of, a substance to which this section applies if he proves that he had possession, or attempted to obtain possession, of the substance only for the purpose of delivering it –

(a) *[Section 36 Subsection (2) amended by No. 78 of 2007, s. 8, Applied:01 Jul 2008] [Section 36 Subsection (2) amended by No. 42 of 2010, s. 6, Applied:01 Jan 2011] [Section 36 Subsection (2) amended by No. 15 of 2017, s. 16, Applied:13 Jun 2017] [Section 36 Subsection (2) amended by No. 23 of 2022, s. 28, Applied:24 Oct 2022]* to a medical practitioner, pharmacist, dentist, authorised health professional, authorised nurse practitioner, endorsed midwife or veterinary surgeon; or

(b) *[Section 36 Subsection (2) amended by No. 78 of 2007, s. 8, Applied:01 Jul 2008] [Section 36 Subsection (2) amended by No. 42 of 2010, s. 6, Applied:01 Jan 2011] [Section 36 Subsection (2) amended by No. 15 of 2017, s. 16, Applied:13 Jun 2017] [Section 36 Subsection (2) amended by No. 23 of 2022, s. 28, Applied:24 Oct 2022]* to a person to whom its supply has been authorised by the prescription of a medical practitioner, dentist, authorised health professional, authorised nurse practitioner, endorsed midwife or veterinary surgeon.

(2AA) *[Section 36 Subsection (2AA) inserted by No. 15 of 2019, Sched. 1, Applied:28 Jun 2019]* A person is not guilty of an offence against subsection (1) if the person is the holder of a permit, licence or authority in force under this Act and is acting in accordance with the terms and conditions of that permit, licence or authority.

(2AB) [Section 36 Subsection (2AB) inserted by No. 21 of 2021, s. 5, Applied:17 Dec 2021] A person is not guilty of an offence against subsection (1) if –

- (a) the possession by the person of the substance to which this section applies is authorised under an emergency order; and
- (b) that person is acting in accordance with the emergency order.

(2A) [Section 36 Subsection (2A) inserted by No. 7 of 2012, s. 10, Applied:01 Jul 2012] A person may have in his or her possession a substance to which this section applies if –

- (a) the substance was lawfully prescribed and dispensed to the person in another State or a Territory for the use of the person or a member of his or her immediate family; and
- (b) the person brought the substance into this State with them, either on their person or in their luggage.

(2B) [Section 36 Subsection (2B) inserted by No. 73 of 2013, Sched. 1, Applied:01 Jul 2014] A person may have in his or her possession a substance to which this section applies if –

- (a) the substance was lawfully supplied to the person in another State or a Territory; and
- (b) the person brought the substance into this State to provide ambulance services under the Ambulance Service Act 1982 .

(3) [Section 36 Subsection (3) inserted by No. 55 of 1997, s. 5, Applied:22 Dec 1997] In this section,

substance to which this section applies means a restricted substance that is declared by the Minister, by order, to be a substance to which this section applies.

Division 2 - Dangerous poisons

[Part III, Div 2 Heading amended by No. 95 of 1973, s. 4]

37. Regulations for the control, &c., of the manufacture, use, &c., of dangerous poisons

(1) [Section 37 Subsection (1) amended by No. 95 of 1973, s. 11 and Sched. 1]The Governor may make regulations for or with respect to –

- (a) regulating and prohibiting the possession, manufacture, sale, supply, or use of dangerous poisons, either absolutely or except in such circumstances, or subject to such conditions, as may be prescribed; and
- (b) the precautions to be taken in, or in connection with, the regulation and control of the manufacture, storage, use, distribution, or handling of any such poisons.

(2) [Section 37 Subsection (2) amended by No. 43 of 1991, s. 5 and Sched. 1]A person who is guilty of an offence against a regulation made for the purposes of this section is liable to a fine not exceeding 20 penalty units or to imprisonment for a term not exceeding 12 months, or to both.

Division 3 - Exemptions

38. Limitation of application of certain provisions of Division 1 of this Part

(1) [Section 38 Subsection (1) amended by No. 55 of 1997, s. 6, Applied:22 Dec 1997] [Section 38 Subsection (1) substituted by No. 27 of 1984, s. 15][Section 38 Subsection (1) amended by No. 9 of 1986, s. 4][Section 38 Subsection (1) amended by No. 87 of 1994, s. 84 and Sched. 4][Section 38 Subsection (1) amended by No. 81 of 1995, s. 80 and Sched. 4] Section 26(1) and (1B) do not apply to or in relation to–

- (a) [Section 38 Subsection (1) amended by No. 78 of 2007, s. 9, Applied:01 Jul 2008] [Section 38 Subsection (1) amended by No. 15 of 2017, s. 17, Applied:13 Jun 2017] [Section 38 Subsection (1) amended by No. 23 of 2022, s. 29, Applied:24 Oct 2022] the sale or supply of a restricted substance that is sold or supplied by a pharmacist on and in accordance with the prescription of a medical practitioner, dentist, authorised health professional, authorised nurse practitioner or veterinary surgeon;

(ab) [Section 38 Subsection (1) amended by No. 6 of 2000, s. 4, Applied:04 Apr 2001] [Section 38 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010] [Section 38 Subsection (1) amended by No. 15 of 2017, s. 17, Applied:13 Jun 2017]

(ac) [Section 38 Subsection (1) amended by No. 42 of 2010, s. 7, Applied:01 Jan 2011] [Section 38 Subsection (1) amended by No. 15 of 2017, s. 17, Applied:13 Jun 2017] [Section 38 Subsection (1) amended by No. 23 of 2022, s. 29, Applied:24 Oct 2022] the sale or supply of a midwifery restricted substance that is sold or supplied by a pharmacist on and in accordance with the prescription of an endorsed midwife;

(b) [Section 38 Subsection (1) amended by No. 23 of 2022, s. 29, Applied:24 Oct 2022] the sale or supply of a restricted substance (not being a specified psychotropic substance) that is sold or supplied by a pharmacist otherwise than on and in accordance with such a prescription, but only where that sale or supply is made in accordance with such conditions (if any) as are prescribed in the regulations for the purposes of this paragraph;

(ba) [Section 38 Subsection (1) amended by No. 73 of 2013, Sched. 1, Applied:01 Jul 2014] [Section 38 Subsection (1) amended by No. 23 of 2022, s. 29, Applied:24 Oct 2022] the sale or supply of a restricted substance that is sold or supplied by a pharmacist, or licensed wholesale chemist, otherwise than on and in accordance with such a prescription, but only where that sale or supply is to a person holding the Secretary's written authority for the use of the substance in respect of ambulance services;

(bb) [Section 38 Subsection (1) amended by No. 21 of 2021, s. 6, Applied:17 Dec 2021] the sale or supply of a restricted substance by a person who is authorised under, and acting in accordance with, an emergency order;

(c) [Section 38 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010] [Section 38 Subsection (1) amended by No. 15 of 2017, s. 17, Applied:13 Jun 2017] [Section 38 Subsection (1) amended by No. 23 of 2022, s. 29, Applied:24 Oct 2022] the supply of a restricted substance by a registered nurse or midwife in accordance with an authorisation conferred on that nurse or midwife under section 25A ;

(d) the administration to a person who, because of age or mental or physical disability, whether permanent or temporary, is incapable of caring for himself of–

(i) a substance to which section 26 applies by a parent or guardian of the person; or

(ii) [Section 38 Subsection (1) amended by No. 78 of 2007, s. 9, Applied:01 Jul 2008] [Section 38 Subsection (1) amended by No. 15 of 2017, s. 17, Applied:13 Jun 2017] a restricted substance by a parent or guardian of the person as prescribed by a medical practitioner, dentist, authorised health professional or authorised nurse practitioner;

(e) [Section 38 Subsection (1) amended by No. 78 of 2007, s. 9, Applied:01 Jul 2008] [Section 38 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010] [Section 38 Subsection (1) amended by No. 15 of 2017, s. 17, Applied:13 Jun 2017] the administration to a person of a substance to which section 26 applies or a restricted substance by a registered nurse or midwife in accordance with the written directions of a medical practitioner, dentist, authorised health professional or authorised nurse practitioner;

(ea) [Section 38 Subsection (1) amended by No. 6 of 2000, s. 4, Applied:04 Apr 2001] [Section 38 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010] [Section 38 Subsection (1) amended by No. 15 of 2017, s. 17, Applied:13 Jun 2017]

(f) [Section 38 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010] [Section 38 Subsection (1) amended by No. 15 of 2017, s. 17, Applied:13 Jun 2017]

(g) [Section 38 Subsection (1) amended by No. 16 of 1997, Sched. 1, Applied:30 Jul 1997] the administration to a person of a substance to which section 26 applies or a restricted substance by the master of a boat where the substance is required to be carried on a boat of that class by regulations or by-laws made under the Marine and Safety Authority Act 1997 for the purpose of providing medical treatment of a passenger or crew member on the boat;

(h) [Section 38 Subsection (1) amended by No. 73 of 2013, Sched. 1, Applied:01 Jul 2014] the administration to a person of a substance to which section 26 applies or a restricted substance by a volunteer ambulance

officer, an ambulance officer, a paramedic or an interstate ambulance officer—

(i) at the direction of a medical practitioner; or

(ii) [Section 38 Subsection (1) amended by No. 73 of 2013, Sched. 1, Applied:01 Jul 2014] in accordance with the Field Protocols applying with respect to the administration of scheduled substances as approved by the Commissioner of Ambulance Services from time to time; or

(i) the administration to a person of a substance to which section 26 applies or a restricted substance by a prescribed person or a member of a class of prescribed persons in circumstances prescribed by the regulations.

(1A) [Section 38 Subsection (1A) inserted by No. 27 of 1984, s. 15] [Section 38 Subsection (1A) substituted by No. 6 of 2000, s. 4, Applied:04 Apr 2001] In subsection (1) —[Section 38 Subsection (1A) amended by No. 15 of 2017, s. 17, Applied:13 Jun 2017] [Section 38 Subsection (1A) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010] [Section 38 Subsection (1A) amended by No. 15 of 2017, s. 17, Applied:13 Jun 2017]

specified psychotropic substance means a restricted substance that is designated in the regulations as a psychotropic substance for the purposes of subsection (1)(b) .

(2) Section 36 (1) does not apply to or in relation to a wholesale dealer who has in his possession, or attempts to obtain possession of, a substance to which that section applies for the purposes of a wholesale dealing.

(3) [Section 38 Subsection (3) amended by No. 95 of 1973, s. 11 and Sched. 1] Sections 28 , 29 , 30 , 31 , and 33 do not apply to or in relation to the sale or supply of a hazardous poison —

(a) [Section 38 Subsection (3) amended by No. 15 of 2017, s. 17, Applied:13 Jun 2017] that is made up or compounded as a medicine by—

(i) [Section 38 Subsection (3) amended by No. 23 of 2022, s. 29, Applied:24 Oct 2022] a pharmacist acting in the lawful practice of his profession as such; or

(ii) [Section 38 Subsection (3) amended by No. 23 of 2022, s. 29, Applied:24 Oct 2022] a provisionally registered pharmacist under the direct personal supervision of a pharmacist so acting—

on and in accordance with the prescription of a medical practitioner, authorised health professional, dentist, or veterinary surgeon;

(b) [Section 38 Subsection (3) amended by No. 23 of 2022, s. 29, Applied:24 Oct 2022] that is made up or compounded extemporaneously as a medicine by a pharmacist so acting for a specific and individual case, if the medicine does not contain a restricted substance; or

(c) [Section 38 Subsection (3) amended by No. 15 of 2017, s. 17, Applied:13 Jun 2017] that is made up or compounded as a medicine and is supplied by a medical practitioner so acting for the purposes of medical treatment, by a dentist so acting for the purposes of dental treatment, by an authorised health professional so acting in the course of his or her profession, or by a veterinary surgeon so acting for the purposes of animal treatment—

but this subsection does not apply in respect of a medicine for external use containing a hazardous poison unless the container thereof bears the word "Poison" printed conspicuously thereon together with the name and address of the seller.

(4) [Section 38 Subsection (4) amended by No. 95 of 1973, s. 11 and Sched. 1] Sections 26 , 28 , 29 , 30 , 31 , and 33 do not apply to or in relation to the sale or supply of —

(a) photographic materials for the purposes of photography;

(b) a material or liquid containing a substance that is a hazardous poison or a medicinal poison (not being such a poison that is excluded by the regulations from the operation of this subsection) for the destruction of animals, birds, insects, or plants; or

(c) a substance that is a hazardous poison, medicinal poison, potent substance, or restricted substance by a wholesale dealer in the ordinary course of wholesale dealing.

Division 4 - Monitored medicines database

38A. Interpretation

[Section 38A of Part III Inserted by No. 21 of 2021, s. 7, Applied:17 Dec 2021] In this Division –

data source entity means a person or a class of persons, or an entity or a class of entities, approved to be a data source entity under section 38F ;

dispenser means –

- (a) *[Section 38A Amended by No. 23 of 2022, s. 30, Applied:24 Oct 2022]* a pharmacist; and
- (b) a person who is prescribed as a dispenser for the purposes of this definition;

entity means –

- (a) an incorporated or unincorporated body; or
- (b) the trustee of a trust; or
- (c) the Commonwealth, another State or a Territory in respect of which the Secretary has entered into an agreement or memorandum of understanding under section 38C(2) ; or
- (d) a person or a body in another Australian jurisdiction in respect of whom the Secretary has entered into an agreement or memorandum of understanding under section 38C(2) ; or
- (e) a person or body that is prescribed as an entity for the purposes of this definition;

information includes records;

prescriber means –

- (a) a medical practitioner; or
- (b) a dentist; or
- (c) a person who is prescribed as a prescriber for the purposes of this definition;

registered health practitioner means a registered health practitioner within the meaning of the Health Practitioner Regulation National Law (Tasmania).

38B. Secretary to establish and maintain monitored medicines database

[Section 38B of Part III Inserted by No. 21 of 2021, s. 7, Applied:17 Dec 2021]

(1) The Secretary is to establish and maintain an electronic database (the ***monitored medicines database***) to monitor and record –

- (a) information relating to the issuing of prescriptions for monitored medicines; and
- (b) information relating to the dispensing of monitored medicines on and in accordance with a prescription; and
- (c) information relating to the sale and supply of monitored medicines, otherwise than on and in accordance with a prescription, by a person who is authorised by or under this Act to sell or supply monitored medicines; and
- (d) information obtained for the purposes of, or in connection with, the administration or enforcement of this Act; and
- (e) any other prescribed information.

(2) The purposes of the monitored medicines database are –

- (a) to promote safe and effective practices for the issuing of prescriptions for monitored medicines; and
- (b) to promote safe and effective practices for the dispensing of monitored medicines on and in accordance with a prescription; and

- (c) to promote safe and effective practices for the sale and supply of monitored medicines, otherwise than on and in accordance with a prescription, by a person who is authorised by or under this Act to sell and supply monitored medicines; and
- (d) to minimise the harm associated with monitored medicines and other high-risk substances; and
- (e) to promote and protect public health and safety associated with the use of monitored medicines and other high-risk substances; and
- (f) to facilitate the evaluation of, and research into, monitored medicines; and
- (g) to facilitate the administration and enforcement of this Act; and
- (h) any other prescribed purpose.

38C. Powers of Secretary in relation to monitored medicines database

[Section 38C of Part III Inserted by No. 21 of 2021, s. 7, Applied: 17 Dec 2021]

(1) For the purposes of establishing and maintaining the monitored medicines database and furthering the purposes of the monitored medicines database, the Secretary may –

- (a) authorise, in writing and with or without any conditions, as the Secretary considers necessary, a person or an entity to collect, access, store and otherwise deal with information, provided to the monitored medicines database, for the purpose of operating the database; and
- (b) collect, access, store and otherwise deal with information, required for the monitored medicines database or permitted to be collected, accessed, stored or otherwise dealt with by or under this Act or the regulations; and
- (c) authorise, in writing and with or without any conditions, as the Secretary considers necessary, a data source entity to provide information to the monitored medicines database in the prescribed manner and in the prescribed form; and
- (d) require, in writing and with or without any conditions, as the Secretary considers necessary, a person or a class of persons to provide information to the monitored medicines database in the prescribed manner and in the prescribed form; and
- (e) authorise, in writing and with or without any conditions, as the Secretary considers necessary, the manner, and the form, in which information in relation to the issue of prescriptions for the sale or supply of monitored medicines, the dispensing of any such prescription, and the sale or supply of any such monitored medicines thereunder, are to be provided to the monitored medicines database; and
- (f) authorise, in writing and with or without any conditions, as the Secretary considers necessary, the manner, and the form, in which information in relation to the sale or supply of monitored medicines otherwise than on and in accordance with a prescription is to be provided to the monitored medicines database by a person who is authorised to do so by or under this Act; and
- (g) collect, access, store and otherwise deal with information in the monitored medicines database for the purpose of ascertaining whether there is or has been a contravention of, or a failure to comply with, this Act; and
- (h) collect, access, store and otherwise deal with information in the monitored medicines database for purposes of, or in connection with, the administration or enforcement of this Act; and
- (i) collect, access, store and otherwise deal with information in the monitored medicines database including, but not limited to, the following:
 - (i) disclosing information in the monitored medicines database to the Commonwealth, another State or a Territory;
 - (ii) receiving or collecting information for the monitored medicines database from the Commonwealth, another State or a Territory or from an entity in any other Australian jurisdiction;

(iii) authorising, in writing, an entity to use and disclose information in the monitored medicines database;

(iv) using or disclosing information in the monitored medicines database in accordance with this Act or the regulations; and

(j) do any other thing or exercise any other power reasonably necessary –

(i) to implement, maintain, administer, develop, operate or oversee the monitored medicines database; and

(ii) to further the purposes of the monitored medicines database.

(2) Without limiting subsection (1) or any other power of the Secretary, the Secretary may enter into an agreement or a memorandum of understanding with the Commonwealth, another State or a Territory, and any person or body in another Australian jurisdiction, in relation to the provision of information to or from the monitored medicines database by or to that other jurisdiction.

38D. Information provided to, and collected and stored in, monitored medicines database

[Section 38D of Part III Inserted by No. 21 of 2021, s. 7, Applied: 17 Dec 2021]

(1) The regulations may prescribe the information that must be, or that may be, provided to, or collected and stored in, the monitored medicines database.

(2) Without limiting subsection (1), the information prescribed in the regulations may include –

(a) personal information within the meaning of the Right to Information Act 2009 ; and

(b) information obtained under a law of another jurisdiction for a purpose specified in section 38B(2) .

38E. Access, use and disclosure of information in monitored medicines database

[Section 38E of Part III Inserted by No. 21 of 2021, s. 7, Applied: 17 Dec 2021]

(1) A prescriber may access, use and disclose information in the monitored medicines database –

(a) for the purpose of providing information to the monitored medicines database in accordance with this Act or the regulations; and

(b) in relation to a person to whom monitored medicines may be supplied, prescribed or administered; and

(c) in respect of a person in relation to the medical treatment or care of that person; and

(d) for the purpose of disclosing information in the monitored medicines database to a registered health practitioner involved in the care of a person whose information is maintained in the database; and

(e) for any other prescribed purpose.

(2) A dispenser may access, use and disclose information in the monitored medicines database –

(a) for the purpose of providing information to the monitored medicines database in accordance with this Act or the regulations; and

(b) in relation to a person to whom monitored medicines may be supplied, prescribed or administered; and

(c) in respect of a person in relation to the medical treatment or care of that person; and

(d) for the purpose of disclosing information in the monitored medicines database to a registered health practitioner involved in the care of a person whose information is maintained in the database; and

(e) for any other prescribed purpose.

(3) The Secretary may authorise a person, a class of persons, an entity or a class of entities to access, use and disclose information in the monitored medicines database for the purposes specified in the authorisation, in

relation to the person, class of persons, entity or class of entities, if the Secretary is satisfied that the access, use and disclosure –

(a) would assist in achieving the purposes of –

(i) promoting safe prescribing and dispensing practices in respect of monitored medicines; and

(ii) reducing harm associated with monitored medicines; or

(b) would assist in achieving the purposes of the monitored medicines database; or

(c) is for technical or administrative purposes relating to the maintenance of the monitored medicines database; or

(d) is to facilitate evaluation of and research into monitored medicines and the operation of the monitored medicines database.

(4) An authorisation under subsection (3) must –

(a) be in writing; and

(b) in the case of an authorisation for a class of persons, or a class of entities, be published in the *Gazette*.

(5) Any person or entity who is authorised by the Secretary under subsection (3) , or who belongs to a class of persons or a class of entities that is authorised by the Secretary under subsection (3) , may access, use and disclose information in the monitored medicines database for the purposes specified in that authorisation.

38F. Data source entity

[Section 38F of Part III Inserted by No. 21 of 2021, s. 7, Applied:17 Dec 2021] The Secretary may approve, in writing and with or without any conditions, as the Secretary considers necessary, a person or a class of persons, or an entity or a class of entities, to be a data source entity for the purposes of the monitored medicines database.

38G. Prescribers to check monitored medicines database before issuing prescription for monitored medicine

[Section 38G of Part III Inserted by No. 21 of 2021, s. 7, Applied:17 Dec 2021] *[Section 38G Substituted by No. 23 of 2022, s. 31, Applied:24 Oct 2022]*

(1) Subject to subsection (2) , before a prescriber issues a prescription for the supply of a monitored medicine to a person, the prescriber must take all reasonable steps to check the monitored medicines database for information in relation to the person.

Penalty: Fine not exceeding 10 penalty units.

(2) The regulations may prescribe circumstances in which a prescriber need not comply with subsection (1) .

38H. Dispensers to check monitored medicines database before dispensing monitored medicine

[Section 38H of Part III Inserted by No. 21 of 2021, s. 7, Applied:17 Dec 2021] *[Section 38H Substituted by No. 23 of 2022, s. 32, Applied:24 Oct 2022]*

(1) Subject to subsection (2) , before a dispenser dispenses a monitored medicine on and in accordance with a prescription to a person, the dispenser must take all reasonable steps to check the monitored medicines database for information in relation to the person.

Penalty: Fine not exceeding 10 penalty units.

(2) The regulations may prescribe circumstances in which a dispenser need not comply with subsection (1) .

38I. Offences relating to unauthorised access or use of monitored medicines database

[Section 38I of Part III Inserted by No. 21 of 2021, s. 7, Applied:17 Dec 2021]

(1) A person who is not authorised by or under this Act, the regulations or any other law to access, use or disclose information in the monitored medicines database must not knowingly access, use or disclose information in the database.

Penalty: Fine not exceeding 10 penalty units.

(2) A person who is authorised by or under this Act, the regulations or any other law to access, use or disclose information in the monitored medicines database must not access, use or disclose information in the database unless the person is acting in accordance with the authorisation conferred on that person.

Penalty: Fine not exceeding 10 penalty units.

Division 5 - Emergency orders

38J. Authorisation under emergency order

[Section 38J of Part III Inserted by No. 21 of 2021, s. 7, Applied: 17 Dec 2021]

(1) A person may possess, sell or supply a scheduled substance without a prescription if the person is authorised to do so under an emergency order.

(2) If an event referred to in subsection (4) occurs, the Secretary may make an order (an ***emergency order***) authorising a person to possess, sell or supply a scheduled substance without a prescription.

(3) An emergency order must include the following information:

- (a) the person, or the class of persons, to whom the emergency order applies;
- (b) the scheduled substance, or the class of scheduled substances, to which the emergency order applies;
- (c) the event, referred to in subsection (4), that has occurred;
- (d) a description of the area to which the emergency order applies;
- (e) the day on which the emergency order starts;
- (f) the day, no later than 3 months after the day on which the emergency order starts, on which the emergency order ends;
- (g) the circumstances in which the person, or the class of persons, may possess, sell or supply the scheduled substance to which the emergency order applies;
- (h) the conditions, if any, applying to the possession, sale or supply of the scheduled substance to which the emergency order applies.

(4) The Secretary may make an emergency order if any of the following events occurs:

- (a) the declaration of a public health emergency in accordance with section 14 of the Public Health Act 1997 ;
- (b) the authorisation of emergency powers in accordance with section 40 of the Emergency Management Act 2006 ;
- (c) the declaration of a state of alert in accordance with section 41A of the Emergency Management Act 2006 ;
- (d) the declaration of a state of emergency in accordance with section 42 of the Emergency Management Act 2006 ;
- (e) any other event that is prescribed in the regulations.

(5) An emergency order is to be issued in a manner that the Secretary considers necessary, having regard to the intended application and scope of the order.

38K. Publication of emergency order

[Section 38K of Part III Inserted by No. 21 of 2021, s. 7, Applied: 17 Dec 2021]

(1) The Secretary must publish an emergency order in the *Gazette* as soon as practicable after it is made.

(2) An emergency order is not invalid only because of a failure of the Secretary to comply with subsection (1) .

PART IV - New Drugs

39. Interpretation

In this Part, unless the contrary intention appears –*[Section 39 Amended by No. 29 of 2009, s. 7, Applied:01 Sep 2009]*

new drug means a drug –

(a) that is not included in the latest edition for the time being of –

- (i) the *British Pharmacopoeia*;
- (ii) the *British Pharmaceutical Codex*; or
- (iii) the *United States Pharmacopoeia*; or

(b) being a drug that is or contains a scheduled substance, in relation to which the method of manufacture, composition, route of administration, or indications for use is or are changed after the day on which that substance is first specified in a schedule to the Poisons List.

40. Classification of new drugs

(1) Before a new drug is first offered for sale to the public, the manufacturer, importer, or distributor (as the case may require) of the new drug shall make application to the Minister –

- (a) to classify the new drug by determining the schedule (if any) to the Poisons List in which the drug is to be specified; and
- (b) to determine whether substances containing more or less than a specified percentage by weight or volume of that drug are to be excluded from, or included in, any of the schedules to the Poisons List.

(2) *[Section 40 Subsection (2) substituted by No. 27 of 1984, s. 16]* On receipt of an application under this section, the Minister –

- (a) shall forthwith determine whether it is necessary to include the drug to which the application relates in a schedule to the Poisons List and, if he determines that it is necessary to include the drug in that List, shall determine in which of those schedules the drug should be included;
- (b) if it appears to the Minister to be necessary to do so, may make a determination under subsection (1) (b) ; and
- (c) *[Section 40 Subsection (2) amended by No. 15 of 2019, Sched. 1, Applied:28 Jun 2019]* is to make any order under section 14 as may be necessary for the purpose of giving effect to his or her determination.

(3) *[Section 40 Subsection (3) substituted by No. 27 of 1984, s. 16]**[Section 40 Subsection (3) amended by No. 68 of 1994, s. 3 and Sched. 1]* In making a determination under subsection (2) (a) , the Minister shall have regard to whether or not the drug is included in any classification of poisons made by the National Health and Medical Research Council.

(4) *[Section 40 Subsection (4) omitted by No. 68 of 1994, s. 3 and Sched. 1]*.

(5) *[Section 40 Subsection (5) substituted by No. 27 of 1984, s. 16]* The Minister shall cause his determination under subsection (2) with respect to an application under this section to be notified to the applicant in writing.

(6) *[Section 40 Subsection (6) substituted by No. 27 of 1984, s. 16]* A determination by the Minister under subsection (2) is final and conclusive.

(7) *[Section 40 Subsection (7) omitted by No. 27 of 1984, s. 16]*.

41. Prohibition of the sale, &c., of a new drug until it is classified

[Section 41 Subsection (1) amended by No. 43 of 1991, s. 5 and Sched. 1]

(1) *[Section 41 Subsection (1) amended by No. 27 of 1984, s. 48 and Sched. 1]* A person shall not –

- (a) sell or supply a new drug; or

(b) cause, permit, or suffer a new drug to be sold or supplied –

to another person before an order under section 15 adding that drug to a schedule to the Poisons List has been made and has taken effect.

Penalty: Fine not exceeding 10 penalty units.

(2) *[Section 41 Subsection (2) amended by No. 27 of 1984, s. 17]* Subsection (1) does not apply to or in relation to a new drug in respect of which the Minister has, pursuant to section 40 (5) , notified the person by whom an application under that section has been made that the drug does not need to be specified in a schedule to the Poisons List.

42. Power to prohibit the sale, &c., of a new drug

(1) *[Section 42 Subsection (1) amended by No. 27 of 1984, s. 18]* The Minister may at any time, by order, prohibit the sale or supply of any new drug, either absolutely or except on and subject to such conditions as are specified in the order.

(2) *[Section 42 Subsection (2) amended by No. 23 of 2022, s. 33, Applied: 24 Oct 2022]* *[Section 42 Subsection (2) amended by No. 27 of 1984, s. 18]* Notwithstanding the provisions of sections 40 and 41 , where application is made under section 40 for the classification of a new drug the Minister may, before the new drug is classified, authorise the sale or supply of that drug to any person or public institution, but such a sale or supply shall be made only in compliance with such conditions as the Minister thinks fit, and as are specified by the Minister in writing.

43. Contravention, &c., of Ministerial order or conditions

[Section 43 Substituted by No. 27 of 1984, s. 48 and Sched. 1] *[Section 43 Amended by No. 43 of 1991, s. 5 and Sched. 1]* A person who –

(a) contravenes or fails to comply with the provisions of an order under section 42 (1) ; or

(b) sells or supplies a drug otherwise than in compliance with conditions specified by the Minister under section 42 (2) –

is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

PART V - Special Provisions Relating to Narcotics, Prohibited Plants, and Prohibited Substances

Division 1 - Interpretation

44. Interpretation: Part V

[Section 44 Amended by No. 27 of 1984, s. 19] In this Part, unless the contrary intention appears –

[Section 44 Amended by No. 95 of 2001, Sched. 1, Applied:01 Jun 2002] **approved port** means a place that is declared by the Minister, by order, to be an approved port for the purposes of this Part.

[Section 44 Amended by No. 95 of 2001, Sched. 1, Applied:01 Jun 2002]

Division 2 - Restrictions on the importation, making, refining, preparation, sale, supply, possession, cultivation, and use of narcotics and prohibited plants

45. Restriction of importation

[Section 45 Subsection (1) amended by No. 43 of 1991, s. 5 and Sched. 1]

(1) *[Section 45 Subsection (1) amended by No. 7 of 2012, s. 11, Applied:01 Jul 2012]* *[Section 45 Subsection (1) amended by No. 27 of 1984, s. 48 and Sched. 1]* Subject to subsection (4), a person must not import or bring into the State a raw narcotic or narcotic substance except into an approved port.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

(2) *[Section 45 Subsection (2) amended by No. 27 of 1984, s. 48 and Sched. 1]* *[Section 45 Subsection (2) substituted by No. 55 of 1997, s. 7, Applied:22 Dec 1997]* A person must not import or bring into the State a raw narcotic or narcotic substance unless the person is –

(a) the holder of a licence granted by the Minister under this Part, acting in accordance with the terms of that licence; or

(ab) *[Section 45 Subsection (2) amended by No. 73 of 2013, Sched. 1, Applied:01 Jul 2014]* a person who –

(i) has been lawfully supplied with the raw narcotic or narcotic substance in another jurisdiction; and

(ii) is importing, or bringing into the State, the raw narcotic or narcotic substance to provide ambulance services under the Ambulance Service Act 1982; or

(b) a person authorised under subsection (3).

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

(3) *[Section 45 Subsection (3) amended by No. 23 of 2022, s. 34, Applied:24 Oct 2022]* *[Section 45 Subsection (3) inserted by No. 55 of 1997, s. 7, Applied:22 Dec 1997]* A pharmacist, licensed manufacturing chemist or licensed wholesale chemist, in the lawful practice of his or her profession or business, is authorised to import or bring into the State a raw narcotic or narcotic substance.

(4) *[Section 45 Subsection (4) inserted by No. 7 of 2012, s. 11, Applied:01 Jul 2012]* A person may bring into the State a raw narcotic or narcotic substance if –

(a) the raw narcotic or narcotic substance was lawfully prescribed and dispensed to the person in another State or a Territory for the use of the person or a member of his or her immediate family; and

(b) the person brought the substance into this State with them, either on their person or in their luggage.

(5) *[Section 45 Subsection (5) inserted by No. 15 of 2017, s. 18, Applied:13 Jun 2017]* A person may bring into the State a raw narcotic or narcotic substance if –

- (a) the raw narcotic or narcotic substance was lawfully prescribed and dispensed to the person in another country for the use of the person or a member of his or her immediate family; and
- (b) the raw narcotic or narcotic substance was declared on entry to Australia; and
- (c) the person brought the substance into this State with them, either on their person or in their luggage.

46. Manufacture of narcotic substances

[Section 46 Amended by No. 27 of 1984, s. 48 and Sched. 1] [Section 46 Amended by No. 43 of 1991, s. 5 and Sched. 1] [Section 46 Amended by No. 40 of 2016, s. 11, Applied: 17 Oct 2016] A person shall not make, refine, or prepare a narcotic substance unless he is, or is acting as the servant and under the orders of, a person who is the holder of a licence to manufacture such a substance granted under this Act and, if so required under the *Narcotic Drugs Act 1967* of the Commonwealth, is also the holder of a licence under that Act.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

47. Sale and supply of narcotic substances, prohibited plants, and prohibited substances

(1) *[Section 47 Subsection (1) amended by No. 55 of 2009, s. 5, Applied: 12 Nov 2009] [Section 47 Subsection (1) substituted by No. 27 of 1984, s. 20] [Section 47 Subsection (1) amended by No. 9 of 1986, s. 5]* Subject to section 47A , a person shall not—

- (a) sell or supply a raw narcotic or narcotic substance to another person; or

- (b) traffic in a raw narcotic or narcotic substance—

unless—

- (c) *[Section 47 Subsection (1) amended by No. 15 of 2017, s. 19, Applied: 13 Jun 2017] [Section 47 Subsection (1) amended by No. 23 of 2022, s. 35, Applied: 24 Oct 2022]* the person is, or is acting as the employee of and under the direction of, a licensed manufacturing chemist, licensed wholesale chemist, pharmacist, medical practitioner, dentist, authorised health professional or veterinary surgeon engaged in the lawful practice of his business or profession as such;

- (d) *[Section 47 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied: 01 Jul 2010] [Section 47 Subsection (1) amended by No. 23 of 2022, s. 35, Applied: 24 Oct 2022]* the person is a registered nurse or midwife acting in accordance with an authorisation conferred under section 25A ;

- (daa) *[Section 47 Subsection (1) amended by No. 78 of 2007, s. 10, Applied: 01 Jul 2008]* the person is an authorised nurse practitioner acting in accordance with an authorisation conferred on him or her under section 25B ;

- (da) *[Section 47 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied: 01 Jul 2010]* the person is a registered nurse or midwife administering a narcotic substance in the course of medical treatment on the direction in writing of a medical practitioner;

- (db) *[Section 47 Subsection (1) amended by No. 78 of 2007, s. 10, Applied: 01 Jul 2008] [Section 47 Subsection (1) amended by No. 15 of 2017, s. 19, Applied: 13 Jun 2017]* the person is the parent or guardian of a person who, because of age or mental or physical disability, whether permanent or temporary, is incapable of caring for himself to whom a narcotic substance is being administered on the direction in writing of a medical practitioner, dentist, authorised health professional or authorised nurse practitioner;

- (dc) *[Section 47 Subsection (1) amended by No. 16 of 1997, Sched. 1, Applied: 30 Jul 1997]* the person is the master of a boat administering a narcotic substance to a passenger or crew member on the boat where the substance is required to be carried on a boat of that class by regulations or by-laws made under the Marine and Safety Authority Act 1997 for the purposes of medical treatment;

- (dd) *[Section 47 Subsection (1) amended by No. 73 of 2013, Sched. 1, Applied: 01 Jul 2014]* the person is an ambulance officer or paramedic administering a narcotic substance—

- (i) at the direction of a medical practitioner; or

- (ii) *[Section 47 Subsection (1) amended by No. 73 of 2013, Sched. 1, Applied: 01 Jul 2014]* in accordance with the Field Protocols applying with respect to the administration of scheduled substances as

approved by the Commissioner of Ambulance Services from time to time; or

(e) *[Section 47 Subsection (1) amended by No. 23 of 2022, s. 35, Applied:24 Oct 2022]* the person is acting in accordance with an authorisation conferred by the regulations.

(2) Nothing in subsection (1) applies to or in relation to a raw narcotic or narcotic substance that is a prohibited plant or prohibited substance.

(3) *[Section 47 Subsection (3) amended by No. 27 of 1984, s. 48 and Sched. 1]* A person shall not –

(a) sell or supply a prohibited plant or prohibited substance to another person; or

(b) traffic in such a plant or substance.

(4) Nothing in subsection (3) applies to or in relation to –

(a) *[Section 47 Subsection (4) amended by No. 40 of 2016, s. 12, Applied:17 Oct 2016]* the sale or supply of a prohibited plant to a licensed manufacturing chemist by a person who is the holder of a poppy research licence or a poppy grower's licence; or

(ba) *[Section 47 Subsection (4) amended by No. 40 of 2016, s. 12, Applied:17 Oct 2016]* the sale or supply of the seed of an alkaloid poppy; or

(b) the sale or supply of a prohibited plant by a licensed manufacturing chemist to another licensed manufacturing chemist.

(5) *[Section 47 Subsection (5) amended by No. 27 of 1984, s. 20]* A person who contravenes subsection (1) or (3) is guilty of a crime and is liable to punishment on indictment under the Criminal Code accordingly.

(6) *[Section 47 Subsection (6) omitted by No. 27 of 1984, s. 20].*

(7) *[Section 47 Subsection (7) amended by No. 27 of 1984, s. 20]* *[Section 47 Subsection (7) omitted by No. 95 of 2001, Sched. 1, Applied:01 Jun 2002].*

(8) On an indictment under subsection (1), the accused person may be convicted of an offence under section 48 and punished as provided by that section.

(9) On an indictment under subsection (3), the accused person may be convicted of an offence under section 49 or section 55 and punished as provided in the relevant section.

(10) *[Section 47 Subsection (10) amended by No. 23 of 2022, s. 35, Applied:24 Oct 2022]* *[Section 47 Subsection (10) substituted by No. 27 of 1984, s. 20]* Nothing in this section prohibits the supply of a raw narcotic, narcotic substance, prohibited plant, or prohibited substance by a person who is authorised by or under this Act to be in possession of and to supply that raw narcotic, narcotic substance, prohibited plant, or prohibited substance, if–

(a) *[Section 47 Subsection (10) amended by No. 78 of 2007, s. 10, Applied:01 Jul 2008]* *[Section 47 Subsection (10) amended by No. 13 of 2019, Sched. 1, Applied:18 Jun 2019]* *[Section 47 Subsection (10) amended by No. 23 of 2022, s. 35, Applied:24 Oct 2022]* that supply is in the circumstances and subject to the conditions specified in the authorisation granted to that person under section 25A, 25B, 25C, 25D or 25E ;

(b) *[Section 47 Subsection (10) amended by No. 23 of 2022, s. 35, Applied:24 Oct 2022]* that supply is in the circumstances and subject to the conditions prescribed in the regulations under which authorisation is granted to that person to supply that raw narcotic, narcotic substance, prohibited plant, or prohibited substance; or

(c) *[Section 47 Subsection (10) amended by No. 23 of 2022, s. 35, Applied:24 Oct 2022]* that supply is in the ordinary course of business, or the ordinary practice of the profession, of a person who is authorised to supply that raw narcotic, narcotic substance, prohibited plant, or prohibited substance.

(11) *[Section 47 Subsection (11) inserted by No. 21 of 2021, s. 8, Applied:17 Dec 2021]* Nothing in this section prohibits a person from selling or supplying a substance to which this section applies if the person is authorised to do so under an emergency order and the person is acting in accordance with the emergency order.

47A. Administration of medicinal poisons and potent, restricted and narcotic substances

[Section 47A Inserted by No. 55 of 2009, s. 6, Applied:12 Nov 2009]

(1) This section applies to the following:

- (a) medicinal poisons;
- (b) potent substances;
- (c) restricted substances;
- (d) narcotic substances.

(2) Notwithstanding section 26(1) and (1B) and section 47 , the regulations may –

- (a) allow for any poisons or substances to which this section applies to be administered by such persons in such circumstances as the regulations prescribe; and
- (b) prescribe conditions and restrictions in respect of such administration.

(3) In this section "administer" includes making available for self-administration.

47B.

[Section 47B Inserted by No. 55 of 2009, s. 6, Applied:12 Nov 2009] [Section 47B Repealed by No. 15 of 2017, s. 20, Applied:13 Jun 2017]

47C. Endorsed midwives

[Section 47C Inserted by No. 42 of 2010, s. 8, Applied:01 Jan 2011]

(1) *[Section 47C Subsection (1) amended by No. 15 of 2017, s. 21, Applied:13 Jun 2017]* Notwithstanding section 26(1B) and section 36(1) and subject to subsection (2) , an endorsed midwife may administer, obtain, possess, sell, supply or prescribe a midwifery restricted substance in the lawful practice of the profession of midwifery.

(2) *[Section 47C Subsection (2) amended by No. 15 of 2017, s. 21, Applied:13 Jun 2017]* In the case of a midwifery restricted substance that is a restricted substance declared by the Minister by order under section 36 , the endorsed midwife may only administer, obtain, possess, sell, supply or prescribe the substance if the midwife is acting in the lawful practice of the profession of midwifery in Tasmania.

(3) *[Section 47C Subsection (3) amended by No. 15 of 2017, s. 21, Applied:13 Jun 2017]* Notwithstanding sections 47 and 48 and subject to section 47D , an endorsed midwife may only administer, obtain or possess a midwifery narcotic substance if the midwife is acting in the lawful practice of the profession of midwifery in Tasmania.

47D. Offence for endorsed midwife to make available drugs of dependence, &c.

[Section 47D Inserted by No. 42 of 2010, s. 8, Applied:01 Jan 2011]

(1) *[Section 47D Subsection (1) amended by No. 15 of 2017, s. 22, Applied:13 Jun 2017]* An endorsed midwife must not administer a midwifery narcotic substance to any person who he or she has reason to believe is a drug-dependent person.

Penalty: Fine not exceeding 50 penalty units.

(2) *[Section 47D Subsection (2) amended by No. 15 of 2017, s. 22, Applied:13 Jun 2017]* An endorsed midwife must not administer a midwifery narcotic substance to a person who he or she has reason to believe is exhibiting drug-seeking behaviour.

Penalty: Fine not exceeding 50 penalty units.

(3) *[Section 47D Subsection (3) amended by No. 15 of 2017, s. 22, Applied:13 Jun 2017]* An endorsed midwife must not administer a midwifery narcotic substance to any person for any period longer than 48 hours.

Penalty: Fine not exceeding 50 penalty units.

(4) *[Section 47D Subsection (4) amended by No. 15 of 2017, s. 22, Applied:13 Jun 2017]* An endorsed midwife must not administer a midwifery narcotic substance to any person who has a history of obtaining a notifiable

restricted substance, narcotic substance or prohibited substance for a non-medical purpose or of unlawful possession or unlawful supply of a notifiable restricted substance, narcotic substance or prohibited substance. Penalty: Fine not exceeding 50 penalty units.

(5) *[Section 47D Subsection (5) amended by No. 15 of 2017, s. 22, Applied:13 Jun 2017]* An endorsed midwife must not make available a midwifery restricted substance that is also a notifiable restricted substance, or administer a midwifery narcotic substance, to any person if the endorsed midwife knows or ought to know that the person is the subject of an authority under section 59E(1) .

Penalty: Fine not exceeding 50 penalty units.

(6) In this section –

notifiable restricted substance means a notifiable restricted substance within the meaning of section 59A .

48. Possession of narcotic substances, &c.

(1) *[Section 48 Subsection (1) amended by No. 7 of 2012, s. 12, Applied:01 Jul 2012]* *[Section 48 Subsection (1) substituted by No. 27 of 1984, s. 21]**[Section 48 Subsection (1) amended by No. 43 of 1991, s. 5 and Sched. 1]* Subject to subsection (2) and subsection (2A) , a person must not have a raw narcotic or narcotic substance in his possession, unless–

(a) *[Section 48 Subsection (1) amended by No. 15 of 2017, s. 23, Applied:13 Jun 2017]* *[Section 48 Subsection (1) amended by No. 23 of 2022, s. 36, Applied:24 Oct 2022]* the person is, or is acting as the employee of and under the direction of, a licensed manufacturing chemist, licensed wholesale chemist, pharmacist, medical practitioner, dentist, authorised health professional or veterinary surgeon engaged in the lawful practice of his business or profession as such;

(ab) *[Section 48 Subsection (1) amended by No. 78 of 2007, s. 11, Applied:01 Jul 2008]* the person is an authorised nurse practitioner acting in accordance with an authorisation conferred on him or her under section 25B ; or

(b) *[Section 48 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010]* *[Section 48 Subsection (1) amended by No. 23 of 2022, s. 36, Applied:24 Oct 2022]* the person is a registered nurse or midwife acting in accordance with an authorisation conferred under section 25A ; or

(c) *[Section 48 Subsection (1) amended by No. 23 of 2022, s. 36, Applied:24 Oct 2022]* the person is acting in accordance with an authorisation conferred by the regulations.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

(2) *[Section 48 Subsection (2) amended by No. 27 of 1984, s. 21]* Nothing in subsection (1) prohibits –

(a) the keeping or using of a raw narcotic or narcotic substance in a prescribed institution in accordance with the directions of the person in charge of that institution;

(b) *[Section 48 Subsection (2) amended by No. 15 of 2017, s. 23, Applied:13 Jun 2017]* *[Section 48 Subsection (2) amended by No. 23 of 2022, s. 36, Applied:24 Oct 2022]* the possession by a person of a raw narcotic or narcotic substance supplied by a medical practitioner, dentist, pharmacist, authorised health professional or veterinary surgeon to him or for some person who is a member of his family or his household or of whom he has the care, custody, or control;

(ba) *[Section 48 Subsection (2) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010]* *[Section 48 Subsection (2) amended by No. 23 of 2022, s. 36, Applied:24 Oct 2022]* the possession by a person of a narcotic substance supplied by a registered nurse or midwife, in accordance with an authorisation conferred by section 25A , to him or for some person who is a member of his family or his household or of whom he has the care, custody, or control; or

(baa) *[Section 48 Subsection (2) amended by No. 78 of 2007, s. 11, Applied:01 Jul 2008]* the possession by a person of a narcotic substance supplied by an authorised nurse practitioner, in accordance with an authorisation under section 25B , to him or her or to some person who is a member of his or her family or his or her household or of whom he or she has the care, custody or control; or

(c) the possession, keeping, or use of a raw narcotic or narcotic substance in accordance with the regulations made under section 59 (1) (i) .

(2A) *[Section 48 Subsection (2A) inserted by No. 7 of 2012, s. 12, Applied:01 Jul 2012]* A person may have in his or her possession a raw narcotic or narcotic substance if –

(a) the raw narcotic or narcotic substance was lawfully prescribed and dispensed to the person in another State or a Territory for the use of the person or a member of his or her immediate family; and

(b) *[Section 48 Subsection (2A) amended by No. 15 of 2017, s. 23, Applied:13 Jun 2017]* the person lawfully brought the raw narcotic or narcotic substance into this State with them, either on their person or in their luggage.

(2B) *[Section 48 Subsection (2B) inserted by No. 15 of 2017, s. 23, Applied:13 Jun 2017]* A person may have in his or her possession a raw narcotic or narcotic substance if –

(a) the raw narcotic or narcotic substance was lawfully prescribed and dispensed to the person in another country for the use of the person or a member of his or her immediate family; and

(b) the raw narcotic or narcotic substance was declared on entry to Australia; and

(c) the person brought the raw narcotic or narcotic substance lawfully into this State with them, either on their person or in their luggage.

(2C) *[Section 48 Subsection (2C) inserted by No. 15 of 2019, Sched. 1, Applied:28 Jun 2019]* A person is not guilty of an offence against subsection (1) if the person is the holder of a permit, licence or authority in force under this Act and is acting in accordance with the terms and conditions of that permit, licence or authority.

(2D) *[Section 48 Subsection (2D) inserted by No. 21 of 2021, s. 9, Applied:17 Dec 2021]* A person is not guilty of an offence against subsection (1) if –

(a) the possession by the person of the raw narcotic or narcotic substance is authorised under an emergency order; and

(b) that person is acting in accordance with the emergency order.

(3) In this section, ***prescribed institution*** means –

(a) a public institution; or

(b) any other institution or establishment that is for the time being approved by the Minister, in writing, for the purposes of this section.

49. Prohibition of possession of prohibited plants except under licence

[Section 49 Subsection (1) amended by No. 43 of 1991, s. 5 and Sched. 1]

(1) *[Section 49 Subsection (1) amended by No. 27 of 1984, s. 48 and Sched. 1]* A person shall not have in his possession –

(a) a prohibited plant, whether in its original form or not; or

(b) any part of a prohibited plant –

unless he is, or is acting as the employee and under the direction of –

(c) a licensed manufacturing chemist engaged in the lawful practice of his business as such;

(d) *[Section 49 Subsection (1) amended by No. 40 of 2016, s. 13, Applied:17 Oct 2016]* *[Section 49 Subsection (1) amended by No. 23 of 2022, s. 37, Applied:24 Oct 2022]* the holder of a licence under this Part authorising him or her to grow the plant; or

(e) *[Section 49 Subsection (1) amended by No. 40 of 2016, s. 13, Applied:17 Oct 2016]* a person who is engaged, under a contract or arrangement entered into between him and the holder of such a licence, in the transport of such a plant or any part thereof from the place where the plant is grown to–

- (i) *[Section 49 Subsection (1) amended by No. 23 of 2022, s. 37, Applied:24 Oct 2022]* a place where a licensed manufacturing chemist is authorised by his licence to engage in the business of making from the plant substances for therapeutic use; or
- (ii) a place where, by or on behalf of such a chemist, the plant is subjected to any treatment or process preparatory to its use in the making of a substance for therapeutic use.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

(2) In proceedings in respect of an offence against this section it is a defence for the person charged to prove that at the relevant time he did not know, and had no means of knowing, that the plant to which the proceedings relate was a prohibited plant or a part of a prohibited plant, as the case may be.

(3) *[Section 49 Subsection (3) amended by No. 40 of 2016, s. 13, Applied:17 Oct 2016]* This section does not prohibit a person from having in his possession the seed of an alkaloid poppy.

50. Exceptions as to scientific institutions

*[Section 50 Amended by No. 95 of 1973, s. 5]**[Section 50 Amended by No. 40 of 2016, s. 14, Applied:17 Oct 2016]* Nothing in sections 46 , 48 , 49 , or 55 prohibits the manufacture, possession, or use of a narcotic substance for scientific or research purposes in accordance with a licence granted by the Minister under this Act.

51.

*[Section 51 Amended by No. 99 of 1982, s. 3 and Sched. 2, Pt. II]**[Section 51 Subsection (1) substituted by No. 27 of 1984, s. 22]*
*[Section 51 Subsection (1) amended by No. 43 of 1991, s. 5 and Sched. 1]**[Section 51 Subsection (2) amended by No. 27 of 1984, s. 22 and s. 48 and Sched. 1]**[Section 51 Subsection (2) amended by No. 43 of 1991, s. 5 and Sched. 1]**[Section 51 Subsection (3) substituted by No. 27 of 1984, s. 22]**[Section 51 Subsection (3) amended by No. 43 of 1991, s. 5 and Sched. 1]**[Section 51 Subsection (4) added by No. 27 of 1984, s. 22]**[Section 51 Subsection (4) amended by No. 43 of 1991, s. 5 and Sched. 1]**[Section 51 Repealed by No. 95 of 2001, Sched. 1, Applied:01 Jun 2002]*

52. Growing of certain plants prohibited except under licence

[Section 52 Subsection (1) amended by No. 43 of 1991, s. 5 and Sched. 1]

(1) *[Section 52 Subsection (1) amended by No. 40 of 2016, s. 15, Applied:17 Oct 2016]* *[Section 52 Subsection (1) amended by No. 27 of 1984, s. 48 and Sched. 1]* A person shall not, except under and in accordance with a licence granted or deemed to have been granted by a responsible licensing authority under this Part and in accordance with the conditions and restrictions specified in the licence, grow a prohibited plant.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

(2) In proceedings in respect of an offence against subsection (1) , it is a defence for the person charged to prove that at the relevant time he did not know, and had no means of knowing that the plant to which the proceedings relate was a prohibited plant or part of a prohibited plant, as the case may be.

Division 3 - Poppy research licence

[Division 3 of Part V Repealed by No. 95 of 2001, Sched. 1, Applied:01 Jun 2002] *[Division 3 of Part V Substituted by No. 40 of 2016, s. 16, Applied:17 Oct 2016]*

53. Application for licence

[Section 53 Substituted by No. 40 of 2016, s. 16, Applied:17 Oct 2016] A person who wishes to grow alkaloid poppies for scientific or research purposes may apply to the Minister for a poppy research licence.

54. Poppy research licence

*[Section 54 Subsection (1) amended by No. 43 of 1991, s. 5 and Sched. 1]**[Section 54 Subsection (1) amended by No. 27 of 1984, s. 48 and Sched. 1]**[Section 54 Repealed by No. 95 of 2001, Sched. 1, Applied:01 Jun 2002]* *[Section 54 Substituted by No. 40 of 2016, s. 16, Applied:17 Oct 2016]*

(1) If the Minister receives from a person an application under section 53 , the Minister must –

- (a) grant to the person a poppy research licence; or
- (b) refuse to grant to the person a poppy research licence.

(2) A poppy research licence authorises the holder of the licence to possess and grow alkaloid poppies for scientific or research purposes in accordance with this Act and the conditions and restrictions specified in the licence.

54A. Duration of licence

[Section 54A Inserted by No. 40 of 2016, s. 16, Applied:17 Oct 2016] Subject to this Act, a poppy research licence continues in force for 5 years from the date on which it was granted or renewed or a shorter period, if any, specified in the licence or renewal.

54B. Renewal of licence

[Section 54B Inserted by No. 40 of 2016, s. 16, Applied:17 Oct 2016]

- (1) The holder of a poppy research licence may apply to the Minister for the renewal of the licence.
- (2) The Minister may renew, or refuse to renew, a licence to which an application under subsection (1) relates.

Division 3A - Poppy grower's licence

[Division 3A of Part V Inserted by No. 40 of 2016, s. 16, Applied:17 Oct 2016]

54C. Application for licence

[Section 54C Inserted by No. 40 of 2016, s. 16, Applied:17 Oct 2016] A person who wishes to grow alkaloid poppies for commercial purposes may apply to the Board for a poppy grower's licence.

54D. Poppy grower's licence

[Section 54D Inserted by No. 40 of 2016, s. 16, Applied:17 Oct 2016]

- (1) If the Board receives from a person an application under section 54C, the Board must –
 - (a) grant to the person a poppy grower's licence; or
 - (b) refuse to grant to the person a poppy grower's licence.
- (2) A poppy grower's licence authorises the holder of the licence to possess, grow, sell and supply alkaloid poppies in accordance with this Act and the conditions and restrictions specified in the licence.

54E. Conditions of licence

[Section 54E Amended by No. 15 of 2017, s. 24, Applied:13 Jun 2017] [Section 54E Inserted by No. 40 of 2016, s. 16, Applied:17 Oct 2016] It is a condition of a poppy grower's licence that the holder of the licence must, before growing alkaloid poppies under the licence –

- (a) ensure that there is a contract, in force between the holder of the licence and a manufacturing chemist, that requires alkaloid poppies to be grown under the licence; and
- (b) *[Section 54E Amended by No. 13 of 2019, Sched. 1, Applied:18 Jun 2019]* provide to the Board a copy of the contract; and
- (c) *[Section 54E Amended by No. 13 of 2019, Sched. 1, Applied:18 Jun 2019]* have a notice, approved by the Board, containing details of the location and area (in hectares) to be planted with alkaloid poppies for the relevant growing period.

54F. Duration of licence

[Section 54F Inserted by No. 40 of 2016, s. 16, Applied:17 Oct 2016] Subject to this Act, a poppy grower's licence continues in force for 5 years from the date on which it was granted or renewed or a shorter period, if any, specified in the licence or renewal.

54G. Renewal of licence

[Section 54G Inserted by No. 40 of 2016, s. 16, Applied:17 Oct 2016]

- (1) The holder of a poppy grower's licence may apply to the Board for the renewal of the licence.
- (2) The Board may renew, or refuse to renew, a licence to which an application under subsection (1) relates.
- (3) *[Section 54G Subsection (3) inserted by No. 15 of 2019, Sched. 1, Applied:28 Jun 2019]* Notwithstanding section 6(2), an application for the renewal of a poppy grower's licence may be made up to 3 months after the expiry of the licence.

54H. Application for review of decision

[Section 54H Inserted by No. 40 of 2016, s. 16, Applied:17 Oct 2016]

- (1) An applicant for a poppy grower's licence who is aggrieved by a decision of the Board to refuse to grant the applicant a poppy grower's licence may apply to the primary industries Minister to review the decision.
- (2) The holder of a poppy grower's licence who is aggrieved by a decision of the Board –
 - (a) to specify under section 9 in a poppy grower's licence conditions or restrictions or to vary under section 9 the conditions or restrictions specified in the licence; or
 - (b) to suspend or revoke under section 10 or 11 a poppy grower's licence –may apply to the primary industries Minister to review the decision.
- (3) An application –
 - (a) is to be made in writing within 30 days of the applicant receiving notice of the Board's decision; and
 - (b) is to specify the reasons for the application.
- (4) The primary industries Minister may extend the period referred to in subsection (3)(a) for making an application.

54I. Review of decision

[Section 54I Inserted by No. 40 of 2016, s. 16, Applied:17 Oct 2016]

- (1) The primary industries Minister must, within 30 days after receiving an application under section 54H in relation to a decision of the Board, review the decision and make a determination in relation to the decision.
- (2) The primary industries Minister may, in a determination under subsection (1) in relation to a decision of the Board –
 - (a) confirm the decision; or
 - (b) declare that the decision was not in accordance with the requirements of this Act.
- (3) If the primary industries Minister makes a determination in accordance with subsection (2)(b) in relation to a decision, the primary industries Minister must, in the determination, require the Board to make, in accordance with –
 - (a) the provisions of this Act; and
 - (b) any directions, as to compliance with those provisions, that are specified in the determination –a further decision in substitution for the decision to which the determination relates.
- (4) The primary industries Minister must, by notice served on the applicant and the Board, notify the applicant of the determination and the reasons for the determination.
- (5) If the primary industries Minister makes a determination under subsection (2)(b) in relation to a decision (the **first decision**), the Board must, in accordance with –
 - (a) the provisions of this Act; and
 - (b) any directions, as to compliance with those provisions, that are specified in the determination –

make another decision (a **further decision**) in substitution for the first decision.

(6) The first decision of the Board ceases to have effect when the Board makes a further decision in relation to the matter in accordance with subsection (5) .

Division 4 - Prohibited substances

55. Prohibition of manufacture, &c., of prohibited substances

[Section 55 Subsection (1) amended by No. 43 of 1991, s. 5 and Sched. 1]

(1) *[Section 55 Subsection (1) amended by No. 27 of 1984, s. 48 and Sched. 1]*Notwithstanding any other provision of this Part, a person (whether the holder of a licence under this Part or not) who –

- (a) imports or brings into the State a prohibited substance;
- (b) makes, refines, prepares, sells, or supplies a prohibited substance;
- (c) has in his possession a prohibited substance; or
- (d) uses a prohibited substance –

is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 2 years, or both.

(2) This section does not apply to or in relation to –

- (a) the importation or bringing into the State of a prohibited substance by or on behalf of an exempted public institution; or
- (b) the making, refining, preparation, possession, or use of a prohibited substance in an exempted public institution –

for educational, experimental, or research purposes in compliance with the conditions determined by the Minister in relation to the particular institution or in relation to exempted public institutions generally.

(3) In this section, **exempted public institution** means a public institution that is declared by the Minister, by order, to be an exempted public institution for the purposes of this section.

Division 5 - General

56. Offences against this Part

[Section 56 Subsection (1) amended by No. 43 of 1991, s. 5 and Sched. 1]

(1) *[Section 56 Subsection (1) amended by No. 27 of 1984, s. 48 and Sched. 1]*A person who –

- (a) contravenes or fails to comply with the conditions of any licence issued or authority granted to him under this Part;
- (b) within the State aids, abets, counsels, or procures the commission in a place outside the State of an offence punishable under a corresponding law in force in that place, or does any act in furtherance of an act committed outside the State that, if committed in the State, would constitute an offence against this Part; or
- (c) *[Section 56 Subsection (1) amended by No. 40 of 2016, s. 17, Applied: 17 Oct 2016]*

is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units or to imprisonment for a term not exceeding 12 months, or both.

(2) In this section, **corresponding law** means a law stated in a certificate purporting to be issued by or on behalf of the Government of –

- (a) a British possession (including a territory that is under the Sovereign's protection or that is governed under a trusteeship agreement by the Government of any part of the Sovereign's dominions) outside this State; or

(b) a foreign country (including a protectorate thereof or any territory that is governed under a trusteeship agreement by the Government thereof) –

to be a law providing for the control and regulation in that possession or country of the manufacture, sale, use, export, or import of narcotic substances in accordance with the provisions of –

(c) the International Opium Convention signed at The Hague on 23rd January 1912;

(d) the convention that is referred to as the Geneva Convention in the preamble to the Imperial Act known as the *Dangerous Drugs Act 1925*; or

(e) the Single Convention on Narcotic Drugs, 1961, signed at New York on 30th March 1961.

(3) A statement in such a certificate as is mentioned in subsection (2) as to the effect of a law mentioned therein, or a statement in such a certificate that any facts constitute an offence punishable under such a law, is conclusive.

57. Application of certain provisions of the Criminal Code

The provisions of sections 8 and 9 of the Criminal Code apply to and in relation to offences against this Part that are punishable summarily as if those offences were crimes within the meaning of that Code.

58. Penalties

(1) *[Section 58 Subsection (1) amended by No. 43 of 1991, s. 5 and Sched. 1]* A person who is guilty of an offence against this Part for which no specific penalty is prescribed elsewhere in this Part is liable to a fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or to both.

(2) *[Section 58 Subsection (2) amended by No. 9 of 2003, Sched. 1, Applied: 16 Apr 2003]* *[Section 58 Subsection (2) amended by No. 43 of 1991, s. 5 and Sched. 1]* A person, on conviction for the offence of contravening or failing to comply with the conditions of a licence issued or authority granted under this Part or of contravening or failing to comply with a regulation relating to the keeping of books or the issuing or dispensing of prescriptions for the supply of a substance that is or contains a narcotic substance, shall not be sentenced to imprisonment without the option of a fine or to pay a fine exceeding 10 penalty units if the magistrate or justices dealing with the case is or are satisfied that the offence was committed through inadvertence and was not committed in the course of or in connection with the commission or intended commission of any other offence against this Part.

(3) A term of imprisonment imposed on a person in respect of the non-payment of a fine for an offence against this Part may be ordered to commence at the expiration of any term of imprisonment imposed on that person for the same offence in addition to the fine.

59. Regulations relating to narcotics and narcotic substances

[Section 59 Subsection (6) amended by No. 68 of 1994, s. 3 and Sched. 1] *[Section 59 Subsection (6) amended by No. 2 of 1996, s. 87 and Sched. 7]*

(1) *[Section 59 Subsection (1) amended by No. 27 of 1984, s. 24]* The Governor may make regulations for controlling the making, refining, preparation, sale, supply, prescription, possession, use, and distribution of narcotic substances or any of them, or of raw narcotics or any of them and, in particular and without prejudice to the generality of the foregoing, for or with respect to –

(a) regulating the granting of licences for the purposes of this Part;

(b) prescribing or regulating the times or stage of growth or development at which a prohibited plant may be harvested, treated, processed, or manufactured into narcotic drugs or other substances by the holders of licences under this Part, and prohibiting the harvesting, treatment, or processing of a prohibited plant or any part thereof except in accordance with such conditions as may be prescribed, and requiring and regulating the clearing, cleansing, or treatment as prescribed of any soil in which a prohibited plant has been so grown and the destruction of any part thereof not required by the holder of such a licence for any purpose of treatment, processing, or manufacture;

(c) prohibiting the making, refining, or preparation of a narcotic substance except on premises licensed for the purpose by the Minister and subject to any conditions specified in the licence;

- (d) regulating the importation into, and export from, the State of any narcotic substance or raw narcotic;
- (e) *[Section 59 Subsection (1) amended by No. 78 of 2007, s. 12, Applied:01 Jul 2008] [Section 59 Subsection (1) amended by No. 15 of 2017, s. 25, Applied:13 Jun 2017]* regulating the issue by medical practitioners, dentists, authorised health professionals, authorised nurse practitioners and veterinary surgeons of prescriptions for the supply of substances that are or contain narcotic substances and the dispensing of those prescriptions and prohibiting the issue of any such prescriptions by other persons;
- (f) prescribing the persons by whom, the circumstances in which, and the conditions under which, a narcotic substance may be administered to a person;
- (g) *[Section 59 Subsection (1) amended by No. 78 of 2007, s. 12, Applied:01 Jul 2008] [Section 59 Subsection (1) amended by No. 15 of 2017, s. 25, Applied:13 Jun 2017]* requiring medical practitioners, dentists, authorised health professionals and authorised nurse practitioners, in such cases or circumstances as may be prescribed, to furnish to such persons or authorities as may be prescribed such information as may be prescribed and as they may have with respect to persons professionally treated by them for the treatment of whom they have prescribed any narcotic substance;
- (h) requiring persons engaged in the making, refining, preparation, sale, distribution, or supply of narcotic substances or engaged in the growing, cultivation, or harvesting of a prohibited plant to keep such books and records and furnish such information and returns as may be prescribed, and regulating the inspection of any such books or records;
- (i) *[Section 59 Subsection (1) amended by No. 23 of 2022, s. 38, Applied:24 Oct 2022]* authorising the possession, keeping, or use of raw narcotics or narcotic substances, or both, by such persons or in such places as may be prescribed, and in such cases or circumstances and subject to such conditions as may be prescribed;
- (j) regulating the storage and safe custody of narcotic substances; and
- (k) *[Section 59 Subsection (1) amended by No. 40 of 2016, s. 18, Applied:17 Oct 2016]* prescribing fees to be paid in respect of any licence (other than a poppy research licence or a poppy grower's licence) issued or authority granted under this Part.

(2) The regulations made under this section may make provision for or with respect to –

- (a) *[Section 59 Subsection (2) amended by No. 23 of 2022, s. 38, Applied:24 Oct 2022]* authorising pharmacists to be in possession of narcotic substances for the purposes of–
 - (i) making, refining, or preparing at their shops in the ordinary course of retail business any preparation, admixture, or extract of such a substance; and
 - (ii) carrying on at their shops the business of selling, or of dispensing or compounding, such a substance;
- (b) *[Section 59 Subsection (2) amended by No. 78 of 2007, s. 12, Applied:01 Jul 2008] [Section 59 Subsection (2) amended by No. 15 of 2017, s. 25, Applied:13 Jun 2017] [Section 59 Subsection (2) amended by No. 23 of 2022, s. 38, Applied:24 Oct 2022]* authorising medical practitioners, pharmacists employed in dispensing medicines at any public hospital or other like institution, dentists, authorised health professionals, authorised nurse practitioners and veterinary surgeons to be in possession of narcotic substances and, in the lawful practice of their professions or businesses as such, to supply narcotic substances, subject to such conditions and restrictions as may be prescribed;
- (c) *[Section 59 Subsection (2) amended by No. 23 of 2022, s. 38, Applied:24 Oct 2022]* authorising persons in charge of laboratories for the purposes of research or instruction, and such other persons as the Minister may deem proper, to be in possession of narcotic substances for the purposes of their professions or employments, subject to such conditions and restrictions as may be prescribed;
- (d) the issue, grant, and renewal of licences or authorities for the purposes of this Part by such person as may be prescribed and on such terms and subject to such conditions (including in the case of a licence the payment of a fee) as that person thinks proper;

(e) the suspension or cancellation of such a licence or authority; and

(f) the institution, hearing, and determination of appeals against any determination with respect to such a licence or authority made by the person by whom it is issued, granted, or revoked.

(3) The regulations made under this section shall not provide for the issue of a general licence to make, refine, or prepare narcotic substances, but a licence issued under those regulations shall be limited to the making, refining, or preparation of any particular substance or substances specified in the licence.

(4) Subsection (3) does not prevent the issue to any one person, pursuant to the regulations, of several licences to make, refine, or prepare narcotic substances.

(5) The regulations, or any of them, made under this section may be made so as to apply –

(a) to all narcotic substances, to any such substance specified in the regulations, or to all such substances other than those specified; and

(b) to all persons, to persons or classes of persons specified in the regulations, or to all persons other than persons or classes of persons so specified.

(6) *[Section 59 Subsection (6) amended by No. 43 of 1982, s. 66 and Sched. 3]* The regulations made under this section or under any other provision of this Act may provide that any specified offence against this Part or those regulations shall be regarded as –

(a) *[Section 59 Subsection (6) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010]* professional misconduct within the meaning and for the purposes of Part 8 of the Health Practitioner Regulation National Law (Tasmania);

(b) *[Section 59 Subsection (6) amended by No. 20 of 2001, Sched. 6, Applied:03 Oct 2001]* *[Section 59 Subsection (6) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010]*

(c) *[Section 59 Subsection (6) amended by No. 90 of 2001, Sched. 6, Applied:01 Apr 2002]* *[Section 59 Subsection (6) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010]*

(ca) *[Section 59 Subsection (6) amended by No. 78 of 2007, s. 12, Applied:01 Jul 2008]* *[Section 59 Subsection (6) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010]*

(d) misconduct as a veterinary surgeon within the meaning and for the purposes of the Veterinary Surgeons Act 1987 ; and

(e) infamous or improper conduct, or misconduct, within the meaning and for the purposes of any other prescribed law relating to the carrying on of a particular profession, occupation, or calling.

(7) The regulations under this section may prescribe the substances to which the regulations relate either specifically or by reference to any international convention referred to in the regulations or to any list of substances issued by, or by an agency of, the United Nations.

PART VA - Notification and authorisation in relation to certain restricted substances and narcotic substances

59A. Interpretation of Part

[Section 59A Inserted by No. 29 of 2009, s. 8, Applied:01 Sep 2009] In this Part –

make available includes prescribe, supply or authorise to be supplied;

notifiable restricted substance means a restricted substance that is declared by the Minister, by order, to be a notifiable restricted substance for the purposes of this Part;

prescribed period means a period that is declared by the Minister, by order, to be the maximum period for which a narcotic substance or a specified substance may be made available for continuous use by a person without an authority issued under section 59E ;

specified substance means a restricted substance that is declared by the Minister, by order, to be a specified substance for the purposes of this Part.

59AB. Treatment centres

[Section 59AB Inserted by No. 30 of 2021, s. 7, Applied:01 Mar 2022]

- (1) The Secretary may, in writing, approve a place as a treatment centre.
- (2) The Secretary may, in writing, revoke the approval of a place as a treatment centre.
- (3) A place that was, immediately before the commencement of this section, a treatment centre, within the meaning of the Alcohol and Drug Dependency Act 1968 as then in force, is taken to be a treatment centre approved under subsection (1) until revoked under subsection (2) , if at all.
- (4) An instrument in writing under this section –
 - (a) is not a statutory rule for the purposes of the Rules Publication Act 1953 ; and
 - (b) is not subordinate legislation for the purposes of the Subordinate Legislation Act 1992 .

59B. Notification required in relation to certain restricted substances and narcotic substances

[Section 59B Inserted by No. 29 of 2009, s. 8, Applied:01 Sep 2009]

- (1) *[Section 59B Subsection (1) substituted by No. 15 of 2017, s. 26, Applied:13 Jun 2017]* In this section –

specified person means a medical practitioner, a dentist, an authorised health professional, an authorised nurse practitioner, a veterinary surgeon or a pharmacist.

(1A) *[Section 59B Subsection (1A) inserted by No. 15 of 2017, s. 26, Applied:13 Jun 2017]* If a person seeks from a specified person a notifiable restricted substance or a narcotic substance, the specified person may, at his or her discretion, notify the Secretary of the relevant facts.

(1B) *[Section 59B Subsection (1B) inserted by No. 15 of 2017, s. 26, Applied:13 Jun 2017]* If a person seeks a notifiable restricted substance or a narcotic substance from a specified person and that specified person has reason to believe that the person seeking the substance –

- (a) has a history of drug-seeking behaviour; or
- (b) is exhibiting drug-seeking behaviour; or
- (c) has consumed or used, or is likely to consume or use, a notifiable restricted substance or a narcotic substance contrary to the prescribing practitioner's instructions –

the specified person must notify the Secretary of the relevant facts.

Penalty: Fine not exceeding 50 penalty units.

- (2) This section does not require notice to be given –

(a) *[Section 59B Subsection (2) amended by No. 15 of 2017, s. 26, Applied:13 Jun 2017]* where the Secretary has previously been notified in relation to the person by the specified person or by a medical practitioner or dentist in the same medical or dental practice, and an authorisation to make available under section 59E has been issued in relation to the person; or

(b) *[Section 59B Subsection (2) amended by No. 15 of 2017, s. 26, Applied:13 Jun 2017]* where the Secretary has previously been notified in relation to the person by the specified person or by a medical practitioner or dentist in the same medical or dental practice, and the person is not treated with a notifiable restricted substance or narcotic substance; or

(c) *[Section 59B Subsection (2) amended by No. 15 of 2017, s. 26, Applied:13 Jun 2017]* by a medical practitioner, authorised health professional or authorised nurse practitioner on the staff of, or attending at, a treatment centre or hospital in respect of any person receiving medical treatment at that centre or hospital if such a notice has already been given in respect of that person by a medical practitioner, authorised health professional or authorised nurse practitioner; or

(d) *[Section 59B Subsection (2) amended by No. 15 of 2017, s. 26, Applied:13 Jun 2017]* where an application has been made, or is being made, to the Secretary by the medical practitioner, authorised health professional or authorised nurse practitioner to place the person on a program for the treatment of drug dependency.

59C. Offence to make available drugs of dependence, &c.

[Section 59C Inserted by No. 29 of 2009, s. 8, Applied:01 Sep 2009]

(1) *[Section 59C Subsection (1) amended by No. 15 of 2017, s. 27, Applied:13 Jun 2017]* A medical practitioner, dentist, authorised health professional or authorised nurse practitioner must not, without the authority of the Secretary, make available a narcotic substance or a specified substance to any person who he or she has reason to believe is a drug-dependent person.

Penalty: Fine not exceeding 50 penalty units.

(2) *[Section 59C Subsection (2) amended by No. 15 of 2017, s. 27, Applied:13 Jun 2017]* A medical practitioner, dentist, authorised health professional or authorised nurse practitioner must not, without the authority of the Secretary, make available a narcotic substance or a specified substance to a person who he or she has reason to believe is exhibiting drug-seeking behaviour.

Penalty: Fine not exceeding 50 penalty units.

(3) *[Section 59C Subsection (3) amended by No. 15 of 2017, s. 27, Applied:13 Jun 2017]* A medical practitioner, dentist, authorised health professional or authorised nurse practitioner must not, without the authority of the Secretary, make available a narcotic substance or a specified substance to any person for any period longer than the prescribed period.

Penalty: Fine not exceeding 50 penalty units.

(4) *[Section 59C Subsection (4) amended by No. 15 of 2017, s. 27, Applied:13 Jun 2017]* A medical practitioner, dentist, authorised health professional or authorised nurse practitioner must not, without the authority of the Secretary, make available a narcotic substance or a specified substance to any person who has a history of obtaining a notifiable restricted substance, a narcotic substance or a prohibited substance for a non-medical purpose or of unlawful possession or unlawful supply of a notifiable restricted substance, narcotic substance or prohibited substance.

Penalty: Fine not exceeding 50 penalty units.

(5) *[Section 59C Subsection (5) amended by No. 15 of 2017, s. 27, Applied:13 Jun 2017]* A medical practitioner, dentist, authorised health professional or authorised nurse practitioner must not make available a notifiable restricted substance, a specified substance or a narcotic substance to any person if the medical practitioner, dentist, authorised health professional or authorised nurse practitioner knows or ought to know that the person is the subject of an authority under section 59E(1) .

Penalty: Fine not exceeding 50 penalty units.

(6) *[Section 59C Subsection (6) substituted by No. 15 of 2017, s. 27, Applied:13 Jun 2017]* Subsection (5) does not apply in respect of the making available of a notifiable restricted substance, a specified substance or a narcotic

substance to a medical practitioner, dentist, authorised health professional or authorised nurse practitioner authorised under section 59E(1) or to another medical practitioner, dentist, or authorised health professional employed in the same practice as the person so authorised.

(7) *[Section 59C Subsection (7) inserted by No. 23 of 2022, s. 39, Applied:24 Oct 2022]* This section does not apply in respect of the making available of a notifiable restricted substance, a specified substance or a narcotic substance if the substance is made available –

- (a) by a medical practitioner, dentist, authorised health professional or authorised nurse practitioner, or class of medical practitioners, dentists, authorised health professionals or authorised nurse practitioners; and
- (b) in circumstances; and
- (c) subject to conditions –

that are prescribed in the regulations.

59D. Exception for emergency treatment, hospitals and treatment centres

[Section 59D Inserted by No. 29 of 2009, s. 8, Applied:01 Sep 2009] Nothing in section 59C prevents the making of a notifiable restricted substance, narcotic substance or specified substance available for the use of a person –

- (a) receiving emergency medical treatment as an initial response to a trauma or acute condition; or
- (b) receiving medical treatment as an inpatient at a hospital or treatment centre, if those substances are so made available by, or with the authority of, a medical practitioner or an authorised nurse practitioner acting in the course of his or her duties at that hospital or treatment centre.

59E. Authority for making drugs available to certain patients

[Section 59E Inserted by No. 29 of 2009, s. 8, Applied:01 Sep 2009]

(1) *[Section 59E Subsection (1) amended by No. 15 of 2017, s. 28, Applied:13 Jun 2017]* *[Section 59E Subsection (1) substituted by No. 23 of 2022, s. 40, Applied:24 Oct 2022]* The Secretary may, on an application made under this section in respect of any person (in this section referred to as ***the patient***), authorise a medical practitioner, dentist, authorised health professional or authorised nurse practitioner to make available –

- (a) a narcotic substance or a specified substance; or
- (b) more than one narcotic substance; or
- (c) more than one specified substance; or
- (d) a combination of one or more narcotic substances and one or more specified substances –

for the use of the patient.

(2) *[Section 59E Subsection (2) amended by No. 15 of 2017, s. 28, Applied:13 Jun 2017]* An application under this section is to be in writing in a form approved by the Secretary and signed by the medical practitioner, dentist, authorised health professional or authorised nurse practitioner by whom it is made.

(3) An application is to –

- (a) specify the patient in respect of whom it is made; and
- (b) *[Section 59E Subsection (3) amended by No. 15 of 2017, s. 28, Applied:13 Jun 2017]* state whether, in the opinion of the medical practitioner, dentist, authorised health professional or authorised nurse practitioner the patient –
 - (i) is a drug-dependent person; or
 - (ii) is exhibiting drug-seeking behaviour; or
 - (iii) has a history of obtaining a notifiable restricted substance, a narcotic substance or a prohibited substance for a non-medical purpose, or of unlawful possession or unlawful supply of a notifiable restricted substance, narcotic substance or prohibited substance; and

(c) contain such other information relating to the medical history and treatment of the patient as the Secretary requires.

(4) An authority given under this section in respect of a patient is to specify –

(a) *[Section 59E Subsection (4) amended by No. 23 of 2022, s. 40, Applied:24 Oct 2022]* the name of each substance to be made available; and

(b) *[Section 59E Subsection (4) amended by No. 23 of 2022, s. 40, Applied:24 Oct 2022]* the amount, including an amount up to a maximum amount of each substance, to be made available; and

(c) the period during which the authority is to be in force; and

(d) *[Section 59E Subsection (4) amended by No. 23 of 2022, s. 40, Applied:24 Oct 2022]* other substances, if any, which must not be made available in conjunction with a substance specified in paragraph (a) ; and

(e) *[Section 59E Subsection (4) amended by No. 23 of 2022, s. 40, Applied:24 Oct 2022]* the conditions under which, or the circumstances in which, if any, the substance or substances specified in paragraph (a) may be made available.

(5) An authority given under this section is to be in writing signed by the Secretary but, in a case of emergency, may be given orally.

(6) An authority given orally is to be confirmed in writing as soon as practicable after it is given.

(7) An authority given under subsection (1) also authorises a medical practitioner or dentist, who is in the same medical practice or dental practice as the person authorised, to make the substances available for the use of the patient in accordance with the terms of the authority.

(8) *[Section 59E Subsection (8) amended by No. 23 of 2022, s. 40, Applied:24 Oct 2022]* *[Section 59E Subsection (8) inserted by No. 15 of 2017, s. 28, Applied:13 Jun 2017]* The Secretary may at any time revoke an authority given under subsection (1) or vary the terms or conditions subject to which such an authority may be exercised.

(9) *[Section 59E Subsection (9) inserted by No. 15 of 2017, s. 28, Applied:13 Jun 2017]* If the Secretary gives an authority under subsection (1) , any previous authorisation given to the holder of that authority under that subsection is revoked.

(10) *[Section 59E Subsection (10) inserted by No. 15 of 2017, s. 28, Applied:13 Jun 2017]* A person aggrieved by a decision made under this section by a delegate of the Secretary may apply in writing to the Secretary for a review of the decision within –

(a) 30 days after the day on which the decision first came to the notice of the applicant; or

(b) such further period (if any) as the Secretary allows.

(11) *[Section 59E Subsection (11) inserted by No. 15 of 2017, s. 28, Applied:13 Jun 2017]* The Secretary may –

(a) make a decision affirming, varying or revoking the decision; and

(b) if the Secretary revokes the decision, make such other decision as the Secretary thinks appropriate.

59F. Protection from liability for information

[Section 59F Amended by No. 15 of 2017, s. 29, Applied:13 Jun 2017] *[Section 59F Inserted by No. 29 of 2009, s. 8, Applied:01 Sep 2009]* A medical practitioner, dentist, authorised health professional or authorised nurse practitioner who notifies the Secretary under section 59B(1) or makes an application to the Secretary under section 59E –

(a) cannot, by virtue of doing so, be held to have breached any code of professional etiquette or ethics, or to have departed from any accepted form of professional conduct; and

(b) insofar as he or she has acted in good faith, incurs no civil or criminal liability in respect of –

(i) so notifying or applying to the Secretary; or

(ii) the provision of further information.

PART 5A -

[Part 5A Repealed by No. 55 of 2009, s. 7, Applied:12 Nov 2009]

59A..

[Section 59A. Inserted by No. 35 of 2008, s. 4, Applied:15 Feb 2009] [Section 59A. Repealed by No. 55 of 2009, s. 7, Applied:12 Nov 2009]

59B..

[Section 59B. Inserted by No. 35 of 2008, s. 4, Applied:15 Feb 2009] [Section 59B. Repealed by No. 55 of 2009, s. 7, Applied:12 Nov 2009]

59C..

[Section 59C. Inserted by No. 35 of 2008, s. 4, Applied:15 Feb 2009] [Section 59C. Repealed by No. 55 of 2009, s. 7, Applied:12 Nov 2009]

59D..

[Section 59D. Inserted by No. 35 of 2008, s. 4, Applied:15 Feb 2009] [Section 59D. Repealed by No. 55 of 2009, s. 7, Applied:12 Nov 2009]

59E..

[Section 59E. Inserted by No. 35 of 2008, s. 4, Applied:15 Feb 2009] [Section 59E. Repealed by No. 55 of 2009, s. 7, Applied:12 Nov 2009]

59F..

[Section 59F. Inserted by No. 35 of 2008, s. 4, Applied:15 Feb 2009] [Section 59F. Repealed by No. 55 of 2009, s. 7, Applied:12 Nov 2009]

59G..

[Section 59G. Inserted by No. 35 of 2008, s. 4, Applied:15 Feb 2009] [Section 59G. Repealed by No. 55 of 2009, s. 7, Applied:12 Nov 2009]

PART VB - Poppy Advisory and Control Board

Division 1 - [Division 1 of Part VB Heading inserted by No. 40 of 2016, s. 19, Applied:17 Oct 2016] Poppy Advisory and Control Board

59G. Interpretation

[Section 59G Inserted by No. 55 of 2009, s. 8, Applied:12 Nov 2009] In this Part, unless the contrary intention appears –*[Section 59G Amended by No. 40 of 2016, s. 20, Applied:17 Oct 2016]*

Convention means the 1961 Single Convention on Narcotic Drugs published by the United Nations, as amended from time to time;

Department means the responsible Department in relation to this Part;

manufacture includes refine and process and anything done for the purpose of refining or processing;

meeting means a meeting of the Board;

member means a member of the Board;

Minister means the Minister having the administration of this Part;

process means to treat by mechanical, chemical or other artificial means but does not include harvesting.

59H. Poppy Advisory and Control Board

[Section 59H Inserted by No. 55 of 2009, s. 8, Applied:12 Nov 2009]

(1) The Poppy Advisory and Control Board is established.

(2) The Board consists of the following members:

(a) *[Section 59H Subsection (2) amended by No. 40 of 2016, s. 21, Applied:17 Oct 2016]*

(b) the Secretary of the responsible Department in relation to the Public Health Act 1997 or a person nominated by that Secretary;

(c) the Commissioner of Police or a person nominated by the Commissioner;

(d) the Secretary of the responsible Department in relation to the Agricultural and Veterinary Chemicals (Tasmania) Act 1994 or a person nominated by that Secretary;

(e) *[Section 59H Subsection (2) amended by No. 40 of 2016, s. 21, Applied:17 Oct 2016]* the Secretary of the responsible Department in relation to the Primary Industry Activities Protection Act 1995 or a person nominated by that Secretary;

(f) *[Section 59H Subsection (2) amended by No. 40 of 2016, s. 21, Applied:17 Oct 2016]* 2 persons, appointed by the Minister, who –

(i) have qualifications, experience or skills relevant to the poppy growing industry or the poppy processing industry; and

(ii) are not engaged in poppy growing or the poppy processing industry –

and one of whom is to be appointed by the Minister to be the chairperson.

(3) A nomination under subsection (2) –

(a) may be for an indefinite period or a period specified in writing by the Secretary; and

(b) may be in respect of all matters relating to the Board or any specified matters; and

(c) is revocable at will.

(4) A person nominated under subsection (2) , while acting as a nominee and in accordance with the terms of his or her appointment, is taken to be a member of the Board with all the powers, rights and functions of such a

member.

(4A) *[Section 59H Subsection (4A) inserted by No. 40 of 2016, s. 21, Applied: 17 Oct 2016]* The Secretary of the responsible Commonwealth department in relation to the grant of licences to manufacture drugs under Part II of the Narcotic Drugs Act 1967 of the Commonwealth may attend, or send a representative to attend, every meeting of the Board as an observer.

(4B) *[Section 59H Subsection (4B) inserted by No. 40 of 2016, s. 21, Applied: 17 Oct 2016]* A person who attends a meeting of the Board as an observer under subsection (4A) is entitled to view and take copies of any documentation provided, whether at a meeting or otherwise, to members of the Board.

(5) Schedule 1 has effect with respect to membership of the Board.

(6) Schedule 2 has effect with respect to meetings of the Board.

59I. Functions of Board

[Section 59I Inserted by No. 55 of 2009, s. 8, Applied: 12 Nov 2009] The functions of the Board are as follows:

- (a) to act in any matter relating to the alkaloid poppy industry as may be directed by the Secretary;
- (b) to receive, consider and determine production estimates for the contract growing and harvesting of alkaloid poppy material;
- (c) to liaise with the Commonwealth in order to fulfil Australia's obligations under the Convention;
- (d) to ensure the security of Tasmanian alkaloid poppy crops;
- (e) to collect and collate statistical information relating to the alkaloid poppy industry and prepare reports on the industry;
- (f) to facilitate the destruction of any alkaloid poppies grown without the authority of a licence or other authority issued or granted under this Act;
- (g) to advise the Minister and the Minister having the administration of the Public Health Act 1997 on any matter relating to the alkaloid poppy industry;
- (h) to do anything, and provide such other advice to other Ministers, as may be requested by those Ministers.

59J. Powers of Board

[Section 59J Inserted by No. 55 of 2009, s. 8, Applied: 12 Nov 2009] The Board may do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of its functions under this or any other Act.

59K. Delegation

[Section 59K Inserted by No. 55 of 2009, s. 8, Applied: 12 Nov 2009] The Board may delegate any of its functions and powers, other than this power of delegation, to a specified person or the holder of a specified office.

59L. Annual report

[Section 59L Inserted by No. 55 of 2009, s. 8, Applied: 12 Nov 2009]

- (1) The Board, not later than 31 August after the end of each financial year, is to give the Minister a report on its operations for that financial year.
- (2) The Minister may, in writing, direct the Board to prepare the report in a particular way or to include particular information in the report.
- (3) The report may be appended to the annual report of the Department.
- (4) If the Board's report is not appended to the annual report of the Department, the Minister is to cause the report to be laid before each House of Parliament by not later than 31 October after the end of the financial year to which it relates.

59M. Secretarial and administrative support

[Section 59M Inserted by No. 55 of 2009, s. 8, Applied: 12 Nov 2009]

- (1) Subject to and in accordance with the State Service Act 2000, persons may be appointed or employed for the purpose of enabling the functions of the Board under this Part to be carried out.
- (2) The Board may make arrangements with the Secretary of the Department for such State Service officers and State Service employees employed in the Department as may be considered necessary to be made available to enable the Board to perform the functions of office under this or any other Act and those officers and employees, in conjunction with State Service employment, are to serve the Board in any capacity.

59N. Ministerial statement of expectation

[Section 59N Inserted by No. 40 of 2016, s. 22, Applied: 17 Oct 2016]

- (1) The Minister may provide to the Board a ministerial statement of expectation.
- (2) The Minister may at any time, at his or her discretion or on receipt of an application by the Board –
 - (a) amend the ministerial statement of expectation; or
 - (b) revoke the ministerial statement of expectation and substitute another ministerial statement of expectation –

by providing the amendment or substituted ministerial statement of expectation to the Board.

- (3) In preparing the ministerial statement of expectation, the Minister must consult with the Board.
- (4) The ministerial statement of expectation and any amendment to the ministerial statement of expectation is to be in writing and signed by the Minister.
- (5) The ministerial statement of expectation or an amendment to the ministerial statement of expectation takes effect on a day specified in it, being a day not earlier than the day on which it is provided to the Board under subsection (1).
- (6) The Board is to make the ministerial statement of expectation provided to it under subsection (1) available to the public in the manner determined by the Board.

59O. Contents of ministerial statement of expectation

[Section 59O Inserted by No. 40 of 2016, s. 22, Applied: 17 Oct 2016]

- (1) The ministerial statement of expectation is to specify the objectives of the Minister on any matter relating to the functions of the Board.
- (2) The ministerial statement of expectation –
 - (a) may not prevent the Board from performing a function it is required to perform or otherwise complying with any Act; and
 - (b) may not extend the functions and powers of the Board.

59P. Statement of intent

[Section 59P Inserted by No. 40 of 2016, s. 22, Applied: 17 Oct 2016]

- (1) Within 3 months after receiving the ministerial statement of expectation or any amendment to the ministerial statement of expectation, the Board must provide to the Minister a statement of intent.
- (2) A statement of intent is to –
 - (a) specify the objectives of the Board for the period covered by the statement of intent; and
 - (b) address matters raised in the ministerial statement of expectation; and
 - (c) state the nature and scope of the activities to be carried out by the Board during the period covered by the statement of intent; and

- (d) specify the performance criteria and other measures by which the performance of the Board is to be assessed against the objectives of the Board for the period covered by the statement of intent.
- (3) The statement of intent may contain any other matter the Board considers appropriate.
- (4) The Board may at any time at its own discretion or on the request of the Minister –
 - (a) amend the statement of intent; or
 - (b) revoke the statement of intent and substitute another statement of intent.
- (5) The statement of intent and any amendment to the statement of intent are to be in writing and signed by the chairperson of the Board.
- (6) The statement of intent or any amendment to the statement of intent takes effect on the day on which it is approved by the Minister or on a later day specified by the Minister.
- (7) The Board is to make a statement of intent approved by the Minister under subsection (6) available to the public in the manner determined by the Board.

59Q. Conduct to be consistent with ministerial statement of expectation and statement of intent

[Section 59Q Inserted by No. 40 of 2016, s. 22, Applied:17 Oct 2016] The Board is to conduct its business and affairs in a manner that is consistent with the ministerial statement of expectation and the statement of intent.

Division 2 - General

59R. Guidelines

[Section 59R of Part VB Inserted by No. 40 of 2016, s. 23, Applied:17 Oct 2016]

- (1) The Board may issue guidelines for the education and guidance of holders of a poppy research licence or poppy grower's licence.
- (2) The guidelines are not –
 - (a) a statutory rule for the purposes of the *Rules Publication Act 1953*; or
 - (b) subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.
- (3) The Acts Interpretation Act 1931 applies to the interpretation of the guidelines as if the guidelines were by-laws.

59S. Indemnity of Board

[Section 59S of Part VB Inserted by No. 40 of 2016, s. 23, Applied:17 Oct 2016] The Board or a member of it does not incur any personal liability in respect of any act done, or omitted to be done, in good faith in the performance or exercise, or the purported performance or exercise, of any function or power under this Act.

PART VI - Miscellaneous

Division 1 - [Part VI, Div. 1 Heading amended by No. 27 of 1984, s. 25]Analysis and examination of scheduled substances and scheduled plants

60. Power to demand, select, and take samples

- (1) On payment or tender to a person (in this section referred to as "the seller") engaged in the business of selling or manufacturing a scheduled substance or to the agent or servant of the seller, or to a person in charge of such a substance, either in transit or otherwise, of the current market value thereof or at the rate of payment prescribed, an inspector may demand and select and take or obtain a sample of that substance as required by him for the purposes of this Act.
- (2) The inspector may require the seller, or his agent or servant, or the person in charge of the substance, either in transit or otherwise, to show, and permit the inspection of, any package or container in which the substance is kept, and may take or draw, or require the seller or his agent or servant, or the person so in charge of the substance to take or draw, from the package or container the sample demanded.
- (3) Where a substance is kept for retail sale in a closed package, a person shall not be required by an inspector pursuant to this section to sell less than the whole of the contents of the package.
- (4) The procuring by an inspector of a sample of a substance pursuant to this section and the payment or tender of the current market value thereof or at the rate of payment prescribed, shall, for the purposes of this Act, be deemed to be a sale by the seller, or by his agent or servant or the person in charge of the substance, as the case may be, to the inspector of the substance contained in the sample.
- (5) If rates have been prescribed for the payment for samples of substances, it is not necessary for an inspector to tender a higher price for a sample.
- (6) *[Section 60 Subsection (6) amended by No. 27 of 1984, s. 26]*A person may, on payment of the prescribed fee together with the cost of the sample, require an inspector to purchase a sample of a substance and submit the sample for analysis or examination.

61. Analysis, &c., of substance or plant

[Section 61 Subsection (1) amended by No. 27 of 1984, s. 27]

- (1) *[Section 61 Subsection (1) amended by No. 95 of 1973, s. 6]*Where a substance is procured by an inspector, as provided by section 60 , for the purposes of analysis or examination the inspector shall –
 - (a) forthwith inform the person from whom he procured the substance of the purpose for which he procured the substance;
 - (b) except where otherwise provided, forthwith divide the substance into 3 portions of equal, or approximately equal, quantity and securely close or fasten up each portion in a separate container or package, as may be appropriate to its nature, and seal each one;
 - (c) clearly and legibly mark each vessel, container, or package with some distinctive mark of identification;
 - (d) deliver, or, if delivery is not taken, tender, to the person from whom he procured the substance one portion so marked;
 - (e) retain one portion;
 - (f) deliver or transmit to an analyst the third portion as soon as is reasonably practicable; and
 - (g) within 28 days after procuring the substance, transmit a copy of the analyst's report of the analysis or examination of his portion to any person against whom the inspector intends to take proceedings in respect of the substance analysed or examined.

(2) Where a substance is sold in a container or package the inspector who procures a sample thereof may procure 3 of the packages or containers each purporting to contain the same kind of substance and bearing the same brand or label, and in that case each package or container so procured shall be deemed to be one such portion as is mentioned in subsection (1) , and no division thereof is required.

(3) The regulations may prescribe the procedure to be followed in respect of any particular kind of substance specified in the regulations, and any such procedure may be in addition to or in substitution for the procedure provided in subsections (1) and (2) to such extent as may be prescribed.

(4) Subject to subsection (5) , in proceedings under this Act in respect of a substance a sample of which has been submitted to an analyst as provided in this section, the court hearing the proceedings shall not receive the certificate of the analyst as evidence as provided by section 78 unless it is satisfied that the provisions of this section have been complied with.

(5) *[Section 61 Subsection (5) amended by No. 27 of 1984, s. 27]*In proceedings under this Act in respect of a substance bought in the usual course of business by a person other than an inspector, if it is proved that the sample of the substance submitted for analysis or examination was in the same state when received by the analyst as when so bought, the certificate of the analyst thereon may be received as evidence without proof of compliance with the preceding provisions of this section.

62. Forwarding of sample for analysis or examination

(1) *[Section 62 Subsection (1) substituted by No. 27 of 1984, s. 28]*Where the owner or buyer of a scheduled substance wishes to have the substance analysed or examined or a scheduled substance, prohibited substance, or prohibited plant is procured or seized under this Act, that substance or plant may be delivered personally or be forwarded by post or by any other convenient means to an analyst for analysis or examination.

(1A) *[Section 62 Subsection (1A) inserted by No. 27 of 1984, s. 28]*Where a substance or plant is forwarded as referred to in subsection (1) , a certificate purporting to be given by the person who forwarded the substance or plant to the effect that, at a specified time on a specified date and at a specified place, he forwarded the substance or plant by a specified means to an analyst in a sealed container for analysis or examination is admissible in evidence in proceedings for an offence under this Act as to those matters, unless the party against whom the certificate is tendered has given notice in writing to the other party, at least 4 days before the hearing of the proceedings, that he requires the person to be called as a witness in the proceedings.

(1B) *[Section 62 Subsection (1B) inserted by No. 27 of 1984, s. 28]*Where an analyst receives a sealed container containing a substance or plant for analysis or examination, a certificate purporting to be given by him to the effect that, at a specified time on a specified date and at a specified place, he received the container with the seal unbroken is admissible in evidence as to those matters in proceedings for an offence under this Act and of the fact that the substance or plant was in the same state as it was in when it was forwarded to him for analysis or examination, unless the party against whom the certificate is tendered has given notice in writing to the other party, at least 4 days before the hearing of the proceedings, that he requires the analyst to be called as a witness in the proceedings.

(2) A charge for postage or carriage shall be deemed to be one of the expenses of the analysis.

63. Right of owner or buyer to have substance or plant analysed, &c.

*[Section 63 Amended by No. 27 of 1984, s. 29]*The owner or buyer of a scheduled substance, on payment of a fee according to a scale to be prescribed, is entitled to have the substance analysed and to receive from the analyst a certificate of the result of his analysis or examination.

64. Where method of analysis or examination prescribed

*[Section 64 Amended by No. 27 of 1984, s. 30]*Where a method of analysis or examination has been prescribed for the analysis or examination of a particular kind of substance or plant, an analyst, either for the complainant or for the defendant in proceedings under this Act, shall, in his certificate of analysis or examination, declare that he has followed the prescribed method in his analysis or examination; but evidence is admissible on the part of the defence of an analysis or examination made by a method other than the prescribed method and to show that the prescribed method is not correct.

65. Costs of analysis or examination

(1) *[Section 65 Subsection (1) amended by No. 27 of 1984, s. 31]* Where the prosecutor, in proceedings under this Act, has caused the substance or plant to which the proceedings relate to be analysed or examined by an analyst, the court may, in case of a conviction, assess the reasonable expense of and attending the analysis or examination and award it against the defendant as part of the costs of the prosecutor.

(2) In addition to the costs (if any) under subsection (1), the court may assess and award against the defendant

(a) as part of the costs of the prosecutor, the expenses incurred by the prosecutor while engaged in travelling to and attending the trial, including the proportionate part of his salary while so engaged; and

(b) where the Government Analyst or a member of his staff has given evidence at the trial, such costs in respect of his attendance as the court may determine.

66. Copy of result of analysis or examination to be supplied on demand in certain cases

[Section 66 Amended by No. 27 of 1984, s. 32] A copy of the certificate showing the result of an analysis or examination of a substance made at the request of the owner or buyer of the substance or of an inspector shall, on demand, be supplied by the analyst to the person from whom the substance was taken or obtained, and to the manufacturer or his agent in the State, on payment of a fee to be prescribed.

67. Copy of inspector's certificate to be supplied on demand in certain cases

A copy of a certificate of an inspector under section 25 (2) shall, on demand, be supplied by the inspector to the person whose stocks of substances or plants were inspected by the inspector or to that person's agent in the State.

68. Additional copies of certificate

On payment of the prescribed fee –

(a) an analyst may supply additional copies of the certificate referred to in section 66 to a person to whom that section relates; and

(b) an inspector may supply additional copies of the certificate referred to in section 67 to a person to whom that section relates.

69. Analysis or examination not to be referred to for trade purposes

[Section 69 Amended by No. 27 of 1984, s. 33 and s. 48 and Sched. 1] *[Section 69 Amended by No. 43 of 1991, s. 5 and Sched. 1]* A person shall not, for trade purposes or advertisement, use an analysis or examination made for the purposes of this Part.

Penalty: Fine not exceeding 5 penalty units.

Division 1A - Improvement notices

69AA. Improvement notices

[Section 69AA of Part VI Inserted by No. 40 of 2016, s. 24, Applied: 17 Oct 2016]

(1) If the responsible licensing authority believes on reasonable grounds that a person who is the holder of a licence or authorisation has contravened or is contravening a provision of this Act or the regulations, the responsible licensing authority, or an inspector authorised by the responsible licensing authority to issue such notices, may issue and serve an improvement notice and serve it on the person.

(2) An improvement notice may –

(a) require specified action to be taken within 7 days from the service of the notice (or a lesser period specified in the notice) to rectify the contravention to which the notice relates; or

(b) require specified action to be taken within 7 days from the service of the notice (or a lesser period specified in the notice) to ensure that the provision of this Act or regulations to which the notice relates

is complied with.

(3) An improvement notice must –

- (a) be in writing; and
- (b) specify the grounds on which it is issued; and
- (c) specify the requirements of the notice, including the action which must be taken to comply with the notice.

69AB. Compliance with improvement notice

[Section 69AB of Part VI Inserted by No. 40 of 2016, s. 24, Applied:17 Oct 2016]

- (1) If a requirement of an improvement notice is complied with, the responsible licensing authority or inspector that issued and served the notice on a person is to notate on a copy of the notice the date on or by which the notice is complied with.
- (2) The responsible licensing authority or inspector that issued and served under section 69AA(1) an improvement notice on a person must, if requested to do so by the person, give to the person a copy of the notice containing the notation referred to in subsection (1) .

69AC. Contravention of improvement notice

[Section 69AC of Part VI Inserted by No. 40 of 2016, s. 24, Applied:17 Oct 2016] A person must not, without reasonable excuse, contravene or fail to comply with an improvement notice served on the person under section 69AA(1) .
Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

69AD. Review of improvement notice

[Section 69AD Amended by No. 7 of 2025, s. 169, Applied:01 Jul 2025] [Section 69AD of Part VI Inserted by No. 40 of 2016, s. 24, Applied:17 Oct 2016] A person aggrieved by a decision in relation to an improvement notice may apply to the Tasmanian Civil and Administrative Tribunal for a review of the decision.

Division 2 - Legal proceedings and offences

69A. Time for instituting prosecutions

[Section 69A Inserted by No. 95 of 1973, s. 7]

- (1) A prosecution for an offence against this Act (not being a prosecution for a contravention of section 47 (1) or (3)) may be instituted at any time within 2 years after the commission of the offence.
- (2) Notwithstanding anything in subsection (1) , where a prosecution for an offence to which this section applies is instituted more than 6 months after the commission of the offence, the court may dismiss the charge if it considers that in the circumstances of the case it would be unjust, having regard to the period of time which has elapsed since the commission of the offence, to proceed with the prosecution.

70. Return day of summons

On a complaint under this Act concerning a substance or plant, the summons shall not be made returnable less than 10 days after the day on which it is served.

71. Copy of analyst's certificate to be served on defendant

*[Section 71 Substituted by No. 27 of 1984, s. 34][Section 71 Amended by No. 27 of 1991, s. 5 and Sched. 1]*Where proceedings are taken on summons under this Act for an offence concerning a substance or a plant that has been analysed or examined by, or under the supervision of, an analyst –

- (a) a document purporting to be a certificate of the result of the analysis or examination is not admissible in evidence in those proceedings unless a copy of the document has been served on the defendant not

less than 7 days before the hearing of those proceedings; and

(b) [Section 71 Amended by No. 80 of 2001, Sched. 1, Applied:01 Jul 2002] section 177A of the Evidence Act 2001 does not apply in relation to those proceedings.

72. Source of information of witness need not be disclosed

A witness on behalf of the prosecution in proceedings under this Act is not obliged to disclose –

- (a) the fact that he received any information;
- (b) the nature of any information received by him; or
- (c) the name of the person who gave information.

73. Reports to inspector need not be disclosed

An inspector appearing as a witness in proceedings under this Act is not obliged to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

74. Burden of proof

In proceedings under this Act concerning a substance or plant, the burden of proving that the substance or plant was not sold for consumption or use is on the defendant.

75. Agent or servant liable in addition to principal

(1) Subject to subsection (2), in proceedings under this Act for an offence in relation to the sale or supply of a substance or plant, it is no defence that the defendant is only the agent or servant of the owner of, or person dealing in, that substance or plant but the agent or servant and the owner or person dealing in the substance or plant are both liable.

(2) A servant is not liable if he proves that the offence was committed in a store, shop, stall, or other similar place in which business was, at the time of the commission of the offence, conducted under the personal superintendence of the owner of the business or some manager or other person representing him.

76. Right of agent or servant to recover from principal

(1) If the defendant in proceedings under this Act for an offence in relation to the sale or supply of a substance or plant, being the agent or servant of the owner or person dealing in the substance or plant, proves that he sold or supplied the substance or plant without knowledge that any provision of this Act with respect to the substance or plant or any container or package in which it was contained had been contravened or had not been complied with, he may, whether his principal or employer has or has not been convicted and fined, recover in a court of competent jurisdiction from his principal or employer the amount of any penalty imposed on the agent or servant in the proceedings, together with the costs paid or payable by him on his conviction and those paid or payable by him in and about his defence to the proceedings.

(2) Where an agent or servant has been convicted under this Act, the court before which he is convicted may suspend the operation of the conviction for a period not exceeding 3 months, to enable the agent or servant to recover from his principal or employer as provided in subsection (1).

77. Defence available to defendant where some other person is responsible for commission of offence

(1) A person against whom proceedings are brought in respect of an offence against this Act is entitled to have any person (in this section referred to as "the third party") to whose act or default he alleges that the commission of the offence was due brought before the court in those proceedings, and if, after the offence is proved, the original defendant proves that the commission of the offence was due to the act or default of that other person, that other person may be convicted of the offence, and, if the original defendant further proves that he used all due diligence to secure compliance with the provisions of this Act in respect of the contravention in relation to which the proceedings are brought, he shall be acquitted of the offence.

(2) To avail himself of the provisions of subsection (1) the defendant may, on 3 clear days' notice to the prosecutor, apply to a justice for a summons to the third party and –

- (a) the justice shall make the return day of that summons conform to the principle of section 70 and amend the return day of the summons on the complaint accordingly; and
 - (b) the justice's summons to the third party shall recite the complaint and the defendant's allegation on which it is issued.
- (3) Where a defendant avails himself of the provisions of subsection (1) –
- (a) the prosecutor and the third party are entitled to cross-examine the defendant, if he gives evidence, and to cross-examine any witness called by him in support of his evidence, and to call rebutting evidence; and
 - (b) the court before which the proceedings are brought may make such order as the court thinks fit for the payment of costs by any party to the proceedings to any other party thereto.
- (4) Where it appears to an inspector that an offence under this Act has been committed in respect of which proceedings might be taken against some person and the inspector is reasonably satisfied that the offence was due to an act or default of some other person and that the first-mentioned person could have that other person brought before a court in accordance with subsection (1), the inspector may cause proceedings to be brought against that other person without first causing proceedings to be brought against the first-mentioned person, and in any proceedings so brought that other person may be charged with and, on proof that the commission of the offence was due to his act or default, may be convicted of, the offence with which the first-mentioned person might have been charged.

78. Evidentiary provisions

[Section 78 Subsection (1) amended by No. 27 of 1991, s. 5 and Sched. 1]

(1) *[Section 78 Subsection (1) amended by No. 27 of 1984, s. 35]* In proceedings in respect of an offence against this Act –

(a) the production of a document purporting to be an analyst's or inspector's certificate prepared pursuant to section 25 is evidence of the facts therein stated if tendered by –

- (i) the prosecutor; or
- (ii) the defendant if he has, not less than 7 days before the hearing, delivered a copy thereof to the prosecutor –

unless the party against whom the document is tendered has given notice in writing to the other party, at least 4 days before the hearing, that he requires the analyst, a person who, under the supervision of the analyst, was involved with the analysis or the inspector to be called as a witness; and

(b) if the defendant requires the portion of a substance retained as provided by section 61 (1) (e) to be produced at the hearing, he shall give the prosecutor not less than 3 days' notice in writing of his requirement; and

(c) *[Section 78 Subsection (1) amended by No. 80 of 2001, Sched. 1, Applied:01 Jul 2002]* section 177A of the Evidence Act 2001 does not apply.

(2) In proceedings in respect of an offence against this Act, when it is necessary or proper to prove in respect of a particular substance that it conforms to any of the following descriptions, namely:

- (a) that it is a poison or poisonous;
- (b) that it consists of or contains poison;
- (c) that it is a restricted substance;
- (d) that it is a narcotic substance –

then in every such case –

(e) evidence that a substance commonly sold under the same name or description as that particular substance conforms to any of the descriptions contained in paragraph (a), paragraph (b), paragraph (c),

or paragraph (d) is evidence that that particular substance also conforms to the same description accordingly;

(f) evidence that a particular substance bears an inscription required by the regulations in respect of any substance or kind of substances is evidence that that particular substance is a substance, or belongs to the kind of substances, in respect of which that inscription is so required; and

(g) evidence that the container or package in which a particular substance is contained is labelled as required, or bears an inscription required, by the regulations in respect of containers or packages containing any substance or kind of substances is evidence that that particular substance is a substance, or belongs to a kind of substances, the containers or packages containing which are so required to be labelled or to bear that inscription.

(3) In proceedings against a person in respect of an offence against Part V it is not necessary to negative by evidence any licence, authority, or other matter of exception or defence, and the burden of proving any such matters lies on the person seeking to avail himself of it.

(4) *[Section 78 Subsection (4) inserted by No. 27 of 1984, s. 35]* In any proceedings for an offence under this Act, a printed document which purports to set out a standard or specification of a prescribed authority as defined in section 92A and which purports to have been published or issued by or on behalf of the authority is admissible in evidence and is evidence of the standard or specification.

79. Persons deemed to have sold certain substances

(1) Where a scheduled substance is sold in an unopened container or package to a police officer or to an inspector and in respect of the sale thereof there is a contravention of or failure to comply with any provision of this Act, each of the persons referred to in paragraphs (a) and (b) is, in addition to the person who actually sold the container or package to the police officer or inspector, liable in respect of that contravention or failure, namely:

(a) if the container or package has a label on or attached to it, any person who appears from that label to have manufactured or prepared the substance, or to have imported it into the State, or to have enclosed it or caused it to be enclosed in that container or package, or to have been the wholesale supplier thereof;

(b) if the container or package has a label on or attached to it but the label does not disclose any of the particulars referred to in paragraph (a) or if the container or package has no label on or attached to it, any person who has previously sold the unopened container or package.

(2) A person to whom the provisions of subsection (1) apply is deemed to have sold the unopened container or package to the police officer or inspector as on the day when, and at the place where, the police officer or inspector purchased it, and that person is liable to the same penalty as if he had actually sold the container or package to the police officer or inspector on that day and at that place.

(3) It is a defence to a charge under this section if the person charged shows –

(a) that the contravention or non-compliance is due to the act or default of some subsequent seller; or

(b) where the container or package has a label on or attached to it, that he did not in fact affix or attach the label or cause it to be affixed or attached or enclose the substance in or cause it to be enclosed in the container or package.

(4) Nothing in this section affects the liability of a person selling an unopened package to a police officer or to an inspector with respect to any contravention or non-compliance due to his default or to other causes within his control; and the conviction of a person under the provisions of this section does not relieve the person selling the unopened container or package or any other person from liability with respect to any such contravention or non-compliance.

(5) Without affecting the generality of the application of this section or any other provision of this Act to firms or the members of firms, where a firm appears from a label to have imported or manufactured a scheduled substance or to have been the wholesale supplier thereof or to have enclosed the substance in a container or package –

(a) proceedings under this section may be taken against, and penalties imposed on and recovered from, any member or members of the firm; and

(b) this section has effect, and shall be read, as if the name of that member or the names of those members had appeared on the label.

(6) In this section, **wholesale supplier** means a person who sells or supplies a scheduled substance to another person for the purposes of resale by that other person.

80. Selling certain substances by means of automatic machines prohibited

[Section 80 Amended by No. 27 of 1984, s. 48 and Sched. 1][Section 80 Amended by No. 43 of 1991, s. 5 and Sched. 1] A person shall not –

(a) whether on or about his premises or elsewhere –

(i) install an automatic machine for the sale or supply of a scheduled substance; or

(ii) sell or supply such a substance by means of an automatic machine;

(b) permit or suffer an automatic machine designed for, or capable of being used for, the sale of such a substance to be installed on his premises or on premises under his control;

(c) place such a substance or permit or suffer such a substance to be placed in any automatic machine on his premises or on premises under his control; or

(d) permit or suffer a person to buy or be supplied with or otherwise obtain such a substance by means of an automatic machine on the premises of, or under the control of, the first-mentioned person.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 6 months, together with a daily fine not exceeding 0·2 penalty unit in the case of a continuing offence.

81. Medicines, &c., for internal use not to be sold in certain containers

[Section 81 Subsection (1) amended by No. 43 of 1991, s. 5 and Sched. 1]

(1) *[Section 81 Subsection (1) amended by No. 27 of 1984, s. 48 and Sched. 1]* A person shall not sell a drug or medicine that is for internal use, or any food, drink, or condiment, in a container or package –

(a) of like description to that prescribed in the regulations for a container or package in which a substance that is or contains a scheduled substance (being a substance intended for external use) may be sold; or

(b) of such a description as not to be readily distinguishable by sight and touch, or by either sight or touch, from a container or package in which such a substance intended for external use may be sold.

Penalty: Fine not exceeding 10 penalty units.

(2) Nothing in this section affects any other requirement of this Act relating to the containers or packages in which drugs or medicines that are or that contain scheduled substances may be sold.

82. Obstruction, &c., of officers

(1) *[Section 82 Subsection (1) substituted by No. 27 of 1984, s. 36][Section 82 Subsection (1) amended by No. 43 of 1991, s. 5 and Sched. 1]* A person who –

(a) intentionally delays or obstructs an inspector or a police officer in the exercise or proposed exercise of his powers under section 90 , 90A , 90B , or 90E ; or

(b) without reasonable excuse, fails to produce, or conceals, any substance, plant, or document, or any stocks of a substance or plant, that he is required under section 90 to produce –

is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units.

(2) *[Section 82 Subsection (2) amended by No. 35 of 1997, Sched. 1, Applied:01 Jun 1999] [Section 82 Subsection (2) substituted by No. 27 of 1984, s. 36][Section 82 Subsection (3) amended by No. 43 of 1991, s. 5 and Sched. 1]* If the admission of an inspector or a police officer to any premises which he seeks to enter in accordance with section

90 or 90E is refused, or is delayed or obstructed for such time that it may reasonably be inferred that the delay or obstruction was intentional, the occupier of the premises, and any other person who refuses, delays, or obstructs the admission of the inspector or police officer, are each guilty of an offence and are liable on summary conviction to a fine not exceeding 50 penalty units.

(3) In proceedings in respect of an offence against this section in relation to the delaying or obstructing of a police officer or an inspector, if it is shown that the entrance of a police officer or of an inspector into any premises or place was prevented or delayed by the existence of any barrier or obstruction in or on the premises or place, it shall be presumed, unless the contrary is proved, that the barrier or obstruction was intended to prevent or delay the entry into the premises or place of the police officer or inspector.

83. Hawking, &c., of scheduled substances prohibited

[Section 83 Substituted by No. 95 of 1973, s. 8][Section 83 Subsection (1) amended by No. 43 of 1991, s. 5 and Sched. 1]

(1) *[Section 83 Subsection (1) amended by No. 27 of 1984, s. 48 and Sched. 1]* A person shall not –

(a) sell or supply a scheduled substance, or distribute a scheduled substance free or as a sample, in any street or from place to place;

(b) hawk or peddle a scheduled substance; or

(c) whether by appointment or otherwise, go from place to place selling, supplying, or distributing (whether free or as a sample) a scheduled substance.

Penalty: Fine not exceeding 10 penalty units.

(2) *[Section 83 Subsection (2) amended by No. 15 of 2017, s. 30, Applied:13 Jun 2017]* Subsection (1) does not apply to any wholesale dealing or in relation to the free distribution of clinical samples of a scheduled substance (other than a narcotic substance) to medical practitioners, dentists, nurse practitioners, endorsed midwives, authorised health professionals or veterinary surgeons by persons engaged in the manufacture of, or dealing in, any such substance, where the distribution is made to the medical practitioner, dentist, nurse practitioner, endorsed midwife, authorised health professional or veterinary surgeon personally or by posting, by registered post, a letter or parcel containing the substance addressed to him.

(3) In this section, **street** has the same meaning as it has in the Police Offences Act 1935 .

83A. Possession of pipe, &c.

[Section 83A Inserted by No. 27 of 1984, s. 37]

(1) *[Section 83A Subsection (1) amended by No. 51 of 2019, s. 4, Applied:31 Jan 2020][Section 83A Subsection (1) amended by No. 43 of 1991, s. 5 and Sched. 1]* A person who has in his possession any pipe, syringe, or other utensil, or any other appliance or thing, for use or designed to be used in connection with the preparation, smoking, inhalation, administration, or taking of a raw narcotic, narcotic substance, prohibited plant, or prohibited substance is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units.

(2) *[Section 83A Subsection (2) amended by No. 23 of 2022, s. 41, Applied:24 Oct 2022]* Subsection (1) does not prohibit anything authorised by a licence granted under this Act, or otherwise authorised by or under this Act.

83B. Causing, &c., use of premises for certain purposes

[Section 83B Inserted by No. 27 of 1984, s. 37][Section 83B Amended by No. 43 of 1991, s. 5 and Sched. 1] An owner or occupier of premises who knowingly causes, permits, or suffers those premises to be used for or in connection with the unlawful growing, manufacture, preparation, sale, distribution, trafficking, use, or administration of a raw narcotic, narcotic substance, prohibited plant, or prohibited substance is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 2 years, or both.

83C. Offence to make false statement, &c.

[Section 83C Inserted by No. 40 of 2016, s. 25, Applied:17 Oct 2016] A person must not, for the purpose of obtaining the issue, grant or renewal of a licence or authorisation, make a declaration or statement that is false in any particular, or knowingly utter, produce or make use of such a declaration or statement or a document containing such a declaration or statement.

Penalty: Fine not exceeding 100 penalty units.

84. Forfeiture of substances, &c., in certain cases

[Section 84 Substituted by No. 27 of 1984, s. 38]

(1) *[Section 84 Subsection (1) amended by No. 35 of 1997, Sched. 1, Applied:01 Jun 1999]* Where an inspector or police officer, in accordance with section 90 , 90B or under a warrant issued under the Search Warrants Act 1997 , seizes—

(a) a substance, being a raw narcotic, narcotic substance, prohibited substance, or substance to which section 36 applies; or

(b) *[Section 84 Subsection (1) amended by No. 40 of 2016, s. 26, Applied:17 Oct 2016]* a prohibited plant or part of such a plant, other than the seed of an alkaloid poppy—

that substance, plant, or part of a plant is, by virtue of this subsection, forfeited to the Crown and shall be disposed of as the Minister directs.

(2) *[Section 84 Subsection (2) omitted by No. 20 of 1993, s. 81].*

(3) *[Section 84 Subsection (3) omitted by No. 20 of 1993, s. 81].*

(4) *[Section 84 Subsection (4) omitted by No. 20 of 1993, s. 81].*

(5) *[Section 84 Subsection (5) omitted by No. 20 of 1993, s. 81].*

(6) *[Section 84 Subsection (6) omitted by No. 20 of 1993, s. 81].*

(7) *[Section 84 Subsection (7) omitted by No. 20 of 1993, s. 81].*

(8) *[Section 84 Subsection (8) omitted by No. 20 of 1993, s. 81].*

(9) *[Section 84 Subsection (9) omitted by No. 20 of 1993, s. 81].*

(10) *[Section 84 Subsection (10) omitted by No. 20 of 1993, s. 81].*

(11) *[Section 84 Subsection (11) omitted by No. 20 of 1993, s. 81].*

(12) *[Section 84 Subsection (12) omitted by No. 20 of 1993, s. 81].*

(13) *[Section 84 Subsection (13) omitted by No. 20 of 1993, s. 81].*

(14) *[Section 84 Subsection (14) omitted by No. 20 of 1993, s. 81].*

(15) *[Section 84 Subsection (15) omitted by No. 20 of 1993, s. 81].*

(16) *[Section 84 Subsection (16) omitted by No. 20 of 1993, s. 81].*

84A. Destruction of scheduled substances and prohibited plants

[Section 84A Inserted by No. 40 of 2016, s. 27, Applied:17 Oct 2016]

(1) In this section —

corresponding law means a law of another Australian jurisdiction that is declared by the regulations to be a corresponding law for the purposes of this section;

drug-related offence means an indictable offence under the Misuse of Drugs Act 2001 , the Criminal Code Act 1924 , this Act or a corresponding law.

(2) If a person is found guilty by a court of a drug-related offence, the court may order the forfeiture to the Crown of any scheduled substances, or prohibited plants, that were, at the time of the commission of the

offence, in the person's possession or apparently under the person's control.

(3) If an inspector believes on reasonable grounds that a person who is the holder of a licence has contravened this Act or the licence, the inspector may detain or seize any scheduled substances, or prohibited plants, that are in the possession of the person.

(4) If a licence is suspended or cancelled, any scheduled substances or prohibited plants in the possession of, or apparently under the control of, the person who was the licence holder are –

(a) in the case of suspension, forfeited to the Crown for the duration of the suspension; or

(b) in the case of cancellation, forfeited to the Crown.

(5) Subject to subsection (6), any scheduled substances or prohibited plants that are forfeited to the Crown under subsection (4)(b) are to be destroyed in accordance with the directions of the Secretary.

(6) The Secretary may, instead of directing the destruction of the scheduled substances or prohibited plants, authorise a person to take possession of the scheduled substances or prohibited plants, on behalf of the Crown or some other person, for a purpose specified by the Secretary.

(7) If any scheduled substances or prohibited plants that were in the possession, or apparently under the control, of a person referred to in subsection (2), (3) or (4) are destroyed under this section, the person must pay to the Crown the reasonable costs of the destruction.

84B. Directions to former holder of licence

[Section 84B Inserted by No. 40 of 2016, s. 27, Applied: 17 Oct 2016]

(1) An inspector or a responsible licensing authority may give to a person who has ceased to be the holder of a licence under this Act directions in relation to the disposal, removal or destruction of any prohibited plant or substance to which the licence related.

(2) A person must comply with a direction given to the person under subsection (1).

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 50 penalty units; or

(b) a natural person, a fine not exceeding 10 penalty units.

(3) If a person has ceased to be the holder of a licence under this Act that authorised the possession of a prohibited plant or a substance, the person is not to be taken, in relation to the plant or substance, to contravene, after ceasing to hold the licence, a provision of this Act in relation to the possession of a plant or substance, if the person –

(a) takes all reasonable steps to secure the plant or substance from loss or theft; and

(b) complies with any directions given to the person under subsection (1) in relation to the plant or substance.

85.

[Section 85 Repealed by No. 27 of 1984, s. 39].

86. Offences by bodies corporate

Where a body corporate is convicted of an offence against this Act, each director or member of the governing authority of the body corporate and each officer concerned in the management of the body corporate is guilty of the like offence unless he proves that he used all due diligence to prevent the commission of the offence or that the offence was committed without his knowledge or consent or contrary to his orders or directions.

Division 2A - Transitional provision

[Part VI, Div. 2A Repealed by No. 20 of 1993, s. 81] [Division 2A of Part VI Inserted by No. 29 of 2009, s. 9, Applied: 01 Sep 2009]

86A. Transitional provision

[Section 86A Repealed by No. 20 of 1993, s. 81][Section 86A Inserted by No. 29 of 2009, s. 9, Applied:01 Sep 2009]

- (1) A notification made under section 18 of the Alcohol and Drug Dependency Act 1968 and in force immediately before the commencement of the Poisons Amendment Act 2009 is taken to be a notification made under section 59B of this Act.
- (2) An authority given under section 22 of the Alcohol and Drug Dependency Act 1968 and in force immediately before the commencement of the Poisons Amendment Act 2009 is taken to be an authority given under section 59E of this Act.
- (3) An application for an authority made under section 22 of the Alcohol and Drug Dependency Act 1968 and not finalised before the commencement of the Poisons Amendment Act 2009 is taken to have been made under section 59E of this Act immediately after that commencement.

86B. Savings provisions for current licences

[Section 86B Repealed by No. 20 of 1993, s. 81][Section 86B Inserted by No. 40 of 2016, s. 28, Applied:17 Oct 2016]

- (1) Subject to this Act, a licence granted in respect of the growing of a prohibited plant under Part V and in force immediately before the commencement of the *Poisons Amendment (Poppy Industry Reform) Act 2016 (the amending Act)* is to be taken to be a poppy grower's licence granted under this Act and remains in force as such a licence for –
 - (a) subject to paragraph (b) , the period for which the licence would have remained in force if the amending Act had not commenced; or
 - (b) if, before the expiry of the period referred to in paragraph (a) , the person has provided to the Board a document, issued by a body approved by the Board, providing evidence that the person is a fit and proper person and the Board has not notified the person that the Board is of the opinion that the person is not a fit and proper person – a period of 5 years from the date on which the document was issued by the body.
- (2) Nothing in subsection (1) is to be taken to prevent the conditions and restrictions in a licence to which that subsection applies from being varied under section 9 .

Division 2B - Ice pipes

[Division 2B of Part VI Inserted by No. 51 of 2019, s. 5, Applied:31 Jan 2020]

86C. Interpretation

[Section 86C Repealed by No. 20 of 1993, s. 81][Section 86C Inserted by No. 51 of 2019, s. 5, Applied:31 Jan 2020] In this Division –

controlled drug has the same meaning as in the Misuse of Drugs Act 2001 ;

device includes components that together make a device;

exempt pipe means a device, or a class of devices, that is prescribed by the regulations as being an exempt pipe for the purposes of this definition;

exempt shop means a place, structure or thing, or a class of places, structures or things, in, on or at which a business that sells goods is carried on, that is prescribed by the regulations as being an exempt shop for the purposes of this definition;

ice pipe means a device that –

- (a) is capable of being used, or is intended to be used, for the purpose of administering a controlled drug into the body of a person by the drawing or inhaling of smoke, or vapour or fumes, resulting from the heating or burning of the controlled drug in a crystal or powder form;
- or

(b) is intended to be used as such a device but requires adjustment, modification or addition before it is so used; or

(c) is of a prescribed class, type or description;

shop means –

(a) all, or any part of, a building, premises or place in or at which a business that sells goods is carried on; or

(b) all, or any part of, a stall, booth, tent, stand, trailer, vehicle, caravan or other temporary or permanent fixed or mobile structure or thing in, on or at which a business that sells goods is carried on; or

(c) any other place, structure or thing in, on or at which a business that sells goods is carried on that is prescribed by the regulations as being a shop for the purposes of this definition.

86D. Application of Division

[Section 86D Repealed by No. 20 of 1993, s. 81] [Section 86D Inserted by No. 51 of 2019, s. 5, Applied: 31 Jan 2020]

(1) This Division does not apply to an exempt pipe.

(2) This Division does not apply to an exempt shop.

86E. Offence to sell ice pipes

[Section 86E Inserted by No. 51 of 2019, s. 5, Applied: 31 Jan 2020] A person must not sell an ice pipe –

(a) in a shop; or

(b) in connection with a shop.

Penalty: Fine not exceeding 100 penalty units.

86F. Defence

[Section 86F Inserted by No. 51 of 2019, s. 5, Applied: 31 Jan 2020]

(1) In proceedings in respect of an offence against section 86E, it is a defence for the person charged to prove that the ice pipe to which the proceedings relate is designed primarily to be used for a purpose other than administering a controlled drug.

(2) Despite subsection (1), in proceedings in respect of an offence against section 86E, evidence of a disclaimer is not, of itself, a defence.

(3) In this section –

disclaimer, in relation to a device, means an oral or written statement made on, or in relation to, the device, at or before the time of the commission of an alleged offence against this Division in relation to the device, to the effect that the device is designed, or intended, to be used for a purpose that is not a purpose related to the administering of a controlled drug.

86G. Seizure of ice pipes, &c.

[Section 86G Inserted by No. 51 of 2019, s. 5, Applied: 31 Jan 2020]

(1) For the purpose of ascertaining whether there is or has been a failure to comply with section 86E, an inspector or a police officer may, at any reasonable time, without a warrant enter a shop if the inspector or the police officer believes, on reasonable grounds, that the shop is being used for or in connection with the sale of an ice pipe.

(2) An inspector or a police officer who has entered a shop in accordance with subsection (1), may do all or any of the following:

(a) examine any room in, or any part of, the shop and any thing kept within any such room or part;

- (b) require the production of any thing which the inspector or the police officer believes on reasonable grounds to be an ice pipe;
- (c) open, or require the opening of, any package or thing which the inspector or the police officer believes on reasonable grounds to be, or to contain, an ice pipe;
- (d) inspect, check and make an inventory of any thing which the inspector or the police officer believes on reasonable grounds to be an ice pipe;
- (e) seize any thing, being a thing in relation to which the inspector or the police officer believes, on reasonable grounds, that there is or has been a contravention of this Division;
- (f) detain or remove to some other place any thing so seized.

(3) An inspector or a police officer may exercise the powers conferred on the inspector or police officer by subsections (1) and (2) with or without assistance.

(4) A person must not –

- (a) intentionally delay, or obstruct, an inspector or a police officer in the exercise, or the proposed exercise, of his or her powers under this section; or
- (b) without reasonable cause, fail to produce, or conceal, any thing that he or she is required to produce under this section.

Penalty: Fine not exceeding 50 penalty units.

86H. Retention, return or destruction of seized ice pipes

[Section 86H Inserted by No. 51 of 2019, s. 5, Applied:31 Jan 2020]

- (1) If an inspector or a police officer seizes any thing in accordance with section 86G , the inspector or the police officer must take reasonable steps to return the thing to the person from whom it was seized, or its lawful owner, if the reason for its seizure no longer exists.
- (2) If a person is found guilty by a court of an offence against section 86E , the court may order that the ice pipe to which the offence relates –
 - (a) be forfeited to the Crown; and
 - (b) be destroyed in accordance with the order.
- (3) If a person is taken to have been convicted of an offence against section 86E in accordance with section 20 of the Monetary Penalties Enforcement Act 2005 , the Secretary may direct, in writing, that an ice pipe, to which the offence relates and that has been seized in accordance with section 86G , be destroyed in accordance with that direction.

Division 3 - General

87. Application of certain Acts to orders made under this Act

The provisions of –

- (a) section 47 of the Acts Interpretation Act 1931 ; and
- (b) the Subordinate Legislation Committee Act 1969 –

apply to and in relation to any order made by the Minister under this Act as if the order were a regulation.

88. Calculation of percentages

For the purposes of this Act and of the Poisons List, percentages in the case of liquid preparations shall (unless other provision in that respect is made by the regulations) be calculated on the basis that a preparation containing one per cent of a substance means a preparation in which –

- (a) one gramme of the substance, if a solid; or

(b) one millilitre of the substance, if a liquid –

is contained in every 100 millilitres of the preparation, and so on in proportion for any greater or lesser percentage.

89. Annual list of holders of licences under section 27

(1) The Minister shall, in the month of January in each year, cause to be published in the *Gazette* a correct list of the names of all persons to whom licences under section 27 have been granted, and that list shall set out those names in the alphabetical order of the surnames appearing therein and shall specify the respective place of residence or business of each person whose name appears therein.

(2) The production of the *Gazette* containing the list referred to in subsection (1) is evidence that the persons whose names appear therein have been granted licences under section 27 .

90. Powers of inspectors with respect to licensed premises, &c.

[Section 90 Substituted by No. 27 of 1984, s. 41]

(1) For the purpose of ascertaining whether there is or has been a contravention of or a failure to comply with this Act, an inspector may, at any reasonable time, without a warrant, enter premises –

(a) *[Section 90 Subsection (1) amended by No. 40 of 2016, s. 29, Applied:17 Oct 2016] [Section 90 Subsection (1) amended by No. 23 of 2022, s. 42, Applied:24 Oct 2022]* occupied by a person who is, or in the previous 6 months was, the holder of a licence under this Act authorising him to manufacture or distribute a scheduled substance;

(b) where –

(i) goods are sold on those premises; and

(ii) the inspector believes, on reasonable grounds, that those premises are used for or in connection with the sale or supply of a scheduled substance;

(c) *[Section 90 Subsection (1) amended by No. 40 of 2016, s. 29, Applied:17 Oct 2016] [Section 90 Subsection (1) amended by No. 23 of 2022, s. 42, Applied:24 Oct 2022]* occupied by a person who is, or in the previous 6 months was, the holder of a licence under this Act authorising him to have in his possession a scheduled substance or who is otherwise authorised by this Act to have such a substance in his possession;

(d) *[Section 90 Subsection (1) amended by No. 40 of 2016, s. 29, Applied:17 Oct 2016] [Section 90 Subsection (1) amended by No. 23 of 2022, s. 42, Applied:24 Oct 2022]* occupied by a person who is the holder of a licence under this Act authorising him to grow a prohibited plant; or

(e) *[Section 90 Subsection (1) amended by No. 23 of 2022, s. 42, Applied:24 Oct 2022]* in which the making, refining, preparation, possession, or use of a prohibited substance is authorised by this Act.

(2) An inspector who has entered premises under the power conferred on him by subsection (1) may do all or any of the following things:

(a) examine any room in, or any part of, the premises and any articles within any such room or part;

(b) inspect, check, and make an inventory of any substances or plants kept in any such room or part which he believes on reasonable grounds to be scheduled substances or prohibited plants;

(c) require the production of, and inspect and make copies of, any documents relating to dealings with any scheduled substances or prohibited plants kept or that he finds on the premises;

(d) require the production of any scheduled substances or prohibited plants kept on the premises;

(e) inspect, check, and make an inventory of any substances or plants kept on the premises which he believes on reasonable grounds to be scheduled substances or prohibited plants;

(f) on payment or tender of a reasonable price, demand, select, and obtain any sample of any scheduled substance which is on the premises;

(g) seize any substance, plant, or document kept or that he finds on the premises, being a substance, plant, or document in relation to which he believes on reasonable grounds there has been a contravention of, or failure to comply with, this Act;

(h) detain or remove to some other place any substance, plant, or document so seized.

(3) An inspector may exercise the powers conferred on him by subsections (1) and (2) with or without assistance.

90A. Powers of police officers executing search warrants

[Section 90A Inserted by No. 27 of 1984, s. 42][Section 90A Substituted by No. 35 of 1997, Sched. 1, Applied:01 Jun 1999]

(1) A police officer executing a warrant issued under the Search Warrants Act 1997 in relation to premises may –

(a) arrest any person on the premises whom the police officer believes on reasonable grounds to be committing or to have committed an offence under this Act; and

(b) search any person found on the premises and detain any such person for that purpose.

(2) For the purposes of enabling the execution of a warrant referred to in subsection (1) , a police officer may use such animals or devices and be accompanied by such assistants as the police officer considers necessary, and every such assistant has, while in the company of the police officer named in the warrant, the same powers to execute the warrant as the police officer.

90B. Seizure of certain substances found in vehicles, &c.

[Section 90B Inserted by No. 27 of 1984, s. 42]

(1) Where a police officer believes on reasonable grounds that there is –

(a) in the possession of any person in a public place;

(b) on or in any vehicle in a public place;

(c) on any animal in a public place;

(d) on or in any boat, whether underway or not; or

(e) on or in any aircraft –

any raw narcotic, narcotic substance, prohibited substance, section 36 substance, or prohibited plant in relation to which an offence under this Act is being or has been committed, he may, without warrant and with such assistance as he considers necessary –

(f) search the person and detain him for the purpose of carrying out the search;

(g) search the vehicle, animal, boat, or aircraft;

(h) seize or seize and remove the vehicle, animal, boat, or aircraft; and

(i) seize or seize and remove –

(i) any substance found in or on the person, vehicle, animal, boat, or aircraft which the inspector or police officer believes is or contains a raw narcotic, narcotic substance, prohibited substance, section 36 substance, or prohibited plant; or

(ii) any money or valuable thing found in or on the person, animal, vehicle, boat, or aircraft –

in relation to which the police officer believes an offence under this Act is being or has been committed.

(2) Where, pursuant to subsection (1) , a police officer searches or is empowered to search a person, the police officer may arrest the person without warrant if the police officer believes on reasonable grounds that the person is committing or has committed an offence under this Act in relation to a raw narcotic, a narcotic substance, a prohibited substance, a section 36 substance, or a prohibited plant.

(3) In this section, a reference to a search of a person includes a reference to any clothing worn by the person and any article that may be in his possession.

(4) In this section, **section 36 substance** means a substance to which section 36 applies.

90C. Personal searches

[Section 90C Inserted by No. 27 of 1984, s. 42]

(1) *[Section 90C Subsection (1) amended by No. 5 of 1990, s. 3 and Sched. 1]* Where, pursuant to section 90A or 90B, an inspector or a police officer detains a person for the purpose of search, the following provisions apply:

(a) if a strip search is to be carried out on a female, that search shall be carried out by a female police officer;

(b) if a strip search is to be carried out on a male, that search shall be carried out by a male police officer;

(c) if the inspector or police officer suspects on reasonable grounds that a raw narcotic, narcotic substance, prohibited substance, section 36 substance, or prohibited plant may be present in the cavities of that person's body and wishes to determine the presence or absence of the narcotic, substance, or plant in those cavities, he shall cause that person to be brought before a magistrate;

(d) on a person being brought before a magistrate in accordance with paragraph (c), the magistrate shall either –

(i) make an order in writing that the cavities of that person's body which are specified in that order shall be searched by a specified medical practitioner; or

(ii) refuse to make such an order;

(e) if the search involves the application of force to the person – the inspector or police officer shall, within 7 days after effecting the search, deliver to the Secretary or, as the case may be, to the Commissioner of Police a report in writing giving full particulars of the search, including particulars of the circumstances which gave rise to the application of force.

(2) For the purposes of subsection (1) –

(a) **cavities of a person's body** means the vagina and rectum of that person;

(b) **strip search** means a search, other than a cavity search ordered by a magistrate under subsection (1)

(d) (i), in which the person to be searched is required to remove most or all of his clothing.

(3) An order under subsection (1) (d) (i) is sufficient authority for the medical practitioner specified in the order, and any person working in the medical or nursing profession acting in good faith in aid of, and under the direction of, that medical practitioner, to carry out a search of the cavities of the body of the person concerned which are specified in that order.

(4) *[Section 90C Subsection (4) amended by No. 23 of 2022, s. 43, Applied:24 Oct 2022]* If a person in respect of whom an order has been made under subsection (1) (d) (i) requests that the search authorised by that order be not carried out unless another medical practitioner, of the same sex as that person, is present, the search shall not be carried out unless another medical practitioner of the same sex as that person is present unless the circumstances are such that it is not reasonably practicable to arrange for the presence of another medical practitioner of the same sex as that person at the search.

(5) *[Section 90C Subsection (5) amended by No. 23 of 2022, s. 43, Applied:24 Oct 2022]* Notwithstanding subsection (3), a search authorised by an order under subsection (1) (d) (i) shall not be carried out until the person in respect of whom the search is to be carried out has been informed of the request that he may make pursuant to subsection (4).

(6) *[Section 90C Subsection (6) amended by No. 23 of 2022, s. 43, Applied:24 Oct 2022]* If a person in respect of whom an order has been made under subsection (1) (d) (i) refuses or fails to submit himself to the search authorised by that order, or wilfully obstructs the carrying out of the search, the medical practitioner authorised to carry out the search, and any person working in the medical or nursing profession acting in good faith in aid of, and under

the direction of, that medical practitioner, may use such force as is reasonably necessary for the purpose of enabling the search to be carried out.

(7) In this section, **section 36 substance** means a substance to which section 36 applies.

90D. Power of police officer to require person to provide certain particulars

[Section 90D Inserted by No. 27 of 1984, s. 42]

(1) *[Section 90D Subsection (1) amended by No. 35 of 1997, Sched. 1, Applied:01 Jun 1999]* Where a police officer seizes a substance, plant, or other article under section 90 , 90B or under a warrant issued under the Search Warrants Act 1997 , he may require the person from whom the substance, plant, or article was seized to state—

(a) his name and the address of his place of residence or of the place where he proposes next to reside; and

(b) the place at which, and the person from whom, the first-mentioned person obtained the substance, plant, or article.

(2) *[Section 90D Subsection (2) amended by No. 43 of 1991, s. 5 and Sched. 1]* Any person who —

(a) fails to comply with a requirement made to him under subsection (1) with respect to the particulars referred to in paragraph (a) of that subsection;

(b) without reasonable excuse, fails to comply with a requirement made to him under subsection (1) with respect to the particulars referred to in paragraph (b) of that subsection when it is within his power so to comply; or

(c) in response to a requirement made to him under subsection (1) , gives information which to his knowledge is false or misleading —

is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

(3) *[Section 90D Subsection (3) amended by No. 35 of 1997, Sched. 1, Applied:01 Jun 1999]* Where, pursuant to section 90B or under a warrant issued under the Search Warrants Act 1997 , a police officer searches or is empowered to search a person, the police officer may arrest the person without warrant if—

(a) the person fails to comply with a requirement made to him under subsection (1) ; or

(b) in response to such a requirement, the person gives information that the police officer believes on reasonable grounds to be false or misleading.

90E. Power of police officer to pursue suspected person on to private premises

[Section 90E Inserted by No. 27 of 1984, s. 42]

(1) Where —

(a) a person whom a police officer believes on reasonable grounds to be committing or to have committed an offence under this Act in relation to a raw narcotic, a narcotic substance, a prohibited substance, a section 36 substance, or a prohibited plant —

(i) flees from the presence of the police officer while the police officer is endeavouring to arrest him or to exercise in respect of him any other power conferred by this Act on a police officer; and

(ii) after fleeing from that presence, enters premises that are not a public place; and

(b) the police officer, immediately after the person flees from his presence, pursues the person and the pursuit continues without interruption —

the police officer may, without warrant, enter the premises notwithstanding that they are not a public place and may for the purpose of effecting entry to the premises use such force (but no more) as may be reasonably necessary.

(2) In this section, **premises** includes a dwelling-house, a residential flat, and any other place used as a residence, whether temporarily or permanently.

(3) In this section, **section 36 substance** means a substance to which section 36 applies.

91. Protection from liability

*[Section 91 Amended by No. 27 of 1984, s. 43]**[Section 91 Amended by No. 5 of 1990, s. 3 and Sched. 1]*No act, matter, or thing done or omitted to be done in good faith by the Minister, or by the Secretary, or by any police officer or inspector, in the administration or intended administration of this Act, or in the exercise or performance or intended exercise or performance of any of his or its powers, functions, or duties under this Act, subjects the Minister, or the Secretary, or the police officer or inspector, to any liability (whether civil or criminal) in respect of that act, matter, or thing.

92. Revocation or suspension of rights

[Section 92 Subsection (6) substituted by No. 46 of 1991, s. 5 and Sched. 3]

(1) *[Section 92 Subsection (1) amended by No. 27 of 1984, s. 44]*Notwithstanding any other provision of this Act but subject to this section, the Minister may, by notice in writing to a person, suspend or revoke any right conferred on that person by or under this Act –

(a) to make, refine, prepare, prescribe, sell, supply, or have in his possession a scheduled substance, prohibited substance, or raw narcotic; or

(b) *[Section 92 Subsection (1) amended by No. 40 of 2016, s. 30, Applied:17 Oct 2016]* to grow, or use or have in his possession, a prohibited plant–

and may, at any time, by notice in writing to that person, remove the suspension or restore that right.

(2) A notice under subsection (1) shall be served on the person to whom it is directed –

(a) personally;

(b) by sending the notice or a copy of the notice to that person by post at his last-known place of residence, business, or employment; or

(c) in the case of a body corporate, by sending the notice or a copy of the notice by post to the registered office (if any) of the body corporate or by serving the notice personally on the manager, secretary, or other executive officer of the body corporate.

(3) *[Section 92 Subsection (3) amended by No. 7 of 2025, s. 170, Applied:01 Jul 2025]* A suspension under subsection (1) has effect for such period (not exceeding 21 days) as the Minister determines and specifies in the notice of suspension, but that period may be extended for such further period as may be ordered by the Tasmanian Civil and Administrative Tribunal on application made to, and heard and determined by, the Tribunal as prescribed.

(4) *[Section 92 Subsection (4) amended by No. 7 of 2025, s. 170, Applied:01 Jul 2025]* *[Section 92 Subsection (4) substituted by No. 73 of 2001, Sched. 1, Applied:01 Jul 2002]* A person who is aggrieved by the suspension or revocation by the Minister pursuant to subsection (1) of such a right as is referred to in that subsection may apply to the Tasmanian Civil and Administrative Tribunal for a review of the suspension or revocation.

(4A) *[Section 92 Subsection (4A) amended by No. 7 of 2025, s. 170, Applied:01 Jul 2025]* *[Section 92 Subsection (4A) inserted by No. 73 of 2001, Sched. 1, Applied:01 Jul 2002]* A person who is aggrieved by an order by the Tasmanian Civil and Administrative Tribunal under subsection (3) extending the period of such a suspension may appeal to the Supreme Court which has jurisdiction to hear and determine the appeal.

(5) *[Section 92 Subsection (5) substituted by No. 73 of 2001, Sched. 1, Applied:01 Jul 2002]* *[Section 92 Subsection (5) omitted by No. 7 of 2025, s. 170, Applied:01 Jul 2025]*

(6) *[Section 92 Subsection (6) substituted by No. 27 of 1984, s. 44]*The Minister shall not, pursuant to this section, suspend or revoke a right referred to in subsection (1) unless, after giving the person on whom the right is conferred an opportunity to be heard and having regard to the evidence before him, he is satisfied that –

(a) the person, in relation to that right, is or has been guilty of conduct which –

(i) is an abuse of that right or a contravention of or failure to comply with a provision of this Act;
or

(ii) shows him to be unfit to enjoy that right; or

(b) [Section 92 Subsection (6) amended by No. 15 of 2017, s. 31, Applied:13 Jun 2017] in the interests of the person's health or welfare, it is desirable to suspend or revoke the right; or

(c) [Section 92 Subsection (6) amended by No. 15 of 2017, s. 31, Applied:13 Jun 2017] it is in the public interest to suspend or revoke the right.

(7) [Section 92 Subsection (7) substituted by No. 27 of 1984, s. 44]In this section, a reference to a right conferred on a person by or under this Act is a reference to –

(a) [Section 92 Subsection (7) amended by No. 55 of 1997, Applied:22 Dec 1997] [Section 92 Subsection (7) amended by No. 55 of 1997, s. 8, Applied:22 Dec 1997] a right arising by virtue of a licence, permit, authorisation or authority issued, conferred or granted by or under this Act conferring on the holder of the licence, permit, authorisation or authority the right to make, refine, prepare, prescribe, sell, supply, or have in his possession or use a substance or plant of a kind referred to in subsection (1) ; or

(b) a right, privilege, or freedom arising by virtue of an exception or exemption provided for by or under this Act to do any of the things referred to in paragraph (a) .

92A. Adoption of standards by reference

[Section 92A Inserted by No. 27 of 1984, s. 45]

(1) The regulations may adopt, either wholly or in part, and either specifically or by reference and with or without modification, a standard or specification of a prescribed authority, being a standard or specification specified in the regulations and dealing with a matter to which the regulations relate, whether the standard or specification is published or issued before or after the commencement of section 45 of the *Poisons Amendment Act 1984*.

(2) In subsection (1) , **prescribed authority** means –

(a) the Standards Association of Australia;

(b) the British Standards Institution; and

(c) such other body as may be specified in the regulations for the purposes of this section.

(3) A reference in subsection (1) to a standard or specification includes a reference to an amendment of that standard or specification, whether the amendment is published or issued before or after the commencement of section 45 of the *Poisons Amendment Act 1984*.

(4) In subsection (3) , **amendment** means –

(a) the omission of matter;

(b) the insertion of additional matter; and

(c) the omission of matter and the substitution of other matter.

92B. Infringement notices

[Section 92B Inserted by No. 40 of 2016, s. 31, Applied:17 Oct 2016]

(1) In this section –

infringement offence means an offence against this Act or the regulations that is prescribed to be an infringement offence.

(2) [Section 92B Subsection (2) amended by No. 51 of 2019, s. 6, Applied:31 Jan 2020] The Board, an inspector or a police officer may issue and serve an infringement notice on a person if the Board, the inspector or the police officer reasonably believes that the person has committed an infringement offence.

(3) An infringement notice may not be served on an individual who has not attained the age of 16 years.

(4) An infringement notice –

- (a) is to be in accordance with section 14 of the Monetary Penalties Enforcement Act 2005 ; and
- (b) is not to relate to more than 3 offences.

(5) The regulations –

- (a) may prescribe, for infringement offences, the penalties payable under infringement notices; and
- (b) may prescribe different penalties for bodies corporate and individuals.

92C. Disclosure of protected information

[Section 92C Inserted by No. 21 of 2021, s. 10, Applied: 17 Dec 2021]

(1) In this section –

informed person means –

- (a) a person who has, in connection with the administration or the execution of this Act, obtained protected information; or
- (b) a person who has, in the course of or as a result of performing a function or exercising a power under this Act, obtained protected information; or
- (c) the Secretary of the department responsible for the administration of this Act who has obtained protected information in the course of that administration;

law enforcement agency means –

- (a) a police force or police service of –
 - (i) the Commonwealth; or
 - (ii) this State; or
 - (iii) any other State or a Territory of the Commonwealth; or
 - (iv) any country; or
- (b) the Australian Crime Commission; or
- (c) a person, entity or commission established or appointed, under any Act of this State, of any other State or of a Territory of the Commonwealth, to investigate matters relating to scheduled substances; or
- (d) the Attorney-General; or
- (e) the Solicitor-General appointed and holding office under the Solicitor-General Act 1983 ; or
- (f) the Director of Public Prosecutions appointed and holding office under the Director of Public Prosecutions Act 1973 ;

protected information means any information, or opinion, in any format –

- (a) that is information, or an opinion, relating to a natural person, from which the identity of the natural person is apparent or is reasonably ascertainable; or
- (b) that is information, or an opinion, that is commercial in nature and would reveal proprietary business, competitive or trade secret information of a significant value if disclosed.

(2) An informed person must not disclose any protected information to another person unless the disclosure is authorised under subsection (3) .

Penalty: Fine not exceeding 50 penalty units.

(3) An informed person is authorised to disclose protected information to another person if the disclosure –

- (a) is for the purposes of legal proceedings arising out of this Act; or

- (b) is for the purposes of ensuring compliance with, and enforcing, this Act; or
 - (c) is for the purposes of, or is made in connection with, the performance of functions or the exercise of powers under this Act or any other Act; or
 - (d) is made in connection with the administration or enforcement of this Act; or
 - (e) is for a purpose authorised, or is required, by this Act or any other Act; or
 - (f) is made to a law enforcement agency for the purposes of preventing, detecting, investigating or prosecuting an offence in relation to a scheduled substance; or
 - (g) is made to the Australian Health Practitioner Regulation Agency established by section 23 of the Health Practitioner Regulation National Law (Tasmania); or
 - (h) is made to a National Board within the meaning of the Health Practitioner Regulation National Law (Tasmania); or
 - (i) is made to the Australian Pesticides and Veterinary Medicines Authority for the purposes of enabling it to perform its functions under the *Agricultural and Veterinary Chemicals Act 1994* of the Commonwealth or the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth; or
 - (j) is made to the Secretary under the *Therapeutic Goods Act 1989* of the Commonwealth for the purposes of enabling the Secretary to perform the Secretary's functions under that Act or under the *Therapeutic Goods Act 2001* ; or
 - (k) is made to a person administering or enforcing a law of the Commonwealth or of another State or a Territory that corresponds to this Act; or
 - (l) is made to an entity of the Commonwealth, of another State, or of a Territory, that performs functions in relation to the management of health and safety risks in public places or workplaces; or
 - (m) is made to an entity of the Commonwealth, of another State, or of a Territory, that performs functions in relation to the importation or exportation of goods or substances into or from Australia; or
 - (n) is made to a regulatory authority in a foreign country for the purpose of enabling it to perform its functions in relation to the importation or exportation of scheduled substances into or from Australia; or
 - (o) is made to a person, or to a class of persons, prescribed for the purposes of this paragraph.
- (4) An informed person is not guilty of an offence against this section if –
- (a) the protected information that the informed person disclosed was publicly available at the time when the disclosure was made; or
 - (b) the natural person to whom the protected information relates gives his or her written consent to the disclosure of the protected information by the informed person; or
 - (c) the owner of the business, or the occupier of the premises, gives his or her written consent to the disclosure of the protected information by the informed person; or
 - (d) the informed person reasonably believed that the disclosure of the protected information was necessary so as to prevent or reduce a serious threat to the life, health or safety of the person to whom the protected information relates; or
 - (e) the informed person reasonably believed that the disclosure of the protected information was necessary so as to prevent or reduce a serious threat to public health or public safety; or
 - (f) the disclosure of the protected information was made for or in connection with the reporting or lawful investigation of a crime or unlawful act (whether actual or prospective).

93. Regulations

[Section 93 Subsection (2) amended by No. 27 of 1984, s. 46][Section 93 Subsection (2) amended by No. 43 of 1991, s. 5 and Sched. 1][Section 93 Subsection (6) amended by No. 68 of 1994, s. 3 and Sched. 1][Section 93 Subsection (6) amended by No. 8 of 1996, s. 3 and Sched. 1]

(1) The Governor may make regulations for the purposes of this Act.

(2) *[Section 93 Subsection (2) amended by No. 23 of 2022, s. 44, Applied:24 Oct 2022]* *[Section 93 Subsection (2) amended by No. 95 of 1973, s. 11 and Sched. 1]* In addition to the regulations authorised to be made by any other provision of this Act, the Governor may make regulations for or with respect to—

(a) the manufacture, possession, sale, supply, storage, and safe custody of hazardous poisons and domestic poisons, including the specifications of receptacles used for the storage thereof, and the words or warning notices to be painted on, or affixed to, those receptacles, and the manner of keeping or storing substances in those receptacles and prohibiting the keeping or storage in those receptacles of any substances specified in the regulations;

(b) the kind or description of containers and packages in which scheduled substances may be sold or supplied and the size, shape, colour, and materials thereof, and the manner of sealing any such containers and packages and prohibiting the use of any such containers and packages for other substances;

(c) the marking and labelling of containers and packages in which scheduled substances or any prescribed classes or kinds of those substances, are cased, covered, enclosed, contained, or packed and the particulars (including antidotes) to be shown in labels attached to those containers and packages or in or on those containers and packages themselves;

(ca) prohibiting the advertising of potent substances and restricted substances, except in specified publications or a specified class of publications, or in specified circumstances, or in accordance with or subject to specified conditions or restrictions;

(d) the regulation, control, and restriction of the contents of labels attached to or inserted in containers and packages containing a scheduled substance and of advertisements relating to such a substance and the prohibition of the use in any such labels or advertisements of claims, statements, words, and devices indicating or suggesting that the substance to which they relate may be used, or is effective, for a particular purpose;

(e) the colouring of, or of prescribed classes or kinds of, scheduled substances;

(f) the granting of permits to persons to purchase or otherwise obtain from licensed manufacturing chemists or licensed wholesale chemists, scheduled substances or any prescribed class or kind of those substances, for use for industrial, educational, advisory, or research purposes but not for resale, and the conditions, limitations, and restrictions to which those permits shall be subject, and the duration, renewal, suspension, or cancellation of those permits;

(g) the precautions to be taken in or in connection with the making, refining, preparing, storing, handling, or use of scheduled substances or of any prescribed class or kind of those substances;

(h) the application for, and the granting, duration, renewal, suspension, and cancellation of, licences, permits, and authorities under this Act (other than licences under Division 3 of Part II, or under section 27, or under Part V) and the fees payable on or in respect of the granting or renewal thereof and the terms, conditions, limitations, and restrictions to which those licences, permits, and authorities shall be, or may be, made subject;

(i) prescribing the particulars to be recorded in the poisons book;

(j) prohibiting the sale of scheduled substances or of any prescribed class or kind thereof by any method of self-service other than such methods as may be prescribed;

(ja) prohibiting the sale and supply of potent substances, except in accordance with or subject to specified conditions or restrictions;

(k) *[Section 93 Subsection (2) amended by No. 23 of 2022, s. 44, Applied:24 Oct 2022]* specifying the persons or classes or persons authorised or entitled to purchase, use, or be in possession of scheduled substances or any prescribed class or kind of those substances;

(l) [Section 93 Subsection (2) amended by No. 15 of 2017, s. 32, Applied:13 Jun 2017] [Section 93 Subsection (2) amended by No. 23 of 2022, s. 44, Applied:24 Oct 2022] exempting from all or any of the provisions of this Act substances that by their nature are not capable of being used in evasion of this Act, or that are supplied or sold by a pharmacist or in accordance with the prescription of a medical practitioner, dentist, authorised health professional or veterinary surgeon for an individual and specific case;

(m) [Section 93 Subsection (2) amended by No. 78 of 2007, s. 13, Applied:01 Jul 2008] [Section 93 Subsection (2) amended by No. 42 of 2010, s. 9, Applied:01 Jan 2011] [Section 93 Subsection (2) amended by No. 17 of 1996, Applied:09 Jun 2011] [Section 93 Subsection (2) amended by No. 15 of 2017, s. 32, Applied:13 Jun 2017] [Section 93 Subsection (2) amended by No. 23 of 2022, s. 44, Applied:24 Oct 2022] authorising medical practitioners and pharmacists dispensing medicines and drugs at a hospital or other like establishment, and persons in charge of public institutions, and persons in charge of laboratories for the purpose of research or instruction, and dentists, authorised health professionals, authorised nurse practitioners, endorsed midwives, veterinary surgeons, and such other persons as may be prescribed, to be in possession of any scheduled substance for the purposes of their respective professions or employments, and prescribing the conditions and restrictions subject to which such an authority may be given;

(ma) [Section 93 Subsection (2) amended by No. 15 of 2017, s. 32, Applied:13 Jun 2017] [Section 93 Subsection (2) amended by No. 23 of 2022, s. 44, Applied:24 Oct 2022] authorising the prescription, obtainment, possession, keeping, use or supply of scheduled substances by such persons, or classes of persons, or in such places as may be prescribed, and in such cases or circumstances and subject to such conditions as may be prescribed;

(mb) [Section 93 Subsection (2) amended by No. 15 of 2017, s. 32, Applied:13 Jun 2017] regulating the storage and safe custody of scheduled substances;

(mc) [Section 93 Subsection (2) amended by No. 15 of 2017, s. 32, Applied:13 Jun 2017] regulating, controlling, and restricting the free distribution of clinical samples of scheduled substances;

(n) [Section 93 Subsection (2) amended by No. 78 of 2007, s. 13, Applied:01 Jul 2008] [Section 93 Subsection (2) amended by No. 42 of 2010, s. 9, Applied:01 Jan 2011] [Section 93 Subsection (2) amended by No. 15 of 2017, s. 32, Applied:13 Jun 2017] regulating, controlling, and restricting the issue by medical practitioners, dentists, authorised health professionals, authorised nurse practitioners, endorsed midwives or veterinary surgeons of prescriptions for the supply of a substance that is or contains a scheduled substance, the dispensing of any such prescription, and the supply and administration of any such substance thereunder;

(na) [Section 93 Subsection (2) amended by No. 55 of 1997, s. 9, Applied:22 Dec 1997] specifying the persons or classes of persons authorised to write, issue or dispense prescriptions for restricted substances;

(o) any other purpose that the Governor deems necessary for safeguarding the public and the public health in relation to scheduled substances; and

(p) providing for any contravention of or failure to comply with a provision of the regulations to be an offence and providing on the summary conviction of a person for such an offence for the imposition of a fine not exceeding 10 penalty units.

(2A) [Section 93 Subsection (2A) inserted by No. 21 of 2021, s. 11, Applied:17 Dec 2021] The regulations made under this section or under any other provision of this Act may –

(a) authorise any matter to be determined, applied or regulated by the Secretary or the Director of Public Health appointed under section 6 of the Public Health Act 1997 ; and

(b) confer a power or impose a duty on the Secretary or the Director of Public Health appointed under section 6 of the Public Health Act 1997 .

(3) The regulations made under this section or under any other provision of this Act may require that, in such cases as may be prescribed, any application, return, record, or other document required or permitted to be made, furnished, or lodged under or for the purposes of the regulations shall be verified by statutory declaration made by such person as may be prescribed.

(4) The regulations made under this section or under any other provision of this Act –

- (a) may be of general or specially limited application;
- (b) may apply to or in relation to substances generally or specified classes or kinds of substances; and
- (c) may make different provision in relation to different substances or may differ according to differences in the purposes for which substances are sold, supplied, or used or differences in locality, place, time, or circumstance.

(5) *[Section 93 Subsection (5) amended by No. 27 of 1984, s. 46]* The regulations (whether made under this section or under any other provision of this Act) shall not be regarded as invalid on the ground that they delegate to or confer on the Minister or a prescribed officer a discretionary authority.

(6) *[Section 93 Subsection (6) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010] [Section 93 Subsection (6) amended by No. 8 of 2003, Sched. 2, Applied:15 Oct 2003] [Section 93 Subsection (6) amended by No. 90 of 2001, Sched. 6, Applied:01 Apr 2002] [Section 93 Subsection (6) amended by No. 40 of 1987, s. 37]* The regulations made under this section or under any other provision of this Act are in addition to and not in derogation of any regulations made under the Health Practitioner Regulation National Law (Tasmania), the Fertilizers Act 1993 , the Public Health Act 1997 , the Food Act 2003 or the Agricultural and Veterinary Chemicals (Control of Use) Act 1995 but if a provision of a regulation made under any one of those Acts is inconsistent with a provision of a regulation made under this Act (whether the regulation made under this Act is made before or after the making of the regulation under the other Act) the provision of the regulation made under this Act, to the extent of the inconsistency, prevails.

94. Savings and transitional provisions

[Section 94 Inserted by No. 7 of 2012, s. 13, Applied:01 Jul 2012] Schedule 3 has effect in respect of savings and transitional provisions consequent on the enactment of the Poisons Amendment Act 2012 .

SCHEDULE 1 - Membership of Poppy Advisory and Control Board

[Schedule 1 Substituted by No. 27 of 1984, s. 47] [Schedule 1 Repealed by No. 95 of 2001, Sched. 1, Applied: 01 Jun 2002] [Schedule 1 Inserted by No. 35 of 2008, s. 5, Applied: 15 Feb 2009]

Section 59B(5)

1. Interpretation

In this Schedule –

[Schedule 1 Amended by No. 55 of 2009, Applied: 12 Nov 2009] **Board** means the Poppy Advisory and Control Board established under section 59H ;

member means a member of the Board;

[Schedule 1 Amended by No. 55 of 2009, s. 10, Applied: 12 Nov 2009] **Minister** means the Minister having the administration of Part VB .

2. Term of appointment

[Schedule 1 Amended by No. 55 of 2009, s. 10, Applied: 12 Nov 2009] [Schedule 1 Amended by No. 15 of 2019, Sched. 1, Applied: 28 Jun 2019] A member appointed under section 59H(2)(f) is to be appointed for a period, not exceeding 5 years, specified in the member's instrument of appointment.

3. Holding other office

The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of a member; and
- (b) accepting any remuneration payable to a member.

4. State Service Act 2000 not to apply

- (1) The State Service Act 2000 does not apply in relation to a member in his or her capacity as a member.
- (2) A person may hold the office of member in conjunction with State Service employment.

5. Remuneration and other conditions

- (1) A member is entitled to be paid such remuneration and allowances as the Minister determines.
- (2) A member who is a State Service officer or State Service employee is not entitled to remuneration or allowances under subclause (1) except with the approval of the Minister administering the State Service Act 2000 .
- (3) A member holds office on such conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment.

6. Vacation of office

(1) *[Schedule 1 Amended by No. 15 of 2019, Sched. 1, Applied: 28 Jun 2019] [Schedule 1 Amended by No. 55 of 2009, s. 10, Applied: 12 Nov 2009]* A member appointed under section 59H(2)(f) vacates office if the member –

- (a) dies; or
- (b) resigns; or
- (c) is removed from office under subclause (2) .

(2) *[Schedule 1 Amended by No. 15 of 2019, Sched. 1, Applied: 28 Jun 2019] [Schedule 1 Amended by No. 55 of 2009, s. 10, Applied: 12 Nov 2009]* The Minister may remove from office a member appointed under

section 59H(2)(f) if the member –

- (a) is absent from 2 consecutive meetings of the Board without the Board's permission; or
- (b) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 12 months or longer or a fine of 300 penalty units or more; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of any remuneration or estate for their benefit; or
- (d) is unable to perform adequately or competently the duties of his or her office.

7. Filling of vacancies

(1) *[Schedule 1 Amended by No. 15 of 2019, Sched. 1, Applied:28 Jun 2019] [Schedule 1 Amended by No. 55 of 2009, s. 10, Applied:12 Nov 2009]* If the office of a member appointed under section 59H(2)(f) becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.

(2) *[Schedule 1 Amended by No. 15 of 2019, Sched. 1, Applied:28 Jun 2019] [Schedule 1 Amended by No. 55 of 2009, s. 10, Applied:12 Nov 2009]* If a member appointed under section 59H(2)(f) is unable for any reason to perform the functions of a member, the Minister may appoint a suitable person to act in the office of that member for a period determined by the Minister.

8. Validity of proceedings

(1) An act or proceeding of the Board or of a person acting under the direction of the Board is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the membership of the Board.

(2) All acts and proceedings of the Board or of a person acting under a direction of the Board are, despite the subsequent discovery of a defect in the appointment of a member or that any other person was disqualified from acting as, or incapable of being, a member, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the Board had been fully constituted.

9. Presumptions

In any proceedings by or against the Board, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Board; or
- (b) any resolution of the Board; or
- (c) the appointment or nomination of any member; or
- (d) the presence of a quorum at any meeting of the Board.

SCHEDULE 2 - Meetings of Board

[Schedule 2 Inserted by No. 35 of 2008, s. 5, Applied:15 Feb 2009]

Section 59B(6)

1. Interpretation

In this Schedule –

[Schedule 2 Amended by No. 55 of 2009, s. 10, Applied:12 Nov 2009] **Board** means the Poppy Advisory and Control Board established under section 59H ;

meeting means a meeting of the Board;

member means a member of the Board;

[Schedule 2 Amended by No. 55 of 2009, s. 11, Applied:12 Nov 2009] **Minister** means the Minister having the administration of Part VB .

2. Convening of meetings

(1) The chairperson of the Board –

(a) may convene a meeting at any time; and

(b) must convene a meeting if requested in writing by 2 or more members to do so.

(2) The first meeting of the Board must be convened in accordance with directions given by the Minister.

3. Procedure at meetings

(1) The quorum at any duly convened meeting of the Board is 3 members.

(2) Any duly convened meeting of the Board at which a quorum is present is competent to transact any business of the Board.

(3) Questions arising at a meeting of the Board are to be determined by a majority of votes of the members present and voting.

(4) A telephone or video conference between members is taken to be a meeting of the Board at which the members participating in the conference are present.

4. Chairperson

(1) The chairperson of the Board is to preside at all meetings of the Board.

(2) If the chairperson of the Board is not present at a meeting of the Board, a member elected by the members present is to preside at that meeting.

(3) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, the motion is lost.

5. Disclosure of interest

(1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board must, as soon as practicable after the relevant facts come to the knowledge of the member, disclose the nature of that interest at a meeting of the Board.

(2) A disclosure under subclause (1) is to be recorded in the minutes and the member must not, unless the Board exclusive of that member determines otherwise –

(a) be present during any deliberations of the Board in relation to that matter; or

(b) take part in any decision of the Board in relation to that matter.

6. General procedure

Subject to this Schedule, the procedure for the calling of, or for the conduct of business at, meetings is to be as determined by the Board.

SCHEDULE 3 - Savings and transitional provisions consequent on the Poisons Amendment Act 2012

[Schedule 3 Inserted by No. 7 of 2012, s. 14, Applied:01 Jul 2012]

Section 94

1. Duration of licences

A licence that was in force on the day on which the Poisons Amendment Act 2012 commenced remains in force until 31 March next following that day.

2. Appointment of responsible officer

Notwithstanding section 16A , a licence holder, other than a natural person , that was holding a licence that was in force on the day on which the Poisons Amendment Act 2012 commenced is not required to appoint a responsible officer until the licence is next renewed.