

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

DRUGS OF DEPENDENCE ORDINANCE 1989

No. 11 of 1989

The Drugs of Dependence Ordinance 1989 (the Ordinance) represents a major reform of the ACT's antiquated and inadequate drug laws. It replaces major parts of the Poisons and Narcotic Drugs Ordinance 1978, the Poisons and Dangerous Drugs Ordinance 1933 and the Poisons Regulations with more comprehensive and modern provisions which takes the ACT to the forefront of Australian drug regulatory measures.

The Ordinance was prepared following agreement in principle at the Special Premiers Conference on Drugs Strategy in April 1985 (the Drug Summit), that there should be uniformity of approach among jurisdictions on legislation governing drugs of dependence and broad consistency on key issues such as the scheduling of drugs, the thrust of offences and penalties.

As a result of this agreement the Commonwealth undertook to prepare a draft model legislative package for discussion among jurisdictions. The draft was in the form of an ACT Ordinance.

During a review of legislation in the various jurisdictions it became apparent that the ACT lagged behind most States and that reform was well overdue. Furthermore the ACT had legislation which was not consistent with the agreed approach to key issues established at the Drug Summit.

Accordingly in 1986 steps were taken to modify the draft model legislative package into an Ordinance which would be suitable for operation in the ACT.

Following extensive consultation within the ACT community and a considerable amount of change to meet the practical requirements of those who will enforce and work with the Ordinance it is now in a form which is appropriate for operation in the ACT.

Briefly the Ordinance provides for:-

- the licensing of people wishing to manufacture or wholesale a drug of dependence, (drugs such as morphine which have medical purposes but are illegal for recreational uses).
- the establishment of new standards for the safekeeping, monitoring and recording of the legal usage of drugs of dependence, (to ensure the drugs are not diverted to illegal uses).
- the clear delienation of responsibility for drugs of dependence amongst those who are engaged in the legal usage of drugs of dependence, ranging from those responsible for drugs in hospitals to a person who is responsible for a first aid kit.
- the establishment of a scheme whereby people who have a drug problem and who are found guilty of drug related offences can be properly assessed by an expert panel as to the extent of the problem and appropriate treatment.

- a mechanism whereby courts can by consent order offenders to attend specially approved and regulated treatment centres in lieu of or in conjunction with sentences handed down for offences.
- the creation of a series of offences which carry greatly increased penalties in relation to the manufacture, cultivation and supply of a drug of dependence or prohibited substance, (a prohibited substance has no accepted medical use, is addictive and is banned completely).
- increased police powers to combat the illicit trade of drugs of dependence and prohibited substances.
- the legalisation of the supply of syringes to drug dependent persons under controlled circumstances for the purpose of preventing the spread of the AIDS virus.

Details of the Ordinance are set out in the attachment.

ATTACHMENTPART I - PRELIMINARY

Sections 1 and 2 outlines the formal parts relating to the Short title and date commencement of the legislation. The Ordinance will come into operation on a date fixed by the Minister.

Section 3 defines certain terms for the purpose of the legislation. The more important ones are as follows:

- 'Drug of dependence' means a substance specified in Schedule 1 and includes substances such as morphine and pethidine. These substances have a medical use but are harmful when used for recreational purposes.
- 'drug dependent person' means a person who in relation to a drug of dependence or a prohibited substance is with a condition such that:-
 - as a result of administration to him or her of drugs of dependence or prohibited substances demonstrates impaired control in relation to the use of a drug of dependence or prohibited substance, or
 - to whom the cessation of the administration of the drug or substance is likely to cause the person to experience symptoms of mental or physical distress or disorder.
- The definition is consistent with that recommended by the World Health Organisation.
- 'Manufacture' of a drug of dependence or prohibited substance means:-
 - carrying out any of the processes by which the drug or substance is obtained
 - the refining process
 - the processes of transforming a drug or substance into another drug or substance
 - making or preparing of tablets and other dosage forms which consist of or contain a drug or substance
 - mixing, compounding or formulating; and
 - packing or repacking.
- "physical condition" means:-
 - a physical disease, illness, ailment, defect or injury,
 - pregnancy, or
 - a physical state which may be changed by surgery in the course of

professional medical practice but does not include drug dependence.

"prohibited substance" means a substance specified in schedule 2 and includes substances such as Herion, Cannabis and LSD which do not have a medical use and are harmful when used for recreational purposes.

"Service" means ACT Community and Health Service.

PART II - MANUFACTURE

This part establishes the administrative procedure for applications for a licence to manufacture a drug of dependence and a system of monitoring the movement of drugs and the disposal of by-products. In the Poisons and Narcotic Drugs Ordinance 1978 (PANDO) (the previous legislation) provision was made for the approval of manufacturing of these drugs but it did not contain controls on personnel and it placed less emphasis on security and reporting than the Ordinance.

Section 4 defines words and phrases used in this part. The most important of which is the definition of drug of dependence. For this Part it only means schedule 3 drugs. These include drugs from schedule 1 but does not include all of them because the manufacture of many of them is regulated by the Narcotic Drugs Act 1967.

Section 5 provides that a person may apply for a licence to manufacture a drug of dependence and sets out the detail to be included in the application. Where the applicant is a company the section requires that individuals be nominated as those personally responsible for the operation. There is an emphasis on security details.

Section 6 sets out the criteria that must be satisfied before a licence to manufacture may be granted. It includes considerations such as the fitness of the applicant and those supervising the manufacture of the drugs, their qualifications and the place at which manufacture is to be conducted.

Section 7 allows for conditions to be attached to the licence concerning proper manufacture, safekeeping, supervision, maintenance and compliance with labelling requirements.

Section 8 allows for the variation of conditions and requires that proper notice be given to ensure that changes in responsibility are monitored. Failure to provide notice attracts a penalty of \$2000.

Section 9 requires the licensee to notify the General Manager of a change of address or supervisor and to obtain approval before the manufacturer uses the new supervisor or commences to manufacture at premises other than the premises referred to in his licence. The penalty for non-compliance is \$2000.

Section 10 outlines the procedure for surrendering a licence.

Section 11 provides that a licence may be cancelled in circumstances where the licensee commits a drug offence, another offence punishable on conviction for a period of not less than 1 year or contravenes a condition of the licence

Section 12 require licensees to lodge with the General Manager a weekly report of all dealings with a drug of dependence. Penalty \$2000.

Section 13 and 14 provide for annual expiration and renewal of the licence.

Section 15 create a number of offences in relation to licenced manufacturers. They are :

- the manufacture or possession of a drug of dependence at a place other than the licensed premises;
- the sale or supply of that drug from a place other than the licensed premises;
- the manufacture of a drug of dependence other than under the supervision of the person who is specified in the licence to supervise the manufacture;

A penalty of \$10,000 is provided.

Section 16 authorises the General Manager to give directions as to the disposal of any by-product of the manufacturing process. A penalty of \$10,000 or imprisonment for 5 years or both is provided for failure to comply with the directions.

Section 17 requires former licensees to return their licence to the General Manager. Penalty \$2000. A person who manufactures drugs of dependence without a licence will commit an offence under section 161. The penalty is a fine of \$20,000 or imprisonment for 10 years or both.

PART III - SALE BY WHOLESALE

This part establishes the administrative procedure for applications for a licence to engage in the wholesale selling of a drug of dependence and a system for monitoring the movement of the drugs. In PANDO provision was made for the licensing of sellers but it did not contain controls on personnel and it places less emphasis on security and reporting than the Ordinance.

Section 18 defines "licensee" as a person to whom a wholesaler's licence is granted and "licensed premises" as the premises the address of which is specified in a wholesaler's licence. "Drugs of dependence" for the purposes of this Part and the rest of the Ordinance reverts to the general definition - drugs listed in schedule 1.

Section 19 provides that a person may apply for a licence to sell a drug of dependence by wholesale and sets out the detail to be included in the application. Where the applicant is a Company the section will require that individuals be nominated as those personally responsible for the operation. There is emphasis on security details.

Section 20 sets out the criteria that must be satisfied before a licence to sell by wholesale may be granted, such as whether the applicant is a fit and proper person, the suitability of the premises and those who are to supervise the operation.

Section 21 authorises conditions that may be attached to a licence. These conditions can relate to measures reasonably necessary for ensuring the safe-keeping and supervision of the drugs held by a licensed wholesaler, the maintenance of the premises and compliance with labelling requirements.

Section 22 allows for the variation of conditions and provides that proper notice must be given to ensure that changes in responsibility are monitored. Failure to provide notice attracts a penalty of \$2000.

Section 23 requires the licensee to notify the General Manager of a change of address or supervisor and to obtain approval before the wholesaler uses a new supervisor or commences to sell drugs at another premises. The penalty is \$2000.

Section 24 provides for the surrender of licences.

Section 25 provides that a licence may be cancelled in circumstances where the licensee commits a drug offence or contravenes a condition of the licence.

Section 26 requires licensees to lodge with the General Manager a weekly report of all dealings with drugs of dependence. A penalty of \$2,000 is provided.

Sections 27 and 28 provides for the annual expiration and renewal of licences.

Section 29 makes it an offence for the licensee to possess or sell a drug of dependence from any place other than the licensed premises or under the supervision of a person specified in the licence. The penalty for non-compliance is a fine of \$10,000.

Section 30 requires former licensees to return the licence to the General Manager. There is a penalty of \$2000 for non-compliance. Apart from people who are otherwise authorised (such as pharmacists) a person who wholesales a drug of dependence without a licence will commit an offence under section 163 which contains a penalty of \$20000 or imprisonment for 10 years or both. An unlicensed wholesaler is distinguishable from the street supplier of drugs by the fact that he or she supplies to those who are legally entitled to possess the drugs.

PART IV - RESEARCH, EDUCATION, FIRST AID

This part establishes the administrative procedure for applications for an authorisation to conduct a program of research or education. Under PANDO there was provision for approval of research, but there were no requirements controlling how the drugs are to be used, safekeeping and supervision.

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Section 31 contains a number of definitions. "Clinical trial protocol" will mean in relation to a program of research a written statement as to the aims, conduct and method of analysis. "Recognised educational institution" and "recognised research institution" are definitions which include the main existing institutions involved in the use of drugs for educational and research purposes -the ACT Community and Health Service, ANU, CCAE and CSIRO.

Section 32 provides for a person who proposes to conduct a research or educational program which involves the possession and use by that person of a drug of dependence or prohibited substance to apply for an authorisation. It also sets out the detail to be included in the application, such as the qualifications of the person supervising the program and security arrangements.

Section 33 sets out the criteria that must be satisfied before an authorisation may be granted. The Service must be satisfied that the applicant is a fit and proper person to conduct the proposed program, taking into account his or her academic and other qualifications, the nature of the drug, the nature and purpose of the program and whether the program can be carried out satisfactorily without the use of the drug. In the case of a proposed research program the Service is also required to take into account the clinical trial protocol accompanying the application and whether the research is scientifically viable and will be adequately supervised. In the case of a proposed research and education program the Service is to take account of where the program is to be conducted at, and whether it is under the auspices of a recognised research or education institution.

Section 34 enables the specification of condition to an authorisation. These may relate to measures necessary for ensuring the safe keeping of the drugs and recording requirements.

Section 35 allows for the variation of conditions and provides that proper notice must be given to ensure that changes in responsibility are monitored. Failure to provide notice attracts a penalty of \$2000.

Section 36 provides for the surrender of an authorisation.

Section 37 provides that an authorisation may be cancelled if the authorised person, or a supervisor specified in the authorisation has been convicted of a relevant offence, contravenes a condition of the authorisation, is not conducting the program in a proper manner in respect of the use of the drug in that program or has ceased to conduct the program.

Sections 38 and 39 provide for the annual expiration and renewal of authorisations.

Section 40 requires former authorised person, to return the authorisation to the General Manager and provides for a penalty of \$2000.

Section 41 contains definitions relevant to Division 2 which is concerned with the control of drugs of dependence which are to be obtained in first-aid kits. Division 2 is consistent with similar provisions in the States.

Section 42 provides that a person may apply to have control of a first-aid kit containing a drug of dependence. The application will need to contain details of the purpose and security arrangements.

Section 43 provides the criteria for the grant of an authorisation. It includes details as to whether the person resides or is employed in an isolated locality, or is a nurse employed to provide first aid to workers in the course of their employment, or is a representative of an organisation established to conduct search and rescue operations in mountainous regions, or is a person who has some other adequate reason. All people who are granted an authorisation must first satisfy the General Manager that they are a fit and proper person to hold an authorisation.

Section 44 provide that an authorisation may be conditional.

Section 45 provides a procedure for the variation of the conditions and provides that proper notice must be given to ensure that changes are monitored. Failure to provide notice attracts a penalty of \$1000.

Section 46 provides that changes of address must be notified within 14 days. The penalty for non-compliance is \$2000.

Section 47 provides for the surrender of an authorisation.

Section 48 enables the cancellation of an authorisation where the holder has been convicted of a relevant offence, has contravened the terms of the authorisation or has ceased to require the drug.

Section 49 provides that the term of an authorisation may be specified therein and that it can be renewed at the expiration of that time.

Section 50 provides a procedure for renewing authorisations and section 51 requires the return of the authorisation when the holder ceases to be authorised. Penalty \$1000.

PART V - ORDERS AND DELIVERY

This part regulates the orders for and delivery of drugs of dependence which are to be used for legal purposes and follows New South Wales legislation. There are no equivalent requirements in existing ACT legislation.

Section 52 provides that this Part does not apply where a drug is sold or supplied upon a prescription or requisition or supplied by way of administration to a person or animal. Those matters will be controlled in Part VI of the Ordinance.

Section 53 provides that a person shall not sell or supply a drug of dependence to another except in response to a signed and dated written order. Where the drug is to be delivered to the master of a ship there is a requirement that there be written authority from the Service. The drugs are often required on ships for emergency medical procedures. A penalty of \$10,000 or imprisonment for 5 years or both applies where the requirements are not followed.

Section 54 provides for the mode of delivery and the persons permitted to deliver the drug. These include the supplier personally, an employee of the supplier over the age of 18 years, by registered post or by courier service. These are usual methods of delivery in NSW. Where drugs are sent by registered post there are procedures followed by Australia Post to ensure they are not identified. The provision requires that the drugs must only be delivered to the purchaser personally, to an employee over the age of 18 years or a person nominated in writing by the purchaser. There are requirements concerning the signature of documentation verifying receipt. There is also an obligation on suppliers to only use courier services who comply with the documentary requirements. Failure to comply with any of these requirements will attract a fine of \$5000.

Section 55 requires that the drug inspector (who is to be appointed under section 175) must be notified if a drug has not been delivered or if the written order for delivery has not been completed. Where the drug inspector has been told the drug has been stolen or believes on reasonable grounds it has been stolen, he must report this fact to the police immediately. A penalty of \$5000 is provided.

PART VI - SUPPLY AND ADMINISTRATION

This Part establishes a procedure to regulate the prescription, requisition, supply and administration of drugs of dependence. It will be more comprehensive than existing ACT legislation and is designed to lessen the chances of diversion for illegal purposes by increasing accountability and clarifying the responsibilities of various health professionals. Of particular importance is the recognition of the role of nurses and the clarification of their position with respect to these drugs.

Section 56 defines various amphetamine related drugs as "amphetamines". The Division contains special requirements concerning amphetamines because they are particularly dangerous and addictive drugs. "Medical practitioner" is defined to include intern in this part.

Section 57 prohibits the issue of prescriptions by any person other than:-

- a medical practitioner
- an intern (if it is for a patient at a hospital)
- a veterinary surgeon (if it is for an animal)

There is a penalty of \$2000 or imprisonment for 12 months or both. "Prescription" is to be defined in subsection 3(1) as an authorisation for the supply of a drug to a person for administration of the drug to a person. The provision reflects current practice.

Section 58 deals with the prescription of drugs of dependence by medical practitioners and interns. A medical practitioner or intern is only able to prescribe the drugs for the treatment of a physical or mental condition. If there are reasonable grounds for believing the patient is a drug dependent person and the drug to be prescribed is an amphetamine the practitioner is required to obtain the approval of the Medical Officer of Health before prescribing in specified circumstances. This mechanism is the same as the scheme already operating under the previous legislation. There are many circumstances where drug dependent people require the administration of other drugs of dependence for medical purposes but the legislation will provide that it has to be monitored. Approval will have to be obtained where the patient is drug dependent or where the patient has been using a drug of dependence for 2 months. The penalty for each offence will be \$2000 or imprisonment for 12 months or both.

Section 59 recognises the practice in recent years to use methodone for the treatment of drug dependent persons. It provides for an alternative, less complex approval mechanism where methadone is prescribed as part of an approved methodone program.

Section 60 provides for details which are to be included in prescriptions. The penalty for non-compliance is a fine of \$2000 or imprisonment for 12 months or both.

Section 61 provides that a medical practitioner, intern or veterinary surgeon shall not issue a verbal prescription unless the quantity of drug to be supplied is necessary for the emergency treatment of a person or animal. It provides for a written verification within 24 hours and obliges pharmacists to report on failures to verify to ensure that there is accountability. There is also a provision allowing nurses to supply the drugs when a pharmacist is not available. There is a penalty of \$2000 or imprisonment for 12 months or both for non-compliance.

Section 62 regulates the use of requisitions. "Requisition" is also defined in subsection 3(1) and differs from a prescription in that it is an authorisation for the supply of a drug to parts of a hospital (Class 1 institution) and not to a particular patient. Section 62 provides that requisitions can be issued by the person in charge of the ward (charge nurse) as well as by a pharmacist, medical practitioner and intern. It also requires that a requisition can only be issued for the supply of drugs for the treatment of patients. A penalty of \$2000 or imprisonment for 12 months or both is provided.

Section 63 requires that a written requisition must contain certain details and countersignature by either the pharmacist supplying the drug, a medical practitioner or intern. A penalty of \$2,000 or imprisonment for 12 months, or both is provided.

Section 64 provides that only medical practitioners and interns can issue a verbal requisition and only where the quantity of drug is necessary for emergency treatment of patient at a Class 1 institution (hospital). As with verbal prescriptions there is a requirement that the requisition must be verified in writing within 24 hours. Failure to follow the procedure attracts a penalty of \$2,000 or imprisonment for 12 months or both.

Section 65 refers to a definition relating to the Drugs Advisory Committee and the Chairperson of that Committee.

Section 66 establishes the Drugs Advisory Committee. The Committee is exactly the same as it is in the Poisons and Narcotic Drugs Ordinance 1978. The Committee has 3 members, each of whom are medical practitioners, 1 who is a psychiatrist and 1 who is nominated by the AMA. The provision also provides that the Minister shall appoint one of the members of the Committee to be the Chairperson.

Section 67 enables the Minister to terminate the appointment of a member where he or she ceases to be a medical practitioner is medically unfit, is guilty of misbehaviour or has a serious criminal conviction.

Section 68 outlines the details required in an application for the approval of a prescription which is to be issued in the special circumstances where the patient is drug dependent, has been receiving the drug for 2 months or an amphetamine is involved.

Section 69 outlines the powers of the Medical Officer of Health under the legislation. The Medical Officer of Health is appointed under the Public Health Ordinance 1928 and is the chief Government medical officer responsible for public health in the ACT. The provision gives the Medical Officer of Health power to grant or refuse the applications, or refer them to the Drugs Advisory Committee (the Committee). It has been found under the existing legislation a second opinion is often desired and valuable. In the case of the approval of prescriptions relating to drug dependent persons, where it is required other than for the treatment of an organic disease, the application must be referred to the Committee.

Section 70 provides for the powers of the Committee. It is able to deal with referrals as well as review applications which have been rejected by the Medical Officer of Health. Decisions of the Medical Officer of Health are not reviewable by the Administrative Appeals Tribunal because the issues are medical in nature and can be best dealt with by the Committee which has the appropriate expertise. The Committee has power to direct the Medical Officer of Health to grant an approval or vary it.

Section 71 gives the Medical Officer of Health and the Committee power to revoke an approval.

Section 72 outlines the procedure for seeking a review of the Medical Officer of Health's decisions. An application for review must be made to the Committee within 7 days of notice being given of the decision.

Section 73 provides for the details to be included in the approval. The approval and a variation or revocation needs to be in writing signed by the Medical Officer of Health.

Section 74 provides that an approval takes effect from the time it is signed by the Medical Officer of Health. A variation or revocation on the other hand will take effect from the time at which notice is delivered to the applicant.

Section 75 provides for transitional arrangements. An application or approval under the Poisons and Narcotic Drugs Ordinance 1978 is treated as an application or approval under the Ordinance. It also provides that a person who was appointed a member or a Chairperson of the Committee under the Poisons and Narcotic Drugs Ordinance 1978 is deemed to have been appointed as a member or the Chairperson of the Committee established under this Ordinance for the remainder of the period for which he or she was so appointed.

Section 76 defines "licensee" (licensed manufacturer or wholesaler) and "order" for the purpose of Division 5 which is concerned with regulating the supply of drugs of dependence.

Section 77 prohibits the supply of a drug of dependence other than in accordance with the terms of an order, requisition or prescription. The penalty is \$2000 or imprisonment for 2 years or both.

Section 78 provides that only licensees and pharmacists can supply drugs of dependence on an order, (that is, supply drugs without reference to particular patient or veterinary needs). Section 78 restricts who may be supplied on an order - a licensee, a pharmacist, a medical practitioner or veterinary surgeon, for some drugs - dentists, the person in charge of a non-hospital methadone program treatment centre, an authorised person for educational or research purposes and the agent or owner of a ship. A penalty of \$2000 or imprisonment for 12 months or both is provided.

Section 79 provides that requisitions can only be supplied by pharmacists at the class 1 institution and provides that only pharmacists, the person in charge of the ward, medical practitioner and intern are to be supplied at the institution. A penalty of \$2000 or imprisonment for 12 months or both is provided.

Section 80 provides for restrictions on the supply of drugs upon a prescription. It provides that the drugs can only be supplied by a pharmacist, medical practitioner (or someone under their supervision) a veterinary surgeon or a nurse in the circumstances outlined in section 61. The provision also provides that the drugs can only be supplied to the person who is being treated (or who has custody of the animal being treated) or an authorised representative of the patient. There is a penalty of \$2000 or imprisonment for 12 months or both for non-compliance.

Section 81 prohibits the supply of drugs of dependence upon a prescription requisition or order which appears forged, cancelled or outdated. There is a penalty of \$2000 or imprisonment for 12 months or both.

Section 82 requires a person who on reasonable grounds suspects forgery or alteration to report the matter to the Police and the drug inspector. There is a penalty of \$2000 or imprisonment for 12 months or both for non-compliance.

Section 83 requires the supplier to verify the identity of people who have prescriptions for dextromoramide and hyromorphone because those drugs are particularly susceptible to abuse. There is a penalty of \$5000 or imprisonment for 2 years or both.

Section 84 provides that a medical practitioner, dentist or nurse shall not administer a drug to a patient at an institution except in the presence of a specified group of persons such as another medical practitioner, dentist, or nurse, intern or enrolled nurse. Failure to ensure that there is a witness attracts a penalty of \$2000 or imprisonment for 12 months or both.

PART VII - SUPPLY OF SYRINGES

This Part is new to Australian legislation. It has been prepared for the purpose of assisting in efforts to stem the spread of the AIDS virus amongst intravenous drug users. It enables specified trained personnel to supply clean syringes to users without fear of criminal prosecution for aiding and abetting the commission of a drug offence. In some circumstances it is possible under the existing law to prosecute a person who supplies a syringe to a known drug user.

Section 85 provides for definitions in this Part.

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Section 86 requires all people who are intending to supply the syringes to make application for approval. The provision is included in terms which enable the ACT Community and Health Service to limit the number of these approved if necessary. It also enables the Service to require that the people be specially trained.

Section 87 enables an approved person to surrender the approval.

Section 88 enables the Service to cancel an approval where the approved person has not attended a conditional course of instruction, the person is convicted under this Part or is otherwise no longer a fit and proper person to be approved.

Section 89 provides that approvals are to expire at the end of each 12 month period.

Section 90 provides for renewals.

Section 91 requires approved persons to produce the approval for inspection by the police. There is a penalty of \$1000 for non-compliance.

Section 92 prohibits lending an approval to another person. There is a penalty of \$1000.

Section 93 will exempt approved persons from offences under the Crimes Act 1900 (NSW) as applicable in the ACT, which arise by reason only of their supply of a syringe to another person. The exemption is qualified and only allows the approved person to distribute the syringes in the course of their duties as an approved person and where the syringe is for the sole use of the person receiving it. There is concern that the syringe supply should be in controlled numbers and steps are being taken to encourage users to return dirty syringes for destruction.

Section 94 requires former approved persons to return their approval when they cease these duties. There is a penalty of \$1000.

PART VIII - RECORDS, SAFE-KEEPING AND DISPOSAL

This Part establishes procedures for recording, safekeeping and disposal of drugs of dependence. They are considerably stricter than existing requirements and generally reflect the Victorian drugs legislation.

Section 95 defines words and phrases used in relation to the recording of drug movements. They include a definition of "prescribed person" which means a licensee, pharmacist in control, Chief Pharmacist, medical practitioner, dentist and veterinary surgeon.

Section 96 requires a seller or supplier to maintain a record of the drugs sold or supplied for a period of not less than 2 years.

Section 97 requires a person who supplies a drug of dependence to endorse the prescription or requisition and keep it in each case for a period of 2 years. The person is also required to mark the label of the bottle or package of the drug with the number accorded to the prescription or requisition. A penalty of \$2,000 or imprisonment for 12 months, or both is provided.

Section 98 requires a person who receives or supplies a drug of dependence to supply the General Manager with details concerning the relevant order, prescription or requisition.

Section 99 requires a prescribed person to keep a drug register at the place where drugs of dependence are kept. The Register is required to comply with Form 1 of Schedule 4. There is a penalty of \$2000 or imprisonment for 12 months or both for failing to keep the register.

Section 100 requires the prescribed persons to enter details of the receipt or supply of drugs of dependence in the drug register within 24 hours of any movement. The person making the entry is required to sign the register and there is a penalty of \$2000 for failing to comply with the requirements.

Section 101 requires that a person in charge of a ward must keep a ward drugs of dependence register in Form 2 of Schedule 4. There is a penalty of \$2000 or imprisonment for 12 months or both for failing to keep the register.

Section 102 requires the person in charge of the ward to enter details regarding drugs received and supplied in the ward register within 24 hours. The entry must be signed and countersigned by a witness. The penalty is a \$2000 fine.

Section 103 will provide that a person who has control of a first-aid kit pursuant to section 30 must keep a first-aid register, in accordance with Form 3 of Schedule 4. There is a penalty of \$2,000 or imprisonment for 12 months, or both.

Section 104 requires the person who keeps the first-aid register to enter details regarding drugs received and supplied within 24 hours. The entry must be signed. The penalty is a \$2000 fine.

Section 105 provides that where a drug in relation to which an entry has been made has been disposed or is surrendered, details relating to the disposal or surrender in the register are required to be kept and must be signed by those involved in the disposal of the drug. There is a penalty of \$2000.



Section 106 provides that a person shall not alter an entry in a register unless it is a correction of a mistake by that person. The person is required to sign next to the alteration. It also provides that the register shall be kept for 2 years after the date of the last entry in the register and that it is to be made available for inspection when requested by the drug inspector or a police officer. If the Register is lost or destroyed the person who keeps the register is required to inform the General Manager. In those circumstances the person is required to compile an inventory and from copies of prescriptions and requisitions reconstruct the register. There is a penalty of \$2000 or imprisonment for 12 months or both for failing to comply.

Section 107 provides that a person who keeps a register shall not knowingly make an entry in the register that is false or misleading. The penalty for this offence is \$2000 or imprisonment for 12 months or both.

Section 108 provides that a person who administers a drug of dependence shall enter the details in the patients' clinical record and initial them. There is a penalty of \$1000.

Section 109 provides that where a pharmacist is to take charge of a Community pharmacy for more than 14 days, the previous pharmacist must make an inventory of the drugs of dependence held in the dispensary in accordance with the Form 4 of Schedule 4. Other particulars are required to be entered in the drugs register and the pharmacist who is to take charge is required to check the inventory against the drugs kept in the dispensary. If the inventory is correct the pharmacist must mark the inventory accordingly and sign it. If the inventory is incorrect, the pharmacist is required to mark the inventory and advise the drug inspector. There is a penalty of \$2000 for breaches of any of these requirements.

Section 110 defines "drug cabinet", "key safe", "safe", "strong room" and "vault". Each definition contains specifications as to construction and security which reflect guidelines issued by the Commonwealth Department of Community Services and Health and contained in Victorian legislation.

Section 111 provides that a licensee (manufacturer or wholesaler) shall keep each drug in a vault, strong room or safe at the premises specified in the licence, though the licensee is only be able to use a strong room or safe if the Service is satisfied that the quantity of drugs to be kept are not large enough to require storage in a strong room. The licensee may also be required to install a warning device. There is a penalty of \$10000 for non-compliance.

Section 112 provides that a Chief Pharmacist must keep each drug in a vault, strong room or safe at the central dispensary or store controlled by him or her and such vault, strong room or safe is to be fitted with warning devices as are approved by the Service. A penalty of \$5000 or imprisonment for 12 months or both is provided.

Section 113 provides that a medical practitioner, dentist, veterinary surgeon or other authorised person must keep drugs of dependence held by them in a locked room or a receptacle securely fixed to the premises, and for each drug that is being carried by him or her, keep it in a secure locked bag or container. A penalty of \$5000 is provided. The requirements are in this case be less stringent than others because of the smaller quantities involved.

Section 114 provides that other persons (such as hospitals) who keep a drug of dependence shall keep the drug in a drug cabinet or in a safe securely embedded in a concrete floor and with warning devices as are approved by the Service are to be fitted on the drug cabinet or safe. The warning devices will not be required where the drug cabinet is in a dispensary at a community pharmacy and the Service is satisfied that the building is patrolled by a security service in a satisfactory manner. A penalty of \$5000 is provided.

Section 115 requires that a person in charge of a Class II institution (such as a nursing home without a pharmacy) shall not keep at that institution any quantity of a drug of dependence other than a quantity prescribed by a medical practitioner for the treatment of a patient. The drug is not to be removed from its storage until it is required for that purpose. A penalty of \$5000 is provided for each offence.

Section 116 provides that a person shall, immediately on becoming aware of a theft of a drug report the circumstances of the theft to a police officer and to the drug inspector, and record the theft in the register. If the drug has been lost, it is only required to be reported to the drug inspector. Where the drug is subsequently discovered the person who originally held that drug is required to record the discovery in the register. A penalty of \$2000 is provided for each offence.

Section 117 provides that a specified group of persons shall retain personal custody or control of the method of access to the receptacle or place where the drug of dependence is kept. The penalty for non-compliance is \$2000 or imprisonment for 12 months or both.

Section 118 provides that a person who keeps the drug shall ensure that the drug is properly preserved, only drugs of dependence are kept in the receptacle or place (except for those who keep small supplies such as medical practitioners) and when not in use, the receptacle or place is locked. The penalty is \$2000 or imprisonment for 12 months or both.

Section 119 provides that a Chief Pharmacist shall make or cause to be made regular inspections of the records kept in accordance with the Ordinance in relation to any drug, and each dispensary and ward at that institution to ensure that the records are accurate and that storage requirements are being complied with. A penalty of \$2000 is provided.

Section 120 provides that where a person wishes to dispose of a drug of dependence in his or her possession it must be done under the supervision of a drug inspector or a Chief Pharmacist (in the case of a class 1 institution). Failure to follow the procedure attracts a penalty of \$2000 or imprisonment for 12 months or both.

PART IX - TREATMENT

This Part establishes the Treatment assessment panels and the procedure for referral of offenders to approved treatment centres by the Courts. The process provides for expert assessment of drug problems. Previous offenders were released on a bond to attend centres on an ad hoc basis without proper assessment. The treatment centres are also required to be assessed and approved with a view to ensure that they meet adequate standards.

Section 121 defines words and phrases used in this Part. These include:-

- "approved treatment centre" which means a hospital or other health facility conducted by the ACT Community and Health Service or a treatment centre which is approved under the legislation;
- "treatment" which encompasses medical treatment, therapy, an educational or rehabilitation program aimed at assisting people who are drug dependent to overcome their dependence.

Section 122 provides that where a court finds an offence under an ACT law proved against a person, the Court may make an order for assessment having regard to whether the person may have been:

- a) under the influence of a drug of dependence or prohibited substance when he or she committed the offence; or
- b) motivated to commit the offence by a desire:-
 - (i) to self-administer a drug of dependence or prohibited substance;
 - (ii) to obtain a drug or substance for self-administration; or
 - (iii) to obtain resources to enable him or her to obtain a drug or substance for self-administration.

The order for assessment requires the person to attend an assessment panel and any approved treatment centres as required by the panel. A Court is not able to make the order unless the offender consents and is only to be able to do so prior to conviction, sentencing or disposing of the case. This process is designed to ensure the Court is properly advised before making a decision whether to fine, imprison or release the offender for the purpose of obtaining treatment. It is possible for the order to apply to any offender, whether he or she is an adult or a juvenile. It is considered that juveniles will equally benefit from an assessment of their drug problem. The assessment panel and Courts have sufficient discretion to ensure that juveniles are not placed with adult offenders in inappropriate circumstances.

Section 123 contains a definition of "probation officer" which means a person authorised by the "responsible officer". "Responsible officer" is defined in section 121 to mean either the Director of Welfare (where the offender is under 18 years of age) or the Administrator appointed under the Remand Centres Ordinance 1976 where the person is an adult offender. The provision ties in existing probation services with the activities of the drug treatment assessment and referral arrangements.

Section 123 provides that where a Court has made an assessment order and the panel makes a recommendation that the person should undergo treatment at an approved treatment centre, the Court may make a treatment order. The treatment order can only be made by consent and may have a duration of up to 2 years. It is only made by consent because authorities on the subject, including the Williams Royal Commission on Drugs recognise that for effective treatment the offender should make a decision to undergo the program.

The treatment order can include conditions, including those relating to supervision by a probation officer, attendance at a particular approved treatment centre, and periodic attendance before the panel. The Court is able to make an order either on its own or with a fine or bond under either sections 556A or 556B of the Crimes Act 1900 (NSW - as applicable in the ACT). The Court is able to also combine it with a community service order, imprisonment, an order for costs, compensation or action against the offender's drivers license. This wide range of options ensures that courts will not be persuaded against making treatment orders because of constraints with respect to other options.

A copy of the order is required to be given to the responsible officer (who can then arrange for the usual corrections service monitoring of the offenders progress).

Section 124 provides, as with bonds, that offenders who fail to comply with the treatment order are guilty of an offence. Where this occurs the offender can be summonsed or brought before the Court and can be sentenced again for the original offence. The Court also has the option of giving the person another chance and is able to make another treatment order if the person desires that course of action. There is a safe-guard in sub section (9) to ensure that where the offender has complied with the treatment order or has had previous action taken against him or her, that those matters are taken into account in the sentence.

Section 125 enables action to be taken by the Supreme Court or Magistrates Court where the offender commits another offence falling within the category of offences for which a person may be referred. The Court in each case has the same powers to deal with the person as it has under section 124.

Section 126 enables a warrant to be issued for the apprehension of any offender who is about to leave the ACT to avoid requirements of an Order. The provision requires the offender to be brought before the Court upon apprehension.

Section 127 outlines the powers of the Court where an offender is apprehended under section 126. The Magistrates Court is able to remand the person in custody to the Supreme Court where the Order was made by the Supreme Court or if that is not the case, deal with the person as it is able to under section 124.

Section 128 provides that the Court has powers to remand an offender in custody, bail the offender or release the person as it has with respect to any defendant where the offender is apprehended other than under section 126.

Section 129 enables orders to be varied or revoked. This is required upon application either by the offender or the Community and Health Service (the Service) to the Court. Where it is proposed that the length of the order should be changed the offender's consent is required. The change needs to be in accordance with a recommendation of the assessment panel. When revoking an Order, the Court is able to impose an additional penalty for example, where the offender has fallen well short of the order's requirements) or release the person from further obligations, (for example, where the offender has responded well to treatment and no longer requires assistance). The Court is obliged to take into account the length of compliance with the order and other orders made in relation to the original offence. Where the application is initiated by the Service there are requirements for notification of the offender and attendance.

Section 130 requires the Service to establish the treatment assessment panels for the purposes of the Ordinance and provides for the composition of the panel. It includes a legal practitioner and two persons with extensive knowledge in problems relating to drug dependence. The composition is based on South Australian drug assessment panels appointed under the Controlled Substances Act of that State.

Section 131 empowers the Service to appoint part-time members of the panel provided the person has not in the past 5 years been convicted of an offence punishable on conviction by imprisonment for 1 year and is a fit and proper person.

Section 132 provides for the tenure of office of members. A member is not to hold office for more than 3 years but is eligible for re-appointment.

Section 133 provides that the Service shall appoint a member of each panel to be the presiding member of that panel.

Section 134 will provide that the Service may appoint an acting member or an acting presiding member during a vacancy in the office of a member or a presiding member or during the period when the member or the presiding member is absent from duty. The person so appointed shall not hold office for more than 12 months.

Section 135 provides that panel members are to be paid in accordance the Regulations or with a Remuneration Tribunal determination.

Section 136 provides that a member may resign his or her office by writing signed by the member and delivered to the General Manager.

Section 137 allows the Service to suspend a member's appointment if in the opinion of the Service circumstances exist which may lead to the termination of a member's appointment. The suspension is to be effective until the appointment is terminated or the Service is satisfied there are reasonable grounds for terminating the appointment.

Section 138 empowers the Service to terminate a member's appointment if the member is convicted of an offence punishable by 1 years imprisonment or more, is absent without leave from 3 consecutive meetings of the panel, or the Service becomes aware of a conviction which would have barred the person from originally being appointed.

Section 139 provides for panel meetings. The presiding member may at any time convene a meeting. The meeting is to be conducted in private all members must be present and a record shall be kept of the meetings. Offenders who appear before a panel are not entitled to representation. This though does not prevent the offender from having a friend present, or the Panel from requiring the presence of an officer for security reasons.

Section 140 empowers the panel to make such enquiries as it considers desirable in performing its functions under the Part. The Panel may also obtain by consent medical reports and have regard to information supplied by the police, a person in charge of an approved treatment centre or the responsible officer.

Section 141 outlines the matters which the panel is required to assess when the Court refers an offender. They will include:-

- . Whether the offender is drug dependent,
- . whether any treatment would be suitable, and
- . the type, location and duration of any treatment which would be desirable.

Section 141 requires the panel to prepare a notification of its assessment in form 7 Schedule 7 which includes the panel's recommendation and reasons. Copies are to be given to the offender and the Court through the General Manager.

Section 142 enables variations in the place and type of treatment being provided under a treatment order. Where the change proposed does not involve extending or reducing the duration of the order it can be changed by the panel. An application is able to be lodged by either the offender or the officer in charge of the approved treatment centre. The provision requires notification of the police, the responsible officer and the Court where changes are made.

Section 143 outlines the manner in which panels may vary treatment where the Court has made the order such that the offender's treatment is to be periodically reviewed by the panel. The variations do include changes in the length of the order or changes which are not consented to by the offender.

Section 144 deals with the procedure where the Court has received an application under section 129 for the revocation or variation of the length of the treatment order. It also deals with referrals which follow a breach of an earlier treatment order. The provision requires the panel to notify the relevant approved treatment centres and to make recommendations concerning the issue in question. There is also notification of the police and the responsible officer.

Section 145 governs the assessments carried out by the approved treatment centres. It will provide that a panel cannot recommend that an offender attend a particular approved treatment centre without first obtaining a recommendation from the officer in charge of the centre that suitable treatment is available. The provision provides a procedure whereby an offender can be referred to the approved treatment centre for an interview and assessment. The provision will enable the panel to specify when it requires a response to the referral.

Section 146 provides an obligation on the offender to attend a panel meeting or approved treatment centre at a time specified in a notice given by the panel. In the event the offender fails to attend there is a reporting requirement which ensures the police and the court are notified.

Section 147 requires approved treatment centres to report breaches of a treatment order to the court, the responsible officer and the panel. It also provide for reports when the treatment terminates to enable the panel to monitor progress with the treatment program.

Section 148 defines words and phrases used in this Division, in particular "approval" is defined to mean an approval granted under this Division to conduct a treatment centre.

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Section 149 provides for the details to be contained in an application for approval.

Section 150 provides for the grant of an approval. The Service is required to give approval where it is satisfied that the criteria provided in this section in relation to the applicant has been met. The criteria includes matters such as the calibre of staff and those who operate the centre, the type of treatment and the suitability of the premises. The provision enables the Service to make the approval conditional.

Section 151 outlines the types of conditions that may be included in an approval, such as whether methadone can be administered to patients, a requirement to provide statistical reports and concerning the timely provision of assessment reports.

Section 152 provides that upon application by the holder of an approval, the Service may vary or revoke a condition of the approval if it is satisfied that it is in the interest of patients at the centre. Further it provides for a notification procedure for changes initiated by the Service.

Section 153 provides that a holder of an approval may surrender the approval at any time.

Section 154 provides that where the Service is satisfied that any of the requirements of section 150 or a condition is not complied with, it may require the holder of an approval to show cause why the approval should not be cancelled.

Section 155 provides that, notwithstanding Section 154, where the Service is satisfied that circumstances exist that give rise to an immediate risk of danger to the health or safety of patients, residents or staff at the centre, it may cancel the approval. The holder of an approval may at a later time apply for the restoration of the approval on the ground that specified changes in circumstances have occurred since the date of cancellation and that it is proper that the approval should be restored.

Section 156 provides that where the Service cancels an approval, it may make alternative arrangements for a person undergoing treatment pursuant to a treatment order and advise the person, panel, police, responsible officer and the court accordingly.

Sections 157 and 158 provide for the annual expiration and renewal of approvals.

Section 159 requires the return of approvals where a person ceases to be an approval holder. There is a penalty of \$2000 for non-compliance.

PART X - OFFENCES

This Part creates various offences relating to cultivation, unlawful manufacture, supply, possession and administration of drugs of dependence and prohibited substances. Penalties have been increased significantly against those who traffick in illicit drugs.

Section 160 defines "traffickable quantity" and "commercial quantity". The definitions refer to the lists of drugs and substances in proposed Schedules 1 and 2. The traffickable quantities are smaller and are an amount which has been regarded to be of a quantity which is more than what one would expect a person to require for personal usage only. The level of quantities reflects those in the Customs Act 1901 and the existing legislation. The amounts are similar to those in the drugs legislation of other States. As with other drugs legislation, if a person is caught possessing more than a traffickable quantity, there is a rebuttable presumption in subsection 164(8) that possession is for the purpose of supply to another person. In the case of commercial quantities which are in most cases 100 times the size of a traffickable quantity, there are more severe penalties. The commercial quantities listed in Schedules 1 and 2 are the same as those in the Drug Misuse and Trafficking Act, 1985 (NSW) and the Customs Act 1901.

Another important definition in section 160 is "exempt person". In the case of "drugs of dependence", as they have medical uses, there are many people who require legal authority to possess them. These include people who are licensed to legally manufacture and wholesale these drugs, those who deliver them, medical practitioners, interns, pharmacists, nurses, student nurses, specially qualified enrolled nurses, dentists (in the case of some drugs), veterinary surgeons, or someone who in accordance with accepted professional practice possesses the drugs under the supervision of one of the listed health professionals. The listed health professionals are only exempted in so far as the possession and the quantity involved is in accordance with professional practice. The definition also includes those who need to possess the drug of dependence for approved research and educational purposes, first-aid kits, drug inspectors, police officers, analysts and officers of the Court (in accord with official duties) as well as people specially authorised by the Community and Health Service. "Exempt persons" are liable to prosecution under section 169 which will provide for a penalty of \$5000 or imprisonment for 2 years or both. The scope of the exemption reflects existing practices involving the legal use of these drugs, including those in other States. Earlier Parts of the Ordinance provide a frame-work through which the possession of drugs by exempt persons is carefully monitored. There are significant penalties for those who fail to abide by the procedures necessary to ensure that monitoring is effective.

Section 161 provides that except for a pharmacist, a licensed manufacturer or an authorised researcher or educator, a person is prohibited from manufacturing or participating in the manufacturing of drugs of dependence or prohibited substances. Participation will be defined to include those who participate in part of the process, finance the operation or provide premises. As the Courts will impute knowledge - only a person who knowingly or recklessly participates can be successfully prosecuted under the provision. There is a penalty of \$20000 or imprisonment for 10 years or both for each offence.

Section 162 provides that a person shall not cultivate or participate in the cultivation of a prohibited plant. Participation is defined in the same way as in section 161. "Prohibited Plants" are listed in Schedule 5 and include cannabis (marihuana), the opium poppy and some types of mushroom. The penalty for

cultivation are the same as those for comparable offences relating to the possession for personal use and supply offences. As with the Drug Misuse and Trafficking Act 1985 (NSW) the lowest penalty is for the cultivation of 5 cannabis plants, but if the plants are large in size there will be an imputation that the plants have been cultivated for the purpose of supply. If that is the case the penalty is \$5000 or imprisonment for 2 years or both (subsection 162(3)(d)) and ranging to imprisonment for life where there are more than 1000 plants. If there is no imputation that the plants have been cultivated for that purpose (for example, 5 small cannabis plants) the penalty is \$100 - the same as the penalty for simple possession of cannabis. The penalties for cultivating for the purpose of supply with respect to other prohibited plants are higher, starting from \$10000 or imprisonment for 5 years or both and ranging to imprisonment for life where more than 1000 plants are cultivated. Under the previous legislation there was no specific offence for cultivating drugs though most offenders would be caught by offences relating to the possession and supply of drugs where cultivation is involved. The penalties are significantly higher than those prescribed for the existing offences.

Section 163 prohibits the conduct or participation in the wholesaling of drugs of dependence without a license. The provision applies to the legitimate retail sales or use in a profession, trade, business or industry. Participation will be defined in the same way as in section 161.

Bearing in mind that the provision is designed to catch those involved in selling to legitimate users of drugs of dependence or prohibited substances, the penalties are lower than those for the supply of drugs to an other person under section 164. The penalty for wholesaling is \$20000 or imprisonment for 10 years or both for each offence.

Section 164 prohibits the sale or supply of drugs of dependence and prohibited substances. It also encompasses possession for the purpose of sale or supply and participation in the sale or supply of drugs and substances, (which is defined in the same way as in section 161).

There are now considerably higher penalties for these offences. Under the previous legislation the maximum penalty was \$100000 or 25 years imprisonment or both while with the Ordinance it is life imprisonment (where a commercial quantity is involved). Where the quantity is more than a traffickable quantity but less than a commercial quantity the penalty is \$100000 or imprisonment for 25 years or both, and where it is a smaller quantity it is \$10000 or imprisonment for 5 years or both, though a person caught supplying even a small quantity to a person under the age of 18 years is subject to a penalty of \$100000 or imprisonment for 25 years or both. This penalty reflects the Government's policy of stamping out those who supply youngsters with these drugs and substances.

As with the possession offences, there are some people who require an exemption to enable them to lawfully supply drugs of dependence. These include licensed manufacturers, wholesalers, medical practitioners, veterinary surgeons, pharmacists, dentists (with some drugs), authorised researchers and educators, and the holder of an authority to have a drug of dependence in a first-aid kit where it is necessary for emergency treatment. Authorised researchers and educators are also be able to supply prohibited substances for authorised purposes. The people who are exempted in this way are similarly treated in other States.

Section 165 prohibits the sale or supply of cannabis to any person. It also encompasses possession for the purpose of sale or supply and participation in the sale or supply of cannabis, (which is also be defined in the same way as in section

161). Where a commercial quantity is involved the penalty will be imprisonment for life, the same as the penalty prescribed for the sale or supply of other prohibited substances. For smaller quantities the penalties is \$20000 or imprisonment for 10 years or both (a traffickable quantity but not a commercial quantity) and \$5000 or imprisonment for 2 years or both (for less than a traffickable quantity). The sale of less than a traffickable quantity to a person under the age of 18 years attracts a penalty of \$10000 or imprisonment for 5 years or both (reflecting the Government's desire to discourage suppliers from introducing drugs to young people). The only people who are exempted from this provision are authorised researchers and educators for authorised purposes.

Section 166 provides that a person shall not publish or display an advertisement that promotes the use of a drug of dependence or prohibited substance or indicates that a person is willing or authorised to sell or supply a drug of dependence or prohibited substance. "Advertisement" is defined broadly. A penalty of \$5000 or imprisonment for 2 years or both is provided.

Section 167 provide that a person shall not forge, alter or knowingly present a prescription, requisition or order for the supply of a drug of dependence which is either signed by a person who is not an authorised person or has been altered without the authority of the person who signed the prescription, requisition or order. In addition, a person shall not make a false representation to a medical practitioner or veterinary surgeon for the purpose of obtaining a prescription for the supply of a drug of dependence. A penalty of \$5000 or imprisonment for 2 years or both is provided for each offence.

Section 168 provides that a person shall not knowing that a substance is not a drug of dependence or prohibited substance, sell or supply that substance as a drug of dependence or prohibited substance. A penalty of \$5000 or imprisonment for 2 years or both is provided. This provision recognises the fact that in many cases the substitution of other substances for drugs of dependence or prohibited substances is dangerous and in some cases likely to do more harm than the substance it is purported to contain.

Section 169 provides that a person shall not have in his or her possession a drug of dependence. It also provides that a person shall not self-administer or administer to another person a drug of dependence. Medical practitioners and dentists are prohibited from directing the supply of a drug of dependence for administration to themselves. A penalty of \$5000 or imprisonment for 2 years or both is provided.

Section 170 provides that the prohibition on possessing drugs of dependence in section 169 does not apply to "exempt persons" (as defined in section 160). It also does not apply to the person who is being treated with the drug, the person who has custody of an animal which is being treated or an authorised agent of the person. The provision provides that the self-administration offence will not apply where the quantity of the drug involved has been supplied for that person's treatment, and allows medical practitioners, dentists, nurses, authorised agents, researchers, educators, and the holder of a first-aid kit approval to administer drugs within the scope of their respective duties.

Section 171 prohibits the possession of prohibited substances. It provides that a person shall not self-administer or administer to another person, or permit another person to administer him or her a prohibited substance. There is a penalty of \$100 where the substance is cannabis and the quantity is less than 25 grams (the same as the penalty under the previous legislation). In the case of other prohibited substances there is a fine of \$5000 or imprisonment for 2 years or both. The Ordinance provides for increases in penalties which primarily affect those who supply the drugs. It has been designed to reserve the main punishment for those who perpetrate drug dependence. The provision also provides that the possession offences do not apply to authorised researchers and educators, drug inspectors, police officers, analysts, officers of the Court and specially authorised people where it is within the scope of their duties.

Section 172 provides that for proving the liability of a corporation where it is necessary to establish the state of mind or conduct of a corporation it is sufficient to show that a director, servant or agent of the corporation acting within the scope of his authority, had that state of mind or had engaged in that conduct. A penalty that the Court is able to impose where a corporation is convicted is a fine not exceeding 5 times the maximum amount that the Court could impose as a pecuniary penalty for that offence.

Section 173 provides that people such as those who deliver drugs, a medical practitioner, intern, pharmacist, nurse, student nurse, enrolled nurse, dentist, veterinary surgeon and an authorised holder of drugs in a first-aid kit who are "exempt persons" may by notice declare they do not wish to continue with exempt status. Furthermore where one of these people are convicted of a drug offence the Court may make an order restricting the persons access to and use of drugs of dependence or prohibited substances where it is in the interest of that person or the public. There are notification requirements to ensure the person's employer and professional registration board are made aware of the person's legal status.

PART XI - ENFORCEMENT

This Part establishes the enforcement procedure to be adopted by inspectors, analysts and the police who are responsible for detecting breaches. It also provides for the forfeiture of drugs of dependence and prohibited substances which have been seized. The new provisions outline clear guidelines which should enable the police to carry out their duties without doubt as to the scope of their powers.

Section 174 provides interpretation for the purposes of Part XI. The section defines "offence" to mean an offence under the Ordinance (and regulations). It also provides that a thing is connected with a particular offence if:

- the offence has been committed with respect to it
- it will afford evidence of the commission of the offence
- it was used, or intended to be used for the purpose of committing the offence
- it was in the possession or control of the offender at the time of apprehension and it is likely it was used for committing the offence or for use afterwards to avoid detection.

The interpretation concerning the thing connected with an offence is important in that it delineates the scope of provisions concerning search and seizure, (such as sections 184,186,187 and 188).

Section 175 provides that the Service may appoint drug inspectors to perform duties for the purposes of the Ordinance. Drug inspectors are to be issued with an identity card and are required to return it to the General Manager upon ceasing to hold their appointment. The penalty for contravention is \$100. These inspectors are concerned with monitoring the lawful use of drugs of dependence and prohibited substances.

Section 176 provides that the Service may appoint treatment centre inspectors who are responsible for ensuring the standards at centres are adequate. The Service is required to only appoint someone who has extensive knowledge of the problems associated with drug abuse and the treatment and education of people with those problems. As with the drug inspectors, these inspectors are also required to be issued with an identity card and must return it if they cease to be appointed. There is a fine of \$100 for non-compliance with that requirement.

Section 177 requires licensees to provide the drug inspector with a statement accounting for each drug of dependence in relation to which the licence is granted. The penalty for non-compliance is \$10000.

Section 178 empowers a drug inspector to inspect prescribed premises (ranging from those of a licensee to a community pharmacist) for the purposes of ensuring that the provisions of the Ordinance are being complied with. This section enables the drug inspector to enter the premises at any reasonable time during business hours and give the inspector power to check equipment, books, take samples and various other necessary capabilities.

Section 179 allows the treatment centre inspector to enter a centre at any reasonable hour to inspect facilities, prescribed documentation and require the production of prescribed documents and information. As there is concern that the documents should not unnecessarily encompass confidential material, specific documents designed to omit any unnecessary material will be required to be kept and will be prescribed in the Regulations.

Section 180 provides that an inspector is not authorised to remain on the premises if on request he or she does not produce the identity card issued under sections 178 and 179. A person is not obliged to comply with the requirements of the inspector where on request the card is not produced.

Section 181 provides that a person shall not without reasonable excuse obstruct or fail to comply with a reasonable requirement of a treatment centre inspector or drug inspector. A penalty of \$1000 or imprisonment for 6 months or both will be provided.

Section 182 defines "place" to include vacant land, premises, a vehicle, a vessel or aircraft.

Section 183 provides for the appointment of analysts.

Section 184 outlines the circumstances where a police officer may search a person, his or her clothing, and property in the person's immediate control or a place and seize findings which the police officer believes on reasonable ground are connected with an offence. They are:

- where the persons consent has been obtained
- where the person has been arrested
- pursuant to a search warrant issued under section 187
- where the search is in an emergency as outlined in section 188
- pursuant to a court order under other ACT law, (for example in accordance with a warrant issued under the Crimes Act 1900 (NSW) or Customs Act 1901)

Section 185 provides the procedure that a police officer is required to follow when seeking consent to search. The police officer is required to inform the person of his or her option to refuse and obtain a written acknowledgement from the person before conducting the search. Where the acknowledgement is produced in evidence there is a rebuttable presumption that consent was given.

Section 186 outlines the procedure where a police officer wishes to search an arrested person. The provision provides that the police officer may search the person, including the clothing and immediate property. This is only lawful if the police officer believes on reasonable grounds that it is necessary to ascertain whether the person possesses a thing connected with the offence for which the person was arrested. It is also be permissible if the police officer believes on reasonable grounds that the search is necessary to prevent the concealment, loss or destruction of evidence relating to the offence. If the police officer finds a thing connected with an offence as a result of the search, the provision allows him to seize that thing. The provision provides effective powers and at the same time contains clear guidelines to both the detainee and police officer concerning powers conferred by the provision.

Section 187 provides procedures relating to the issue of search warrants. Likewise this provision endeavours to combine effective powers with an adequate and clear outline of the limits to those powers. The provision is the result of extensive consultation with the Australian Federal Police, the A.C.T. Criminal Law Consultative Committee and the Attorney-General's Department.

Subsection 187(2) provides that a search warrant can only be issued by a Magistrate after a statement and an oath is given alleging there are reasonable grounds to suspect that on that day or within 28 days there is or will be a thing of a particular kind connected with a particular offence on, in the clothing or in any property in the apparent control of a particular person. By so providing the provision requires the police officer to particularise the allegations, including the name of the person to be searched, the type of things he or she is looking for and the offences it is considered the thing is connected with.

The provision provides that once the Magistrate decides to issue the warrant, he or she must ensure the police officers who will be responsible for using the warrant are named in it, though they will be authorised to obtain necessary and reasonable assistance.

The provision authorises a police officer named in the warrant (with force if necessary) to enter any place (land, premises, vehicle, vessel, aircraft) he or she believes on reasonable grounds to be occupied by the person. It also enables the officer to search the person, the clothing and property in his or her apparent control. Any clothing or property which the officer believes on reasonable grounds to be connected with the offence can be seized under the warrant. The provision does not authorise internal body searches under the warrant.

Subsection 187(3) provides for the issue of a warrant relating to the search of a place. As with subsection (2) the warrant requires information to be given on oath before a Magistrate and it may cover up to a 28 day period. There needs to be an allegation that there are reasonable grounds for suspecting that there is or will be at or in the place named in the warrant a thing of a particular kind connected with a particular offence before the Magistrate may issue the warrant.

The warrant authorises the officer or officers named in the warrant to obtain assistance, and to use force where it is reasonable and necessary to enter the place described in the warrant. The warrant authorises a search of that place for the type of things mentioned in the warrant, and where the place is not a public place (for example, an airport lounge) any person the police officer reasonably believes is about to enter or has just left or is in the place who is suspected of carrying a thing connected with a particular offence. It also authorises the officer to seize any such things he or she finds. This provision ensures that members of the public who are in a public place are not subjected to searches on the authority of the warrant, but at the same time it allows warrants to be issued for the search of a public place and gives police power to search unsuspecting drug buyers who are seeking further supplies at a particular private place. The new provision gives the police sufficient operational flexibility and respects the civil liberties of ordinary citizens gathering in public places.

Subsection 187(6) requires the warrant to contain more details than is presently the case - these include the parameters concerning the purpose of the warrant as well as the means by which the person to whom it relates is identified (such as the attachment of a photograph).

Subsection 187(7) provides that the police officer may seize things connected with an offence other than that specified in the warrant where it is found in the course of the search.

Section 188 provides for searches without either consent, arrest or warrant in emergencies. To use this power the police officer must be able to demonstrate that he or she believes on reasonable grounds that it is necessary to do so to prevent concealment, loss or destruction of a thing connected with an offence and that the circumstances are so serious and urgent that the search has to be done immediately and without the authority of a Magistrate or Court. It also empowers the officer to detain the person for the short time that he or she is being searched and to stop vehicles, vessels and aircraft. It is expected that the Courts will be careful to ensure that this power is only used in genuine emergency situations. The power is necessary to ensure that those involved in the elusive business of drug trafficking cannot use the search procedures to effect an escape or to hide evidence. Without section 188, modern transportation and technology would make the procedures avoidable where the offender is a sophisticated trafficker of drugs.

Section 189 allows the removal of clothing in any of the mentioned searches providing it is done by a person of the same sex. Internal body searches are prohibited by this provision. The issue of internal body searches is currently being considered by the Gibb's Review of the Commonwealth Criminal Law. Depending upon the results of that Review the Ordinance may be amended at a later date.

Section 190 provides for the forfeiture to the Commonwealth of suspected and actual drugs of dependence or prohibited substances in relation to which an offence has been committed. This enables the early analysis and destruction of the drugs to reduce security risks. Where the police officer or drug inspector is not of the view that an offence has been committed the substance will not be forfeited until the expiry of 30 days after seizure. This enables a claim to be made by any person who has a entitlement to lawfully possess the drug (for example, a medical practitioner). The provision enables the General Manager to arrange for disposal at the expiry of 30 days.

Section 191 requires that substances connected with the commission of an offence must be analysed. The person who seizes the substance is given responsibility for ensuring that it is analysed.

Section 192 provides for the preparation of analyst's certificates. These will be much more comprehensive than under the previous legislation. It is hoped that the greater detail will enable the earlier destruction of excess quantities of drugs and reduce the need for the analyst to appear in Court. As with the previous legislation this provision will provide that the certificate is prima facie evidence of the matters stated in it. The new approach of a relying more on the certificate of analysis was recommended by both the Williams and Stewart Royal Commissions concerning drug trafficking to reduce the need for storing large quantities of drugs for long periods of time. This provision and section 193 incorporate safeguards, such as ample notification to the defence to enable the defendant adequate time to challenge the certificate.

Section 194 will allow the destruction of the bulk of the substance as soon as it has been weighed by the analyst. Under previous legislation all the drugs upon which the Crown is relying upon to prosecute the defendant cannot be destroyed until the person has been convicted. The Royal Commissions considered that the existing practice posed serious security problems and placed an onerous responsibility on the officials involved. The new provision has a safeguard which will ensure the defence can challenge the weight of the drugs prior to destruction and provides for the retention of an amount sufficient for re-analysis in the event that the defence challenges the results of the analysis. Before the drugs are destroyed those who have an interest in them are to be notified and there must be an order made by a Magistrate. The Magistrate needs to be satisfied that a sufficient quantity is retained for analysis and re-analysis, all who have an interest in the matter have been notified and there is no dispute concerning the weight.

Section 195 provides for the disposal of the drugs and substances which remain after excess quantities have been destroyed. These are required to be kept either until criminal proceedings are completed or for a maximum of 3 months if proceedings have not commenced within that time.

Section 196 provides for compensation to the person who owns the drugs where they have been destroyed, no offence is proved and that person is entitled to lawfully possess the drugs, (for example, where all along the drugs were the lawful property of a pharmacist and charges laid are shown to be unfounded). There is no scope for a person who is to receive compensation where the prosecution fails for other reasons.

Section 197 provides that property seized under the Ordinance (other than illegal drugs or substances) may be recovered after the completion of criminal proceedings which relate to it or at the end of 3 months if proceedings have not commenced within that time.

Sections 198 and 199 provide for review by the Administrative Appeals Tribunal of decisions made by the Community and Health Service under the Ordinance, such as refusing to grant a wholesaler's license or the cancellation of an approval to conduct a treatment centre. The provision will contain the usual notification requirements.

Section 200 enables the Service to authorise its employees and public servants to possess certain drugs of dependence or substances in the course of their duties, (for example, to destroy the drugs or collect them from a plantation site).

Section 201 provides for a secrecy provision. As the Ordinance will involve numerous people who are not employed by the Service or under the Public Service

Act, it was recognised they too will need to be bound by obligations to maintain confidence which are similar to those of public employees. The penalty for non-compliance is \$5000 or imprisonment for 2 years or both.

Section 202 provides for an annual report to Parliament.

Section 203 enables the delegation of powers held by the Service, the General Manager and Medical Officer of Health under the Ordinance. This will be particularly necessary because of the increased administrative responsibilities under the Ordinance.

Section 204 enables the Minister to determine fee for the purposes of the Ordinance, (for example, the fee for a manufacturer's licence).

Section 205 requires the completion of forms in accordance with explanatory notes outlined in Schedule .

Section 206 will empower the Minister to make regulations.

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