

TASMANIA

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**MISUSE OF DRUGS AMENDMENT (DRUG ANALYSIS)  
BILL 2018**

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# MISUSE OF DRUGS AMENDMENT (DRUG ANALYSIS) BILL 2018

*(Brought in by Rosalie Ellen Woodruff MP)*

## A BILL FOR

### **An Act to amend the *Misuse of Drugs Act 2001* to provide for the lawful delivery of drug analysis services**

Be it enacted by Her 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:

#### **1. Short title**

This Act may be cited as the *Misuse of Drugs Amendment (Drug Analysis) Act 2018*.

#### **2. Commencement**

This Act commences on the day on which this Act receives the Royal Assent.

#### **3. Principal Act**

In this Act, the *Misuse of Drugs Act 2001*\* is referred to as the Principal Act.

#### **4. Part 4A Inserted**

After section 38I of the Principal Act, the following part is inserted:

#### **Part 4A – Drug analysis**

##### **38J. Objects of Part**

The Objects of this Part are –

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\*No. 94 of 2001

- (a) to reduce injury, fatality and harm associated with the use of a controlled drug;
- (b) to provide a framework for the lawful administration and use of drug analysis services; and
- (c) to provide for robust, evidence-based standards ensuring the delivery of safe, high quality drug analysis services.

### **38K. Interpretation**

In this Part –

**Advisory Committee** means the Drug Analysis Advisory Committee established under section 38L;

**analysis technology** means a technique used for determining the contents of a controlled drug, including but not limited to spectroscopy, mass spectrometry, and liquid chromatography techniques;

**approved analysis technology** means an analysis technology approved under section 38L.

**authorised drug analysis service** means –

- (a) a drug analysis operation permitted under section 38O; and
- (b) a drug analysis service licenced under section 38P;

**drug analysis** means the use of an analysis technology to determine the contents of a controlled drug;

**drug analysis operation** means a scheduled, finite-term delivery of a drug analysis service in a set venue or location;

**drug analysis service** means the delivery of drug analysis to a third party or parties.

**38L. Drug Analysis Advisory Committee established**

- (1) There is established a Drug Analysis Advisory Committee consisting of –
  - (a) a person appointed as chairperson of the Advisory Committee; and
  - (b) a person nominated by the Commissioner of Police; and
  - (c) a person nominated by the Secretary of the responsible Department in relation to the Public Health Act 1993; and
  - (d) a person to represent paramedics nominated by the Secretary of the responsible Department in relation to the Ambulance Service Act 1982; and
  - (e) a person nominated by the Alcohol, Tobacco and other Drugs Council of Tasmania; and
  - (f) a general practitioner with experience in drug addiction treatment nominated by the Tasmanian branch of the Royal Australian College of General Practitioners; and
  - (g) a person to represent drug analysis service providers nominated by Harm Reduction Australia; and

- (h) a person with experience of controlled substance use to represent users of controlled substances; and
  - (i) a person to represent event organisers who host, or intend to host, drug analysis operations; and
  - (j) a person with detailed technical knowledge of analysis technology.
- (2) The members are appointed by the Minister.
- (3) A member of the Advisory Committee may, with the approval of the Minister, appoint a person nominated by the organization which the member represents as their deputy.
- (4) The Secretary of a responsible Department referred to in paragraph (b), (c) or (d) of subsection (1) may, with the approval of the Minister, appoint a person as a deputy to the person nominated in paragraph (b), (c) or (d) of subsection (1) .
- (5) If a body referred to in paragraph (e), (f) or (g) of subsection (1) changes its name, the Minister may, by order, amend that paragraph by substituting the body's new name.
- (6) If a body referred to in paragraph (e), (f) or (g) of subsection (1) ceases to exist, the Minister, on the recommendation of the Advisory Committee, may, by order, amend that paragraph by substituting the name of a body which the Minister is satisfied substantially represents the interests represented by the first-mentioned body.
- (7) The Advisory Committee has the following functions:
  - (a) to advise the Minister on any matter generally relating to drug analysis;

- (b) to advise the Minister on any specific matter relating to drug analysis as requested by the Minister;
  - (c) to review the operation of this Part;
  - (d) to provide recommendations to the Minister to further the objectives of this Part;
  - (e) to provide advice on the formulation of regulations under this Part;
  - (f) any functions imposed by this Act;
  - (g) any other functions the Minister may determine.
- (8) For the purposes of giving advice under this section, the Advisory Committee may consult any parties it considers appropriate.
- (9) The Advisory Committee may declare an analysis technology to be an approved analysis technology if the analysis technology meets prescribed criteria.
- (10) An approval for an analysis technology may be revoked if the Advisory Committee is satisfied that new evidence indicates the analysis technology no longer meets prescribed criteria, or a change in prescribed criteria results in the analysis technology no longer meeting prescribed criteria.

**38M. Advisory Committee membership and meetings**

- (1) A member of the Advisory Committee, other than a member appointed under section 38L subsection (1) (b), (c) or (d), is to be appointed for such term, not exceeding 3 years, specified in the instrument of appointment.

- (2) The holder of an office who is required under any Act to devote the whole of their time to the duties of that office is not disqualified from holding that office and also the office of a member or accepting any remuneration payable to a member.
- (3) A member of the Advisory Committee is to be paid such remuneration, expenses and allowances as the Minister may determine, but no such determination applies in respect of a member of the Advisory Committee who holds office in the State Service unless the Minister administering the State Service Act 2000 approves of the determination.
- (4) The provisions of the State Service Act 2000 do not apply to, or in respect of, the appointment of a member of the Advisory Committee and a member of the Advisory Committee is not, in their capacity as such a member, subject to the provisions of that Act during their term of office.
- (5) The Minister may appoint any person to act in the office of the chairperson or appoint any person to act in the office of a member of the Advisory Committee other than the chairperson while the chairperson or that member of the Advisory Committee, as the case may be, is absent from office through illness or any other cause.
- (6) A member of the Advisory Committee other than the chairperson is, for the purposes of subsection (5), taken to be absent from their office if the member is acting in the office of chairperson under subsection (5).
- (7) A member of the Advisory Committee is, for the purposes of subsection (5), taken to be absent from their office if there is a vacancy in that office which has not been filled in accordance with subsection (10).

- (8) The office of a member of the Advisory Committee becomes vacant –
- (a) when the member dies; or
  - (b) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with their creditors or makes an assignment of their remuneration or estate for their benefit; or
  - (c) if the member is convicted in Tasmania of a crime or offence which is punishable by imprisonment for a period of not less than 12 months, or if the member is convicted elsewhere than in Tasmania of an offence which, if committed in Tasmania, would be a crime or an offence so punishable; or
  - (d) if the member resigns their office by writing under their hand addressed to the Minister and the Minister accepts the resignation; or
  - (e) if the member is removed from office by the Minister under subsection (9).
- (9) The Minister may remove from office a member of the Advisory Committee if –
- (a) the Minister is satisfied that the member is unable to perform adequately or competently the duties of the member's office; or
  - (b) the Minister is satisfied that the member no longer meets the criteria for their appointment under section 38L subsection (1); or

- (c) if the member is appointed under section 38L subsection (1) paragraph (e), (f) or (g) if the nominating body recommends the removal of that member; or
  - (d) the member is absent from 2 consecutive meetings of the Advisory Committee without the permission of the other members of the Advisory Committee; or
  - (e) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
  - (f) the member is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 12 months or longer.
- (10) On the occurrence of a vacancy in the office of a member of the Advisory Committee otherwise than by the expiration of the term for which the member was appointed, the Minister may appoint a person to the vacant office for the balance of their predecessor's term of office.
- (11) A member of the Advisory Committee is not personally liable for an honest act or omission in the performance or the purported performance of functions, or exercise or purported exercise of powers, under this Act.

- (12) An act or proceeding of the Advisory Committee or of a person acting under the direction of the Advisory Committee is not invalid 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 Advisory Committee.
- (13) An act or proceeding of the Advisory Committee or of a person acting under the direction of the Advisory Committee is valid and has effect, even if –
- (a) the appointment of a member of the Advisory Committee was defective; or
  - (b) a person appointed as a member of the Advisory Committee was disqualified from acting as, or incapable of being, such a member.
- (14) In any proceedings by or against the Advisory Committee, unless evidence is given to the contrary, proof is not required of –
- (a) the constitution of the Advisory Committee; or
  - (b) any resolution of the Advisory Committee; or
  - (c) the appointment of any member of the Advisory Committee; or
  - (d) the presence of a quorum at any meeting of the Advisory Committee.
- (15) Meetings of the Advisory Committee may be convened by the chairperson of the Advisory Committee or by any 3 members of the Advisory Committee.

- (16) The quorum at any convened meeting of the Advisory Committee is half the number of the total members plus one member.
- (17) Questions arising at a meeting of the Advisory Committee are to be determined by a majority of votes of the members of the Advisory Committee present and voting.
- (18) The Advisory Committee must keep full and accurate minutes of the proceedings at each of its meetings.
- (19) The chairperson of the Advisory Committee or, in the absence of the chairperson, the person acting in the office of chairperson is to preside at a meeting of the Advisory Committee.
- (20) If the chairperson of the Advisory Committee or their deputy is not present at a meeting of the Advisory Committee a member elected by the members present is to preside at that meeting.
- (21) Subject to this Act, the Advisory Committee may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.
- (22) The Advisory Committee may permit members to participate in a particular meeting, or all meetings, by –
  - (a) telephone; or
  - (b) video conference; or
  - (c) any other means of communication approved by the Advisory Committee.
- (23) A member who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.

- (24) The Advisory Committee may allow a person to attend a meeting for the purpose of advising or informing it on any matter.
- (25) If the majority of members appointed sign a document containing a statement that they are in favour of a resolution of a matter in the terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the Advisory Committee held on the day on which the document is signed or, if the members do not sign it on the same day, on the day on which the last of the members signs the document.
- (26) If a resolution is taken to have been passed under subclause (25), each member is to be advised immediately of the resolution and given a copy of the terms of the resolution.
- (27) For the purposes of subclause (25) , 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, is taken to constitute one document.

### **38N. Offences non-applicable for drug analysis**

- (1) A person is not guilty of an offence under this Act if their conduct is necessary or reasonable for the purposes of delivering an authorised drug analysis service.
- (2) A person is not guilty of an offence under this Act if they are utilising the services of an authorised drug analysis service, or acting with the clear intention of utilising the services of an authorised drug analysis operation, insofar as their conduct is necessary or reasonable for the purposes of utilising a drug analysis service.

- (3) For the purposes of subsections (1) and (2) a drug analysis service is taken to be an authorised drug analysis if the person could reasonably have assumed that the drug analysis service was an authorised drug analysis service.
- (4) Subsection (2) does not apply to a person in possession of a trafficable quantity of a controlled substance.

### **380. Permit for a drug analysis operation**

- (1) A person or organisation may apply in writing to the Commissioner of Police for a permit to conduct a drug analysis operation or operations.
- (2) An application under subsection (1) must be lodged at least 30 days before a drug analysis operation is to take place and contain the location or locations, and date or dates that the drug analysis operation or operations are to be conducted, as well as any required information and evidence that is prescribed.
- (3) The Commissioner of Police must as soon as practicable, within 30 days, assess an application lodged under subsection (2).
- (4) If assessment under subsection (3) indicates full compliance then the applicant must be issued a permit.
- (5) If assessment under subsection (3) indicates non-compliance then the Commissioner of Police must inform the applicant of the details of non-compliance and either request further evidence, or request that the applicant re-submit an application.
- (6) A permit may only apply to drug analysis operations outlined in the application.

- (7) A permit may not be issued for a drug analysis operation more than a year in advance of the date of the drug analysis operation.
- (8) A permit is to contain such conditions, restrictions and requirements as is prescribed.
- (9) If the conditions of the permit are breached a person responsible for the drug analysis operation is liable for a prescribed penalty, if a penalty for the breach is prescribed.
- (10) A person or organisation may have a permit revoked in writing by the Commissioner of Police if the Commissioner of Police is satisfied that the person or organisation no longer meets prescribed criteria.
- (11) For the avoidance of doubt a person or organisation that has had a permit revoked under subsection (10) may reapply under subsection (1) or may apply for a licence under section 38P.
- (12) Subsection (11) notwithstanding, if a prescribed major violation occurs then the organisation or person may be ineligible to conduct drug analysis under this Part for a prescribed period, at the discretion of the Commissioner of Police.

### **38P. Licencing a drug analysis service**

- (1) An organisation may apply for a licence for the purposes of delivering a drug analysis service.
- (2) An application under subsection (1) is to contain such information and evidence as is prescribed.

- (3) The Commissioner of Police must as soon as practicable, within 90 days, assess an application lodged under subsection (2).
- (4) The Commissioner of Police may require verification of information contained within an application, including but not limited to assessing a site or equipment.
- (5) Verification under subsection (4) may include a verification made by a third party at the applicant's own expense.
- (6) If assessment under subsection (3) or (4) indicates full compliance then the applicant must be issued a licence.
- (7) If assessment under subsection (3) or (4) indicates non-compliance then the Commissioner of Police must inform the applicant of the details of non-compliance and either request further evidence, or request that the applicant re-submit an application.
- (8) A licence is to contain such restrictions, conditions and requirements as is prescribed.
- (9) If the conditions of the licence are breached a person responsible for the drug analysis service is liable for a prescribed penalty, if a penalty for the breach is prescribed.
- (10) An organisation may have its licence revoked in writing by the Commissioner of Police if the Commissioner is satisfied that the organisation no longer meets prescribed criteria.
- (11) For the avoidance of doubt a person or organisation that has had a licence revoked under subsection (10) may reapply under subsection (1) or may apply for a permit under section 380.

(12) Subsection (11) notwithstanding, if a prescribed major violation occurs then the organisation or person may be ineligible to conduct drug analysis under this Part for a prescribed period, at the discretion of the Commissioner of Police.

## **5. Repeal of Act**

This Act is repealed on the three hundred and sixty fifth day from the day on which all of the provisions of this Act commence.