

TASMANIA

POISONS (MISCELLANEOUS AMENDMENTS) BILL 2017

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POISONS (MISCELLANEOUS AMENDMENTS) BILL 2017

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
2 May 2017

*(Brought in by the Minister for Health, the Honourable
Michael Darrel Joseph Ferguson)*

A BILL FOR

An Act to amend the *Poisons Act 1971*

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 *Poisons (Miscellaneous Amendments) Act 2017*.

2. Commencement

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

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3. Principal Act

In this Act, the *Poisons Act 1971** is referred to as the Principal Act.

4. Section 2 repealed

Section 2 of the Principal Act is repealed.

5. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *analyst* in subsection (1):

authorised health professional means
a person who is a member of a
class of health professionals –

- (a) that is prescribed for the
purposes of this
definition; or
- (b) in respect of whom an
order has been made
under section 25D(1)(a) –

except in section 36 and Parts V
and VA in which case the
authorised health professional
must be present in Tasmania and

*No. 81 of 1971

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acting in the course of the
practice of his or her profession
in Tasmania;

- (b) by omitting the definition of *eligible midwife* from subsection (1) and substituting the following definition:

endorsed midwife means a midwife who is endorsed by the Nursing and Midwifery Board of Australia under section 94 of the Health Practitioner Regulation National Law (Tasmania) to prescribe scheduled substances;

- (c) by omitting “Minister;” from paragraph (b) of the definition of *responsible licensing authority* in subsection (1) and substituting “Minister; or”;

- (d) by inserting the following paragraph after paragraph (b) in the definition of *responsible licensing authority* in subsection (1):

(c) the Secretary, if an application for the grant of the authorisation may be made to the Secretary or the authorisation has been granted by the Secretary;

- (e) by omitting “*Veterinary Surgeons Act 1987*” from the definition of *veterinary surgeon* in subsection (1) and substituting “*Veterinary Surgeons Act 1987*, except in section 36 and Parts V

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and VA in which case the veterinary surgeon must be present in Tasmania and acting in the course of veterinary practice in Tasmania;”;

(f) by omitting subsection (7).

6. Section 10 amended (Suspension or cancellation of licence)

Section 10(2) of the Principal Act is amended by omitting “cancelling, under this section, a licence, the responsible licensing authority is to” and substituting “cancelling a licence under this section (other than at the licence holder’s request), the responsible authority is to”.

7. Section 16 amended (Licences)

Section 16 of the Principal Act is amended as follows:

- (a) by inserting in subsection (6) “specified in the licence” after “period”;
- (b) by omitting from subsection (6) “12” and substituting “24”;
- (c) by omitting from subsection (6) “granted, but may be renewed annually, on the application of the holder of the licence.” and substituting “granted.”;
- (d) by inserting the following subsection after subsection (6):

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- (7) If a licence under this section was in force immediately before the commencement of the *Poisons (Miscellaneous Amendments) Act 2017*, that licence continues in force for a period of 24 months, unless sooner cancelled, from the date on which it was granted.

8. Section 18 amended (Offences)

Section 18(3) of the Principal Act is amended as follows:

- (a) by omitting “is a” and substituting “is”;
- (b) by omitting from paragraph (a) “medical” and substituting “a medical”;
- (c) by omitting from paragraph (b) “pharmaceutical” and substituting “a pharmaceutical”;
- (d) by omitting from paragraph (c) “dentist” and substituting “a dentist”;
- (e) by omitting paragraph (d) and substituting the following paragraphs:
 - (d) a veterinary surgeon; or
 - (e) an authorised health professional.

9. Part II, Division 3A inserted

After section 18 of the Principal Act, the following Division is inserted in Part II:

Division 3A – Licensing of first-aid providers

18A. First-aid providers licence

(1) In this section –

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

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

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

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

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

(b) the renewal of such a licence.

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

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

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- (b) renew, or refuse to renew, a licence.
- (4) Without limiting the Minister's discretion, the Minister may refuse to grant an application if the Minister considers that the applicant does not have appropriate clinical governance arrangements in place.
- (5) A first-aid provider licence authorises the licence holder to purchase, possess and supply prescribed substances for the purposes of first-aid services, subject to compliance with the provisions of this Act and any conditions and restrictions specified in the licence.
- (6) A first-aid provider licence, unless sooner cancelled, continues in force for a period specified in the licence of up to 24 months from the day on which it is granted.

10. Sections 25C, 25D and 25E inserted

After section 25B of the Principal Act, the following sections are inserted in Division 5:

25C. Authorisation of health professionals

- (1) In this section –

authorised body, in respect of a class of health professionals, means an organisation that is –

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- (a) prescribed as the authorised body for that class of health professionals for the purposes of this section; or
 - (b) declared to be an authorised body for that class of health professionals under section 25D(1)(b).
- (2) An authorised health professional, who is endorsed to prescribe scheduled substances by an authorised body may only, for the purposes of his or her profession, possess, sell, supply or prescribe the scheduled substances specified in that endorsement.
- (3) The Governor may make regulations authorising and regulating the possession, sale, supply or prescription of scheduled substances by authorised health professionals in such circumstances, subject to such conditions and in relation to such substances or classes of substances, as may be specified in the regulations.

25D. Interim authorisation of health professionals

- (1) The Minister, by order, may –
 - (a) declare a class of health professionals to be authorised

health professionals for the purposes of this Act; and

(b) declare an organisation to be an authorised body for that class of health professionals; and

(c) authorise that class of health professionals to possess, sell, supply or prescribe scheduled substances subject to such conditions and in relation to such substances or classes of substances as may be specified in the order.

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

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

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

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

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subject to which, the authorisation may
be exercised.

**11. Section 26 amended (Sale and supply of potent
substances and hazardous and medicinal poisons)**

Section 26 of the Principal Act is amended as
follows:

- (a) by omitting from subsection (1A) “dentist” and substituting “dentist, authorised health professional”;
- (b) by omitting from subsection (1C) “dentist” and substituting “dentist, authorised health professional”;
- (c) by inserting in subsection (2) “authorised health professionals” after “dentists,”;
- (d) by inserting in subsection (2) “authorised health professional” after “made to the medical practitioner, dentist,”;
- (e) by inserting in subsection (2) “authorised health professional” after “addressed to the medical practitioner, dentist,”;
- (f) by inserting in subsection (3) “an authorised health professional,” after “dentist,”.

12. Section 28 amended (Sale of certain substances to be entered and kept in a poisons book)

Section 28 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “shall” and substituting “must”;
- (b) by inserting the following penalty after paragraph (b) in subsection (1):

Penalty: Fine not exceeding 20 penalty units.

- (c) by omitting subsections (2), (3) and (4) and substituting the following subsection:

(2) The poisons book must be kept –

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

Penalty: Fine not exceeding 20 penalty units.

13. Section 29 amended (Sales of certain substances by correspondence)

Section 29 of the Principal Act is amended as follows:

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- (a) by omitting from subsection (1) “letter” first occurring and substituting “written communication”;
- (b) by omitting from subsection (1) “shall” first occurring and substituting “must”;
- (c) by omitting from subsection (1) “letter” second occurring and substituting “communication”;
- (d) by omitting from subsection (1)(a) “letter” and substituting “communication”;
- (e) by omitting from subsection (1)(b) “by whom that was written” and substituting “from whom that communication was sent”;
- (f) by omitting from subsection (1)(c) “letter” and substituting “communication”;
- (g) by inserting the following penalty after paragraph (c) in subsection (1):

Penalty: Fine not exceeding 20 penalty units.

- (h) by omitting subsections (2) and (3) and substituting the following subsections:
 - (2) A person (in this subsection referred to as “the seller”) must not, unless the Secretary approves otherwise, sell or supply to

another person (in this subsection referred to as “the buyer”) a hazardous poison as the result of written communication received by the seller from the buyer, unless the written communication is signed by the buyer.

Penalty: Fine not exceeding 10 penalty units.

- (3) For the purposes of this section, a signature includes an electronic signature.

14. Section 30 repealed

Section 30 of the Principal Act is repealed.

15. Section 31 amended (Modification of section 28 in relation to certain sales, &c.)

Section 31 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “authorised health professional” after “dentist,”;
- (b) by inserting in subsection (2)(b) “authorised health professional” after “dentist,”;
- (c) by inserting the following subsection after subsection (4):

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- (5) For the purposes of this section, a signature includes an electronic signature.

16. Section 36 amended (Offences relating to certain restricted substances)

Section 36 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(b)(i) “authorised health professional,” after “dentist,”;
- (b) by omitting from subsection (1)(b)(i) “eligible” and substituting “endorsed”;
- (c) by omitting from subsection (1A) “dentist” and substituting “dentist, authorised health professional”;
- (d) by inserting in subsection (2)(a) “authorised health professional,” after “dentist,”;
- (e) by omitting from subsection (2)(a) “eligible” and substituting “endorsed”;
- (f) by inserting in subsection (2)(b) “authorised health professional,” after “dentist,”;
- (g) by omitting from subsection (2)(b) “eligible” and substituting “endorsed”.

17. Section 38 amended (Limitation of application of certain provisions of Division 1 of this Part)

Section 38 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “authorised health professional,” after “dentist,”;
- (b) by omitting paragraph (ab) from subsection (1);
- (c) by omitting from subsection (1)(ac) “eligible” and substituting “endorsed”;
- (d) by inserting in subsection (1)(c) “or midwife” after “that nurse”;
- (e) by omitting from subsection (1)(d)(ii) “dentist” and substituting “dentist, authorised health professional”;
- (f) by omitting from subsection (1)(e) “dentist” and substituting “dentist, authorised health professional”;
- (g) by omitting paragraphs (ea) and (f) from subsection (1);
- (h) by omitting the definitions of *class 1 substance*, *class 2 substance* and *optometrist* from subsection (1A);
- (i) by inserting in subsection (3)(a) “authorised health professional,” after “practitioner,”;

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- (j) by inserting in subsection (3)(c) “by an authorised health professional so acting in the course of his or her profession,” after “dental treatment,”.

18. Section 45 amended (Restriction of importation)

Section 45 of the Principal Act is amended by inserting after subsection (4) the following subsection:

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

19. Section 47 amended (Sale and supply of narcotic substances, prohibited plants, and prohibited substances)

Section 47(1) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (c) “authorised health professional” after “dentist,”;
- (b) by omitting from paragraph (db) “dentist” and substituting “dentist, authorised health professional”.

20. Section 47B repealed

Section 47B of the Principal Act is repealed.

21. Section 47C amended (Endorsed midwives)

Section 47C of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “eligible” and substituting “endorsed”;
- (b) by omitting from subsection (2) “eligible” and substituting “endorsed”;
- (c) by omitting from subsection (3) “eligible” and substituting “endorsed”.

22. Section 47D amended (Offence for endorsed midwife to make available drugs of dependence, &c.)

Section 47D of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “eligible” and substituting “endorsed”;

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- (b) by omitting from subsection (2) “eligible” and substituting “endorsed”;
- (c) by omitting from subsection (3) “eligible” and substituting “endorsed”;
- (d) by omitting from subsection (4) “eligible” and substituting “endorsed”;
- (e) by omitting from subsection (5) “eligible” twice occurring and substituting “endorsed”.

23. Section 48 amended (Possession of narcotic substances, &c.)

Section 48 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “authorised health professional” after “dentist,”;
- (b) by inserting in subsection (2)(b) “authorised health professional” after “chemist,”;
- (c) by inserting in subsection (2A)(b) “lawfully” after “the person”;
- (d) by inserting the following subsection after subsection (2A):
 - (2B) A person may have in his or her possession a raw narcotic or narcotic substance if –

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

24. Section 54E amended (Conditions of licence)

Section 54E of the Principal Act is amended by omitting “cultivating” and substituting “growing”.

25. Section 59 amended (Regulations relating to narcotics and narcotic substances)

Section 59 of the Principal Act is amended as follows:

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- (a) by inserting in subsection (1)(e) “authorised health professionals,” after “dentists,”;
- (b) by omitting from subsection (1)(g) “dentists” and substituting “dentists, authorised health professionals”;
- (c) by inserting in subsection (2)(b) “authorised health professionals,” after “dentists,”.

26. Section 59B amended (Notification required in relation to certain restricted substances and narcotic substances)

Section 59B of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsections:

(1) In this section –

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

- (1A) If a person seeks from a specified person a notifiable restricted substance or a narcotic substance, the specified person may, at his

or her discretion, notify the Secretary of the relevant facts.

(1B) If a person seeks a notifiable restricted substance or a narcotic substance from a specified person and that specified person has reason to believe that the person seeking the substance –

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

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

Penalty: Fine not exceeding 50 penalty units.

- (b) by omitting from subsection (2)(a) “medical practitioner, dentist or authorised nurse practitioner” and substituting “specified person”;
- (c) by omitting from subsection (2)(b) “medical practitioner, dentist or

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authorised nurse practitioner” and substituting “specified person”;

- (d) by omitting from subsection (2)(c) “practitioner” first occurring and substituting “practitioner, authorised health professional”;
- (e) by omitting from subsection (2)(c) “practitioner” third occurring and substituting “practitioner, authorised health professional”;
- (f) by omitting from subsection (2)(d) “practitioner” first occurring and substituting “practitioner, authorised health professional”.

27. Section 59C amended (Offence to make available drugs of dependence, &c.)

Section 59C of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “dentist” and substituting “dentist, authorised health professional”;
- (b) by omitting from subsection (2) “dentist” and substituting “dentist, authorised health professional”;
- (c) by omitting from subsection (3) “dentist” and substituting “dentist, authorised health professional”;

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- (d) by omitting from subsection (4) “dentist” and substituting “dentist, authorised health professional”;
 - (e) by omitting from subsection (5) “dentist” twice occurring and substituting “dentist, authorised health professional”;
 - (f) by omitting subsection (6) and substituting the following subsection:
 - (6) Subsection (5) does not apply in respect of the making available of a notifiable restricted substance, a specified substance or a narcotic substance to a medical practitioner, dentist, authorised health professional or authorised nurse practitioner authorised under section 59E(1) or to another medical practitioner, dentist, or authorised health professional employed in the same practice as the person so authorised.

28. Section 59E amended (Authority for making drugs available to certain patients)

Section 59E of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “dentist” and substituting “dentist, authorised health professional”;

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- (b) by omitting from subsection (2) “dentist” and substituting “dentist, authorised health professional”;
- (c) by omitting from subsection (3)(b) “dentist” and substituting “dentist, authorised health professional”;
- (d) by inserting the following subsections after subsection (7):
 - (8) The Secretary may at any time revoke an authority given under subsection (1) or vary the conditions subject to which such an authority may be exercised.
 - (9) If the Secretary gives an authority under subsection (1), any previous authorisation given to the holder of that authority under that subsection is revoked.
 - (10) A person aggrieved by a decision made under this section by a delegate of the Secretary may apply in writing to the Secretary for a review of the decision within –
 - (a) 30 days after the day on which the decision first came to the notice of the applicant; or

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

(11) The Secretary may –

- (a) make a decision affirming, varying or revoking the decision; and
- (b) if the Secretary revokes the decision, make such other decision as the Secretary thinks appropriate.

29. Section 59F amended (Protection from liability for information)

Section 59F of the Principal Act is amended by omitting “dentist” and substituting “dentist, authorised health professional”.

30. Section 83 amended (Hawking, &c., of scheduled substances prohibited)

Section 83(2) of the Principal Act is amended as follows:

- (a) by inserting “nurse practitioners, endorsed midwives, authorised health professionals” after “dentists,”;
- (b) by inserting “nurse practitioner, endorsed midwife, authorised health professional” after “dentist,”.

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31. Section 92 amended (Revocation or suspension of rights)

Section 92(6) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “right.” and substituting “right; or”;
- (b) by inserting the following paragraph after paragraph (b):
 - (c) it is in the public interest to suspend or revoke the right.

32. Section 93 amended (Regulations)

Section 93(2) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (l) “authorised health professional” after “dentist,”;
- (b) by inserting in paragraph (m) “authorised health professionals,” after “dentists,”;
- (c) by omitting from paragraph (m) “eligible” and substituting “endorsed”;
- (d) by inserting the following paragraphs after paragraph (m):
 - (ma) authorizing the prescription, obtainment, possession, keeping, use or supply of scheduled substances by such persons, or classes of persons, or in such

places as may be prescribed, and
in such cases or circumstances
and subject to such conditions as
may be prescribed;

- (mb) regulating the storage and safe
custody of scheduled substances;
- (mc) regulating, controlling, and
restricting the free distribution of
clinical samples of scheduled
substances;
- (e) by inserting in paragraph (n) “authorised
health professionals,” after “dentists,”;
- (f) by omitting from paragraph (n) “eligible”
and substituting “endorsed”.

33. Repeal of Act

This Act is repealed on the three hundred and
sixty fifth day from the day on which it
commences.