

# CLAUSE NOTES

## *Poisons Amendment Bill 2012*

### **Part 1 Preliminary**

#### **Clause 1 Short Title**

This clause provides that the Act is to be referred to as the *Poisons Amendment Act 2012*.

#### **Clause 2 Commencement**

Provides for the Act to commence on a day to be proclaimed.

#### **Clause 3 Subsequent amendment of Statutory Rules**

This clause provides Statutory Rules amended by this Act may be further amended by Statutory Rule.

### **Part 2 Poisons Act 1971 amended**

#### **Clause 4 Principal Act**

This clause provides that the Principal Act amended by this Bill is the *Poisons Act 1971*.

#### **Clause 5 Section 3 amended (Interpretation)**

This clause amends section 3(1) as follows:

- “opium poppy” – the substituted definition adds the species *papaver bracteatum* to the description of the opium poppy.
- “Poisons List” – the substituted definition means the list of substances set out in Part 4 and Appendix C of the Uniform Standard as amended in its application to Tasmania from time to time. This amendment supports the amended procedure in section 14 for adoption of the Poisons List.
- “prohibited substance” – a substituted definition provides this means a substance specified in Schedule 9 of the Poisons List and includes a prohibited plant. Linking this definition to the Poisons List ensures the description will remain up to date as it is linked to the most recent national standard, unless deliberately amended by the Minister.

- “Uniform Standard” – a new definition describes the Standard for the Uniform Scheduling of Medicines and Poisons, which is the Commonwealth standard on which scheduling under the Act is based. The effect of the definition is that a reference to the Uniform Standard is a reference to the most recently published, substituted or amended version of that standard. This will overcome the need under the current provisions to continually update the schedules of the Poisons List by ministerial order.

New subsection (2) provides for the interpretation of references to scheduled substances and schedules of particular numbers.

Subsection (5) is amended by omitting the reference to section 15, as that section is being repealed by the Bill.

## **Clause 6**

### **Section 14 substituted (Adoption and amendment of Poisons List)**

The clause substitutes section 14 with a new section providing for the adoption of Part 4 and Appendix C of the Uniform Standard as the Poisons List and describing how the Uniform Standard may be amended in its application to Tasmania.

Subsection (1) provides for the Minister to adopt Part 4 of the Uniform Standard – as amended from time to time - by order. As the Uniform Standard is amended at least three times per annum at the national level, it will no longer be necessary for the Minister to regularly update the Poisons List by order to reflect the national changes. Instead it will only be necessary to make an order if the Minister wishes to amend the Uniform Standard as it applies to Tasmania.

Subsection (2) provides that the Minister may amend the Uniform Standard in its application to Tasmania by amending, adding, removing or transferring specified substances to and from the Schedules or by removing and substituting Schedules.

Subsection (3) provides that the Minister must have regard to any relevant classification of substances made from time to time by the United Nations organisation or any of its agencies when amending the Uniform Standard in its application to Tasmania. Relevant UN instruments include the Single Convention on Narcotic Drugs, 1961 and the Convention of Psychotropic Substances 1971 to which Australia is a signatory.

Subsection (4) describes the schedules of the Uniform Standard and the basis on which they are classified. Schedule 1-8 classifications are identical to the former Schedules to the Poisons List. Schedule 9 lists substances which may be abused or misused, the manufacture, sale or use of which should be prohibited by law except when required for medical or scientific research, or for analytical, teaching or training purposes with approval of Commonwealth or State or Territory Health Authorities. Schedule 9 substances are currently prohibited substances scheduled by order under section 3(1).

**Clause 7**

**Section 15 repealed**

This clause removes section 15, which described how the Minister could, at any time, amend the Poisons List by order published in the Gazette, as this is now covered by s.14(2).

**Clause 8**

**Section 16 amended (Licenses)**

Section 16 is amended as follows:

- Subparagraphs (a) and (b) provide for the format of licences and applications for licences to carry on business as a manufacturing chemist or to carry on business as a wholesale chemist to be approved by the Secretary. Previously the format had to be prescribed by the Regulations, imposing an unnecessary administrative burden in amending regulations to update the forms.
- Subparagraph (c) inserts a new paragraph requiring persons making licence applications who are not natural persons to state the full name of the proposed responsible officer ('responsible officer' is provided for in new section 16A).
- Subparagraphs (d) and (e) make amendments so that licences continue in force for a period of up to twelve months, so that licences can be renewed annually for up to twelve months and do not automatically expire on 31 December each year.

## **Clause 9**

### **Sections 16A, 16B and 16C inserted**

This clause inserts new sections 16A, 16B and 16C after section 16 of the Principle Act in Division 3.

#### **16A (Responsible officers)**

This inserts a new requirement for a holder of a licence granted under section 16 who is not a natural person to appoint a natural person as a responsible officer for each workplace at which the holder of the licence carries on the licensed business and makes provision for the failure of the holder of the licence to do so, and other obligations of the holder of the licence.

#### **16B (Duties of responsible officer)**

This provides that the responsible officer is responsible for compliance with the conditions of the licence and relevant provisions of the Act and regulations at his or her workplace, unless: it was not reasonably practicable to perform that responsibility, or the failure to perform the responsibility was due to causes over which the responsible officer had no control and were not reasonably practicable to make provision for, or the responsible officer exercised due diligence to prevent the failure, or the responsible officer was unaware that he or she had been appointed, or was taken to have been appointed, the responsible officer.

Subsection (4) provides that the appointment of a responsible officer does not relieve the holder of the licence of the requirement to perform the holder's responsibilities under the Act.

Subsection (5) provides that a responsible officer may be proceeded against and convicted of having failed to perform the responsibilities of the holder of the licence whether or not the employer has been proceeded against or convicted of having failed to perform the responsibility.

#### **16C (Obstruction of responsible officer)**

This provides that it is an offence for a person having authority or control over the responsible officer at a workplace to obstruct the responsible officer in exercising his or her responsibilities under the Act. The offence has separate penalties for a body corporate or a natural person.

## **Clause 10**

### **Section 36 amended (Offences relating to certain restricted substances)**

This clause amends section 36 to provide an exception in a new subsection (2A) to the offence of unauthorised possession of restricted substances for interstate visitors.

Currently the effect of section 36 is that it is an offence for visitors from interstate to possess a declared restricted substance that was lawfully prescribed in another State or Territory.

This was not intended.

The clause clarifies that a person visiting from interstate may possess a declared restricted substance that was lawfully prescribed and dispensed in another State or Territory, if they brought the substance into this State with them on their person or in their luggage.

The exception also applies to a person holding the substance for the use of a member of the person's immediate family.

## **Clause 11**

### **Section 45 amended (Restriction of importation)**

This clause amends section 45 to provide an exception in a new subsection (4) to the offence of importing a raw narcotic or narcotic substance in the case of interstate visitors.

Currently the effect of section 45 is that it is an offence for visitors from interstate to import a raw narcotic or narcotic substance that was lawfully prescribed in another State or Territory. This was not intended.

This clause clarifies that a person may bring into the State a raw narcotic or narcotic substance that was lawfully prescribed and dispensed in another State or Territory for their use or for the use of a member of the person's immediate family.

**Clause 12****Section 48 amended (Possession of narcotic substances, &c.)**

This clause amends section 48 to provide an exception in a new subsection (2A) to the offence of possessing a raw narcotic or narcotic substance in the case of interstate visitors.

Currently the effect of section 48 is that it is an offence for visitors from interstate to possess a raw narcotic or narcotic substance that was lawfully prescribed in another State or Territory. This was not intended.

The clause clarifies that a person may have in their possession a raw narcotic or narcotic substance that was lawfully prescribed and dispensed in another State or Territory for their use or for the use of a member of the person's immediate family.

**Clause 13****Section 95 inserted (Savings and transitional provisions)**

This clause inserts a new section 95 providing that savings and transitional provisions for the *Poisons Amendment Act 2012* are contained in Schedule 3.

**Clause 14****Schedule 3 inserted**

This clause inserts a new Schedule 3 to the Principal Act, titled Savings and Transitional Provisions Consequent on the *Poisons Amendment Act 2011*.

Paragraph 1 of the Schedule provides that licences in force on the day on which the Act commences, remain in force until 31 March next following that day. This will operate to extend current licences to 31 March rather than 31 December as currently provided.

Paragraph 2 of the Schedule provides that, notwithstanding section 16A, a licence holder that is not a natural person, that was holding a licence on the day on which the amendments commenced is not required to appoint a responsible officer until the licence holder next applies for a licence.

<b>Part 3</b>	<b><i>Corrections Act 1997</i> amended</b>
<b>Clause 15</b>	This clause notes that the <i>Corrections Act 1997</i> is referred to as the Principal Act in Part 3.
<b>Clause 16</b>	<b>Section 3 amended (interpretation)</b> This clause amends section 3 of the <i>Corrections Act 1997</i> by inserting a new definition providing that ‘Poisons List’ has the same meaning as in the <i>Poisons Act 1971</i> .
<b>Clause 17</b>	<b>Section 28 amended (Random testing and searching of prisoners and detainees)</b> This clause removes reference to the <i>Poisons List Order 1984</i> in section 28(1)(d) of the <i>Corrections Act</i> , as the Poisons List will now be defined in section 3 of the <i>Corrections Act</i> as having the same meaning as in the <i>Poisons Act 1971</i> .
<b>Part 4</b>	<b><i>Guardianship and Administration Regulations 2007</i> amended</b>
<b>Clause 18</b>	<b>Principal Act</b> This clause notes that the <i>Guardianship and Administration Regulations 2007</i> are referred to as the Principal Regulations in Part 4.
<b>Clause 19</b>	<b>Regulation 3 amended (Interpretation)</b> This clause replaces the definition of Poisons List in section 3 of the <i>Guardianship and Administration Regulations 2007</i> with a new definition providing that ‘Poisons List’ has the same meaning as in the <i>Poisons Act 1971</i> .
<b>Part 5</b>	<b><i>Health Professionals (Special Events Exemption) Act 1998</i> amended</b>
<b>Clause 20</b>	<b>Principal Act</b> This clause provides that the <i>Health Professionals (Special Events Exemption) Act 1998</i> is referred to as the Principal Act in Part 5.
<b>Clause 21</b>	<b>Section 3 amended (Interpretation)</b> This clause replaces the definition of Poisons List in section 3 of the <i>Health Professionals (Special Events Exemption) Act 1998</i> with a new definition providing that ‘Poisons List’ has the same meaning as in the <i>Poisons Act 1971</i> .

<b>Part 6</b>	<b><i>Misuse of Drugs Act 2001</i> amended</b>
<b>Clause 22</b>	<b>Principal Act</b> <p>This clause provides that the <i>Misuse of Drugs Act 2001</i> is referred to as the Principal Act in Part 6.</p>
<b>Clause 23</b>	<b>Section 3 amended (Interpretation)</b> <p>This clause amends section 3 of the <i>Misuse of Drugs Act 2001</i> by inserting a new definition providing that ‘Poisons List’ has the same meaning as in the <i>Poisons Act 1971</i>.</p>
<b>Clause 24</b>	<b>Schedule 1 amended (Controlled substances and trafficable quantities)</b> <p>This clause removes reference to the Poisons List Order 2001 as the Poisons List will now be defined in section 3 of the <i>Misuse of Drugs Act 2001</i> as having the same meaning as in the <i>Poisons Act 1971</i>.</p>
<b>Part 7</b>	<b><i>Poisons Regulations 2008</i> amended</b>
<b>Clause 25</b>	<p>This clause provides that the <i>Poisons Regulations 2008</i> are referred to as the Principal Regulations in Part 7.</p>
<b>Clause 26</b>	<b>Regulation 3 amended (Interpretation)</b> <p>This clause removes the definition of Uniform Standard and makes a consequential minor typographical change to the definition of ‘specified psychotropic substance’.</p>
<b>Clause 27</b>	<b>Regulation 5 amended (Manufacturing chemists and wholesale chemists)</b> <p>This clause removes subregulations (2) and (3), which prescribe that licences to carry on business as manufacturing or wholesale chemists in accordance with sections 16(2)(a) and 16(3)(a) of the <i>Poisons Act 1971</i> are to be in accordance with Forms 1 and 2, as clause 8 provides for the format of these licences to be approved by the Secretary instead of prescribed.</p>
<b>Clause 28</b>	<b>Schedule 1 amended (forms)</b> <p>This clause removes Forms 1 and 2, which were the prescribed forms for licences to carry on business as manufacturing or wholesale chemists in accordance with sections 16(2)(a) and 16(3)(a) of the <i>Poisons Act 1971</i>.</p>



**Part 8**                      ***Police Service Act 2003* amended**

**Clause 29**                      **Principal Act**

This clause provides that the *Police Service Act 2003* is referred to as the Principal Act in Part 8.

**Clause 30**                      **Section 3 amended (Interpretation)**

This clause amends section 3 of the *Police Service Act 2003* as follows:

Subparagraph (a) amends the definition of ‘drug’ to reflect the inclusion of prohibited substances and prohibited plants in new schedule 9 by omitting paragraphs (a) and (b) from the definition of drug and inserting a new paragraph (a) that provides

Subparagraph (b) inserts a new definition providing that ‘Poisons List’ has the same meaning as in the *Poisons Act 1971*.

**Part 9**                      **Legislation Revoked**

**Clause 31**                      This clause provides that the legislation specified in Schedule 1 is revoked.

**Part 10**                      **Repeal of Act**

This clause provides that this Act is repealed 12 months after the day on which it commences.

**Schedule 1**                      **Legislation to be revoked**

This Schedule lists the legislation revoked by Clause 31.