

TASMANIA

**MISUSE OF DRUGS AMENDMENT BILL
2003**

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MISUSE OF DRUGS AMENDMENT BILL 2003

*(Brought in by the Minister for Justice and Industrial
Relations, the Honourable Judith Louise Jackson)*

A BILL FOR

An Act to amend the *Misuse of Drugs Act 2001*

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

Short title

1. This Act may be cited as the *Misuse of Drugs Amendment Act 2003*.

Commencement

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

Principal Act

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

*No. 94 of 2001

Section 6 amended (Manufacturing controlled drug for sale)

4. Section 6 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “in the absence of evidence to the contrary,” and substituting “unless the accused on the balance of probabilities proves otherwise,”;
- (b) by omitting subsection (3).

Section 7 amended (Cultivating controlled plant for sale)

5. Section 7 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “in the absence of evidence to the contrary,” and substituting “unless the accused on the balance of probabilities proves otherwise,”;
- (b) by omitting subsection (3).

Section 12 amended (Trafficking in controlled substance)

6. Section 12 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “in the absence of evidence to the contrary,” and substituting “unless the accused on the balance of probabilities proves otherwise,”;
- (b) by omitting subsection (3).

Sections 36A and 36B inserted

7. After section 36 of the Principal Act, the following sections are inserted in Division 2:

Alternative convictions

36A. (1) A person who is indicted for but found not guilty of an offence under section 6(1) may be convicted of an offence under section 21 if the evidence in the proceedings on the indictment establishes that the person committed that other offence.

(2) A person who is indicted for but found not guilty of an offence under section 7(1) may be convicted of either or both of the following offences if the evidence in the proceedings on the indictment establishes that the person committed that other offence or, if applicable, those other offences:

- (a) an offence under section 22;
- (b) an offence under section 25.

(3) A person who is indicted for but found not guilty of an offence under section 12(1) may be convicted of an offence under section 24 if the evidence in the proceedings on the indictment establishes that the person committed that other offence.

(4) This section has effect despite anything to the contrary in Chapter XXXIX of Part IX of the *Criminal Code*.

Costs of analysis or examination

36B. (1) In this section, “**analyst**” has the same meaning as in the *Poisons Act 1971*.

(2) Where, for proceedings under this Act, the prosecutor has caused the substance or plant to which the proceedings relate to be analysed or examined by an analyst, the court may, in case of a conviction, assess the reasonable expense of and attending the analysis or examination and award it against the defendant as part of the costs of the prosecutor.

(3) In addition to the costs, if any, under subsection (2), the court may assess and award against the defendant –

- (a) as part of the costs of the prosecutor, the expenses incurred by the prosecutor while engaged in travelling to and attending the trial, including the proportionate part of the prosecutor's salary while so engaged; and
- (b) if an analyst has given evidence in the proceedings, such costs in respect of the analyst's attendance as the court may determine.