

TASMANIA

POISONS AMENDMENT BILL 2012

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POISONS AMENDMENT BILL 2012

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.

P. R. ALCOCK, *Clerk of the House*
13 March 2012

*(Brought in by the Minister for Health, the Honourable
Michelle Anne O'Byrne)*

A BILL FOR

An Act to amend the *Poisons Act 1971* and various other Acts and statutory rules consequentially and to revoke certain statutory rules

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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Poisons Amendment Act 2012*.

2. Commencement

This Act commences on a day to be proclaimed.

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s. 3

Part 1 – Preliminary

3. Subsequent amendment of statutory rules

The amendment by this Act of any statutory rule does not bar its subsequent amendment by statutory rule.

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Part 2 – Poisons Act 1971 Amended

s. 4

PART 2 – POISONS ACT 1971 AMENDED

4. Principal Act

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

5. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definition of *opium poppy* from subsection (1) and substituting the following definition:

opium poppy means a plant of the species *Papaver somniferum* or *Papaver bracteatum*;

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

Poisons List means Part 4 and Appendix C of the Uniform Standard adopted under section 14, as amended in its application to Tasmania under that section from time to time;

*No. 81 of 1971

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- (c) by omitting the definition of *prohibited substance* from subsection (1) and substituting the following definition:

prohibited substance means a substance that is, for the time being, specified in Schedule 9 to the Poisons List and includes a prohibited plant;

- (d) by inserting the following definition after the definition of *treatment centre* in subsection (1):

Uniform Standard means –

- (a) the Standard for the Uniform Scheduling of Medicines and Poisons, of the Commonwealth, published by the Australian Government under the *Therapeutic Goods Act 1989* of the Commonwealth; or
- (b) any similar standard published in substitution for that standard; or
- (c) if the standard, or a standard published in substitution for that standard, has been amended under that Act, that standard as so amended;

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(e) by inserting the following subsection after subsection (1A):

(2) In this Act –

(a) a reference to a scheduled substance is a reference to the substance as specified in the Uniform Standard; and

(b) a reference to a substance by reference to a Schedule of a particular number is taken to be a reference to the substance as specified in the Schedule of that number to the Poisons List.

(f) by omitting from subsection (5) “or section 15”.

6. Section 14 substituted

Section 14 of the Principal Act is repealed and the following section is substituted:

14. Adoption and amendment of Poisons List

(1) The Minister, by order, may adopt Part 4 of the Uniform Standard, as amended from time to time, as the Poisons List for the purposes of this Act.

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Part 2 – Poisons Act 1971 Amended

- (2) The Minister may, by order, amend the Uniform Standard in its application to Tasmania –
 - (a) by adding a specified substance or class of substances to, or omitting a specified substance or class of substances from, any of the Schedules contained in the Uniform Standard; and
 - (b) by transferring a specified substance or class of substances from any of those Schedules to any other of those Schedules; and
 - (c) by amending an item appearing in any of those Schedules; and
 - (d) by omitting all or any of those Schedules and substituting a new Schedule or Schedules.
- (3) In amending the Uniform Standard under subsection (2), the Minister must have regard to any relevant classification of substances made from time to time by the United Nations Organization or any of its agencies.
- (4) The Uniform Standard contains the following Schedules and the substances specified in those Schedules are classified in accordance with the following provisions:
 - (a) Schedule 1 substances;

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- (b) Schedule 2 substances –
Substances, the safe use of which may require advice from a pharmacist and which should be available from a pharmacy or, where a pharmacy service is not available, from a licensed person;
 - (c) Schedule 3 substances –
Substances, the safe use of which requires professional advice but which should be available to the public from a pharmacist without prescription;
 - (d) Schedule 4 substances –
Substances, the use or supply of which should be by or on the order of persons permitted by State or Territory legislation to prescribe and should be available from a pharmacist on prescription;
 - (e) Schedule 5 substances –
Substances with a low potential for causing harm, the extent of which can be reduced through the use of appropriate packaging with simple warnings and safety directions on the label;
 - (f) Schedule 6 substances –
Substances with a moderate potential for causing harm, the extent of which can be reduced

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through the use of distinctive packaging with strong warnings and safety directions on the label;

- (g) Schedule 7 substances – Substances with a high potential for causing harm at low exposure which require special precautions during manufacture, handling or use, which should be available only to specialised or authorised users who have the skills necessary to handle them safely and to which special regulations restricting their availability, possession, storage or use may apply;
- (h) Schedule 8 substances – Substances which should be available for use but require restriction of manufacture, supply, distribution, possession and use to reduce abuse, misuse and physical or psychological dependence;
- (i) Schedule 9 substances – Substances which may be abused or misused, the manufacture, possession, 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

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Commonwealth or State or
Territory health authorities.

- (5) An order under subsection (1) or (2) is a statutory rule for the purposes of the *Rules Publication Act 1953*.

7. Section 15 repealed

Section 15 of the Principal Act is repealed.

8. Section 16 amended (Licences)

Section 16 of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) from subsection (2) and substituting the following paragraph:
 - (a) is to be in a form approved by the Secretary;
- (b) by omitting paragraph (a) from subsection (3) and substituting the following paragraph:
 - (a) is to be in a form approved by the Secretary;
- (c) by inserting the following paragraph after paragraph (a) in subsection (4):
 - (ab) if the person making the application is not a natural

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Part 2 – Poisons Act 1971 Amended

person, is to state the full name of
the proposed responsible officer;
and

- (d) by inserting in subsection (6) “for a period of up to 12 months” after “force”;
- (e) by omitting from subsection (6) “until 31st December next following”.

9. Sections 16A, 16B and 16C inserted

After section 16 of the Principal Act, the following sections are inserted in Division 3:

16A. Responsible officers

- (1) A holder of a licence granted under section 16 who is not a natural person is to appoint a natural person as responsible officer for each workplace at which the holder of the licence carries on business pursuant to the licence.
- (2) If the holder of a licence fails to appoint a responsible officer for a workplace, the person responsible for the direction and management of the business of the holder of the licence at that workplace is taken to have been appointed as the responsible officer for that workplace.
- (3) A holder of a licence is to ensure that a responsible officer appointed under subsection (1) has sufficient authority to

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perform the duties of a responsible officer under this Act.

(4) A holder of a licence must –

- (a) notify the responsible officer in writing of his or her appointment as responsible officer; and
- (b) notify the Secretary in writing of the appointment of the responsible officer; and
- (c) give notice of that appointment as far as reasonably practicable to all persons employed or engaged at the workplace.

Penalty: Fine not exceeding 20 penalty units.

16B. Duties of responsible officer

(1) In this section –

responsibilities includes the duties imposed on the holder of a licence under the Act and any conditions or restrictions specified in the licence.

(2) A responsible officer must perform the responsibilities of the holder of the licence at the workplace for which he or she is the responsible officer.

Penalty: Fine not exceeding 20 penalty units.

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Part 2 – Poisons Act 1971 Amended

- (3) A responsible officer is not to be taken to have failed to perform any responsibility of the holder of the licence, if –
- (a) it was not reasonably practicable for the responsible officer to perform that responsibility; or
 - (b) the failure to perform the responsibility was due to causes over which the responsible officer had no control and against the happening of which it was not reasonably practicable for the responsible officer to make provision; or
 - (c) the responsible officer exercised due diligence to prevent the failure to perform the responsibility; or
 - (d) the responsible officer was unaware that he or she had been appointed, or was taken to have been appointed, as the responsible officer.
- (4) Nothing in subsection (2) relieves the holder of the licence of the requirement to perform the holder's responsibilities under this Act.
- (5) A responsible officer may be proceeded against and convicted of having failed to perform the responsibilities of the holder of the licence under this Act whether or

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not the employer has been proceeded against or has been convicted of having failed to perform the responsibility.

16C. Obstruction of responsible officer

A person having authority or control over the responsible officer at a workplace must not exercise that authority or control in any way to obstruct the responsible officer in the exercise of his or her responsibilities under this Act.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 20 penalty units; and
- (b) a natural person, a fine not exceeding 20 penalty units.

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

Section 36 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “A” and substituting “Subject to subsection (2A), a”;
- (b) by inserting the following subsection after subsection (2):

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Part 2 – Poisons Act 1971 Amended

(2A) A person may have in his or her possession a substance to which this section applies if –

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

11. Section 45 amended (Restriction of importation)

Section 45 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “A person shall” and substituting “Subject to subsection (4), a person must”;
- (b) by inserting the following subsection after subsection (3):
 - (4) A person may bring into the State a raw narcotic or narcotic substance if –
 - (a) the raw narcotic or narcotic substance was

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lawfully prescribed and dispensed to the person in another State or a Territory for the use of the person or a member of his or her immediate family; and

- (b) the person brought the substance into this State with them, either on their person or in their luggage.

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

Section 48 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “, a person shall” and substituting “and subsection (2A), a person must”;
- (b) by inserting the following subsection after subsection (2):

(2A) A person may have in his or her possession a raw narcotic or narcotic substance if –

- (a) the raw narcotic or narcotic substance was lawfully prescribed and dispensed to the person in another State or a

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Part 2 – Poisons Act 1971 Amended

Territory for the use of
the person or a member of
his or her immediate
family; and

- (b) the person brought the
raw narcotic or narcotic
substance into this State
with them, either on their
person or in their luggage.

13. Section 94 inserted

After section 93 of the Principal Act, the
following section is inserted in Division 3:

94. Savings and transitional provisions

Schedule 3 has effect in respect of
savings and transitional provisions
consequent on the enactment of the
Poisons Amendment Act 2012.

14. Schedule 3 inserted

After Schedule 2 to the Principal Act, the
following Schedule is inserted:

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Part 2 – Poisons Act 1971 Amended

s. 14

**SCHEDULE 3 – SAVINGS AND TRANSITIONAL
PROVISIONS CONSEQUENT ON THE *POISONS
AMENDMENT ACT 2012***

Section 94

1. Duration of licences

A licence that was in force on the day on which the *Poisons Amendment Act 2012* commenced remains in force until 31 March next following that day.

2. Appointment of responsible officer

Notwithstanding section 16A, a licence holder, other than a natural person, that was holding a licence that was in force on the day on which the *Poisons Amendment Act 2012* commenced is not required to appoint a responsible officer until the licence is next renewed.

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s. 15

Part 3 – Corrections Act 1997 Amended

PART 3 – CORRECTIONS ACT 1997 AMENDED

15. Principal Act

In this Part, the *Corrections Act 1997** is referred to as the Principal Act.

16. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by inserting after the definition of *parole order* the following definition:

Poisons List has the same meaning as in the
Poisons Act 1971;

17. Section 28 amended (Random testing and searching of prisoners and detainees)

Section 28(1)(d) of the Principal Act is amended by omitting “set out in Schedule 1 to the *Poisons List Order 1984*”.

*No. 51 of 1997

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Act No. of

Part 4 – Guardianship and Administration Regulations 2007 Amended

s. 18

**PART 4 – GUARDIANSHIP AND ADMINISTRATION
REGULATIONS 2007 AMENDED**

18. Principal Regulations

In this Part, the *Guardianship and Administration Regulations 2007** are referred to as the Principal Regulations.

19. Regulation 3 amended (Interpretation)

Regulation 3 of the Principal Regulations is amended by omitting the definition of *Poisons List* and substituting the following definition:

Poisons List has the same meaning as in the *Poisons Act 1971*;

*S.R. 2007, No. 91

s. 20

PART 5 – HEALTH PROFESSIONALS (SPECIAL EVENTS EXEMPTION) ACT 1998 AMENDED

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Part 6 – Misuse of Drugs Act 2001 Amended

s. 22

PART 6 – MISUSE OF DRUGS ACT 2001 AMENDED

22. Principal Act

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

23. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting after the definition of *place* the following definition:

Poisons List has the same meaning as in the *Poisons Act 1971*;

24. Schedule 1 amended (Controlled Substances and Trafficable Quantities)

Schedule 1 to the Principal Act is amended by omitting paragraph (a) from clause 1 of Part 1.

*No. 94 of 2001

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s. 25

Part 7 – Poisons Regulations 2008 Amended

PART 7 – POISONS REGULATIONS 2008 AMENDED

25. Principal Regulations

In this Part, the *Poisons Regulations 2008** are referred to as the Principal Regulations.

26. Regulation 3 amended (Interpretation)

Regulation 3(1) of the Principal Regulations is amended as follows:

- (a) by omitting “Act;” from the definition of *specified psychotropic substance* and substituting “Act.”;
- (b) by omitting the definition of *Uniform Standard*.

27. Regulation 5 amended (Manufacturing chemists and wholesale chemists)

Regulation 5 of the Principal Regulations is amended by omitting subregulations (2) and (3).

28. Schedule 1 amended (Forms)

Schedule 1 to the Principal Regulations is amended by omitting Forms 1 and 2.

*S.R. 2008, No. 162

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Act No. of

Part 8 – Police Service Act 2003 Amended

s. 29

PART 8 – POLICE SERVICE ACT 2003 AMENDED

29. Principal Act

In this Part, the *Police Service Act 2003** is referred to as the Principal Act.

30. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting paragraphs (a) and (b) from the definition of *drug* and substituting the following paragraph:
 - (a) a substance included in Schedule 2, 3, 4, 8 or 9 to the Poisons List; and
- (b) by inserting the following definition after the definition of *non-commissioned police officer*:

Poisons List has the same meaning as in the *Poisons Act 1971*;

*No. 75 of 2003

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s. 31

Part 9 – Legislation revoked

PART 9 – LEGISLATION REVOKED

31. Legislation revoked

The legislation specified in Schedule 1 is
revoked.

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Part 10 – Repeal of Act

s. 32

PART 10 – REPEAL OF ACT

32. Repeal of Act

This Act is repealed 12 months after the day on which it commences.

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SCHEDULE 1 – LEGISLATION REVOKED

Section 31

Prohibited Plant Order 1977 (No. 34 of 1977)

Poisons (Prohibited Substances) Order 1990 (No. 54 of 1990)

Poisons (Prohibited Substances) Amendment Order 1992 (No. 35 of 1992)

Poisons (Prohibited Substances) Amendment Order 1995 (No. 2 of 1995)

Poisons (Prohibited Substances) Amendment Order 1996 (No. 13 of 1996)

Poisons (Prohibited Substances) Amendment Order (No. 2) 1996 (No. 164 of 1996)

Poisons (Prohibited Substances) Amendment Order 1997 (No. 126 of 1997)

Poisons (Prohibited Substances) Amendment Order (No. 2) 1997 (No. 162 of 1997)

Poisons (Prohibited Substances) Amendment Order 1998 (No. 155 of 1998)

Poisons (Prohibited Substances) Amendment Order 1999 (No. 14 of 1999)

Poisons (Prohibited Substances) Amendment Order (No. 2) 1999 (No. 67 of 1999)

Poisons (Prohibited Substances) Amendment Order 2000 (No. 10 of 2000)

Poisons List Order 2001 (No. 102 of 2001)

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Poisons (Prohibited Substances) Amendment Order 2002 (No. 48 of 2002)

Poisons List Amendment Order (No. 3) 2002 (No. 98 of 2002)

Poisons (Prohibited Substances) Amendment Order 2004 (No. 155 of 2004)

Poisons (Prohibited Substances) Amendment Order 2005 (No. 119 of 2005)

Poisons (Prohibited Substances) Amendment Order 2006 (No. 67 of 2006)

Poisons (Prohibited Substances) Amendment Order (No. 2) 2006 (No. 80 of 2006)

Poisons List Amendment Order (No. 2) 2007 (No. 86 of 2007)

Poisons List Amendment Order (No. 3) 2007 (No. 140 of 2007)

Poisons List Amendment Order 2008 (No. 41 of 2008)

Poisons (Prohibited Substances) Amendment Order 2008 (No. 42 of 2008)

Poisons List Amendment Order (No. 2) 2008 (No. 103 of 2008)

Poisons List Amendment Order (No. 3) 2008 (No. 177 of 2008)

Poisons List Amendment Order 2009 (No. 28 of 2009)

Poisons List Amendment Order (No. 2) 2009 (No. 100 of 2009)

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Poisons List Amendment Order (No. 3) 2009 (No. 105 of 2009)

Poisons List Amendment Order (No. 4) 2009 (No. 201 of 2009)

Poisons List Amendment Order 2010 (No. 28 of 2010)

Poisons List Amendment Order (No. 2) 2010 (No. 101 of 2010)

Poisons (Prohibited Substances) Amendment Order 2010 (No. 121 of 2010)

Poisons List Amendment Order (No. 3) 2010 (No. 159 of 2010)

Poisons List Amendment Order 2011 (No. 45 of 2011)

Poisons (Prohibited Substances) Amendment Order 2011 (No. 70 of 2011)

Poisons List Amendment Order (No. 2) 2011 (No. 90 of 2011)

Poisons List Amendment Order (No. 3) 2011 (No. 141 of 2011)