TASMANIA

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POISONS AMENDMENT BILL 2021

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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*
12 October 2021

(Brought in by the Minister for Health, the Honourable Jeremy Page Rockliff)

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 Amendment Act 2021*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Principal Act

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

*No. 81 of 1971

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

(a) by inserting the following definition after the definition of *drug-seeking behaviour*:

emergency order means an order made and in force under section 38J;

(b) by inserting the following definitions after the definition of *midwifery restricted substance*:

monitored medicines means –

(a) narcotic substances; and

(b) substances that are prescribed to be monitored medicines; and

(c) substances that are in a class of substances that are prescribed to be monitored medicines;

monitored medicines database means the electronic database established and maintained under section 38B;

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

Section 36 of the Principal Act is amended by inserting after subsection (2AA) the following subsection:

(2AB) A person is not guilty of an offence against subsection (1) if –

(a) the possession by the person of the substance to which this section applies is authorised under an emergency order; and

(b) that person is acting in accordance with the emergency order.

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

Section 38(1) of the Principal Act is amended by inserting after paragraph (ba) the following paragraph:

(bb) the sale or supply of a restricted substance by a person who is authorised under, and acting in accordance with, an emergency order;

7. Part III, Divisions 4 and 5 inserted

After section 38 of the Principal Act, the following Divisions are inserted in Part III:

Division 4 – Monitored medicines database

38A. Interpretation

In this Division –

data source entity means a person or a class of persons, or an entity or a class of entities, approved to be a data source entity under section 38F;

dispenser means –

(a) a pharmaceutical chemist; and

(b) a person who is prescribed as a dispenser for the purposes of this definition;

entity means –

(a) an incorporated or unincorporated body; or

(b) the trustee of a trust; or

(c) the Commonwealth, another State or a Territory in respect of which the Secretary has entered into an agreement or memorandum of understanding under section 38C(2); or

(d) a person or a body in another Australian jurisdiction in respect of whom the Secretary has entered into an agreement or memorandum of understanding under section 38C(2); or

(e) a person or body that is prescribed as an entity for the purposes of this definition;

information includes records;

prescriber means –

(a) a medical practitioner; or

(b) a dentist; or

(c) a person who is prescribed as a prescriber for the purposes of this definition;

registered health practitioner means a registered health practitioner within the meaning of the Health Practitioner Regulation National Law (Tasmania).

38B. Secretary to establish and maintain monitored medicines database

(1) The Secretary is to establish and maintain an electronic database (the ***monitored medicines database***) to monitor and record –

(a) information relating to the issuing of prescriptions for monitored medicines; and

(b) information relating to the dispensing of monitored medicines on and in accordance with a prescription; and

(c) information relating to the sale and supply of monitored medicines, otherwise than on and in accordance with a prescription, by a person who is authorised by or under this Act to sell or supply monitored medicines; and

(d) information obtained for the purposes of, or in connection with, the administration or enforcement of this Act; and

(e) any other prescribed information.

(2) The purposes of the monitored medicines database are –

(a) to promote safe and effective practices for the issuing of

prescriptions for monitored medicines; and

(b) to promote safe and effective practices for the dispensing of monitored medicines on and in accordance with a prescription; and

(c) to promote safe and effective practices for the sale and supply of monitored medicines, otherwise than on and in accordance with a prescription, by a person who is authorised by or under this Act to sell and supply monitored medicines; and

(d) to minimise the harm associated with monitored medicines and other high-risk substances; and

(e) to promote and protect public health and safety associated with the use of monitored medicines and other high-risk substances; and

(f) to facilitate the evaluation of, and research into, monitored medicines; and

(g) to facilitate the administration and enforcement of this Act; and

(h) any other prescribed purpose.

38C. Powers of Secretary in relation to monitored medicines database

(1) For the purposes of establishing and maintaining the monitored medicines database and furthering the purposes of the monitored medicines database, the Secretary may –

(a) authorise, in writing and with or without any conditions, as the Secretary considers necessary, a person or an entity to collect, access, store and otherwise deal with information, provided to the monitored medicines database, for the purpose of operating the database; and

(b) collect, access, store and otherwise deal with information, required for the monitored medicines database or permitted to be collected, accessed, stored or otherwise dealt with by or under this Act or the regulations; and

(c) authorise, in writing and with or without any conditions, as the Secretary considers necessary, a data source entity to provide information to the monitored medicines database in the prescribed manner and in the prescribed form; and

(d) require, in writing and with or without any conditions, as the Secretary considers necessary, a person or a class of persons to provide information to the monitored medicines database in the prescribed manner and in the prescribed form; and

(e) authorise, in writing and with or without any conditions, as the Secretary considers necessary, the manner, and the form, in which information in relation to the issue of prescriptions for the sale or supply of monitored medicines, the dispensing of any such prescription, and the sale or supply of any such monitored medicines thereunder, are to be provided to the monitored medicines database; and

(f) authorise, in writing and with or without any conditions, as the Secretary considers necessary, the manner, and the form, in which information in relation to the sale or supply of monitored medicines otherwise than on and in accordance with a prescription is to be provided to the monitored medicines database by a person who is authorised to do so by or under this Act; and

(g) collect, access, store and otherwise deal with information in the monitored medicines database for the purpose of ascertaining whether there is or has been a contravention of, or a failure to comply with, this Act; and

(h) collect, access, store and otherwise deal with information in the monitored medicines database for purposes of, or in connection with, the administration or enforcement of this Act; and

(i) collect, access, store and otherwise deal with information in the monitored medicines database including, but not limited to, the following:

(i) disclosing information in the monitored medicines database to the Commonwealth, another State or a Territory;

(ii) receiving or collecting information for the monitored medicines database from the Commonwealth, another State or a Territory or from an entity in any

other Australian jurisdiction;

(iii) authorising, in writing, an entity to use and disclose information in the monitored medicines database;

(iv) using or disclosing information in the monitored medicines database in accordance with this Act or the regulations; and

(j) do any other thing or exercise any other power reasonably necessary –

(i) to implement, maintain, administer, develop, operate or oversee the monitored medicines database; and

(ii) to further the purposes of the monitored medicines database.

(2) Without limiting subsection (1) or any other power of the Secretary, the Secretary may enter into an agreement or a memorandum of understanding with the Commonwealth, another State or a Territory, and any person or body in another Australian jurisdiction, in

relation to the provision of information to or from the monitored medicines database by or to that other jurisdiction.

38D. Information provided to, and collected and stored in, monitored medicines database

(1) The regulations may prescribe the information that must be, or that may be, provided to, or collected and stored in, the monitored medicines database.

(2) Without limiting subsection (1), the information prescribed in the regulations may include –

(a) personal information within the meaning of the *Right to Information Act 2009*; and

(b) information obtained under a law of another jurisdiction for a purpose specified in section 38B(2).

38E. Access, use and disclosure of information in monitored medicines database

(1) A prescriber may access, use and disclose information in the monitored medicines database –

(a) for the purpose of providing information to the monitored medicines database in accordance

with this Act or the regulations; and

(b) in relation to a person to whom monitored medicines may be supplied, prescribed or administered; and

(c) in respect of a person in relation to the medical treatment or care of that person; and

(d) for the purpose of disclosing information in the monitored medicines database to a registered health practitioner involved in the care of a person whose information is maintained in the database; and

(e) for any other prescribed purpose.

(2) A dispenser may access, use and disclose information in the monitored medicines database –

(a) for the purpose of providing information to the monitored medicines database in accordance with this Act or the regulations; and

(b) in relation to a person to whom monitored medicines may be supplied, prescribed or administered; and

(c) in respect of a person in relation to the medical treatment or care of that person; and

(d) for the purpose of disclosing information in the monitored medicines database to a registered health practitioner involved in the care of a person whose information is maintained in the database; and

(e) for any other prescribed purpose.

(3) The Secretary may authorise a person, a class of persons, an entity or a class of entities to access, use and disclose information in the monitored medicines database for the purposes specified in the authorisation, in relation to the person, class of persons, entity or class of entities, if the Secretary is satisfied that the access, use and disclosure –

(a) would assist in achieving the purposes of –

(i) promoting safe prescribing and dispensing practices in respect of monitored medicines; and

(ii) reducing harm associated with monitored medicines; or

(b) would assist in achieving the purposes of the monitored medicines database; or

(c) is for technical or administrative purposes relating to the maintenance of the monitored medicines database; or

(d) is to facilitate evaluation of and research into monitored medicines and the operation of the monitored medicines database.

(4) An authorisation under subsection (3) must –

(a) be in writing; and

(b) in the case of an authorisation for a class of persons, or a class of entities, be published in the *Gazette*.

(5) Any person or entity who is authorised by the Secretary under subsection (3), or who belongs to a class of persons or a class of entities that is authorised by the Secretary under subsection (3), may access, use and disclose information in the monitored medicines database for the purposes specified in that authorisation.

38F. Data source entity

The Secretary may approve, in writing and with or without any conditions, as the Secretary considers necessary, a person or a class of persons, or an entity or a class of entities, to be a data source entity for the purposes of the monitored medicines database.

38G. Prescribers to check monitored medicines database before issuing prescription for monitored medicine

Before a prescriber issues a prescription for the supply of a monitored medicine to a person, the prescriber must take all reasonable steps to check the monitored medicines database for information in relation to the person.

Penalty: Fine not exceeding 10 penalty units.

38H. Dispensers to check monitored medicines database before dispensing monitored medicine

Before a dispenser dispenses a monitored medicine on and in accordance with a prescription to a person, the dispenser must take all reasonable steps to check the monitored medicines database for information in relation to the person.

Penalty: Fine not exceeding 10 penalty units.

38I. Offences relating to unauthorised access or use of monitored medicines database

(1) A person who is not authorised by or under this Act, the regulations or any other law to access, use or disclose information in the monitored medicines database must not knowingly access, use or disclose information in the database.

Penalty: Fine not exceeding 10 penalty units.

(2) A person who is authorised by or under this Act, the regulations or any other law to access, use or disclose information in the monitored medicines database must not access, use or disclose information in the database unless the person is acting in accordance with the authorisation conferred on that person.

Penalty: Fine not exceeding 10 penalty units.

Division 5 – Emergency orders

38J. Authorisation under emergency order

(1) A person may possess, sell or supply a scheduled substance without a prescription if the person is authorised to do so under an emergency order.

(2) If an event referred to in subsection (4) occurs, the Secretary may make an order (an ***emergency order***) authorising a person to possess, sell or supply a scheduled substance without a prescription.

(3) An emergency order must include the following information:

(a) the person, or the class of persons, to whom the emergency order applies;

(b) the scheduled substance, or the class of scheduled substances, to which the emergency order applies;

(c) the event, referred to in subsection (4), that has occurred;

(d) a description of the area to which the emergency order applies;

(e) the day on which the emergency order starts;

(f) the day, no later than 3 months after the day on which the emergency order starts, on which the emergency order ends;

(g) the circumstances in which the person, or the class of persons, may possess, sell or supply the

scheduled substance to which the emergency order applies;

(h) the conditions, if any, applying to the possession, sale or supply of the scheduled substance to which the emergency order applies.

(4) The Secretary may make an emergency order if any of the following events occurs:

(a) the declaration of a public health emergency in accordance with section 14 of the *Public Health Act 1997*;

(b) the authorisation of emergency powers in accordance with section 40 of the *Emergency Management Act 2006*;

(c) the declaration of a state of alert in accordance with section 41A of the *Emergency Management Act 2006*;

(d) the declaration of a state of emergency in accordance with section 42 of the *Emergency Management Act 2006*;

(e) any other event that is prescribed in the regulations.

(5) An emergency order is to be issued in a manner that the Secretary considers

necessary, having regard to the intended application and scope of the order.

38K. Publication of emergency order

(1) The Secretary must publish an emergency order in the *Gazette* as soon as practicable after it is made.

(2) An emergency order is not invalid only because of a failure of the Secretary to comply with subsection (1).

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

Section 47 of the Principal Act is amended by inserting after subsection (10) the following subsection:

(11) Nothing in this section prohibits a person from selling or supplying a substance to which this section applies if the person is authorised to do so under an emergency order and the person is acting in accordance with the emergency order.

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

Section 48 of the Principal Act is amended by inserting after subsection (2C) the following subsection:

(2D) A person is not guilty of an offence against subsection (1) if –

(a) the possession by the person of the raw narcotic or narcotic substance is authorised under an emergency order; and

(b) that person is acting in accordance with the emergency order.

10. Section 92C inserted

After section 92B of the Principal Act, the following section is inserted in Division 3:

92C. Disclosure of protected information

(1) In this section –

informed person means –

(a) a person who has, in connection with the administration or the execution of this Act, obtained protected information; or

(b) a person who has, in the course of or as a result of performing a function or exercising a power under this Act, obtained protected information; or

(c) the Secretary of the department responsible for the administration of this Act who has obtained protected information in the course of that administration;

law enforcement agency means –

(a) a police force or police service of –

(i) the Commonwealth; or

(ii) this State; or

(iii) any other State or a Territory of the Commonwealth; or

(iv) any country; or

(b) the Australian Crime Commission; or

(c) a person, entity or commission established or appointed, under any Act of this State, of any other State or of a Territory of the Commonwealth, to investigate matters

relating to scheduled substances; or

(d) the Attorney-General; or

(e) the Solicitor-General appointed and holding office under the *Solicitor-General Act 1983*; or

(f) the Director of Public Prosecutions appointed and holding office under the *Director of Public Prosecutions Act 1973*;

protected information means any information, or opinion, in any format –

(a) that is information, or an opinion, relating to a natural person, from which the identity of the natural person is apparent or is reasonably ascertainable; or

(b) that is information, or an opinion, that is commercial in nature and would reveal proprietary business, competitive or trade secret information of a significant value if disclosed.

(2) An informed person must not disclose any protected information to another person unless the disclosure is authorised under subsection (3).

Penalty: Fine not exceeding 50 penalty units.

(3) An informed person is authorised to disclose protected information to another person if the disclosure –

(a) is for the purposes of legal proceedings arising out of this Act; or

(b) is for the purposes of ensuring compliance with, and enforcing, this Act; or

(c) is for the purposes of, or is made in connection with, the performance of functions or the exercise of powers under this Act or any other Act; or

(d) is made in connection with the administration or enforcement of this Act; or

(e) is for a purpose authorised, or is required, by this Act or any other Act; or

(f) is made to a law enforcement agency for the purposes of preventing, detecting,

investigating or prosecuting an offence in relation to a scheduled substance; or

(g) is made to the Australian Health Practitioner Regulation Agency established by section 23 of the Health Practitioner Regulation National Law (Tasmania); or

(h) is made to a National Board within the meaning of the Health Practitioner Regulation National Law (Tasmania); or

(i) is made to the Australian Pesticides and Veterinary Medicines Authority for the purposes of enabling it to perform its functions under the *Agricultural and Veterinary Chemicals Act 1994* of the Commonwealth or the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth; or

(j) is made to the Secretary under the *Therapeutic Goods Act 1989* of the Commonwealth for the purposes of enabling the Secretary to perform the Secretary's functions under that Act or under the *Therapeutic Goods Act 2001*; or

(k) is made to a person administering or enforcing a law of the Commonwealth or of another State or a Territory that corresponds to this Act; or

(l) is made to an entity of the Commonwealth, of another State, or of a Territory, that performs functions in relation to the management of health and safety risks in public places or workplaces; or

(m) is made to an entity of the Commonwealth, of another State, or of a Territory, that performs functions in relation to the importation or exportation of goods or substances into or from Australia; or

(n) is made to a regulatory authority in a foreign country for the purpose of enabling it to perform its functions in relation to the importation or exportation of scheduled substances into or from Australia; or

(o) is made to a person, or to a class of persons, prescribed for the purposes of this paragraph.

(4) An informed person is not guilty of an offence against this section if –

(a) the protected information that the informed person disclosed was publicly available at the time when the disclosure was made; or

(b) the natural person to whom the protected information relates gives his or her written consent to the disclosure of the protected information by the informed person; or

(c) the owner of the business, or the occupier of the premises, gives his or her written consent to the disclosure of the protected information by the informed person; or

(d) the informed person reasonably believed that the disclosure of the protected information was necessary so as to prevent or reduce a serious threat to the life, health or safety of the person to whom the protected information relates; or

(e) the informed person reasonably believed that the disclosure of the protected information was necessary so as to prevent or reduce a serious threat to public health or public safety; or

(f) the disclosure of the protected information was made for or in connection with the reporting or lawful investigation of a crime or unlawful act (whether actual or prospective).

11. Section 93 amended (Regulations)

Section 93 of the Principal Act is amended by inserting after subsection (2) the following subsection:

(2A) The regulations made under this section or under any other provision of this Act may –

(a) authorise any matter to be determined, applied or regulated by the Secretary or the Director of Public Health appointed under section 6 of the *Public Health Act 1997*; and

(b) confer a power or impose a duty on the Secretary or the Director of Public Health appointed under section 6 of the *Public Health Act 1997*.

12. Repeal of Act

This Act is repealed on the first anniversary of the day on which the last uncommenced provision of this Act commenced.