

TASMANIA

POISONS AMENDMENT BILL 2019

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POISONS AMENDMENT BILL 2019

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*
29 October 2019

(Brought in by the Minister for Health, the Honourable Sarah Jane Courtney)

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 2019*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Principal Act

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

*No. 81 of 1971

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4. Section 83A amended (Possession of pipe, &c.)

Section 83A(1) of the Principal Act is amended by omitting “20 penalty units” and substituting “50 penalty units”.

5. Part VI, Division 2B inserted

After section 86B of the Principal Act, the following Division is inserted in Part VI:

Division 2B – Ice pipes

86C. Interpretation

In this Division –

controlled drug has the same meaning as in the *Misuse of Drugs Act 2001*;

device includes components that together make a device;

exempt pipe means a device, or a class of devices, that is prescribed by the regulations as being an exempt pipe for the purposes of this definition;

exempt shop means a place, structure or thing, or a class of places, structures or things, in, on or at which a business that sells goods is carried on, that is prescribed by the regulations as being an

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exempt shop for the purposes of
this definition;

ice pipe means a device that –

- (a) is capable of being used,
or is intended to be used,
for the purpose of
administering a controlled
drug into the body of a
person by the drawing or
inhaling of smoke, or
vapour or fumes, resulting
from the heating or
burning of the controlled
drug in a crystal or
powder form; or
- (b) is intended to be used as
such a device but requires
adjustment, modification
or addition before it is so
used; or
- (c) is of a prescribed class,
type or description;

shop means –

- (a) all, or any part of, a
building, premises or
place in or at which a
business that sells goods
is carried on; or
- (b) all, or any part of, a stall,
booth, tent, stand, trailer,

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vehicle, caravan or other temporary or permanent fixed or mobile structure or thing in, on or at which a business that sells goods is carried on; or

- (c) any other place, structure or thing in, on or at which a business that sells goods is carried on that is prescribed by the regulations as being a shop for the purposes of this definition.

86D. Application of Division

- (1) This Division does not apply to an exempt pipe.
- (2) This Division does not apply to an exempt shop.

86E. Offence to sell ice pipes

A person must not sell an ice pipe –

- (a) in a shop; or
- (b) in connection with a shop.

Penalty: Fine not exceeding 100 penalty units.

86F. Defence

- (1) In proceedings in respect of an offence against section 86E, it is a defence for the person charged to prove that the ice pipe to which the proceedings relate is designed primarily to be used for a purpose other than administering a controlled drug.
- (2) Despite subsection (1), in proceedings in respect of an offence against section 86E, evidence of a disclaimer is not, of itself, a defence.
- (3) In this section –

disclaimer, in relation to a device, means an oral or written statement made on, or in relation to, the device, at or before the time of the commission of an alleged offence against this Division in relation to the device, to the effect that the device is designed, or intended, to be used for a purpose that is not a purpose related to the administering of a controlled drug.

86G. Seizure of ice pipes, &c.

- (1) For the purpose of ascertaining whether there is or has been a failure to comply with section 86E, an inspector or a police officer may, at any reasonable time,

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without a warrant enter a shop if the inspector or the police officer believes, on reasonable grounds, that the shop is being used for or in connection with the sale of an ice pipe.

- (2) An inspector or a police officer who has entered a shop in accordance with subsection (1), may do all or any of the following:
- (a) examine any room in, or any part of, the shop and any thing kept within any such room or part;
 - (b) require the production of any thing which the inspector or the police officer believes on reasonable grounds to be an ice pipe;
 - (c) open, or require the opening of, any package or thing which the inspector or the police officer believes on reasonable grounds to be, or to contain, an ice pipe;
 - (d) inspect, check and make an inventory of any thing which the inspector or the police officer believes on reasonable grounds to be an ice pipe;
 - (e) seize any thing, being a thing in relation to which the inspector or the police officer believes, on reasonable grounds, that there is

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or has been a contravention of this Division;

- (f) detain or remove to some other place any thing so seized.
- (3) An inspector or a police officer may exercise the powers conferred on the inspector or police officer by subsections (1) and (2) with or without assistance.
- (4) A person must not –
 - (a) intentionally delay, or obstruct, an inspector or a police officer in the exercise, or the proposed exercise, of his or her powers under this section; or
 - (b) without reasonable cause, fail to produce, or conceal, any thing that he or she is required to produce under this section.

Penalty: Fine not exceeding 50 penalty units.

86H. Retention, return or destruction of seized ice pipes

- (1) If an inspector or a police officer seizes any thing in accordance with section 86G, the inspector or the police officer must take reasonable steps to return the thing to the person from whom

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it was seized, or its lawful owner, if the reason for its seizure no longer exists.

- (2) If a person is found guilty by a court of an offence against section 86E, the court may order that the ice pipe to which the offence relates –
 - (a) be forfeited to the Crown; and
 - (b) be destroyed in accordance with the order.
- (3) If a person is taken to have been convicted of an offence against section 86E in accordance with section 20 of the *Monetary Penalties Enforcement Act 2005*, the Secretary may direct, in writing, that an ice pipe, to which the offence relates and that has been seized in accordance with section 86G, be destroyed in accordance with that direction.

6. Section 92B amended (Infringement notices)

Section 92B(2) of the Principal Act is amended by omitting “The Board or an inspector may issue and serve an infringement notice on a person if the Board or inspector” and substituting “The Board, an inspector or a police officer may issue and serve an infringement notice on a person if the Board, the inspector or the police officer”.

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7. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.