

TASMANIA

POISONS AMENDMENT BILL 2009

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POISONS AMENDMENT BILL 2009

*(Brought in by the Minister for Health, the Honourable
Larissa Tahireh Giddings)*

A BILL FOR

An Act to amend the *Poisons Act 1971* and to make consequential amendments to the *Alcohol and Drug Dependency Act 1968*

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 2009*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Effect of certain consequential amendments

The amendment by this Act of a provision of any regulations made under any Act does not prevent that provision or any other provision of those

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regulations from being amended or rescinded by any subsequent regulations.

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 “drug dependency” from subsection (1) and substituting the following :

“**drug**” means a substance –

- (a) that is designed or intended for therapeutic use; or
- (b) the sole or principal use of which is, or ordinarily is, a therapeutic use or use as an ingredient or component in the preparation or manufacture of a substance for therapeutic use;

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“drug-dependent person” means a person who –

- (a) has acquired, as a result of the repeated administration of drugs of dependence, an overpowering desire for their continued administration; or
- (b) has a condition such that the cessation of the administration of a drug of dependence, or the inability to obtain such a drug, is likely to cause him or her to exhibit signs of mental or physical distress or disorder; or
- (c) exhibits drug-seeking behaviour that suggests impaired control as a result of the person’s continued use of drugs of dependence; or
- (d) consumes or uses a drug of dependence contrary to the prescribing practitioner’s instructions;

“drug of dependence” means a substance listed in Schedule 8 or Schedule 9 to the Poisons List

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and includes any substance or class of substances that the Minister declares by order to be a drug of dependence but does not include any substance or class of substances that the Minister declares by order not to be a drug of dependence;

“drug-seeking behaviour” has the meaning given by section 4;

- (b) by inserting “and Part VA” after “Part V” in the definition of “medical practitioner” in subsection (1);
- (c) by inserting the following definition after the definition of “traffic” in subsection (1):

“treatment centre” means a treatment centre within the meaning of the *Alcohol and Drug Dependency Act 1968*;

- (d) by omitting subsection (2).

6. Section 4 inserted

After section 3 of the Principal Act, the following section is inserted in Part I:

4. Meaning of drug-seeking behaviour

For the purposes of this Act, a person is taken to exhibit drug-seeking behaviour

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in respect of a drug of dependence if there is reason to believe that –

- (a) he or she is seeking to obtain a drug of dependence for the purpose of selling or supplying it to another person; or
- (b) he or she is seeking to obtain a drug of dependence for a non-medical purpose; or
- (c) as a result of the administration to him or her of the drug, he or she exhibits –
 - (i) impaired ability to manage properly the use of any such drug; or
 - (ii) behaviour which suggests such impaired ability; or
- (d) failure to obtain drugs of dependence for a non-medical purpose is likely to cause the person to exhibit signs of mental or physical distress or disorder.

7. Section 39 amended (Interpretation)

Section 39 of the Principal Act is amended by omitting the definition of “drug”.

8. Part VA inserted

After section 59 of the Principal Act, the following Part is inserted:

**PART VA – NOTIFICATION AND AUTHORISATION
IN RELATION TO CERTAIN RESTRICTED
SUBSTANCES AND NARCOTIC SUBSTANCES**

59A. Interpretation of Part

In this Part –

“**make available**” includes prescribe, supply or authorise to be supplied;

“**notifiable restricted substance**” means a restricted substance that is declared by the Minister, by order, to be a notifiable restricted substance for the purposes of this Part;

“**prescribed period**” means a period that is declared by the Minister, by order, to be the maximum period for which a narcotic substance or a specified substance may be made available for continuous use by a person without an authority issued under section 59E;

“**specified substance**” means a restricted substance that is

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declared by the Minister, by order, to be a specified substance for the purposes of this Part.

59B. Notification required in relation to certain restricted substances and narcotic substances

- (1) If a person seeks a notifiable restricted substance or a narcotic substance from a medical practitioner, dentist or authorised nurse practitioner and the medical practitioner, dentist or authorised nurse practitioner prescribes, or has previously prescribed, such a substance for a person, and has reason to believe that the person –
 - (a) has a history of drug-seeking behaviour; or
 - (b) is exhibiting drug-seeking behaviour; or
 - (c) has consumed or used, or is likely to consume or use, a notifiable restricted substance or a narcotic substance contrary to the prescribing practitioner's instructions –

the medical practitioner, dentist or authorised nurse practitioner must notify the Secretary of the relevant facts.

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Penalty: Fine not exceeding 50 penalty units.

- (2) This section does not require notice to be given –
- (a) where the Secretary has previously been notified in relation to the person by the medical practitioner, dentist or authorised nurse practitioner or by a medical practitioner or dentist in the same medical or dental practice, and an authorisation to make available under section 59E has been issued in relation to the person; or
 - (b) where the Secretary has previously been notified in relation to the person by the medical practitioner, dentist or authorised nurse practitioner or by a medical practitioner or dentist in the same medical or dental practice, and the person is not treated with a notifiable restricted substance or narcotic substance; or
 - (c) by a medical practitioner or authorised nurse practitioner on the staff of, or attending at, a treatment centre or hospital in respect of any person receiving medical treatment at that centre

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or hospital if such a notice has already been given in respect of that person by a medical practitioner or authorised nurse practitioner; or

- (d) where an application has been made, or is being made, to the Secretary by the medical practitioner or authorised nurse practitioner to place the person on a program for the treatment of drug dependency.

59C. Offence to make available drugs of dependence, &c.

- (1) A medical practitioner, dentist or authorised nurse practitioner must not, without the authority of the Secretary, make available a narcotic substance or a specified substance to any person who he or she has reason to believe is a drug-dependent person.

Penalty: Fine not exceeding 50 penalty units.

- (2) A medical practitioner, dentist or authorised nurse practitioner must not, without the authority of the Secretary, make available a narcotic substance or a specified substance to a person who he or she has reason to believe is exhibiting drug-seeking behaviour.

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Penalty: Fine not exceeding 50 penalty units.

- (3) A medical practitioner, dentist or authorised nurse practitioner must not, without the authority of the Secretary, make available a narcotic substance or a specified substance to any person for any period longer than the prescribed period.

Penalty: Fine not exceeding 50 penalty units.

- (4) A medical practitioner, dentist or authorised nurse practitioner must not, without the authority of the Secretary, make available a narcotic substance or a specified substance to any person who has a history of obtaining a notifiable restricted substance, a narcotic substance or a prohibited substance for a non-medical purpose or of unlawful possession or unlawful supply of a notifiable restricted substance, narcotic substance or prohibited substance.

Penalty: Fine not exceeding 50 penalty units.

- (5) A medical practitioner, dentist or authorised nurse practitioner must not make available a notifiable restricted substance, a specified substance or a narcotic substance to any person if the medical practitioner, dentist or authorised nurse practitioner knows or ought to

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know that the person is the subject of an authority under section 59E(1).

Penalty: Fine not exceeding 50 penalty units.

- (6) Subsection (5) does not apply to a medical practitioner, dentist or authorised nurse practitioner authorised under section 59E(1) or to another medical practitioner or dentist in the same medical practice or dental practice as the person so authorised.

59D. Exception for emergency treatment, hospitals and treatment centres

Nothing in section 59C prevents the making of a notifiable restricted substance, narcotic substance or specified substance available for the use of a person –

- (a) receiving emergency medical treatment as an initial response to a trauma or acute condition; or
- (b) receiving medical treatment as an inpatient at a hospital or treatment centre, if those substances are so made available by, or with the authority of, a medical practitioner or an authorised nurse practitioner acting in the course of his or her

duties at that hospital or treatment centre.

59E. Authority for making drugs available to certain patients

- (1) The Secretary may, on an application made under this section in respect of any person (in this section referred to as “the patient”), authorise a medical practitioner, dentist or authorised nurse practitioner to make available a narcotic substance or a specified substance for the use of that person.
- (2) An application under this section is to be in writing in a form approved by the Secretary and signed by the medical practitioner, dentist or authorised nurse practitioner by whom it is made.
- (3) An application is to –
 - (a) specify the patient in respect of whom it is made; and
 - (b) state whether, in the opinion of the medical practitioner, dentist or authorised nurse practitioner the patient –
 - (i) is a drug-dependent person; or
 - (ii) is exhibiting drug-seeking behaviour; or

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- (iii) has a history of obtaining a notifiable restricted substance, a narcotic substance or a prohibited substance for a non-medical purpose, or of unlawful possession or unlawful supply of a notifiable restricted substance, narcotic substance or prohibited substance; and
 - (c) contain such other information relating to the medical history and treatment of the patient as the Secretary requires.
- (4) An authority given under this section in respect of a patient is to specify –
 - (a) the name of the narcotic substance or specified substance; and
 - (b) the amount of the substance to be made available; and
 - (c) the period during which the authority is to be in force; and
 - (d) any other substances which must not be made available in conjunction with the narcotic substance or specified substance; and

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- (e) the conditions under which, or the circumstances in which, the substance may be made available.
- (5) An authority given under this section is to be in writing signed by the Secretary but, in a case of emergency, may be given orally.
- (6) An authority given orally is to be confirmed in writing as soon as practicable after it is given.
- (7) An authority given under subsection (1) also authorises a medical practitioner or dentist, who is in the same medical practice or dental practice as the person authorised, to make the substances available for the use of the patient in accordance with the terms of the authority.

59F. Protection from liability for information

A medical practitioner, dentist or authorised nurse practitioner who notifies the Secretary under section 59B(1) or makes an application to the Secretary under section 59E –

- (a) cannot, by virtue of doing so, be held to have breached any code of professional etiquette or ethics, or to have departed from any

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accepted form of professional conduct; and

- (b) insofar as he or she has acted in good faith, incurs no civil or criminal liability in respect of –
 - (i) so notifying or applying to the Secretary; or
 - (ii) the provision of further information.

9. Part VI, Division 2A inserted

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

Division 2A – Transitional provision

86A. Transitional provision

- (1) A notification made under section 18 of the *Alcohol and Drug Dependency Act 1968* and in force immediately before the commencement of the *Poisons Amendment Act 2009* is taken to be a notification made under section 59B of this Act.
- (2) An authority given under section 22 of the *Alcohol and Drug Dependency Act 1968* and in force immediately before the commencement of the *Poisons Amendment Act 2009* is taken to be an

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authority given under section 59E of this Act.

- (3) An application for an authority made under section 22 of the *Alcohol and Drug Dependency Act 1968* and not finalised before the commencement of the *Poisons Amendment Act 2009* is taken to have been made under section 59E of this Act immediately after that commencement.

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Part 3 – Alcohol and Drug Dependency Act 1968 Amended

**PART 3 – ALCOHOL AND DRUG DEPENDENCY ACT
1968 AMENDED**

10. Principal Act

In this Part, the *Alcohol and Drug Dependency Act 1968** is referred to as the Principal Act.

11. Part III repealed

Part III of the Principal Act is repealed.

*No. 61 of 1968

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Part 4 – Alcohol and Drug Dependency Regulations 1999 Amended

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**PART 4 – ALCOHOL AND DRUG DEPENDENCY
REGULATIONS 1999 AMENDED**

12. Principal Regulations

In this Part, the *Alcohol and Drug Dependency Regulations 1999** are referred to as the Principal Regulations.

13. Part 2 rescinded

Part 2 of the Principal Regulations is rescinded.

14. Schedule 1 amended (Forms)

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

*S.R. 1999, No. 178

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Part 5 – Poisons Regulations 2008 Amended

PART 5 – POISONS REGULATIONS 2008 AMENDED

15. Principal Regulations

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

16. Regulation 19 amended (Prescription for certain narcotic substances to be issued only on authority of Secretary)

Regulation 19 of the Principal Regulations is amended by omitting subregulations (2), (3), (4), (5), (6) and (7).

*S.R. 2008, No. 162