

# TASMANIA

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## MISUSE OF DRUGS AMENDMENT BILL 2005

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# **MISUSE OF DRUGS AMENDMENT BILL 2005**

*(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:

### **PART 1 – PRELIMINARY**

#### **1. Short title**

This Act may be cited as the *Misuse of Drugs Amendment Act 2005*.

#### **2. Commencement**

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

**PART 2 – MISUSE OF DRUGS ACT 2001 AMENDED****3. Principal Act**

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

**4. Section 3 amended (Interpretation)**

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

- (a) by omitting “selling it;” from paragraph (e) of the definition of “traffic” and substituting “selling; and”;
- (b) by inserting the following paragraph after paragraph (e) in the definition of “traffic”:
  - (f) import the substance into Tasmania;
- (c) by omitting the definition of “trafficable quantity”.

**5. Section 3A inserted**

After section 3 of the Principal Act, the following section is inserted in Part 1:

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\*No. 94 of 2001

**3A. Meaning of “trafficable quantity” and determining “aggregated trafficable quantity”**

(1) In this Act –

**“trafficable quantity”**, of a controlled substance, means –

- (a) in the case of a controlled drug that is not mixed with or contained in any other substance, a quantity of the controlled drug that is not less than the quantity specified in column 3 of the table in Part 2 of Schedule 1 in relation to the controlled drug; and
- (b) in the case of a controlled drug that is mixed with or contained in another substance where the combined quantity of the substances is not less than the quantity specified in column 3 of the table in Part 2 of Schedule 1 in relation to the controlled drug, any quantity; and
- (c) in the case of a controlled plant, a quantity of the controlled plant that is not less than the quantity specified in column 3 of the table in Part 3 of Schedule 1 in relation to the controlled plant; and
- (d) in the case of a controlled precursor, a quantity of the controlled precursor that is not less than the quantity specified in

column 3 of the table in Part 4 of Schedule 1 in relation to the controlled precursor; and

- (e) in the case of 2 or more controlled substances together, an aggregated trafficable quantity of the controlled substances.
- (2) To determine, for the purpose of this Act, whether a quantity of 2 or more controlled substances together constitutes an aggregated trafficable quantity –
- (a) the quantity of each of the controlled substances is to be calculated as a fraction of the trafficable quantity of that controlled substance; and
  - (b) the fractions calculated under paragraph (a) are to be added together; and
  - (c) the quantity is to be taken to constitute an aggregated trafficable quantity if the total of those fractions so added together is equal to or greater than the number “1”.

**6. Section 12 amended (Trafficking in controlled substance)**

Section 12(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (d) “substance –” and substituting “substance; or”;
- (b) by inserting the following paragraph after paragraph (d):
  - (e) imported a trafficable quantity of a controlled substance into Tasmania –

#### **7. Section 27A inserted**

Before section 28 of the Principal Act, the following section is inserted in Division 5:

#### **27A. Unlawful importation of controlled substance**

A person must not import a controlled substance into Tasmania unless the person is authorised to do so by or under another law of the State.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years.

#### **8. Section 29 amended (Power to seize controlled substances, &c.)**

Section 29 of the Principal Act is amended as follows:

- (a) by omitting “a public” from paragraph (a) of the definition of “prescribed

- belief” in subsection (1) and substituting “any”;
- (b) by omitting “a public” from paragraph (b) of the definition of “prescribed belief” in subsection (1) and substituting “any”;
  - (c) by omitting “a public” from paragraph (c) of the definition of “prescribed belief” in subsection (1) and substituting “any”;
  - (d) by inserting the following subsection after subsection (2):
    - (2A) However, subsection (2) does not apply to private premises unless the police officer forms the prescribed belief only after having lawfully entered the premises.

**9. Section 30 amended (Power to conduct personal searches)**

Section 30(2) of the Principal Act is amended by omitting “section 29” and substituting “section 29 or 33”.

**10. Section 36A amended (Alternative convictions)**

Section 36A(3) of the Principal Act is amended by omitting “section 24” and substituting “section 24, 25 or 27A”.



**11. Part 4, Division 3: Heading amended**

Division 3 of Part 4 of the Principal Act is amended by omitting “*Forfeiture*” from the heading to that Division and substituting “*Forfeiture and disposal*”.

**12. Section 37 substituted**

Section 37 of the Principal Act is repealed and the following sections are substituted:

**37. Crown becomes owner of controlled substances, &c., that are seized, surrendered or found**

- (1) This section applies if a controlled substance or prescription form is –
  - (a) seized by a police officer under a search warrant or section 29; or
  - (b) voluntarily surrendered to a police officer; or
  - (c) found by a police officer.
- (2) The controlled substance or prescription form –
  - (a) becomes the property of the Crown as soon as it is seized, surrendered or found; and
  - (b) may be disposed of as the Minister directs.

**37A. Disposal, &c., of evidence that cannot be practicably or safely held**

(1) In this section –

**“evidentiary material”** means a controlled substance or hazardous chemical that –

- (a) has been seized by or otherwise come into the possession of a police officer; and
- (b) is or could be relevant to proceedings or prospective proceedings for an offence against this Act;

**“hazardous chemical”** means a chemical or other substance that –

- (a) is used or capable of being used in connection with the manufacture of a controlled substance; and
- (b) is, by reason of its combustibility, volatility, toxicity or some other quality, unsafe or potentially unsafe.

(2) This section applies if the Commissioner of Police is satisfied on reasonable grounds that it is impracticable or unsafe to hold or continue holding any evidentiary material.

- (3) The Commissioner of Police may cause the evidentiary material to be –
- (a) rendered safe or inert (if necessary by treating, repackaging or breaking up the material); or
  - (b) destroyed or otherwise disposed of.
- (4) However, before any action is taken under subsection (3), the Commissioner of Police must –
- (a) if the evidentiary material is or could be relevant to indictable proceedings or prospective indictable proceedings against this Act, consult the Director of Public Prosecutions; and
  - (b) ensure that –
    - (i) 2 or more samples are taken of the evidentiary material; and
    - (ii) each of those samples is a true representation of the nature of the evidentiary material.
- (5) The Commissioner must ensure that the samples so taken are kept securely for as long as they are reasonably likely to be required for evidentiary purposes.
- (6) The Minister may –

- (a) issue the Commissioner of Police with written guidelines regarding the administration of this section; and
  - (b) amend or rescind any such guidelines.
- (7) The Commissioner of Police must comply with the Minister's guidelines.
- (8) The Minister's guidelines are not –
  - (a) statutory rules for the purposes of the *Rules Publication Act 1953*; or
  - (b) instruments of a legislative character for the purposes of the *Subordinate Legislation Act 1992*.

**PART 3 – FORENSIC PROCEDURES ACT 2000  
AMENDED**

**13. Principal Act**

In this Part, the *Forensic Procedures Act 2000*\* is referred to as the Principal Act.

**14. Section 3 amended (Interpretation)**

Section 3(1) of the Principal Act is amended by omitting “section 20, 21 or 26 of the *Misuse of Drugs Act 2001*” from paragraph (c) of the definition of “serious offence” and substituting “section 20, 21, 26 or 27 of the *Misuse of Drugs Act 2001*”.

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\*No. 101 of 2000