

## CLAUSE NOTES

### *Poisons Amendment Bill 2021*

#### Clause 1 **Short Title**

This clause provides that, once passed, the Bill will be cited as the *Poisons Amendment Act 2021*.

#### Clause 2 **Commencement**

This clause provides for the Act to commence on a day or days to be proclaimed.

#### Clause 3 **Principal Act**

This clause identifies the *Poisons Act 1971* as the Principal Act.

#### Clause 4 **Section 3 amended (Interpretation)**

This clause inserts definitions for “emergency order”, “monitored medicines” and “monitored medicines database”. The definitions have application for the interpretation of the Principal Act, the regulations and other subordinate legislation.

An “emergency order” is an order made by the Secretary, Department of Health under section 38J.

“Monitored medicines” are the medicines that will be monitored through, and recorded in, the monitored medicines database. The definition includes all substances that are, for the time being, specified in Schedule 8 to the Poisons List. It also includes substances that are to be prescribed in regulations as medicines that are to be monitored through the monitored medicines database. These are medicines associated with high rates of misuse and death.

The “monitored medicines database” is the electronic database established by the Secretary pursuant to section 38B.

#### Clause 5 **Section 36 amended (Offences relating to certain restricted substances)**

Section 36 of the Principal Act makes it an offence for a person to possess certain restricted substances in certain circumstances.

This clause amends section 36 of the Principal Act to clarify that the possession by a person of a restricted substance in the circumstances to which section 36 of the Principal Act applies is not an offence if:

- the person is authorised under an emergency order made by the Secretary of the Department of Health under section 38J to possess the substance; and
- the person is acting in accordance with the emergency order.

**Clause 6**            **Section 38 amended (Limitation of application of certain provisions of Division I of this Part)**

Section 26 of the Principal makes it an offence for a person to sell or supply a restricted substance in certain circumstances.

Section 38 of the Principal Act limits the application of section 26.

This clause amends section 38 of the Principal Act to clarify that the supply of a restricted substance by a person who is authorised under, and is acting in accordance with, an emergency order made by the Secretary of the Department of Health under section 38J of the Principal Act is not an offence under section 26 of the Principal Act.

**Clause 7**            **Part III, Divisions 4 and 5 inserted**

This clause inserts two new Divisions in Part III of the Principal Act.

**Division 4 – Monitored Medicines Database**

**38A. Interpretation**

Section 38A introduces new definitions of “data source entity”, “dispenser”, “entity”, “information”, “prescriber” and “registered health practitioner”.

A “data source entity” is a person or a class of persons, or an entity or a class of entity, that has been approved by the Secretary of the Department of Health under section 38F as a data source entity for the purposes of the monitored medicines database.

A “dispenser” is a pharmaceutical chemist, and any other person who is prescribed by the regulations to be a dispenser.

An “entity” is an incorporated or unincorporated body, the trustee of a trust, a person, body or other government with which the Secretary of the Department of Health has entered into an agreement or memorandum of understanding under subsection 38C(2), and a person or body that is prescribed to be an entity for the purposes of the definition.

A “prescriber” is a medical practitioner, a dentist, and any other person who is prescribed in the regulations to be a dispenser.

The term “information” includes, for the purposes of new Division 4, records.

The term “registered health practitioner” has the same meaning as in the Health Practitioner Regulation National Law (Tasmania) and means an individual who is registered under the National Law to practice in a health profession, other than as a student, and an individual who holds non-practicing registration under the National Law in a health profession.

**38B. Secretary to establish and maintain monitored medicines database**

This section provides for the establishment, by the Secretary of the Department of Health, of a monitored medicines database.

Subsubsection 38B(1) confirms that the monitored medicines database may be in electronic form and identifies the categories of information to be monitored and recorded in the monitored medicines database.

Subsection 38B(2) describes the purposes of the monitored medicines database, which relate to promoting safe practices related to dealing in monitored medicines and the safe and effective use of monitored medicines.

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

Subsection 38C(1) outlines the actions the Secretary of the Department of Health may take to establish and maintain the monitored medicines database and to further the purposes of the monitored medicines database. These include:

- authorising a person or entity operate the database on the Secretary's behalf;
- collecting, accessing, storing and otherwise dealing with information that is recorded in the monitored medicines database for certain, defined purposes;
- authorising a data source entity to provide information to the monitored medicines database; and
- requiring a person or class of persons to provide information to the monitored medicines database.

The regulations will prescribe the manner and form of the information to be provided to the monitored medicines database.

Subsection 38C(2) provides for agreements or Memoranda of Understanding between the Secretary of the Department of Health and other jurisdictions in relation to the provision of information to or from the monitored medicines database by or to the jurisdiction that is a party to the agreement or memorandum.

A jurisdiction with which the Secretary enters into an agreement or Memorandum of Understanding will be an "entity" for the purposes of Division 4 and Division 5 of Part III, and may be approved as a "data source entity" by the Secretary, Department of Health pursuant to section 38F.

### **38D. Information (including records) provided to, and collected and stored on, monitored medicines database**

Section 38D provides that the information that must, or that may, be provided to, or collected or stored in, the monitored medicines database will be as prescribed in regulations.

### **38E. Access, use and disclosure of information (including records) on**

### **monitored medicines database**

Subsection 38E(1) describes the circumstances in which a prescriber may access, use and disclose information and records stored in the monitored medicines database.

Subsection 38E(2) describes the circumstances in which a dispenser may access, use and disclose information that is or that are stored on the monitored medicines database.

Pursuant to subsection 38E(3), the Secretary of the Department of Health may, in certain circumstances and for specified purposes, authorise a person, a class of persons, an entity or a class of entities to access, use and disclose information on the monitored medicines database. This includes if the access, use or disclosure would assist to promote safe prescribing and dispensing practices, or to facilitate evaluation of and research into monitored medicines and the operation of the monitored medicines database.

Pursuant to subsection 38E(5), a person or entity that is authorised by the Secretary of the Department of Health under subsection 38E(3) may access, use and disclose information that is or are stored in the monitored medicines database for the purposes specified in the authorisation.

### **38F. Data source entity**

Section 38F provides for the approval, by the Secretary of the Department of Health, of a person or class of persons, or an entity or class of entity, 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 medicines**

Section 38G makes it an offence for a prescriber to fail to take all reasonable steps to check the monitored medicines database for information in relation to a person, before issuing a prescription for the supply of monitored medicines to that person.

The penalty is a fine not exceeding 10 penalty units or \$1 730.

### **38H. Dispensers to check monitored medicines database before dispensing monitored medicines**

Section 38H makes it an offence for a dispenser to fail to take all reasonable steps to check the monitored medicines database for information in relation to a person, before dispensing monitored medicines to the person.

The penalty is a fine not exceeding 10 penalty units or \$1 730.

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

Subsection 38I(1) makes it an offence for a person, who is not authorised

or under the Principal Act, the regulations or any other law, to knowingly access, use or disclose information on the monitored medicines database.

Subsection 38I(2) makes it an offence for a person, who is authorised by or under the Principal Act, the regulations or any other law to access, use or disclose information on the monitored medicines database, to access, use or disclose information, or records, on the monitored medicines database unless the person is authorised by or under the Principal Act, the regulations or any other law to do so.

The penalty under both subsections is a fine not exceeding 10 penalty units or \$1 730.

## **Division 5 – Emergency orders**

### **38J. Authorisation under emergency order**

Subsection 38J provides for the making of emergency orders.

Subsection 38J(1) provides for the possession, sale or supply by a person of a scheduled substance without a prescription if the person is authorised to do so under an emergency order.

Subsection 38J(2) provides the Secretary of the Department of Health with the power to make an emergency order.

Subsection 38J(3) identifies the information that must be included in an emergency order.

Subsection 38J(4) identifies the circumstances in which an emergency order may be made.

Subsection 38J(5) identifies how the Secretary of the Department of Health is to issue an emergency order.

### **38K. Publication of emergency order**

Section 38K provides that emergency orders must be published in the Tasmanian Government *Gazette* as soon as practicable after they have been made.

## **Clause 8 Section 47 amended (Sale and supply of narcotic substances, prohibited plants, and prohibited substances)**

This clause amends section 47 of the Principal Act to clarify that nothing in section 47 prohibits the supply of a raw narcotic, narcotic substance, prohibited plant or prohibited substance to another person by a person who is authorised by or under the Principal Act to be in possession of and to supply that substance or plant, provided the person is authorised to do so and is acting in accordance with an emergency order.

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

This clause amends section 48 of the Principal Act to include the possession, by a person, of a raw narcotic or narcotic substance in

accordance with an authorisation conferred by an emergency order as a matter that is not prohibited by section 48(1) of the Principal Act.

**Clause 10 Section 92C inserted**

This clause inserts section 92C in Division 3 of the Principal Act.

**92C. Disclosure of protected information**

Subsection 92C(1) introduces new definitions of “informed person”, “law enforcement agency” and “protected information”.

Subsection 92C(2) makes it an offence for an informed person to disclose protected information unless the disclosure is authorised under subsection 92C(3). The penalty is a fine not exceeding 50 penalty units or \$8 650.

Subsection 92C(3) identifies when a disclosure of protected information is authorised.

Subsection 92C(4) outlines when an informed person is not guilty of an offence under subsection 92C(2).

**Clause 11 Section 93 amended (Regulations)**

This clause amends section 93 of the Principal Act by inserting subsection 93(2A), which provides for the making of regulations that authorise matters to be determined by the Secretary of the Department of Health, or by the Director of Public Health, and that confer a power or impose a duty on the Secretary or the Director.

**Clause 12 Repeal of Act**

This clause provides for the Act's repeal on the first anniversary of the day on which the last uncommenced provision of the Act commenced.