

TASMANIA

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**POISONS AMENDMENT (POPPY ADVISORY AND  
CONTROL BOARD) BILL 2008**

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**POISONS AMENDMENT (POPPY ADVISORY AND  
CONTROL BOARD) BILL 2008**

*(Brought in by the Minister for Justice, the Honourable David  
Edward Llewellyn)*

**A BILL FOR**

**An Act to amend the *Poisons Act 1971***

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:

**1. Short title**

This Act may be cited as the *Poisons  
Amendment (Poppy Advisory and Control  
Board) Act 2008*.

**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.

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\*No. 81 of 1971

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**4. Part 5A inserted**

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

**PART 5A – POPPY ADVISORY AND CONTROL BOARD**

**59A. Interpretation**

In this Part, unless the contrary intention appears –

“**alkaloid poppy**” means a plant of the species *Papaver somniferum* or *Papaver bracteatum*;

“**alkaloid poppy material**” means a part or product of an alkaloid poppy;

“**Board**” means the Poppy Advisory and Control Board established under section 59B(1);

“**Convention**” means the 1961 Single Convention on Narcotic Drugs published by the United Nations, as amended from time to time;

“**cultivate**” includes harvest;

“**Department**” means the responsible Department in relation to this Part;

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“**manufacture**” includes refine and process and anything done for the purpose of refining or processing;

“**meeting**” means a meeting of the Board;

“**member**” means a member of the Board;

“**Minister**” means the Minister having the administration of this Part;

“**process**” means to treat by mechanical, chemical or other artificial means but does not include harvesting.

**59B. Poppy Advisory and Control Board**

- (1) The Poppy Advisory and Control Board is established.
- (2) The Board consists of the following members:
  - (a) a person appointed by the Minister who is to be the chairperson of the Board;
  - (b) the Secretary of the responsible Department in relation to the *Public Health Act 1997* or a person nominated by that Secretary;

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- (c) the Commissioner of Police or a person nominated by the Commissioner;
  - (d) the Secretary of the responsible Department in relation to the *Agricultural and Veterinary Chemicals (Tasmania) Act 1994* or a person nominated by that Secretary;
  - (e) a person nominated by the Secretary of the responsible Commonwealth department in relation to the grant of licences to manufacture drugs under Part II of the *Narcotic Drugs Act 1967* of the Commonwealth.
- (3) A nomination under subsection (2) –
- (a) may be for an indefinite period or a period specified in writing by the Secretary; and
  - (b) may be in respect of all matters relating to the Board or any specified matters; and
  - (c) is revocable at will.
- (4) A person nominated under subsection (2), while acting as a nominee and in accordance with the terms of his or her appointment, is taken to be a

member of the Board with all the powers, rights and functions of such a member.

- (5) Schedule 1 has effect with respect to membership of the Board.
- (6) Schedule 2 has effect with respect to meetings of the Board.

#### **59C. Functions of Board**

The functions of the Board are as follows:

- (a) to act in any matter relating to the alkaloid poppy industry as may be directed by the Secretary;
- (b) to receive, consider and determine production estimates for the contract growing and harvesting of alkaloid poppy material;
- (c) to liaise with the Commonwealth in order to fulfil Australia's obligations under the Convention;
- (d) to ensure the security of Tasmanian alkaloid poppy crops;
- (e) to collect and collate statistical information relating to the alkaloid poppy industry and prepare reports on the industry;

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- (f) to facilitate the destruction of any alkaloid poppies grown without the authority of a licence or other authority issued or granted under this Act;
- (g) to advise the Minister and the Minister having the administration of the *Public Health Act 1997* on any matter relating to the alkaloid poppy industry;
- (h) to do anything, and provide such other advice to other Ministers, as may be requested by those Ministers.

**59D. Powers of Board**

The Board may do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of its functions under this or any other Act.

**59E. Delegation**

The Board may delegate any of its functions and powers, other than this power of delegation, to a specified person or the holder of a specified office.



**59F. Annual report**

- (1) The Board, not later than 31 August after the end of each financial year, is to give the Minister a report on its operations for that financial year.
- (2) The Minister may, in writing, direct the Board to prepare the report in a particular way or to include particular information in the report.
- (3) The report may be appended to the annual report of the Department.
- (4) If the Board's report is not appended to the annual report of the Department, the Minister is to cause the report to be laid before each House of Parliament by not later than 31 October after the end of the financial year to which it relates.

**59G. Secretarial and administrative support**

- (1) Subject to and in accordance with the *State Service Act 2000*, persons may be appointed or employed for the purpose of enabling the functions of the Board under this Part to be carried out.
- (2) The Board may make arrangements with the Secretary of the Department for such State Service officers and State Service employees employed in the Department

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as may be considered necessary to be made available to enable the Board to perform the functions of office under this or any other Act and those officers and employees, in conjunction with State Service employment, are to serve the Board in any capacity.

**5. Schedules 1 and 2 inserted**

After section 93 of the Principal Act, the following Schedules are inserted:

**SCHEDULE 1 – MEMBERSHIP OF POPPY  
ADVISORY AND CONTROL BOARD**

Section 59B(5)

**1. Interpretation**

In this Schedule –

“**Board**” means the Poppy Advisory and Control Board established under section 59B;

“**member**” means a member of the Board;

“**Minister**” means the Minister having the administration of Part 5A.

**2. Term of appointment**

A member appointed under section 59B(2)(a) is to be appointed for a period, not exceeding 5 years, specified in the member's instrument of appointment.

**3. Holding other office**

The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of a member; and
- (b) accepting any remuneration payable to a member.

**4. *State Service Act 2000* not to apply**

- (1) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member.
- (2) A person may hold the office of member in conjunction with State Service employment.

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**5. Remuneration and other conditions**

- (1) A member is entitled to be paid such remuneration and allowances as the Minister determines.
- (2) A member who is a State Service officer or State Service employee is not entitled to remuneration or allowances under subclause (1) except with the approval of the Minister administering the *State Service Act 2000*.
- (3) A member holds office on such conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment.

**6. Vacation of office**

- (1) A member appointed under section 59B(2)(a) vacates office if the member –
  - (a) dies; or
  - (b) resigns; or
  - (c) is removed from office under subclause (2).
- (2) The Minister may remove from office a member appointed under section 59B(2)(a) if the member –

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- (a) is absent from 2 consecutive meetings of the Board without the Board's permission; or
- (b) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 12 months or longer or a fine of 300 penalty units or more; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of any remuneration or estate for their benefit; or
- (d) is unable to perform adequately or competently the duties of his or her office.

**7. Filling of vacancies**

- (1) If the office of a member appointed under section 59B(2)(a) becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.
- (2) If a member appointed under section 59B(2)(a) is unable for any reason to perform the functions of a

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member, the Minister may appoint a suitable person to act in the office of that member for a period determined by the Minister.

**8. Validity of proceedings**

- (1) An act or proceeding of the Board or of a person acting under the direction of the Board is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the membership of the Board.
- (2) All acts and proceedings of the Board or of a person acting under a direction of the Board are, despite the subsequent discovery of a defect in the appointment of a member or that any other person was disqualified from acting as, or incapable of being, a member, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the Board had been fully constituted.

**9. Presumptions**

In any proceedings by or against the Board, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Board; or
- (b) any resolution of the Board; or
- (c) the appointment or nomination of any member; or
- (d) the presence of a quorum at any meeting of the Board.

## **SCHEDULE 2 – MEETINGS OF BOARD**

Section 59B(6)

### **1. Interpretation**

In this Schedule –

**“Board”** means the Poppy Advisory and Control Board established under section 59B;

**“meeting”** means a meeting of the Board;

**“member”** means a member of the Board;

**“Minister”** means the Minister having the administration of Part 5A.

### **2. Convening of meetings**

- (1) The chairperson of the Board –

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- (a) may convene a meeting at any time; and
  - (b) must convene a meeting if requested in writing by 2 or more members to do so.
- (2) The first meeting of the Board must be convened in accordance with directions given by the Minister.

**3. Procedure at meetings**

- (1) The quorum at any duly convened meeting of the Board is 3 members.
- (2) Any duly convened meeting of the Board at which a quorum is present is competent to transact any business of the Board.
- (3) Questions arising at a meeting of the Board are to be determined by a majority of votes of the members present and voting.
- (4) A telephone or video conference between members is taken to be a meeting of the Board at which the members participating in the conference are present.



#### **4. Chairperson**

- (1) The chairperson of the Board is to preside at all meetings of the Board.
- (2) If the chairperson of the Board is not present at a meeting of the Board, a member elected by the members present is to preside at that meeting.
- (3) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, the motion is lost.

#### **5. Disclosure of interest**

- (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board must, as soon as practicable after the relevant facts come to the knowledge of the member, disclose the nature of that interest at a meeting of the Board.
- (2) A disclosure under subclause (1) is to be recorded in the minutes and the member must not, unless the Board exclusive of that member determines otherwise –
  - (a) be present during any deliberations of the Board in relation to that matter; or

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- (b) take part in any decision of the Board in relation to that matter.

**6. General procedure**

Subject to this Schedule, the procedure for the calling of, or for the conduct of business at, meetings is to be as determined by the Board.