

Misuse of Drugs Amendment (Psychoactive Substances) Bill 2015

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

**Misuse of Drugs Amendment (Psychoactive
Substances) Bill 2015**

A Bill for

**An Act to amend the *Misuse of Drugs Act 1981* to regulate the
manufacture, sale, supply and promotion of psychoactive substances.**

The Parliament of Western Australia enacts as follows:

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1 **1. Short title**

2 This is the *Misuse of Drugs Amendment (Psychoactive*
3 *Substances) Act 2015*.

4 **2. Commencement**

5 This Act comes into operation as follows —

- 6 (a) sections 1 and 2 — on the day on which this Act
7 receives the Royal Assent;
- 8 (b) the rest of the Act — on a day fixed by proclamation,
9 and different days may be fixed for different provisions.

10 **3. Act amended**

11 This Act amends the *Misuse of Drugs Act 1981*.

12 **4. Part IIIB inserted**

13 After section 8M insert:
14

15 **Part IIIB — Psychoactive substances**

16 **8N. Terms used**

17 (1) In this Part —

18 *Agvet Code of Western Australia* has the meaning
19 given in the *Agricultural and Veterinary Chemicals*
20 *(Western Australia) Act 1995*;

21 *consume* has the meaning given in subsection (2);

22 *manufacture*, in relation to a psychoactive substance,
23 means to make, prepare, produce, process (including
24 by extracting or refining), package or label the
25 psychoactive substance;

- 1 *psychoactive effect*, in relation to a person who
2 consumes a substance, means —
- 3 (a) the effect of stimulating or depressing the
4 central nervous system of the person, resulting
5 in hallucinations or a significant disturbance in,
6 or significant change to, motor function,
7 thinking, behaviour, perception, awareness or
8 mood; or
- 9 (b) the effect of causing a state of dependence,
10 including physical or psychological addiction;
- 11 *psychoactive substance* means any substance that,
12 when consumed by a person, has the capacity to induce
13 a psychoactive effect on the person;
- 14 *substance* includes a natural organism.
- 15 (2) For this Part, a person consumes a substance if —
- 16 (a) the substance is administered to the person,
17 whether the person self-administers it or it is
18 administered by another person; or
- 19 (b) the person smokes, inhales or ingests the
20 substance.

21 **80. Application of this Part to particular substances**

- 22 (1) This Part does not apply to any of the following —
- 23 (a) either —
- 24 (i) a medicine or a Schedule 9 poison as
25 those terms are defined in the *Medicines*
26 *and Poisons Act 2014* section 3; or
- 27 (ii) if the *Medicines and Poisons Act 2014*
28 section 137 has not commenced — a
29 medicine as defined in the *Poisons*
30 *Act 1964* section 5(1) or included in
31 Schedule 9 under the *Poisons Act 1964*;

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- 1 (b) a therapeutic good included in the Register as
2 defined in the *Therapeutic Goods Act 1989*
3 (Commonwealth) section 3(1) or that is
4 exempted from the operation of Part 3-2 of that
5 Act by regulations made under section 18 of
6 that Act;
- 7 (c) a tobacco product as defined in the *Tobacco*
8 *Products Control Act 2006* Glossary;
- 9 (d) a substance referred to in paragraph (a) or (b) of
10 the definition of *liquor* in the *Liquor Control*
11 *Act 1988* section 3(1);
- 12 (e) a food as defined in the *Food Act 2008*
13 section 8;
- 14 (f) a substance that is a chemical product as
15 defined in the Agvet Code of Western Australia
16 if —
- 17 (i) the active constituents for the chemical
18 product are approved under the Agvet
19 Code of Western Australia Part 2; or
- 20 (ii) the chemical product is registered under
21 the Agvet Code of Western Australia
22 Part 2;
- 23 (g) a plant or fungus, or an extract from a plant or
24 fungus;
- 25 (h) a substance of a class prescribed by the
26 regulations.
- 27 (2) Despite subsection (1), this Part applies to a substance
28 listed in subsection (1) if the substance contains, or has
29 added to it, a substance that is not listed in
30 subsection (1).

- 1 **8P. Effect of representing substance as psychoactive**
2 **substance**
- 3 (1) For the purposes of this Part, a substance that is
4 represented in any way as being a psychoactive
5 substance is to be taken to be a psychoactive substance.
- 6 (2) For the purposes of this Part, a substance that is
7 represented in any way as being a specified
8 psychoactive substance is to be taken to be the
9 specified psychoactive substance.
- 10 **8Q. Manufacture, sale or supply of psychoactive**
11 **substances**
- 12 (1) A person commits a simple offence if the person
13 manufactures a psychoactive substance.
14 Penalty: a fine of \$48 000 or imprisonment for 4 years
15 or both.
- 16 (2) A person commits a simple offence if the person sells
17 or supplies a psychoactive substance.
18 Penalty: a fine of \$48 000 or imprisonment for 4 years
19 or both.
- 20 (3) For the purpose of deciding whether or not a person
21 has committed an offence under subsection (1) or (2) in
22 relation to a substance, it is irrelevant that usage
23 instructions concerning the substance given in any
24 manner or form indicate that the substance is not a
25 psychoactive substance or that it is not intended for
26 human consumption.
- 27 **8R. Promoting psychoactive substances**
- 28 (1) A person commits a simple offence if the person —
29 (a) promotes a substance as having a psychoactive
30 effect on a person who consumes the substance;
31 or

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- 1 (b) provides information in any form on how or
2 where a psychoactive substance may be
3 acquired.

4 Penalty: a fine of \$24 000 or imprisonment for 2 years
5 or both.

- 6 (2) For the purposes of subsection (1)(a), a person
7 promotes a substance if the person takes any action that
8 is intended or apparently intended to publicise or
9 promote the substance, whether visual or auditory
10 means are employed and whether the substance is
11 directly depicted or referred to or symbolism of some
12 kind is employed, including action of a kind prescribed
13 by the regulations.

14 **8S. Powers of police officers for purposes of this Part**

- 15 (1) A police officer may, for the purposes of this Part, with
16 such assistance as the police officer considers
17 necessary —

- 18 (a) enter the premises (other than residential
19 premises) of a person who is suspected on
20 reasonable grounds of —
21 (i) manufacturing, selling or supplying a
22 psychoactive substance; or
23 (ii) promoting a substance as having a
24 psychoactive effect on a person who
25 consumes the substance; or
26 (iii) providing information on how or where
27 a psychoactive substance may be
28 acquired; or
29 (iv) having done any of the things
30 mentioned in subparagraph (i) to (iii);
31 and
32 (b) demand the production of, and inspect, any
33 books, papers or documents relating to any of

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- 1 the things mentioned in paragraph (a)(i) to (iii);
2 and
3 (c) inspect any substances.
- 4 (2) Section 25 applies as if the reference in subsection (1)
5 of that section to a police officer exercising the powers
6 conferred by section 22 or 23 included a reference to a
7 police officer exercising the powers in subsection (1).
- 8 (3) Section 29 applies as if —
- 9 (a) references in paragraphs (a) and (b) of that
10 section to a police officer acting in the exercise
11 of the powers conferred on the police officer by
12 or under Part V or a person assisting a police
13 officer so acting included a reference to a
14 police officer acting in the exercise of the
15 powers in subsection (1) or a person assisting a
16 police officer so acting; and
- 17 (b) the reference in paragraph (b) of that section to
18 books, papers, documents, information or
19 stocks referred to in section 22 included a
20 reference to books, papers, documents or
21 substances referred to in subsection (1).
- 22 (4) The powers in subsection (1) are in addition to, and not
23 in derogation of, the powers conferred on police
24 officers by Part V.

25 **8T. Powers to seize and dispose of thing suspected of**
26 **being psychoactive substance**

- 27 (1) In this section and section 8U —
28 *destruction notice* means a notice that complies with
29 subsections (4) and (5).
- 30 (2) If there are reasonable grounds to suspect that any
31 thing found or received during the exercise of the
32 powers conferred by section 8S or by a search warrant

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- 1 is a psychoactive substance, a police officer may seize
2 and detain the thing until it is dealt with under this
3 section or section 8U.
- 4 (3) A police officer must give to a person from whom a
5 thing is seized under subsection (2) a destruction notice
6 if —
- 7 (a) the police officer is satisfied that no person will
8 be tried with the commission of an offence in
9 relation to the thing; or
- 10 (b) a person is tried with the commission of an
11 offence in relation to the thing and the person is
12 not convicted of that offence.
- 13 (4) A destruction notice must —
- 14 (a) be in writing in the prescribed form; and
15 (b) identify the thing to which it relates; and
16 (c) advise that the thing will be destroyed on or
17 after a day specified in the notice unless, before
18 that day, an application is made under
19 section 8U(1) to have a sample of the thing
20 analysed.
- 21 (5) The day referred to in subsection (4)(c) cannot be a day
22 that is sooner than 21 days after the day the notice is
23 given.
- 24 (6) Subject to section 8U, a police officer may destroy a
25 thing seized under subsection (2) on or after the day
26 specified in a destruction notice given in relation to the
27 thing.
- 28 **8U. Analysis of seized thing may be requested**
- 29 (1) On receipt of a destruction notice, a person may apply
30 to the Commissioner to have a sample of the thing
31 identified in the notice analysed by an approved
32 analyst.

- 1 (2) An application must be —
- 2 (a) made in the prescribed form; and
- 3 (b) made within 21 days of the receipt of the
- 4 notice; and
- 5 (c) accompanied by the prescribed fee.
- 6 (3) If an application is made under subsection (1), the
- 7 Commissioner must —
- 8 (a) request an approved analyst to analyse a sample
- 9 of the thing and provide the Commissioner with
- 10 a report of the analysis; and
- 11 (b) direct that the thing not be destroyed under the
- 12 destruction notice.
- 13 (4) After considering a report of the analysis of a sample
- 14 of a thing provided by an approved analyst, the
- 15 Commissioner must —
- 16 (a) if the Commissioner is satisfied that the thing is
- 17 a psychoactive substance — order that the thing
- 18 be destroyed; or
- 19 (b) if the Commissioner is satisfied that the thing is
- 20 not a psychoactive substance but is a relevant
- 21 thing as defined in section 27(6) — order that
- 22 the thing be dealt with under section 27 as if it
- 23 had been seized and detained under section 26;
- 24 or
- 25 (c) if the Commissioner is satisfied that the thing is
- 26 not a psychoactive substance or a relevant
- 27 thing —
- 28 (i) order that the thing be released to the
- 29 person from whom it was seized; and

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- (ii) order that the fee paid by the applicant for a sample of the thing to be analysed be refunded to the applicant.

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