

# Medicines, Poisons and Therapeutic Goods Bill 2013

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**Defined terms**

Western Australia

LEGISLATIVE ASSEMBLY

*(As amended during consideration in detail)*

**Medicines, Poisons and Therapeutic Goods  
Bill 2013**

A Bill for

An Act —

- to regulate and control the manufacture and supply of medicines, poisons and therapeutic goods; and
- to repeal the *Poisons Act 1964*, the *White Phosphorus Matches Prohibition Act 1912* and various regulations; and
- to amend the *Health Act 1911*, *Misuse of Drugs Act 1981* and various other written laws and,  
for incidental and related purposes.

The Parliament of Western Australia enacts as follows:

**Part 1 — Preliminary**

**1. Short title**

This is the *Medicines, Poisons and Therapeutic Goods Act 2013*.

**2. Commencement**

This Act comes into operation as follows —

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

**3. Terms used**

In this Act —

***adopted code*** has the meaning given in section 149(1);

***Agvet Code of Western Australia*** has the meaning given in the *Agricultural and Veterinary Chemicals (Western Australia) Act 1995* section 3;

***authorised health professional*** means a health professional who has a professional authority;

***CEO*** means the chief executive officer of the Department;

***compliance notice*** means a notice given under section 71;

***corporate officer***, in relation to a body corporate, means an individual who is an officer, as defined in the *Corporations Act 2001* (Commonwealth) section 9, of the body corporate;

***Department*** means the department of the Public Service principally assisting in the administration of this Act;

***drugs of addiction record*** means the record kept under section 105;

***health professional*** means a person who is —

- (a) a registered health practitioner; or

- 1 (b) a veterinary surgeon; or
- 2 (c) in a class of persons prescribed by the regulations for the
- 3 purposes of this definition;
- 4 **investigator** means a person designated under section 112(1) to
- 5 be an investigator;
- 6 **licence** means a licence granted under Part 4 Division 2;
- 7 **licensee** means the holder of a licence;
- 8 **manufacture** has the meaning given in section 6;
- 9 **medicine** means a substance that is a Schedule 2, 3, 4 or 8
- 10 poison;
- 11 **needle and syringe programme** means a programme to do one
- 12 or more of the following principally for the purpose of
- 13 preventing the spread of infectious diseases that are carried in
- 14 the blood —
- 15 (a) to supply people with any of the following —
- 16 (i) sterile hypodermic syringes;
- 17 (ii) sterile hypodermic needles;
- 18 (iii) things that may be used in connection with the
- 19 administration, by injection, of prohibited drugs
- 20 (as defined in the *Misuse of Drugs Act 1981*
- 21 section 3(1)), for example, swabs and spoons;
- 22 (b) to facilitate the safe disposal, after use, of any of the
- 23 things mentioned in paragraph (a);
- 24 (c) to advise, counsel or disseminate information to people;
- 25 **permit** means a permit granted under Part 4 Division 2;
- 26 **permit holder** means the holder of a permit;
- 27 **pharmacist** means a person registered under the *Health*
- 28 *Practitioner Regulation National Law (Western Australia)* in
- 29 the pharmacy profession;
- 30 **pharmacy** means premises registered as a pharmacy under the
- 31 *Pharmacy Act 2010* section 39;

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- 1        **poison** means a substance that is a Schedule 2, 3, 4, 5, 6, 7, 8  
2        or 9 poison;
- 3        **prescribe**, in relation to a poison, has the meaning given in  
4        section 7(1);
- 5        **prescriber** has the meaning given in section 7(1);
- 6        **prescription** has the meaning given in section 7(1);
- 7        **professional authority** means —
- 8            (a) an authorisation under section 25 to administer, possess,  
9            prescribe, supply or use a medicine; or
- 10          (b) an authorisation under section 26 to manufacture a  
11          medicine or use or possess a Schedule 7 poison;
- 12        **register** means the register kept under section 75;
- 13        **registered health practitioner** means a health practitioner who  
14        is registered under the *Health Practitioner Regulation National*  
15        *Law (Western Australia)* to practice a health profession;
- 16        **Schedule 2 poison** means a substance that is classified by  
17        regulations made under section 4(1) as a poison included in  
18        Schedule 2;
- 19        **Schedule 3 poison** means a substance that is classified by  
20        regulations made under section 4(1) as a poison included in  
21        Schedule 3;
- 22        **Schedule 4 poison** means a substance that is classified by  
23        regulations made under section 4(1) as a poison included in  
24        Schedule 4;
- 25        **Schedule 5 poison** means a substance that is classified by  
26        regulations made under section 4(1) as a poison included in  
27        Schedule 5;
- 28        **Schedule 6 poison** means a substance that is classified by  
29        regulations made under section 4(1) as a poison included in  
30        Schedule 6;
- 31        **Schedule 7 notice** means a notice given under section 72;

**Schedule 7 poison** means a substance that is classified by regulations made under section 4(1) as a poison included in Schedule 7;

**Schedule 8 poison** means a substance that is classified by regulations made under section 4(1) as a poison included in Schedule 8;

**Schedule 9 poison** means a substance that is classified by regulations made under section 4(1) as a poison included in Schedule 9;

**strictly controlled substance** means a substance that is classified by regulations made under section 5(1) as a strictly controlled substance;

**substance** includes a compound, preparation, mixture or plant;

**supply** has the meaning given in section 8;

**Therapeutic Goods Law (WA)** has the meaning given in section 78;

**veterinary surgeon** means an individual registered as a veterinary surgeon under the *Veterinary Surgeons Act 1960*.

#### 4. Poisons

- (1) The Governor may, on the recommendation of the Minister, make regulations classifying a substance as a poison included in a Schedule referred to in the Table.

Table

<b>Schedule 1</b> — [Blank]
<b>Schedule 2</b> — Pharmacy medicines
Substances, the safe use of which may require advice from a pharmacist and which should be available from a pharmacy or, where a pharmacy service is not available, from a licensed person.

**Schedule 3 — Pharmacist only medicines**

Substances, the safe use of which requires professional advice but which should be available to the public from a pharmacist without a prescription.

**Schedule 4 — Prescription only medicines, or  
Prescription Animal Remedy**

Substances, the use or supply of which should be by or on the order of persons permitted under the Act to prescribe and should be available from a pharmacist on prescription.

**Schedule 5 — Caution**

Substances with a low potential for causing harm, the extent of which can be reduced through the use of appropriate packaging with simple warnings and safety directions on the label.

**Schedule 6 — Poison**

Substances with a moderate potential for causing harm, the extent of which can be reduced through the use of distinctive packaging with strong warnings and safety directions on the label.

**Schedule 7 — Dangerous Poison**

Substances with a high potential for causing harm at low exposure and which require special precautions during manufacture, handling or use. These poisons should be available only to specialised or authorised users who have the skills necessary to handle them safely. Special regulations restricting their availability, possession, storage or use may apply.



**Schedule 8 — Controlled Drug**

Substances which should be available for use but require restriction of manufacture, supply, distribution, possession and use to reduce abuse, misuse and physical or psychological dependence.

**Schedule 9 — Prohibited Substance**

Substances which may be abused or misused, the manufacture, possession, sale or use of which should be prohibited by law except when required for medical or scientific research, or for analytical, teaching or training purposes with approval of the CEO.

- 1       (2)   The Minister may recommend that a substance be identified in  
2       the regulations in any way the Minister thinks fit.
- 3       (3)   Without limiting subsection (2), a substance may be classified  
4       by reference to any of the following —
- 5           (a)   an adopted code;
- 6           (b)   the way in which it is, or is intended to be, used;
- 7           (c)   the purpose for which it is, or is intended to be, used;
- 8           (d)   the quantity in which it is supplied;
- 9           (e)   its packaging or labelling;
- 10          (f)   its physical or chemical state or form;
- 11          (g)   any other factor.
- 12       (4)   The following substances cannot be classified as poisons —
- 13           (a)   industrial hemp or industrial hemp seed as defined in the  
14               *Industrial Hemp Act 2004* section 3(1);
- 15           (b)   processed industrial hemp as defined in the *Misuse of*  
16               *Drugs Act 1981* section 3(1).

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- 1     **5.     Strictly controlled substances**
- 2         (1)   The Governor may, on the recommendation of the Minister,  
3             make regulations classifying a substance as a strictly controlled  
4             substance.
- 5         (2)   The following substances cannot be classified as strictly  
6             controlled substances —
- 7             (a)   industrial hemp or industrial hemp seed as defined in the  
8                 *Industrial Hemp Act 2004* section 3(1);
- 9             (b)   processed industrial hemp as defined in the *Misuse of*  
10                *Drugs Act 1981* section 3(1).
- 11        (3)   The Minister must not recommend that a substance be classified  
12             as a strictly controlled substance unless the Minister is satisfied  
13             that the strict control of the supply and use of the substance is  
14             necessary to protect the health, safety and welfare of the public.
- 15        (4)   If the Minister is satisfied that strict control of the supply and  
16             use of a strictly controlled substance is no longer necessary to  
17             protect the health, safety and welfare of the public the Minister  
18             must recommend the making of regulations terminating the  
19             classification of the substance as a strictly controlled substance.
- 20        (5)   On and from the control day for a strictly controlled substance  
21             that was a poison immediately before that day —
- 22             (a)   that substance ceases to be a poison; and
- 23             (b)   an authorisation given by a licence, permit or  
24                 professional authority to supply or use that substance  
25                 ceases to have effect.
- 26        (6)   For the purposes of subsection (5) —
- 27             ***control day***, in relation to a strictly controlled substance, means  
28             the day that the substance becomes a strictly controlled  
29             substance.
- 30        (7)   The CEO must take all reasonable steps to inform each licensee,  
31             permit holder or authorised health professional who is

1 authorised to supply or use a poison that becomes a strictly  
2 controlled substance about the effect of subsection (5).

3 **6. Term used: manufacture**

4 (1) In this Act —

5 *manufacture*, in relation to a poison, means —

- 6 (a) to produce the poison; or  
7 (b) if the poison is a plant, to cultivate the plant; or  
8 (c) to produce a substance that contains the poison; or  
9 (d) to do anything, including testing, packaging, labelling or  
10 storing the poison, that is part of the process of —  
11 (i) doing a thing described in paragraph (a), (b)  
12 or (c); or  
13 (ii) bringing the poison to its final state.

14 (2) For the purposes of this Act, a person is taken to manufacture a  
15 poison if the person does any of the following —

- 16 (a) agrees to manufacture the poison;  
17 (b) advertises or otherwise offers to manufacture the poison;  
18 (c) has possession of all the necessary equipment or  
19 materials to manufacture the poison for the purpose of  
20 manufacturing the poison.

21 (3) For the purpose of determining if a person has manufactured a  
22 poison the following are immaterial —

- 23 (a) the quantity of the poison;  
24 (b) the purpose for which the poison is manufactured;  
25 (c) whether or not the person was acting as an employee or  
26 agent of another person.

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1     **7.       Terms used: prescription and related terms**

2       (1)   In this Act —

3           *prescribe*, in relation to a poison, means to issue a prescription  
4           for the poison;

5           *prescriber*, in relation to a Schedule 4 or 8 poison, means an  
6           authorised health professional who has authority to prescribe the  
7           poison;

8           *prescription*, in relation to a Schedule 4 or 8 poison, means a  
9           document (whether written or electronic) that —

10          (a)   sets out particulars of the poison, or a substance that  
11               contains the poison, that is, for therapeutic purposes, to  
12               be —

13               (i)   used by, or administered to, a person named in  
14               the document; or

15               (ii)  administered to an animal described in the  
16               document;

17               and

18          (b)   is issued for the purpose of enabling the poison to be  
19               supplied for that purpose; and

20          (c)   complies with any requirements prescribed by the  
21               regulations.

22       (2)   A person is not to be taken to have issued a prescription if the  
23       person —

24          (a)   supplies a Schedule 4 or 8 poison in accordance with a  
25               prescription that authorises —

26               (i)   the supply of 2 or more Schedule 4 or 8 poisons;  
27               or

28               (ii)  the supply of a Schedule 4 or 8 poison on 2 or  
29               more occasions;

30               and

- 1           (b) also issues a form authorising the supply of one or more  
2           of the poisons in accordance with the prescription on  
3           another occasion.
- 4       (3) For the purposes of this Act a person (a *supplier*) supplies a  
5       Schedule 4 or 8 poison *in accordance with a prescription* if —
- 6           (a) the supplier has been given a prescription relating to the  
7           poison; and
- 8           (b) the supplier reasonably believes that the person to whom  
9           the poison is supplied —
- 10           (i) is —
- 11                   (I) if the poison is prescribed for the  
12                   therapeutic use of a person — that  
13                   person; or
- 14                   (II) if the poison is prescribed for the  
15                   therapeutic use of an animal — the  
16                   owner of the animal;
- 17                   or
- 18           (ii) has lawful authority to obtain the poison on  
19           behalf of a person referred to in subparagraph (i);
- 20           and
- 21           (c) the quantity of the poison supplied does not exceed the  
22           quantity specified in the prescription.
- 23       (4) If a prescription describes a poison without reference to a brand  
24       name, then for the purposes of subsection (3)(a), the  
25       prescription relates to any brand of the poison.
- 26       (5) If a prescription describes a poison by reference to a brand  
27       name, then for the purposes of subsection (3)(a), the  
28       prescription relates to —
- 29           (a) if the poison is prescribed for the therapeutic use of a  
30           person who is a patient in a public hospital — any brand  
31           of the poison (even if the prescription indicates that  
32           brand substitution is not permitted); or

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- 1                   (b) if paragraph (a) does not apply —  
2                         (i) if the prescription indicates that brand  
3                                 substitution is not permitted — the brand of  
4                                 poison specified in the prescription; or  
5                         (ii) if the prescription does not indicate that brand  
6                                 substitution is not permitted — any brand of the  
7                                 poison.

8   **8.       Term used: supply**

- 9       (1) In this Act —  
10       *supply*, in relation to a poison, means to supply the poison, or a  
11       substance that contains the poison, to another person, but does  
12       not include administering a poison or substance directly to  
13       another person or to an animal.  
14       (2) For the purposes of this Act a person is taken to supply a poison  
15       if the person does any of the following —  
16               (a) agrees to supply the poison;  
17               (b) makes available, advertises, displays with a view to  
18                     supplying, or otherwise offers to supply, the poison;  
19               (c) has possession of the poison for the purpose of  
20                     supplying it.  
21       (3) For the purpose of determining if a person has supplied a poison  
22       the following are immaterial —  
23               (a) the quantity of the poison;  
24               (b) the purpose for which the poison is supplied;  
25               (c) whether or not the recipient pays for the poison;  
26               (d) whether or not the supplier and recipient are in the same  
27                     place at the same time;  
28               (e) whether or not the poison is supplied by indirect means  
29                     such as the internet, electronic mail, telephone,  
30                     facsimile, mail order or a vending machine;

- 1                   (f) whether or not the person was acting as an employee or  
2                   agent of another person.

3       **9.       Supply and possession of poisons by pharmacy business**

- 4       (1) In this section —  
5       *pharmacy business* has the meaning given in the *Pharmacy*  
6       *Act 2010* section 3(1).

- 7       (2) For the purposes of this Act, supply or possession of a poison by  
8       a pharmacy business carried on at a pharmacy is to be taken to  
9       be supply or possession of the medicine or poison by the  
10       pharmacist who has overall responsibility for the pharmacy  
11       business in accordance with the *Pharmacy Act 2010* section 56.

12       **10.       Relationship with *Misuse of Drugs Act 1981***

- 13       If a provision in this Act is inconsistent with a provision in the  
14       *Misuse of Drugs Act 1981*, the provision in this Act prevails.

15       **11.       Act applies to the State**

- 16       This Act binds the State.

**Part 2 — Offences**

**12.        Terms used**

In this Part —

***appropriate licence*** means each of the following —

- (a) a licence granted under Part 4 Division 2;
- (b) a licence granted under the *Agricultural and Veterinary Chemicals Code Act 1994* (Commonwealth);
- (c) a licence granted under the Agvet Code of Western Australia;
- (d) a licence or exemption granted under the *Radiation Safety Act 1975*;
- (e) a licence granted under the *Therapeutic Goods Act 1989* (Commonwealth);
- (f) a licence granted under the *Therapeutic Goods Law (WA)*;

***appropriate permit*** means each of the following —

- (a) a permit granted under Part 4 Division 2;
- (b) a permit granted under the *Agricultural and Veterinary Chemicals Code Act 1994* (Commonwealth);
- (c) a permit granted under the Agvet Code of Western Australia.

**13.        Offences relating to manufacture and supply of Schedule 2 and Schedule 3 poisons**

- (1) A person who manufactures or supplies a Schedule 2 or 3 poison commits an offence unless —

- (a) the person does so —
  - (i) under and in accordance with an appropriate licence or a professional authority; and
  - (ii) in accordance with the regulations;

or



- 1           (b) the person does so in accordance with subsection (2)  
2           or (3).

3           Penalty: see section 132.

- 4       (2) A person may supply a Schedule 2 or 3 poison to another person  
5       (the *patient*) if —

- 6           (a) the person reasonably believes that the use by the patient  
7           of the poison would be appropriate for therapeutic  
8           purposes; and  
9           (b) the amount of the poison supplied is reasonable in the  
10          circumstances; and  
11          (c) the person reasonably believes that the patient will use  
12          the poison for therapeutic purposes.

- 13       (3) A person may supply a Schedule 2 or 3 poison to another person  
14       (an *agent*) if —

- 15           (a) the person supplies the poison to the agent for the  
16           purpose of it being supplied or administered to another  
17           person or to an animal (the *patient*); and  
18           (b) the person reasonably believes that the use by the  
19           patient, or the administration to the patient, of the poison  
20           would be appropriate for therapeutic purposes; and  
21           (c) the amount of the poison supplied is reasonable in the  
22           circumstances; and  
23           (d) the person reasonably believes that —  
24               (i) the agent will —  
25                       (I) supply or administer the poison to the  
26                       patient; or  
27                       (II) supply the poison to another person for  
28                       the purpose of it being supplied or  
29                       administered to the patient;  
30               and  
31               (ii) the poison will be used by, or administered to,  
32               the patient for therapeutic purposes.

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- 1 (4) A person authorised under an appropriate licence or a  
2 professional authority to supply a Schedule 2 or 3 poison who  
3 supplies the poison in circumstances where the person  
4 reasonably suspects or ought reasonably to suspect that the  
5 recipient intends to use it in a way that might reasonably be  
6 expected to pose a serious threat to the health, safety and  
7 welfare of a person or of the public commits an offence.

8 Penalty: see section 132.

9 **14. Offences relating to manufacture, supply, prescribing and**  
10 **possession of Schedule 4 and Schedule 8 poisons**

- 11 (1) A person who manufactures or supplies a Schedule 4 or 8  
12 poison commits an offence unless the person does so —  
13 (a) under and in accordance with an appropriate licence or a  
14 professional authority; and  
15 (b) in accordance with the regulations.

16 Penalty: see section 132.

- 17 (2) A person authorised under an appropriate licence or a  
18 professional authority to supply a Schedule 4 or 8 poison (an  
19 **authorised supplier**) who supplies a Schedule 4 or 8 poison  
20 commits an offence unless —  
21 (a) the supply is to a person (the **patient**) and —  
22 (i) the poison had been prescribed for the patient by  
23 a prescriber; and  
24 (ii) the authorised supplier reasonably believes that  
25 the patient will use the poison in accordance with  
26 the instructions of the prescriber;  
27 or  
28 (b) the supply is to a person (the **agent**) and —  
29 (i) the authorised supplier supplies the poison to the  
30 agent for the purpose of it being supplied or  
31 administered to another person or to an animal  
32 (the **patient**); and

- 1                   (ii) the poison had been prescribed for the patient by  
2                   a prescriber; and
- 3                   (iii) the authorised supplier reasonably believes that  
4                   the poison will be supplied or administered to the  
5                   patient in accordance with the instructions of the  
6                   prescriber.

7                   Penalty: see section 132.

- 8           (3) A person who prescribes a Schedule 4 or 8 poison commits an  
9           offence unless —

- 10           (a) the person is a health professional who is authorised  
11           under section 25 to prescribe the poison; and
- 12           (b) the prescription is in accordance with the regulations.

13           Penalty: see section 132.

- 14           (4) A person who is in possession of a Schedule 4 or 8 poison  
15           commits an offence unless —

- 16           (a) the person is authorised by a professional authority or an  
17           appropriate licence to manufacture the poison and has  
18           possession of the poison for the purpose of, or as a result  
19           of, that manufacture; or
- 20           (b) the person is authorised by a professional authority or an  
21           appropriate licence to supply the poison and has  
22           possession of the poison for the purpose of that supply;  
23           or
- 24           (c) the person is the holder of an appropriate permit and has  
25           possession of the poison for the purpose specified in the  
26           permit; or
- 27           (d) the poison was prescribed for the person by a prescriber  
28           who is authorised to prescribe the poison and the person  
29           has possession of the poison for the purpose of using it  
30           in accordance with the instructions of the prescriber; or
- 31           (e) the person is a carer of a person referred to in  
32           paragraph (d) (the *patient*) and has possession for the  
33           purposes of supplying or administering the poison to the

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- 1 patient in accordance with the instructions of the  
2 prescriber; or
- 3 (f) the poison was prescribed for an animal by a prescriber  
4 who is authorised to prescribe the poison and the person  
5 has possession of the poison for the purposes of  
6 supplying or administering the poison to the animal in  
7 accordance with the instructions of the prescriber; or
- 8 (g) the person has possession of the poison only for the  
9 purpose of delivering it to a person referred to in  
10 paragraphs (a) to (f); or
- 11 (h) the poison is in or on a used hypodermic syringe, a used  
12 hypodermic needle or another used thing and the person  
13 has possession of the syringe, needle or other thing for  
14 the purposes of disposing of it in accordance with a  
15 needle and syringe programme of a type prescribed by  
16 the regulations; or
- 17 (i) the person is authorised under the *Misuse of Drugs*  
18 *Act 1981* to have possession of the poison.

19 Penalty: see section 132.

- 20 (5) For the purposes of subsection (4)(e) a person is a carer of a  
21 patient if the person assists in the health care of the patient on a  
22 full-time or part-time basis, whether or not the person is paid for  
23 providing that assistance.

24 **15. Offences relating to manufacture and supply of Schedule 5**  
25 **and Schedule 6 poisons**

- 26 (1) A person who manufactures or supplies a Schedule 5 or 6  
27 poison commits an offence unless the person does so —
- 28 (a) in accordance with any compliance notice that applies to  
29 the supply of the poison by the person; and
- 30 (b) in accordance with the regulations.

31 Penalty: see section 132.

- 1       (2) A person who supplies a Schedule 5 or 6 poison in  
2       circumstances where the person reasonably suspects or ought  
3       reasonably to suspect that the recipient intends to use the poison  
4       in a way that might reasonably be expected to pose a serious  
5       threat to the health, safety and welfare of a person or of the  
6       public commits an offence.

7       Penalty: see section 132.

8       **16. Offences relating to manufacture, supply, use and possession**  
9       **of Schedule 7 poisons**

- 10      (1) A person who manufactures or supplies a Schedule 7 poison  
11      commits an offence unless the person does so —  
12          (a) under and in accordance with an appropriate licence;  
13          and  
14          (b) in accordance with any Schedule 7 notice that applies to  
15          the manufacture or supply of the poison by the person;  
16          and  
17          (c) in accordance with the regulations.

18      Penalty: see section 132.

- 19      (2) A person who uses or is in possession of a Schedule 7 poison  
20      commits an offence unless —  
21          (a) the use or possession is in accordance with any  
22          Schedule 7 notice that applies to the use or possession of  
23          the poison by the person; or  
24          (b) the Schedule 7 poison is a pesticide as defined in the  
25          *Health Act 1911* section 3(1), the person is licensed or  
26          registered under the *Health Act 1911* to use or possess  
27          the poison and the use or possession by the person is in  
28          accordance with the licence or registration; or  
29          (c) the person is an officer of the department principally  
30          assisting in the administration of the *Biosecurity and*  
31          *Agriculture Management Act 2007* and the use or  
32          possession is in connection with the employment of the  
33          officer in that department; or

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- 1                      (d) the person is authorised by a professional authority to  
2                                      use or possess the poison.

3                      Penalty: see section 132.

- 4                      (3) A person authorised under an appropriate licence to supply a  
5                                      Schedule 7 poison who supplies the poison in circumstances  
6                                      where the person reasonably suspects or ought reasonably to  
7                                      suspect that the recipient intends to use it in a way that might  
8                                      reasonably be expected to pose a serious threat to the health,  
9                                      safety and welfare of a person or of the public commits an  
10                                      offence.

11                      Penalty: see section 132.

12                      **17.                      Offences relating to manufacture, supply, use and possession**  
13                                      **of Schedule 9 poisons**

14                      A person who manufactures, supplies, uses or is in possession  
15                      of a Schedule 9 poison commits an offence unless —

- 16                                      (a) the person does so under and in accordance with a  
17    licence or a permit; or  
18                                      (b) the poison is in or on a used hypodermic syringe, a used  
19    hypodermic needle or another used thing and the person  
20    has possession of the syringe, needle or other thing for  
21    the purposes of disposing of it in accordance with a  
22    needle and syringe programme of a type prescribed by  
23    the regulations.

24                      Penalty: see section 132.

25                      **18.                      Offences relating to supply and use of strictly controlled**  
26                                      **substances**

- 27                      (1) A person who supplies a strictly controlled substance commits  
28                                      an offence unless —

- 29                                      (a) either —  
30    (i) the person is a member of a class of persons who  
31    are authorised under the regulations to supply the  
32    substance; or

- 1                   (ii) the person supplies the substance under and in  
2                   accordance with an authorisation granted by the  
3                   CEO in accordance with the regulations;  
4                   and  
5                   (b) the supply is in accordance with the regulations.  
6                   Penalty: see section 132.
- 7           (2) A person who uses a strictly controlled substance commits an  
8           offence unless —  
9           (a) either —  
10               (i) the person is a member of a class of persons who  
11               are authorised under the regulations to use the  
12               substance; or  
13               (ii) the person uses the substance under and in  
14               accordance with an authorisation granted by the  
15               CEO in accordance with the regulations;  
16               and  
17               (b) the use is in accordance with the regulations.  
18               Penalty: see section 132.
- 19           (3) It is a defence to a charge under subsection (1) to prove that —  
20               (a) before the substance became a strictly controlled  
21               substance it was a poison; and  
22               (b) the accused was a licensee or authorised health  
23               professional who was authorised to supply the poison;  
24               and  
25               (c) the accused did not know, and could not reasonably  
26               have known, that the substance had become a strictly  
27               controlled substance.
- 28           (4) It is a defence to a charge under subsection (2) to prove that —  
29               (a) before the substance became a strictly controlled  
30               substance it was a poison; and

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- 1                      (b) the accused was a permit holder or authorised health  
2                                      professional who was authorised to use the poison; and
- 3                      (c) the accused did not know, and could not reasonably  
4                                      have known, that the substance had become a strictly  
5                                      controlled substance.
- 6              (5) It is a defence to a charge under subsection (2) to prove that —
- 7                      (a) before the substance became a strictly controlled  
8                                      substance —
- 9                                      (i) it was a Schedule 4 or 8 poison; and
- 10                                      (ii) it was prescribed for the use of a person or for  
11                                      administration to an animal;
- 12                                      and
- 13                      (b) the accused used the substance in accordance with the  
14                                      instructions of the prescriber.
- 15              (6) It is a defence to a charge under subsection (2) to prove that —
- 16                      (a) before the substance became a strictly controlled  
17                                      substance it was a Schedule 5, 6 or 7 poison; and
- 18                      (b) the substance was supplied to the accused before it  
19                                      became a strictly controlled substance; and
- 20                      (c) the accused did not know, and could not reasonably  
21                                      have known, that the substance had become a strictly  
22                                      controlled substance.

23              **19. Use of poison obtained under permit**

24                      A permit holder who uses, or causes or allows to be used, a  
25                      poison obtained by the person under the permit commits an  
26                      offence unless the poison is used —

- 27                      (a) for the purpose and in the manner specified in the  
28                                      permit; and
- 29                      (b) in accordance with any conditions attached to the  
30                                      permit; and



1           (c) in accordance with the regulations.

2           Penalty: see section 132.

3       **20. Unlawfully obtaining poison by wholesale**

4       (1) A person who obtains, or attempts to obtain, a poison by  
5       wholesale supply commits an offence unless —

6           (a) the person —

7               (i) is a licensee or authorised health professional  
8               who is authorised to supply the poison; and

9               (ii) obtains, or attempts to obtain, the poison for the  
10              purpose of such supply;

11           or

12           (b) the person —

13               (i) is a permit holder; and

14               (ii) obtains, or attempts to obtain, the poison for the  
15              purpose specified in the permit;

16           or

17           (c) the poison is a Schedule 5 or 6 poison.

18           Penalty: see section 132.

19       (2) Subsection (1) applies whether or not the supplier from whom  
20       the person obtains, or attempts to obtain, the poison is in this  
21       State.

22       **21. Fraudulent behaviour to obtain supply of poison**

23       (1) A person commits an offence if the person —

24           (a) fraudulently alters a prescription; or

25           (b) is in possession of a prescription that the person  
26              suspects, or ought reasonably to suspect, has been  
27              fraudulently altered.

28           Penalty: see section 132.

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- 1            (2) A pharmacist does not commit an offence under  
2            subsection (1)(b) if the pharmacist —
- 3                      (a) takes possession of a prescription that the pharmacist  
4                      suspects has been fraudulently altered; and
- 5                      (b) as soon as is reasonably practicable, gives the  
6                      prescription to the CEO.
- 7            (3) A person who uses fraudulent means to cause another person to  
8            prescribe or supply a poison commits an offence.  
9            Penalty: see section 132.
- 10          (4) In subsection (3) —  
11          *fraudulent means* includes —
- 12                      (a) making a statement that the person knows, or ought  
13                      reasonably to know, is false or misleading in a material  
14                      particular;
- 15                      (b) failing to disclose all information that the person knows,  
16                      or ought reasonably to know, is materially relevant;
- 17                      (c) using a prescription that the person knows, or ought  
18                      reasonably to know —
- 19                              (i) was issued in contravention of section 14(3); or  
20                              (ii) has been fraudulently altered;
- 21                      (d) using a forged document;
- 22                      (e) using a false pretence.

23    **22.      Storage, handling, transport and disposal of poisons**

- 24            (1) A person who stores, handles, transports or disposes of a poison  
25            other than in accordance with regulations made under  
26            subsection (2) commits an offence.  
27            Penalty: see section 132.
- 28            (2) The regulations may make provision in relation to the manner in  
29            which poisons are to be stored, handled, transported or disposed  
30            of.

1     **23.     Record keeping and reporting**

- 2         (1)   A person who is a licensee, permit holder or authorised health  
3               professional commits an offence unless the person —  
4               (a)   keeps the records that are prescribed by the regulations;  
5                      and  
6               (b)   gives copies of, or information from, those records to  
7                      the CEO as required by the regulations.

8               Penalty: see section 132.

- 9         (2)   A person commits an offence if the person —  
10              (a)   makes an entry in a record that the person knows is false  
11                      or misleading in a material particular; or  
12              (b)   gives information from a record that the person knows is  
13                      false or misleading in a material particular.

14              Penalty: see section 132.

15     **24.     Vending machines**

- 16         (1)   In this section —  
17               *responsible person*, in relation to premises, means a person  
18               having the management or control, or otherwise being in charge  
19               of, the premises;  
20               *vending machine* means a machine or device used or capable of  
21               being used for the purpose of supplying goods without the  
22               personal manipulation or attention at the time of supply of the  
23               supplier or an employee or agent of the supplier.

- 24         (2)   A responsible person for premises commits an offence if a  
25               person is supplied with a poison from a vending machine at the  
26               premises unless the supply of the poison from the vending  
27               machine is in accordance with regulations made under  
28               subsection (5).

29              Penalty: see section 132.

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- 1            (3)    Subsection (2) applies to a responsible person notwithstanding  
2                      that the person may be authorised under a professional authority  
3                      or licence to supply the poison.
- 4            (4)    A person who places, or authorises or allows to be placed, in  
5                      any premises a vending machine commits an offence unless the  
6                      placement is in accordance with regulations made under  
7                      subsection (5).
- 8                      Penalty: see section 132.
- 9            (5)    The regulations may make provision in relation to —
- 10                      (a)    circumstances in which poisons prescribed by the  
11                                  regulations may be supplied from a vending machine;  
12                                  and
- 13                      (b)    premises at which a vending machine may be located.

**Part 3 — Authorisation of health professionals**

**Division 1 — Authorisation of health professionals**

**25. Authorisation of health professionals to administer, possess, prescribe, supply or use medicines**

(1) A health professional acting in the lawful practice of his or her profession is authorised to administer, possess, prescribe, supply or use a medicine if —

- (a) the health professional is a member of a class of health professional prescribed by the regulations; and
- (b) the medicine is prescribed by the regulations as one that may be administered, possessed, prescribed, supplied or used by a member of that class of health professional; and
- (c) the administration, possession, prescription, supply or use of the medicine is in accordance with the regulations.

(2) Regulations referred to in subsection (1) may make provision in relation to the circumstances and manner in which, and the conditions on which, a member of a prescribed class of health professional may administer, possess, prescribe, supply or use a medicine.

**26. Authorisation of pharmacists to manufacture medicines or use or possess Schedule 7 poisons**

A pharmacist acting in the lawful practice of his or her profession is authorised —

- (a) to manufacture any medicine to the extent that it is necessary for the purpose of extemporaneously preparing a medicine that is to be supplied by the pharmacist; and
- (b) to use or possess a Schedule 7 poison that is an ingredient in a therapeutic good within the meaning

1 given in the *Therapeutic Goods Act 1989*  
2 (Commonwealth) section 3(1) for the purpose of  
3 extemporaneously preparing the therapeutic good.

4 **27. Authorisation of employees and agents**

5 (1) An employee or agent of a health professional acting within the  
6 scope of the employee's or agent's actual or apparent authority,  
7 may do anything that is authorised by the professional authority  
8 of the health professional, other than to prescribe a medicine.

9 (2) For the purposes of this Act, if an agent or employee of a health  
10 professional does something that is authorised under  
11 subsection (1) the health professional is to be taken to have also  
12 done the thing.

13 **Division 2 — Conditions, suspension and cancellation**

14 **28. Grounds for taking action**

15 (1) There are ***grounds for taking action*** against an authorised  
16 health professional under this Division if the health professional  
17 or an employee or agent of the health professional —

18 (a) has, in connection with the person's administration,  
19 manufacture, possession, prescription, supply or use of a  
20 poison, contravened any of the following —

21 (i) this Act;

22 (ii) the *Misuse of Drugs Act 1981*;

23 (iii) the *Agricultural and Veterinary Chemicals Code*  
24 *Act 1994* (Commonwealth);

25 (iv) the Agvet Code of Western Australia;

26 (v) the *Therapeutic Goods Act 1989*  
27 (Commonwealth);

28 or

- 1           (b) has, in connection with the person's administration,  
2           manufacture, possession, prescription, supply or use of a  
3           poison —  
4               (i) acted carelessly, incompetently or improperly; or  
5               (ii) done or omitted to do something, or engaged in  
6               conduct, that poses a threat to the health, safety  
7               or welfare of a person or of the public;  
8           or  
9           (c) has done or omitted to do something, or engaged in  
10          conduct, that renders the person unfit to administer,  
11          manufacture, possess, prescribe, supply or use a poison.
- 12       (2) However, if grounds for taking action against an authorised  
13       health professional arise because of the conduct of an employee  
14       or agent, the CEO cannot take action against the health  
15       professional under this Division unless the CEO is satisfied  
16       that —  
17           (a) the employee or agent engaged in the conduct with the  
18           knowledge, authority or consent of the health  
19           professional; or  
20           (b) the health professional failed to take all reasonable  
21           measures to prevent the employee or agent engaging in  
22           the conduct.
- 23       (3) There are also ***grounds for taking action*** against an authorised  
24       health professional under this Division if the health professional  
25       requests that the action be taken.
- 26       **29. CEO may impose conditions, suspend or cancel authority**
- 27       (1) If the CEO considers that there are grounds for taking action  
28       against an authorised health professional under this Division the  
29       CEO may, by giving written notice to the health professional —  
30           (a) impose on the person's professional authority any  
31           conditions the CEO thinks fit; or

- 1 (b) suspend the person's professional authority for a  
2 specified period; or
- 3 (c) cancel the person's professional authority.
- 4 (2) A notice given for the purposes of subsection (1) —
- 5 (a) must set out the grounds on which the action is taken;  
6 and
- 7 (b) takes effect on the day specified in it.
- 8 (3) Conditions imposed under subsection (1)(a) may include a  
9 condition that the health professional must not exercise the  
10 authority in relation to a particular poison or class of poisons.
- 11 (4) Before taking action under subsection (1) the CEO must —
- 12 (a) give to the authorised health professional written notice  
13 of the action that the CEO proposes to take and the  
14 grounds on which it is proposed to take that action; and
- 15 (b) give the health professional a reasonable opportunity to  
16 be heard on the matter.
- 17 (5) However the CEO may take action under subsection (1) without  
18 complying with subsection (4) if the CEO considers that the  
19 taking of immediate action is essential in order to protect the  
20 health, safety and welfare of a person or of the public.
- 21 (6) If the CEO takes immediate action the CEO must —
- 22 (a) as soon as practicable after taking the action give the  
23 health professional a reasonable opportunity to be heard  
24 on the matter; and
- 25 (b) if the health professional makes any representations to  
26 the CEO on the matter, review the decision to take that  
27 action after considering those representations.
- 28 (7) The CEO may, by giving written notice to an authorised health  
29 professional —
- 30 (a) amend or revoke a condition imposed under  
31 subsection (1) on the person's professional authority; or



1                    (b)    revoke the suspension or cancellation under  
2                    subsection (1) of the person's professional authority.

3            (8)    The CEO may exercise a power under subsection (7) on his or  
4            her own initiative or on the request of the authorised health  
5            professional.

6    **30.        Effect of conditions, suspension or cancellation**

7            (1)    If a condition is imposed on a person's professional authority,  
8            the authority conferred on that health professional by section 25  
9            or 26 (as the case requires) is subject to that condition.

10          (2)    If a person's professional authority is suspended, section 25  
11          or 26 (as the case requires) ceases to apply in relation to the  
12          person during the period of suspension.

13          (3)    If a person's professional authority is cancelled, section 25 or 26  
14          (as the case requires) ceases to apply in relation to the health  
15          professional.

16    **31.        CEO may notify regulatory authority if action taken under**  
17    **this Division**

18          (1)    In this section —  
19          *relevant regulatory authority* means —

20                  (a)    in the case of a registered health practitioner, the  
21                  National Agency, as defined in the *Health Practitioner*  
22                  *Regulation National Law (Western Australia)* section 5;  
23                  or

24                  (b)    in the case of a veterinary surgeon, the Veterinary  
25                  Surgeons' Board established under the *Veterinary*  
26                  *Surgeons Act 1960* section 4.

27          (2)    If the CEO takes action against an authorised health  
28          professional under this Division, the CEO may notify a relevant  
29          regulatory authority of the action taken and the grounds on  
30          which the action was taken.

1     **32.     Publishing notice of action taken under this Division**

2             If the CEO takes action against an authorised health  
3             professional under this Division, the CEO may cause notice of  
4             the action to be published as follows —

- 5                 (a)   in the *Gazette*;  
6                 (b)   on a website maintained by the CEO.

7     **33.     Review of decisions by State Administrative Tribunal**

8             (1)   In this section —

9                 *reviewable decision* means a decision of the CEO —

- 10                (a)   under section 29(1) to impose a condition on, suspend or  
11                cancel a professional authority; or  
12                (b)   under section 29(7) to amend a condition on a  
13                professional authority; or  
14                (c)   to refuse a request under section 29(8) for the CEO to —  
15                       (i)   amend or revoke a condition imposed on a  
16                       professional authority; or  
17                       (ii)  revoke the suspension or cancellation of a  
18                       professional authority,  
19                       if the request was made more than 2 years after the  
20                       condition, suspension or cancellation was imposed.

21             (2)   A health professional whose professional authority is affected  
22             by a reviewable decision may apply to the State Administrative  
23             Tribunal for a review of the decision.

**Part 4 — Licences, permits and notices**

**Division 1 — Licences and permits**

**34. Licences**

- (1) A licence authorises the licensee to manufacture or supply a poison in accordance with the licence.
- (2) The regulations may make provision in relation to the types of licences that may be granted under this Act.
- (3) A licence —
- (a) must specify the poison or poisons to which the licence applies; and
  - (b) must specify the activities that are authorised by the licence.
- (4) An agent or employee of a licensee acting within the scope of the agent's or employee's actual or apparent authority, may do anything that is authorised by the licence.
- (5) For the purposes of this Act, if an agent or employee of a licensee does something that is authorised under subsection (4) the licensee is to be taken to have also done the thing.

**35. Licences for Schedule 9 poisons**

A licence granted in relation to a Schedule 9 poison —

- (a) may authorise the manufacture or supply of a Schedule 9 poison only for educational, experimental or research purposes or for a purpose prescribed by the regulations; and
- (b) may not authorise the retail supply of a Schedule 9 poison.

1     **36.     Permits**

- 2         (1) A permit authorises the permit holder to use a poison in  
3             accordance with the permit.
- 4         (2) The regulations may make provision in relation to the types of  
5             permits that may be granted under this Act.
- 6         (3) A permit —
- 7             (a) must specify the poison or poisons to which the permit  
8                 applies; and
- 9             (b) must specify the purpose for which the poison may be  
10                used by the permit holder; and
- 11            (c) may specify the manner in which the poison may be  
12                used by the permit holder.
- 13         (4) An agent or employee of a permit holder, acting within the  
14             scope of the agent's or employee's actual or apparent authority,  
15             may do anything that is authorised by the permit.
- 16         (5) For the purposes of this Act, if an agent or employee of a permit  
17             holder does something that is authorised under subsection (4)  
18             the permit holder is to be taken to have also done the thing.

19     **37.     Permits for Schedule 9 poisons**

20             A permit granted in relation to a Schedule 9 poison may  
21             authorise the use of a Schedule 9 poison only for educational,  
22             experimental or research purposes or for a purpose prescribed  
23             by the regulations.

24             **Division 2 — Licensing and permit procedure**

25     **38.     Application for licence or permit or renewal of licence or**  
26             **permit**

- 27         (1) A person may apply to the CEO for a licence or permit or for  
28             the renewal of a licence or permit.

- 1       (2) An application must be —  
2           (a) in the manner and form approved by the CEO; and  
3           (b) accompanied by —  
4               (i) the application fee prescribed by the regulations  
5               (if any); and  
6               (ii) the licence or permit fee prescribed by the  
7               regulations.
- 8       (3) If a licence or permit is not granted or renewed, the CEO must  
9       refund the licence or permit fee.

10   **39. Further information**

- 11       (1) The CEO may, in writing, require an applicant under section 38  
12       to do any or all of the following —  
13           (a) provide the CEO with such further information that is  
14           relevant to the application as the CEO requires;  
15           (b) verify any further information provided by statutory  
16           declaration;  
17           (c) provide the CEO with the applicant's written consent to  
18           seek from another person specified in the requirement  
19           information about the applicant relevant to the  
20           application.
- 21       (2) The CEO may specify in the requirement a reasonable time  
22       within which the applicant must comply with the requirement.
- 23       (3) The CEO may refuse an application if the applicant does not  
24       comply with a requirement under subsection (1) within the time  
25       specified in the requirement or, if no time is so specified, within  
26       a reasonable time.

27   **40. Timing of application for renewal of licence or permit**

- 28       (1) In this section —  
29       *expiry day*, in relation to a licence or permit, is the day on which  
30       the licence or permit is due to expire.

- 1       (2) An application for the renewal of a licence or permit must be  
2       made not later than 28 days before the expiry day of a licence or  
3       permit.
- 4       (3) The CEO may, at the request of the licensee or permit holder,  
5       accept an application made less than 28 days before the expiry  
6       day if the CEO is satisfied that there is sufficient time to  
7       determine the application before the expiry day.
- 8       (4) If an application has been made for the renewal of a licence or  
9       permit in accordance with this section then the licence or permit  
10      continues to have effect until the application is determined,  
11      unless it is sooner suspended or cancelled under section 61.
- 12   **41. Grant or renewal of licence or permit to individual**
- 13      (1) In this section —  
14      *relevant activity* means —  
15          (a) in relation to a licence, an activity to be authorised by  
16          the licence; or  
17          (b) in relation to a permit, the use of a poison for a purpose  
18          to be specified in the permit;  
19      *sufficient*, in relation to knowledge or resources, means  
20      sufficient to enable each relevant activity to be carried out —  
21          (a) in accordance with the Act; and  
22          (b) without posing a threat to the health, safety and welfare  
23          of a person or of the public.
- 24      (2) The CEO must grant a licence or permit, or renew a licence or  
25      permit, to an applicant who is an individual if the CEO is  
26      satisfied that the applicant —  
27          (a) has complied with sections 38 and 39; and  
28          (b) is at least 21 years of age; and  
29          (c) is a fit and proper person to be involved in each relevant  
30          activity; and

- 1           (d) has sufficient knowledge of —  
2               (i) each poison to which the licence or permit is to  
3               apply; and  
4               (ii) the duties and obligations of a licensee or permit  
5               holder;  
6           and  
7           (e) has sufficient material, human and financial resources to  
8           carry on the relevant activity; and  
9           (f) proposes to carry on each relevant activity at premises  
10           which comply with any requirements prescribed by the  
11           regulations for the purposes of this paragraph; and  
12           (g) proposes to carry on each relevant activity in a manner  
13           which complies with any requirements prescribed by the  
14           regulations for the purposes of this paragraph; and  
15           (h) meets any other requirements prescribed by the  
16           regulations.
- 17       (3) The CEO must not grant a licence or permit, or renew a licence  
18       or permit, to an applicant who is an individual unless the CEO is  
19       satisfied that the applicant has met the requirements set out in  
20       subsection (2).

21       **42. Grant or renewal of licence or permit to partnership**

- 22       (1) The CEO must, on an application made under section 38 by a  
23       member of a partnership, grant a licence or permit, or renew a  
24       licence or permit, jointly to 2 or more persons who together  
25       constitute the partnership, if the CEO is satisfied that —  
26           (a) the applicant has complied with sections 38 and 39; and  
27           (b) each person who is a member of the partnership  
28           complies with section 41(2)(b) to (d) and (h); and  
29           (c) the members of the partnership together —  
30               (i) meet the requirements set out in section 41(2)(e)  
31               to (g); and

- 1 (ii) meet any other requirements prescribed by the  
2 regulations.
- 3 (2) The CEO must not grant a licence or permit, or renew a licence  
4 or permit, jointly to 2 or more persons who together constitute a  
5 partnership unless the CEO is satisfied that the requirements set  
6 out in subsection (1) have been met.
- 7 **43. Grant or renewal of licence or permit to body corporate**
- 8 (1) The CEO must grant a licence or permit, or renew a licence or  
9 permit, to an applicant that is a body corporate if the CEO is  
10 satisfied that —
- 11 (a) the applicant has complied with sections 38 and 39; and  
12 (b) each corporate officer of the body corporate complies  
13 with section 41(2)(b) to (d) and (h); and  
14 (c) the body corporate —
- 15 (i) meets the requirements set out in section 41(2)(e)  
16 to (g); and  
17 (ii) meets any other requirements prescribed by the  
18 regulations.
- 19 (2) The CEO must not grant a licence or permit, or renew a licence  
20 or permit, to an applicant that is a body corporate unless the  
21 CEO is satisfied that the requirements set out in subsection (1)  
22 have been met.
- 23 **44. Notice of decision**
- 24 The CEO must, as soon as is practicable after making a decision  
25 under section 41, 42 or 43, give to the person to whom the  
26 decision relates, written notice of —
- 27 (a) the decision; and  
28 (b) if the grant or renewal of a licence or permit has been  
29 refused — the person's right of review under section 63.



1     **45.     Form of licence or permit**

2             A licence or permit must be in a form approved by the CEO.

3     **46.     Duration of licence or permit**

4         (1)    A licence or permit that is granted or renewed has effect for the  
5               period specified in the licence or permit unless it is sooner  
6               suspended or cancelled under section 61.

7         (2)    The period specified in a licence or permit must not exceed  
8               12 months from the day on which the licence or permit is  
9               granted or renewed.

10    **47.     Licence or permit not transferable**

11            A licence or permit is not transferable.

12    **48.     Application to vary licence or permit**

13         (1)    A licensee may apply to the CEO to vary —

- 14               (a)   the poison or poisons to which the licence applies; or  
15               (b)   the activities that are authorised by the licence.

16         (2)    A permit holder may apply to the CEO to vary —

- 17               (a)   the poison or poisons to which the permit applies; or  
18               (b)   the purpose for which a poison to which the permit  
19               applies may be used by the permit holder; or  
20               (c)   the manner in which a poison to which the permit  
21               applies may be used by the permit holder.

22         (3)    An application must be —

- 23               (a)   made in the manner and form approved by the CEO; and  
24               (b)   accompanied by the fee prescribed by the regulations (if  
25               any).

26         (4)    Section 39 applies in relation to an application as if a reference  
27               in that section to an applicant under section 38 was a reference  
28               to an applicant under this section.

1     **49.     Variation of licence or permit**

- 2         (1)    The CEO must, on an application made under section 48, vary a  
3                licence or permit if the CEO is satisfied that —
- 4                (a)   if the applicant is an individual — the requirements set  
5                      out in section 41(2) are satisfied in relation to the  
6                      variation; or
- 7                (b)   if the applicant is a member of a partnership — the  
8                      requirements set out in section 42(1) are satisfied in  
9                      relation to the variation; or
- 10              (c)   if the applicant is a body corporate — the requirements  
11                      set out in section 43(1) are satisfied in relation to the  
12                      variation.
- 13         (2)    The CEO must not vary a licence or permit unless the CEO is  
14                satisfied that the requirements set out in subsection (1) are  
15                satisfied in relation to the variation.

16               **Division 3 — Conditions on licences or permits**

17     **50.     Regulations may prescribe conditions**

- 18         (1)    The regulations may make provision in relation to conditions to  
19                be imposed on licences or permits.
- 20         (2)    A licence or permit may specify that a prescribed condition does  
21                not apply to that licence or permit.

22     **51.     CEO may impose conditions**

- 23         (1)    The CEO may, when granting or renewing a licence or permit,  
24                impose any condition the CEO thinks fit.
- 25         (2)    The CEO may at any time, by giving written notice to a licensee  
26                or permit holder —
- 27                (a)   impose a condition on the person's licence or permit; or
- 28                (b)   amend or revoke a condition imposed on the person's  
29                      licence or permit.

- 1       (3) The CEO may exercise a power under subsection (2) on the  
2       CEO's own initiative or on the application of the licensee or  
3       permit holder.
- 4       (4) The CEO cannot amend or revoke a condition imposed by the  
5       State Administrative Tribunal.
- 6       (5) A notice under subsection (2) takes effect on the day specified  
7       in it.
- 8       (6) The day specified in a notice under subsection (2) cannot be  
9       before the licensee or permit holder has had a reasonable  
10      opportunity to —
- 11          (a) make submissions to the CEO in relation to the  
12          condition or the amended condition; and
- 13          (b) take any actions necessary to comply with the condition  
14          or amended condition.
- 15   **52.      Application to vary conditions**
- 16      (1) In this section —
- 17          ***application to vary conditions*** means an application by a  
18          licensee or permit holder under section 51(3).
- 19      (2) An application to vary conditions must be —
- 20          (a) made in the manner and form approved by the CEO; and
- 21          (b) accompanied by the fee prescribed by the regulations (if  
22          any).
- 23      (3) Section 39 applies in relation to an application to vary  
24      conditions as if a reference in that section to an applicant under  
25      section 38 was a reference to an applicant under section 51(3).



- 1   **55.     Application for approval of proposed change of**  
2       **management**
- 3       (1)   A licensee or permit holder may apply to the CEO for approval  
4           of a proposed change of management.
- 5       (2)   An application must —
- 6           (a)   be made in the manner and form approved by the CEO;  
7                and
- 8           (b)   be accompanied by the fee prescribed by the regulations  
9                (if any); and
- 10          (c)   specify the day on which it is proposed that the change  
11                will occur; and
- 12          (d)   be made at least 28 days before that day.
- 13       (3)   The CEO may, at the request of a licensee or permit holder,  
14           accept an application made less than 28 days before the day on  
15           which it is proposed that a change of management will occur if  
16           the CEO is satisfied that there is sufficient time to determine the  
17           application before that day.
- 18       (4)   Section 39 applies in relation to an application for approval of a  
19           change of management as if a reference in that section to an  
20           applicant under section 38 was a reference to an applicant under  
21           subsection (1).
- 22   **56.     Grant or refusal of approval of proposed change of**  
23       **management**
- 24       (1)   The CEO must, on an application made under section 55,  
25           approve a proposed change of management if the CEO is  
26           satisfied that the applicant would meet the requirements set out  
27           in section 43(1) if the proposed change of management had  
28           already occurred.
- 29       (2)   The CEO must not approve a proposed change of management  
30           unless the CEO is satisfied that the requirement set out in  
31           subsection (1) has been met.

- 1       (3) The CEO is to be taken to have approved a change of  
2       management if —
- 3           (a) an application has been made under section 55 for an  
4           approval of the proposed change of management; and
- 5           (b) the CEO has not, before the day specified in the  
6           application as the day on which it is proposed that the  
7           change will occur, either —
- 8               (i) approved the change; or
- 9               (ii) required the applicant to provide further  
10              information relevant to the application; or
- 11              (iii) refused to approve the change.
- 12       (4) If the CEO requires the applicant to provide further information  
13       under subsection (3)(b)(ii), then subsection (3) applies as if the  
14       reference in subsection (3)(b) to the day specified in the  
15       application was a reference to the day that is 28 days after the  
16       further information is provided by the applicant.

17       **57. Application for approval after change of management**  
18       **occurs**

- 19       (1) If there is a change of management in a licensee or permit  
20       holder that is a body corporate in relation to which an  
21       application was not made under section 55, the licensee or  
22       permit holder may apply to the CEO under this section for  
23       approval of the change.
- 24       (2) An application must —
- 25           (a) be made in the manner and form approved by the CEO;  
26           and
- 27           (b) be accompanied by the fee prescribed by the regulations  
28           (if any); and
- 29           (c) specify the day on which the change occurred.
- 30       (3) Section 39 applies in relation to an application for approval after  
31       a change of management has occurred as if a reference in that

1           section to an applicant under section 38 was a reference to an  
2           applicant under subsection (1).

3   **58.       Grant or refusal of approval of change of management**

4       (1)   The CEO must, on an application made under section 57,  
5       approve a change of management if the CEO is satisfied that —

6           (a)   the licensee or permit holder did not know, and could  
7               not reasonably be expected to have known, of the  
8               change of management in sufficient time to make an  
9               application under section 55 before the change occurred;  
10              and

11           (b)   the application under section 57 was made as soon as  
12               practicable after the licensee or permit holder became  
13               aware that the change would occur or had occurred; and

14           (c)   the applicant meets the requirements set out in  
15               section 43(1).

16       (2)   The CEO must not approve a change of management unless the  
17       CEO is satisfied that the requirements set out in subsection (1)  
18       have been met.

19   **59.       Death of individual licensee or permit holder**

20       (1)   In this section —

21           *executor* means a person who is, or is named in the will of the  
22           licensee or permit holder as, or intends to apply to become, the  
23           executor or administrator of the licensee or permit holder's  
24           estate;

25           *permission* means permission granted under subsection (4)(a).

26       (2)   If a licensee or permit holder who is an individual dies, the  
27       person's executor may apply to the CEO for permission to act as  
28       the licensee or permit holder for the purposes of winding up the  
29       estate.

30       (3)   An application must be made not more than 14 days after the  
31       death of the licensee or permit holder, or such longer period as  
32       the CEO allows.

- 1       (4) On an application the CEO may —
- 2           (a) grant permission for the executor to act as the licensee
- 3           or permit holder for a period specified by the CEO; or
- 4           (b) refuse to grant permission.
- 5       (5) If the CEO grants permission the CEO may impose any
- 6       conditions the CEO thinks fit on the licence or permit.
- 7       (6) The CEO may, at any time —
- 8           (a) extend the period for which the permission is in force; or
- 9           (b) revoke the permission; or
- 10          (c) vary the conditions that are imposed on the licence or
- 11          permit.
- 12       (7) If an application is made under this section, the applicant is to
- 13       be taken, for all purposes, to be the licensee or permit holder for
- 14       the period commencing on the death of the licensee or permit
- 15       holder and ending —
- 16           (a) if the application is refused, on the day the application is
- 17           refused; or
- 18           (b) if permission is granted, at the end of the period for
- 19           which the permission is in force.

20                   **Division 5 — Amendment, suspension or cancellation**

21       **60.       Grounds for taking action**

- 22       (1) There are ***grounds for taking action*** against a licensee or permit
- 23       holder under this Division if the licensee or permit holder or an
- 24       employee or agent of the licensee or permit holder —
- 25           (a) has, in connection with the person's manufacture,
- 26           supply or use of a poison, contravened any of the
- 27           following —
- 28               (i) this Act;
- 29               (ii) the *Misuse of Drugs Act 1981*;



- 1 (iii) the *Agricultural and Veterinary Chemicals Code*  
2 *Act 1994* (Commonwealth);
- 3 (iv) the Agvet Code of Western Australia;
- 4 (v) the *Therapeutic Goods Act 1989*  
5 (Commonwealth);
- 6 or
- 7 (b) has, in connection with the person's manufacture,  
8 supply or use of a poison —
- 9 (i) acted carelessly, incompetently or improperly; or
- 10 (ii) done or omitted to do something, or engaged in  
11 conduct, that poses a threat to the health, safety  
12 or welfare of a person or of the public;
- 13 or
- 14 (c) has done or omitted to do something, or engaged in  
15 conduct, that renders the person unfit to exercise the  
16 authority conferred by the licence or permit.
- 17 (2) However, if grounds for taking action against a licensee or  
18 permit holder arise under subsection (1) because of the conduct  
19 of an employee or agent, the CEO cannot take action against the  
20 licensee or permit holder under this Division unless the CEO is  
21 satisfied that —
- 22 (a) the employee or agent engaged in the conduct with the  
23 knowledge, authority or consent of the licensee or  
24 permit holder; or
- 25 (b) the licensee or permit holder failed to take all reasonable  
26 measures to prevent the employee or agent engaging in  
27 the conduct.
- 28 (3) There are also ***grounds for taking action*** against a licensee or  
29 permit holder under this Division if —
- 30 (a) the licensee or permit holder has obtained the licence or  
31 permit because of incorrect or misleading information;  
32 or

- 1 (b) the CEO is no longer satisfied that the licensee or permit  
2 holder meets the requirements set out in section 41(2),  
3 42(1) or 43(1) that are relevant to the grant or renewal of  
4 the licence or permit; or
- 5 (c) a poison to which the licence applies ceases to be  
6 included in a particular Schedule and becomes included  
7 in a different Schedule; or
- 8 (d) the licensee or permit holder requests that the action be  
9 taken.

10 **61. CEO may amend, suspend or cancel licence or permit**

- 11 (1) If the CEO considers that there are grounds for taking action  
12 against a licensee or permit holder under this Division the CEO  
13 may, by giving written notice to the person —
- 14 (a) amend the licence or permit to change the poison or  
15 poisons to which it applies; or
- 16 (b) suspend the licence or permit for a specified period; or  
17 (c) cancel the licence or permit.
- 18 (2) A notice given for the purposes of subsection (1) —
- 19 (a) must set out the grounds on which the action is taken;  
20 and  
21 (b) takes effect on the day specified in it.
- 22 (3) Before taking action under subsection (1) the CEO must —
- 23 (a) give to the licensee or permit holder written notice of the  
24 action that the CEO proposes to take and the grounds on  
25 which it is proposed to take that action; and  
26 (b) give the person a reasonable opportunity to be heard on  
27 the matter.
- 28 (4) However, the CEO may take action under subsection (1)  
29 without complying with subsection (3) if the CEO considers that  
30 the taking of immediate action is essential in order to protect the  
31 health, safety and welfare of a person or of the public.

- 1       (5) If the CEO takes immediate action the CEO must —  
2           (a) as soon as practicable after taking the action give the  
3           licensee or permit holder a reasonable opportunity to be  
4           heard on the matter; and  
5           (b) if the person makes any representations to the CEO on  
6           the matter, review the decision to take that action after  
7           considering those representations.
- 8       (6) If a licence or permit is suspended it is of no effect during the  
9       period of suspension.

10   **62.       Publishing notice of action taken under this Division**

11       If the CEO takes action against a licensee or permit holder  
12       under this Division, the CEO may cause notice of the action to  
13       be published in the *Gazette*.

14       **Division 6 — Review of licensing and permit decisions**

15   **63.       Review of decisions**

- 16       (1) In this section —  
17       *person affected* means —  
18           (a) in relation to a reviewable decision about an application,  
19           the applicant; or  
20           (b) in relation to any other reviewable decision, the licensee  
21           or permit holder whose licence or permit is affected by  
22           the decision;  
23       *reviewable decision* means a decision of the CEO —  
24           (a) to refuse a request under section 40(3) to accept an  
25           application;  
26           (b) under section 41, 42 or 43 to refuse to grant or renew a  
27           licence or permit;  
28           (c) under section 49 to refuse to vary a licence or permit;  
29           (d) under section 51 to —  
30           (i) impose a condition on a licence or permit; or

- 1 (ii) amend or revoke, or refuse to amend or revoke, a  
2 condition imposed on a licence or permit;
- 3 (e) under section 55(3) to refuse a request to accept an  
4 application;
- 5 (f) under section 56 or 58 to refuse to approve a change of  
6 management;
- 7 (g) under section 61 to amend, suspend or cancel a licence  
8 or permit.
- 9 (2) A person affected by a reviewable decision may apply to the  
10 State Administrative Tribunal for a review of the decision.

11 **Division 7 — General provisions**

12 **64. False or misleading information**

13 A person commits an offence if the person provides  
14 information, in relation to an application under this Part, that the  
15 person knows to be —

- 16 (a) false or misleading in a material particular; or  
17 (b) likely to deceive in a material way.

18 Penalty: see section 132.

19 **65. Amendment to correct error**

- 20 (1) The CEO may amend a licence or permit to correct —  
21 (a) a clerical mistake, error or unintentional omission; or  
22 (b) a misdescription of a person, activity or thing.
- 23 (2) The CEO must give to the licensee or permit holder written  
24 notice of the amendment.

25 **66. Licence or permit to be produced if amended**

- 26 (1) For the purposes of this section a licence or permit is amended  
27 if —  
28 (a) the licence or permit is varied under section 49; or

- 1           (b) the licence or permit is amended under section 65; or  
2           (c) a new condition is imposed on the licence or permit; or  
3           (d) a condition imposed on the licence or permit is amended  
4           or revoked.

5       (2) If a licence or permit is amended —

- 6           (a) the licensee or permit holder must return the licence or  
7           permit document to the CEO; and  
8           (b) the CEO must issue a replacement licence or document  
9           showing the amendment.

10   **67. Replacement licence or permit**

11           If the CEO is satisfied that a licence or permit has been lost or  
12           destroyed, the CEO may, on payment of the fee prescribed by  
13           the regulations, issue a replacement licence or permit.

14   **68. Certified copy of licence or permit**

- 15       (1) The CEO may, on payment of the fee prescribed by the  
16           regulations, provide to a person a certified copy of a licence or  
17           permit.  
18       (2) A certified copy of a licence or permit must include all of the  
19           conditions imposed on the licence or permit at the time the  
20           certified copy is given.

21   **69. Production of licence or permit for inspection**

22           A licensee or permit holder who, on the request of an  
23           investigator, fails to produce the licence or permit for inspection  
24           by the investigator as soon as is practicable commits an offence.  
25           Penalty: see section 132.

26   **70. Return of licence or permit**

- 27       (1) A person who is or was a licensee or permit holder commits an  
28           offence if the person fails to return the licence or permit to the

1 CEO within 7 days of the cancellation or suspension of the  
2 licence or permit.

3 Penalty: see section 132.

4 (2) The CEO must return a licence or permit to the licensee or  
5 permit holder as soon as is practicable after the suspension of  
6 the licence or permit ceases.

7 **Division 8 — Notices**

8 **71. Compliance notices**

9 (1) The CEO may, by notice in writing given to a person, impose  
10 restrictions on the supply of a Schedule 5 or 6 poison by the  
11 person if the CEO considers that the restriction is necessary to  
12 protect the health, safety and welfare of a person or of the  
13 public.

14 (2) A notice given under subsection (1) —  
15 (a) has effect according to its terms; and  
16 (b) has effect when the notice is given to the person; and  
17 (c) may be varied or revoked by subsequent notice in  
18 writing given to the person by the CEO.

19 **72. Schedule 7 notices**

20 (1) The CEO may, if the CEO considers that it is necessary to  
21 protect the health, safety and welfare of a person or of the  
22 public —  
23 (a) by notice in writing given to a person, impose  
24 restrictions on the supply, use or possession of a  
25 Schedule 7 poison by the person; or  
26 (b) by notice published in the *Gazette*, impose restrictions  
27 on the supply, use or possession of a Schedule 7 poison  
28 by a class of persons specified in the notice or in  
29 circumstances or locations specified in the notice.

- 1       (2) A notice given by the CEO under subsection (1) —  
2           (a) has effect according to its terms; and  
3           (b) has effect —  
4               (i) if the notice applies to a particular person, when  
5               the notice is given to the person; or  
6               (ii) otherwise, on the day after the day on which the  
7               notice is published in the *Gazette* or as specified  
8               in the notice;  
9           and  
10          (c) may be varied or revoked by the CEO by subsequent  
11          notice given in the form referred to in subsection (1) as  
12          appropriate.

13   **73. Review of decisions**

- 14       (1) In this section —  
15       *reviewable decision* means a decision of the CEO —  
16           (a) under section 71 to impose restrictions on the supply of  
17           a poison by a person;  
18           (b) under section 72 to impose restrictions on the supply,  
19           use or possession of a poison by a person.  
20       (2) A person on whom restrictions are imposed by a reviewable  
21       decision may apply to the State Administrative Tribunal for a  
22       review of the decision.

1           **Part 5 — Register of licences, permits, notices and**  
2                           **restricted professional authorities**

3   **74.       Terms used**

4           In this Part —

5           *appropriate licence* has the meaning given in section 12;

6           *appropriate permit* has the meaning given in section 12;

7           *notice* means a notice given under Part 4 Division 8;

8           *restricted health professional* means a health professional  
9           whose professional authority —

- 10           (a) is subject to any conditions imposed under  
11               section 29(1)(a); or  
12           (b) is suspended under section 29(1)(b); or  
13           (c) has been cancelled under section 29(1)(c).

14   **75.       CEO to maintain register**

15       (1) The CEO must keep an accurate and up-to-date register of the  
16       following —

- 17           (a) licences;  
18           (b) permits;  
19           (c) notices;  
20           (d) restricted health professionals.

21       (2) The register may be kept in the manner and form determined by  
22       the CEO.

23       (3) The CEO must record in the register, for each licence, permit,  
24       notice or restricted health professional, such information as is  
25       prescribed by the regulations.



- 1   **76.     Inspection of register**
- 2       (1)   The register must be available during normal office hours for
- 3           inspection by the following persons —
- 4           (a)   the holder of an appropriate licence;
- 5           (b)   the holder of an appropriate permit;
- 6           (c)   an authorised health professional.
- 7       (2)   For the purposes of subsection (1), the register may be made
- 8           available for inspection on a website maintained by the CEO.
- 9       (3)   The CEO must, on payment of the fee prescribed by the
- 10           regulations, provide to a person referred to in subsection (1) a
- 11           copy, or a certified copy, of all or any part of the register.

1                      **Part 6 — Application of Commonwealth therapeutic**  
2    **goods laws to Western Australia**

3    **Division 1 — Preliminary**

4        **77.            Terms used**

5                      In this Part —

6                      ***Commonwealth administrative laws*** means —

7                                      (a)    the following Acts —

8    (i)    the *Administrative Appeals Tribunal Act 1975*  
9    (Commonwealth);

10    (ii)   the *Freedom of Information Act 1982*  
11    (Commonwealth);

12    (iii)   the *Ombudsman Act 1976* (Commonwealth);

13    (iv)   the *Privacy Act 1988* (Commonwealth);

14    and

15                                      (b)    the regulations in force under those Acts;

16                      ***Commonwealth authority*** has the meaning given in the  
17                      *Therapeutic Goods Act 1989* (Commonwealth) section 3;

18                      ***Commonwealth Minister*** means the Minister under the  
19                      *Therapeutic Goods Act 1989* (Commonwealth);

20                      ***Commonwealth officer*** has the meaning given in the  
21                      *Therapeutic Goods Act 1989* (Commonwealth) section 3;

22                      ***Commonwealth Secretary*** means the Secretary as defined in the  
23                      *Therapeutic Goods Act 1989* (Commonwealth) section 3;

24                      ***confer*** includes impose.



- 1 (d) the *Interpretation Act 1984*;  
2 (e) the *Parliamentary Commissioner Act 1971*;  
3 (f) the *Public Sector Management Act 1994*;  
4 (g) the *State Records Act 2000*.

5 **80. Interpretation of *Therapeutic Goods Law (WA)***

6 The *Acts Interpretation Act 1901* (Commonwealth) applies as a  
7 law of this jurisdiction in relation to the interpretation of the  
8 *Therapeutic Goods Law (WA)* and for that purpose —

- 9 (a) the statutory provisions in the *Therapeutic Goods Law*  
10 (*WA*), whether or not modified by the regulations, are to  
11 be taken to be a Commonwealth Act; and  
12 (b) the regulations, orders and manufacturing principles in  
13 the *Therapeutic Goods Law (WA)*, whether or not  
14 modified by the regulations, are to be taken to be  
15 regulations, orders or manufacturing principles under a  
16 Commonwealth Act.

17 **81. No double jeopardy for offences under *Therapeutic Goods***  
18 ***Law (WA)* and *Therapeutic Goods Act 1989* (Commonwealth)**

19 A person is not liable to be punished for the offence under the  
20 *Therapeutic Goods Law (WA)* if —

- 21 (a) an act or omission by a person is an offence under the  
22 *Therapeutic Goods Law (WA)* and is also an offence  
23 under the *Therapeutic Goods Act 1989*  
24 (Commonwealth); and  
25 (b) the person has been punished for the offence under the  
26 *Therapeutic Goods Act 1989* (Commonwealth).

**Division 3 — Application of Commonwealth administrative  
laws to *Therapeutic Goods Law (WA)***

**82. Application of Commonwealth administrative laws in  
relation to *Therapeutic Goods Law (WA)***

(1) The Commonwealth administrative laws apply as laws of this jurisdiction to any matter arising in relation to the *Therapeutic Goods Law (WA)* and for that purpose a matter arising in relation to the *Therapeutic Goods Law (WA)* —

(a) is to be taken to be a matter arising in relation to a law of the Commonwealth in the same way as if the *Therapeutic Goods Law (WA)* were a law of the Commonwealth; and

(b) is to be taken not to be a matter arising in relation to a law of this jurisdiction.

(2) Subsection (1) has effect except as prescribed by the regulations.

**83. Functions and powers conferred on Commonwealth officers  
and authorities**

(1) A Commonwealth administrative law that confers on a Commonwealth officer or Commonwealth authority a function or power is to be taken to confer on the officer or authority the same function or power for the purposes of a matter arising in relation to the *Therapeutic Goods Law (WA)*.

(2) In performing a function or exercising a power conferred by subsection (1), the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power for the purposes of a matter arising in relation to a Commonwealth Act.

1     **84.        Reference in Commonwealth administrative law to a**  
2                   **provision of another law**

3                   For the purposes of section 82, a reference in a Commonwealth  
4                   administrative law to a provision of that or another  
5                   Commonwealth administrative law is to be taken to be a  
6                   reference to that provision as applying because of section 82.

7     **85.        Construction of references to Part IVA of Commonwealth**  
8                   **AAT Act**

9                   For the purposes of section 82, a reference in a provision of the  
10                  *Administrative Appeals Tribunal Act 1975* (Commonwealth) (as  
11                  that provision applies as a law of this jurisdiction) to the whole  
12                  or any part of Part IVA of that Act is to be taken to be a  
13                  reference to the whole or any part of that Part as it has effect as  
14                  a law of the Commonwealth.

15     **Division 4 — Functions and powers under applied provisions**

16     **86.        Functions and powers of Commonwealth Minister**

17                  The Commonwealth Minister has, for the purposes of a matter  
18                  arising in relation to the *Therapeutic Goods Law (WA)*, the same  
19                  functions and powers as that Minister has under the *Therapeutic*  
20                  *Goods Act 1989* (Commonwealth) and the regulations, orders  
21                  and manufacturing principles in force under that Act.

22     **87.        Functions and powers of Commonwealth Secretary**

23                  (1)     The Commonwealth Secretary has, for the purposes of a matter  
24                  arising in relation to the *Therapeutic Goods Law (WA)*, the same  
25                  functions and powers as that Secretary has under the  
26                  *Therapeutic Goods Act 1989* (Commonwealth) and the  
27                  regulations, orders and manufacturing principles in force under  
28                  that Act.

29                  (2)     Without limiting subsection (1), the Commonwealth Secretary  
30                  has the function of including goods in the Australian Register of  
31                  Therapeutic Goods kept under the *Therapeutic Goods Law*

1           (*WA*) and is authorised to cancel the inclusion of goods in the  
2           Register in accordance with those provisions.

3       **88.       Functions and powers of other persons**

4           (1)   In this section —

5               *authorised person* has the meaning given in the *Therapeutic*  
6               *Goods Act 1989* (Commonwealth) section 3.

7           (2)   An authorised person has, for the purposes of a matter arising in  
8               relation to the *Therapeutic Goods Law (WA)*, the same functions  
9               and powers as the person has under the *Therapeutic Goods*  
10              *Act 1989* (Commonwealth) and the regulations, orders and  
11              manufacturing principles in force under that Act.

12       **89.       Delegations by the Commonwealth Minister or Secretary**

13           Any delegation of functions or powers by the Commonwealth  
14           Minister or the Commonwealth Secretary under the *Therapeutic*  
15           *Goods Act 1989* (Commonwealth) section 57 is to be taken to be  
16           a delegation of the same functions and powers for the purposes  
17           of a matter arising in the relation to the *Therapeutic Goods Law*  
18           (*WA*).

19       **90.       Appointments under *Therapeutic Goods Act 1989***  
20       **(Commonwealth)**

21           The appointment of a person to an office under a provision of  
22           the *Therapeutic Goods Act 1989* (Commonwealth) or the  
23           regulations, orders and manufacturing principles in force under  
24           that Act is to be taken to extend to and have effect for the  
25           purposes of the *Therapeutic Goods Law (WA)*.

## 91. Fees

**Division 6 — Conferral of functions on Commonwealth  
Director of Public Prosecutions**

- (a) institute prosecutions on indictment for indictable offences under the *Therapeutic Goods Law (WA)*; and
- (b) carry on prosecutions of the kind referred to in paragraph (a) (except prosecutions instituted by the Attorney General or the Director of Public Prosecutions of this jurisdiction), whether or not instituted by the Commonwealth Director; and
- (c) if the Attorney General or the Director of Public Prosecutions of the State requests the Commonwealth Director in writing to carry on a prosecution of the kind referred to in paragraph (a) that was instituted by the Attorney General or the Director of Public Prosecutions of this jurisdiction — carry on the prosecution; and
- (d) institute proceedings for the summary conviction of persons in relation to offences under the *Therapeutic Goods Law (WA)*; and
- (e) carry on proceedings of a kind referred to in paragraph (d) (whether or not instituted by the Commonwealth Director); and



- 1           (f) do anything incidental or conducive to the performance  
2           of any of the functions referred to in paragraphs (a)  
3           to (e).

4           **Division 7 — Relationship with other State laws**

5   **93. Relationship with other State laws**

- 6       (1) Despite any other provision of this Part or the *Therapeutic*  
7       *Goods Law (WA)*, the regulations may provide —  
8           (a) that a specified enactment has effect despite the  
9           *Therapeutic Goods Law (WA)*, or a specified provision  
10          of the *Therapeutic Goods Law (WA)*; or  
11          (b) that the *Therapeutic Goods Law (WA)*, or a specified  
12          provision of the *Therapeutic Goods Law (WA)*, applies  
13          as a law of Western Australia with modifications  
14          prescribed by the regulations; or  
15          (c) that a specified provision of the *Therapeutic Goods Law*  
16          (*WA*) that would otherwise apply by virtue of Division 2  
17          does not apply as a law of Western Australia.  
18       (2) Subject to subsection (3), regulations under subsection (1)(b)  
19       or (c) may, if the regulations so provide, have retrospective  
20       effect on or from the day on which the relevant provision of the  
21       *Therapeutic Goods Law (WA)* applied (or would otherwise have  
22       applied) as a law of this jurisdiction.  
23       (3) To the extent that regulations take effect under subsection (2) on  
24       or from a date that is earlier than the date of their publication in  
25       the *Gazette*, the regulations do not operate so as —  
26           (a) to affect, in a manner prejudicial to any person (other  
27           than the State or an authority of the State), the rights of  
28           that person existing before the date of publication; or  
29           (b) to impose liabilities on any person (other than the State  
30           or an authority of the State) in relation to anything done  
31           or omitted to be done before the date of publication.

**Part 7 — Drugs of addiction**

**Division 1 — Preliminary**

**94.        Terms used**

(1) In this Part —

*client* means —

- (a) in relation to a pharmacist — a person to whom the pharmacist supplies a drug of addiction; or
- (b) in relation to a veterinary surgeon — a person for whose animal the veterinary surgeon prescribes a drug of addiction; or
- (c) in relation to any other authorised health professional — a patient for whom the practitioner prescribes a drug of addiction;

*drug dependent person* means a person who has acquired, as a result of repeated administration of drugs of addiction or Schedule 9 poisons, an overpowering desire for the continued administration of a drug of addiction or a Schedule 9 poison;

*drug of addiction* means —

- (a) a Schedule 8 poison; or
- (b) a Schedule 4 reportable poison;

*oversupplied person* means a person who has over a period of time obtained, or obtained prescriptions for, quantities of drugs of addiction that are greater than is reasonably necessary for therapeutic use;

*Schedule 4 reportable poison* means a Schedule 4 poison prescribed by regulations referred to in subsection (2) to be a drug of addiction.

(2) The regulations may prescribe a Schedule 4 poison that has a high propensity for misuse, abuse or illicit use to be a drug of addiction.

**Division 2 — Self-prescription**

**95. Self-prescription**

A person who prescribes a drug of addiction for himself or herself commits an offence.

Penalty: see section 132.

**96. Defence: emergency**

It is a defence to a charge under section 95 to prove that the person reasonably believed that —

- (a) the immediate administration of the poison was necessary for therapeutic purposes; and
- (b) it was not reasonably practicable to arrange for another person to prescribe the poison without there being a delay that would pose an unreasonable threat to the health, safety and welfare of the person.

**Division 3 — Drug dependent persons**

**97. Practitioner to inform CEO of drug dependent status of patient**

- (1) An authorised health professional who reasonably believes that a patient of the practitioner is a drug dependent person commits an offence if the practitioner does not make a report in accordance with subsection (2).

Penalty: see section 132.

- (2) A report must —

- (a) be made to the CEO within 48 hours of an authorised health practitioner forming a belief that a person is a drug dependent person; and
- (b) set out the grounds on which the belief is based.

- 1     **98.        CEO may include drug dependent person on drugs of**  
2                **addiction record**
- 3            (1)    The CEO may decide to include the name of a person on the  
4                drugs of addiction record as a drug dependent person if the CEO  
5                reasonably believes that the person is a drug dependent person.
- 6            (2)    Before making a decision under subsection (1) to include the  
7                name of a person on the drugs of addiction record the CEO  
8                must —
- 9                (a)    inform the person of —
- 10                        (i)    the CEO's belief and the grounds on which it is  
11                                based; and
- 12                        (ii)   the CEO's power under subsection (1); and
- 13                        (iii)   the consequences of having his or her name  
14                                included on the drugs of addiction record;
- 15                and
- 16                (b)    give the person a reasonable opportunity to show why  
17                his or her name should not be included on the drugs of  
18                addiction record.
- 19     **99.        Recording and notification of drug dependent status**
- 20            (1)    If the CEO decides under section 98(1) to include the name of a  
21                person on the drugs of addiction record, the CEO must —
- 22                (a)    record that decision, and the grounds on which it was  
23                made, on the drugs of addiction record; and
- 24                (b)    give a notice that complies with subsection (2) to —
- 25                        (i)    the drug dependent person; and
- 26                        (ii)   the authorised health professional (if any) who  
27                                notified the CEO of the practitioner's belief that  
28                                the person was a drug dependent person; and
- 29                        (iii)   the person (if any) whom the CEO considers to  
30                                be the drug dependent person's primary health  
31                                care provider; and

1 (iv) if the CEO considers it to be in the best interests  
2 of the drug dependent person's health to do so —  
3 any other person whom the CEO considers may  
4 be requested to supply a drug of addiction to, or  
5 prescribe a drug of addiction for, the drug  
6 dependent person.

- 7 (2) A notice under subsection (1)(b) must set out the following —
- 8 (a) that the name of the person has been included on the  
9 drugs of addiction record as a drug dependent person;
- 10 (b) the grounds on which it was decided that the person is a  
11 drug dependent person;
- 12 (c) the consequences of the name of the person being  
13 included on the drugs of addiction record as a drug  
14 dependent person;
- 15 (d) the effect of section 100;
- 16 (e) any other information that the CEO considers is in the  
17 best interests of the drug dependent person's health,  
18 safety and welfare to provide.

19 **100. Supply or prescription of drugs of addiction to or for drug**  
20 **dependent persons**

21 (1) The regulations may make provision relating to the supply of a  
22 drug of addiction to, or the prescription of a drug of addiction  
23 for, a person whose name is included on the drugs of addiction  
24 record as a drug dependent person.

25 (2) A person who supplies a drug of addiction to, or prescribes a  
26 drug of addiction for, a person whose name is included on the  
27 drugs of addiction record as a drug dependent person commits  
28 an offence unless the supply or prescription is in accordance  
29 with the regulations.

30 Penalty: see section 132.

**Division 4 — Oversupplied persons**

**101. Practitioner to inform CEO of oversupplied status of client**

- (1) An authorised health professional who reasonably believes that a client of the professional is an oversupplied person commits an offence if the practitioner does not make a report in accordance with subsection (2).

Penalty: see section 132.

- (2) A report must —

(a) be made to the CEO within 48 hours of an authorised health practitioner forming a belief that a person is an oversupplied person; and

(b) set out the grounds on which the belief is based.

**102. CEO may include oversupplied person on drugs of addiction record**

- (1) The CEO may decide to include the name of a person on the drugs of addiction record as an oversupplied person if the CEO reasonably believes that the person is an oversupplied person.

- (2) The CEO is not required to include the name of a person in the drugs of addiction record if the CEO is satisfied that there is a reasonable explanation for the quantity of drugs of addiction that have been obtained by, or prescribed for, the person.

- (3) Before making a decision under subsection (1) to include the name of a person on the drugs of addiction record the CEO must —

(a) inform the person of —

(i) the CEO's belief and the grounds on which it is based; and

(ii) the CEO's power under subsection (1); and

(iii) the consequences of having his or her name included on the drugs of addiction record;

1                                   and

2                   (b)   give the person a reasonable opportunity to show why  
3                                   his or her name should not be included on the drugs of  
4                                   addiction record.

5   **103.   Recording and notification of oversupplied status**

6           (1)   If the CEO decides under section 102(1) to include the name of  
7                   a person on the drugs of addiction record, the CEO must —

8                   (a)   record that decision, and the grounds on which it was  
9                                   made, on the drugs of addiction record; and

10                  (b)   give a notice that complies with subsection (2) to —

11                           (i)   the oversupplied person; and

12                           (ii)   the authorised health professional (if any) who  
13                                   notified the CEO of the professional's belief that  
14                                   the person was an oversupplied person; and

15                           (iii)   the person (if any) whom the CEO considers to  
16                                   be the oversupplied person's primary health care  
17                                   provider; and

18                           (iv)   if the CEO considers it to be in the best interests  
19                                   of the oversupplied person's health to do so —  
20                                   any other person whom the CEO considers may  
21                                   be requested to supply a drug of addiction to, or  
22                                   prescribe a drug of addiction for, the  
23                                   oversupplied person.

24           (2)   A notice under subsection (1)(b) must set out the following —

25                   (a)   that the name of the person has been included on the  
26                                   drugs of addiction record as an oversupplied person;

27                   (b)   the grounds on which it was decided that the person is  
28                                   an oversupplied person;

29                   (c)   the consequences of the name of the person being  
30                                   included on the drugs of addiction record as an  
31                                   oversupplied person;

32                   (d)   the effect of section 104;

- 1 (e) any other information that the CEO considers it is in the  
2 best interests of the oversupplied person's health, safety  
3 and welfare to provide.

4 **104. Supply or prescription of drugs of addiction to or for**  
5 **oversupplied persons**

- 6 (1) The regulations may make provision relating to the supply of a  
7 drug of addiction to, or the prescription of a drug of addiction  
8 for, a person whose name is included on the drugs of addiction  
9 record as an oversupplied person.

- 10 (2) A person who supplies a drug of addiction to, or prescribes a  
11 drug of addiction for, a person whose name is included on the  
12 drugs of addiction record as an oversupplied person commits  
13 and offence unless the supply or prescription is in accordance  
14 with the regulations.

15 Penalty: see section 132.

16 **Division 5 — Drugs of addiction record**

17 **105. Drugs of addiction record**

- 18 (1) The CEO is to keep a record of —  
19 (a) information relating to the supply and prescription of  
20 drugs of addiction; and  
21 (b) drug dependent persons and oversupplied persons.
- 22 (2) The record must include —  
23 (a) information recorded under section 99 or 103; and  
24 (b) other information of a kind prescribed by the regulations  
25 as information that must be included on the drugs of  
26 addiction record.
- 27 (3) The record may include —  
28 (a) information prescribed for the purposes of section 23(1)  
29 relating to drugs of addiction that has been provided to  
30 the CEO; and



- 1           (b) other information of a kind prescribed by the regulations  
2           as information that may be included on the drugs of  
3           addiction record; and
- 4           (c) information that is reasonably necessary to administer  
5           the drugs of addiction record.
- 6       (4) The CEO must not include on the drugs of addiction record  
7       information of a kind prescribed by the regulations as  
8       information that must not be included on the record.
- 9       (5) Subject to the regulations, the drugs of addiction record must be  
10      kept in the manner and form determined by the CEO.

11   **106. Purposes for which drugs of addiction record is kept**

12       The drugs of addiction record is to be kept for the following  
13      purposes —

- 14           (a) to plan, monitor and evaluate services for the control of  
15           the supply or prescription of drugs of addiction in  
16           Western Australia;
- 17           (b) to compile and publish general or statistical information  
18           relating to drugs of addiction;
- 19           (c) to conduct health research relating to the use of drugs of  
20           addiction;
- 21           (d) to monitor and enforce compliance with this Act;
- 22           (e) to carry out any of the CEO's functions under this Act  
23           or any other written law.

24   **107. Amending information in drugs of addiction record**

- 25       (1) A person whose name is included on the drugs of addiction  
26      record may at any time apply to the CEO for —
- 27           (a) the amendment of information on the record relating to  
28           the person; or
- 29           (b) for the removal from the record of identifying  
30           information about the person.

- 1           (2)   The CEO may, on an application made under subsection (1) or  
2               at any time, amend information included on the drugs of  
3               addiction record, including the removal of identifying  
4               information about a person —  
5               (a)   to correct an error or omission; or  
6               (b)   if the CEO considers that it is not accurate or up-to-date  
7               or is misleading.

8   **108.    CEO may authorise disclosure of information**

- 9           (1)   The CEO may authorise disclosure of information on the drugs  
10               of addiction record to an authorised health professional if the  
11               person to whom the information relates is a client of the health  
12               professional.  
13           (2)   The CEO may authorise the disclosure of information on the  
14               drugs of addiction record, other than identifying information,  
15               for a purpose mentioned in section 106.  
16           (3)   The CEO must, on payment of the fee prescribed by the  
17               regulations (if any), provide a copy, or a certified copy, of the  
18               information included on the drugs of addiction record in relation  
19               to a person (the *patient*) as at a specified date to —  
20               (a)   a person who supplied a drug of addiction to, or  
21               prescribed a drug of addiction for, the patient on that  
22               date; or  
23               (b)   an authorised health professional who proposes to  
24               supply a drug of addiction to, or prescribe a drug of  
25               addiction for, the patient.

1 **Division 6 — Review of decisions by State**  
2 **Administrative Tribunal**

3 **109. Review of decision to include person in drugs of addiction**  
4 **record**

5 (1) In this section —

6 ***reviewable decision*** means a decision by the CEO —

- 7 (a) under section 98(1) to include the name of a person on  
8 the drugs of addiction record as a drug dependent  
9 person; or  
10 (b) under section 102(1) to include the name of a person on  
11 the drugs of addiction record as an oversupplied person.

12 (2) A person in relation to whom a reviewable decision has been  
13 made may apply to the State Administrative Tribunal for a  
14 review of the decision.

**Part 8 — Investigation and enforcement**

**Division 1 — Preliminary**

**110. Terms used**

In this Part —

**entry warrant** means a warrant issued under section 127(1);

**place** means any land, building, structure, tent or vehicle;

**vehicle** means any thing capable of transporting people or things by air, road, rail or water, irrespective of whether the thing is permanently or semi-permanently stationary.

**111. This Part's relationship with other laws**

The powers conferred by this Part on a person are in addition to, and do not derogate from any powers conferred on the person by the *Health Practitioner Regulation National Law (Western Australia)* or the *Misuse of Drugs Act 1981*.

**Division 2 — Investigators**

**112. Designation of investigators**

(1) The CEO may, by instrument in writing, designate any of the following persons as an investigator for the purposes of this Act —

(a) a public service officer;

(b) a person employed or engaged under the *Public Sector Management Act 1994* section 100 by the employing authority of the Department;

(c) a person employed by a local government under the *Local Government Act 1995* section 5.36.

(2) A person may be designated to be an investigator for a fixed or indefinite period.

1       (3)   The CEO may, by instrument in writing, revoke a designation at  
2       any time.

3       (4)   The functions of an investigator are subject to any limitations or  
4       conditions specified in the instrument of designation.

5       **113.    CEO has functions of investigator**

6       The CEO —

7           (a)   has and may perform all of the functions of an  
8           investigator; and

9           (b)   when performing those functions, has all the powers and  
10          immunities of an investigator.

11      **114.    Police have functions of investigator**

12      (1)   For the purposes of this Act, a police officer —

13           (a)   has and may perform all the functions of an investigator;  
14           and

15           (b)   when performing those functions, has all the powers and  
16           immunities of an investigator.

17      (2)   The powers that a police officer may exercise in performing a  
18      function under this section are in addition to the powers that the  
19      police officer has under any other law.

20      **115.    Identity cards**

21      (1)   The CEO must give each investigator an identity card.

22      (2)   An identity card must —

23           (a)   identify the person as an investigator; and

24           (b)   contain a recent photograph of the person.

25      (3)   A person who, without a reasonable excuse, fails to return the  
26      person's identity card to the CEO within 14 days of ceasing to  
27      be an investigator commits an offence.

28      Penalty: see section 132.

- 1       (4) An investigator must carry his or her identity card at all times  
2       when exercising powers or performing functions as an  
3       investigator.

4       **116. Production and display of identity card**

- 5       (1) An investigator may exercise a power in relation to someone  
6       only if —  
7           (a) the investigator first produces the investigator's identity  
8           card for the person's inspection; or  
9           (b) the investigator has the identity card displayed so it is  
10          clearly visible to the person.  
11       (2) However, if for any reason it is not practicable to comply with  
12       subsection (1) before exercising the power, the investigator may  
13       exercise the power and then produce the identity card for  
14       inspection by the person at the first reasonable opportunity.

15       **117. Limitation on powers of investigators**

- 16       (1) The powers of an investigator may be limited in one or more of  
17       the following ways —  
18           (a) under a regulation;  
19           (b) under a limitation or condition specified in the person's  
20           instrument of designation as an investigator;  
21           (c) by written notice given by the CEO to the investigator.  
22       (2) The CEO may revoke or vary a limitation or condition referred  
23       to in subsection (1)(b) or a notice referred to in  
24       subsection (1)(c).

25                               **Division 3 — Investigations**

26       **118. Investigations: purpose and procedure**

- 27       (1) An investigation may be carried out for either or both of the  
28       following purposes —  
29           (a) monitoring whether this Act is being complied with;

1           (b) investigating a suspected contravention of this Act.

2       (2) The regulations may make provision relating to the procedures  
3       to be followed by investigators when carrying out functions  
4       under this Act.

5       **119. Entry powers**

6       (1) For the purposes of carrying out an investigation an investigator  
7       may at any reasonable time enter and remain in or on any of the  
8       following places —

9           (a) a place in or on which the investigator has reasonable  
10          cause to believe that there are records that are relevant to  
11          an investigation;

12          (b) a place on which an authorised health professional, a  
13          licensee or a permit holder carries on business;

14          (c) a place in or on which the investigator has reasonable  
15          cause to believe that a contravention of this Act has  
16          occurred, is occurring or is likely to occur.

17       (2) An investigator is not entitled under this section to enter a  
18       restricted place unless —

19           (a) the occupier of the premises consents; or

20           (b) the investigator has the authority of an entry warrant.

21       (3) For the purposes of subsection (2) —

22       *restricted place* means —

23           (a) any part of a place that is used for residential purposes;  
24           or

25           (b) any part of a hospital, health care facility or place at  
26           which a health professional carries on business in which  
27           a patient is being treated.

1     **120. Powers after entry for investigation**

2         (1) An investigator who enters a place under section 119(1) or  
3             under the authority of an entry warrant may, for the purposes of  
4             the investigation, do any of the following —

- 5             (a) inspect the place and any thing at the place;
- 6             (b) search the place and any thing at the place;
- 7             (c) examine, measure, test, photograph or film the place and  
8                 any thing at the place;
- 9             (d) operate a computer or other thing at the place;
- 10            (e) take any thing, or sample of or from a thing, at the place  
11               for analysis or testing;
- 12            (f) make a copy of, take an extract from, or download or  
13               print out, any record that the investigator suspects on  
14               reasonable grounds is relevant to the investigation;
- 15            (g) seize any thing that is or may afford evidence of a  
16               contravention of this Act;
- 17            (h) secure against interference a thing found in or on the  
18               place that cannot be conveniently removed;
- 19            (i) seize a record that the investigator suspects on  
20               reasonable grounds is relevant to the investigation and  
21               retain it for as long as is necessary for the purposes of  
22               this Act;
- 23            (j) direct a person who is at the place to do any of the  
24               following —
- 25               (i) state the person's full name, date of birth, the  
26                   address of where the person is living and the  
27                   address of where the person usually lives;
- 28               (ii) answer (orally or in writing) questions asked by  
29                   the investigator;
- 30               (iii) produce records that are relevant to the  
31                   investigation and are in the person's custody or  
32                   under the person's control;



- 1 (iv) operate a computer or other thing at the place;  
2 (v) provide access (free of charge) to photocopying  
3 equipment at the place to enable the copying of  
4 documents;  
5 (vi) give the investigator a translation, code,  
6 password or other information necessary to gain  
7 access to or interpret and understand a record;  
8 (vii) give other assistance the investigator reasonably  
9 requires.

10 (2) An investigator who enters a place under section 119(1) is not  
11 entitled under this section to seize any patient records or data  
12 relating to a patient unless the occupier of the premises  
13 consents.

14 (3) For the purposes of subsection (2) —  
15 *patient records* does not include a prescription or a record of the  
16 supply or administration of a medicine to a patient.

17 (4) If an investigator takes any thing away from the place, the  
18 investigator must give the occupier of the place a receipt for the  
19 thing.

20 **121. Obtaining information and documents**

- 21 (1) An investigator, for the purpose of an investigation, may do any  
22 of the following —  
23 (a) direct a person to give such information as the  
24 investigator requires in relation to any matter the subject  
25 of the investigation;  
26 (b) to answer a question put to the person in relation to any  
27 matter the subject of the investigation;  
28 (c) direct a person to produce a record that is relevant to an  
29 investigation and is in the person's custody or under the  
30 person's control;  
31 (d) examine and make a copy of a record produced in  
32 response to a direction under paragraph (c).

- 1       (2) A direction under subsection (1)(a) or (b) —
- 2           (a) must specify the time at or within which the information
- 3               or answer is to be given; and
- 4           (b) may require the information or answer —
- 5               (i) to be given orally or in writing; or
- 6               (ii) to be given at or delivered to a place specified in
- 7               the direction; or
- 8               (iii) in the case of written information or a written
- 9               answer, to be delivered by means specified in the
- 10              direction; or
- 11              (iv) to be verified by statutory declaration.
- 12       (3) A direction under subsection (1)(c) —
- 13           (a) must be in writing given to the person required to
- 14               produce the record; and
- 15           (b) must specify the time at or within which the record is to
- 16               be produced; and
- 17           (c) may require that the record be produced —
- 18               (i) at a place specified in the direction; and
- 19               (ii) by any means specified in the direction.

20       **122. Use of force and assistance**

- 21       (1) An investigator may use assistance and force that is reasonably
- 22           necessary in the circumstances when exercising a power under
- 23           this Act.
- 24       (2) However, if the use of reasonable force is likely to cause
- 25           significant damage to property, the investigator is not entitled to
- 26           use force without the authority of the CEO in the particular
- 27           case.
- 28       (3) An investigator may request a police officer or other person to
- 29           assist the investigator in exercising powers under this Act.

- 1       (4) A person, while assisting an investigator at the request of the  
2       investigator and in accordance with this Act —
- 3           (a) has the same powers as conferred on an investigator;  
4           and
- 5           (b) is subject to the same responsibilities as an investigator;  
6           and
- 7           (c) has the same protection from liability as an investigator.
- 8       (5) Nothing in this section derogates from the powers of a police  
9       officer.

10   **123. Obstruction**

- 11       (1) A person who hinders or obstructs the CEO, an investigator, a  
12       person assisting an investigator or a police officer who is  
13       exercising a power conferred by this Act commits an offence.  
14       Penalty: see section 132.
- 15       (2) It is a defence to a charge under this section in relation to an  
16       investigator to prove —
- 17           (a) that the investigator did not show his or her identity card  
18           to the person or did not otherwise identify himself or  
19           herself to the person as an investigator; and
- 20           (b) that the person did not otherwise know that the  
21           investigator was an investigator.

22   **124. Directions generally**

- 23       (1) Except as otherwise stated in this Division, a direction under  
24       this Division may be given orally or in writing.
- 25       (2) A person given a direction under this Division who, without  
26       reasonable excuse, fails to comply with the direction commits  
27       an offence.
- 28       Penalty: see section 132.

1     **125.     Investigator may supply, obtain and possess poison**

2             An investigator who, in the course of conducting an  
3             investigation, supplies, obtains or has possession of, a poison or  
4             a strictly controlled substance does not commit an offence under  
5             this Act.

6                             **Division 4 — Entry warrants**

7     **126.     Warrant to enter place**

- 8         (1)    An investigator may apply to a justice of the peace for an entry  
9             warrant authorising the person to enter a place for the purposes  
10            of an investigation.
- 11        (2)    An investigator may apply for an entry warrant for a place even  
12             if, under this Act, the investigator may enter the place without  
13             an entry warrant.
- 14        (3)    The application must be made in accordance with the *Criminal*  
15             *Investigation Act 2006* section 13 and section 13(8) of that Act  
16             applies in relation to the entry warrant.
- 17        (4)    An application for an entry warrant must —
- 18             (a)   describe with reasonable particularity the place to be  
19                entered; and
- 20             (b)   state that the investigator has reasonable grounds for  
21                believing that entry to the place is necessary for the  
22                purposes of an investigation; and
- 23             (c)   state the purposes for which entry to the place is  
24                required; and
- 25             (d)   include any other information that is prescribed by the  
26                regulations.

27     **127.     Issue of entry warrant**

- 28        (1)    A justice of the peace to whom an application is made under  
29             section 126 may issue an entry warrant if satisfied that there are

1           reasonable grounds for believing that entry and inspection of the  
2           place are necessary for the purposes of an investigation.

- 3       (2)   An entry warrant must contain the following information —
- 4           (a)   a reasonably particular description of the place to which  
5                it relates;
- 6           (b)   a reasonably particular description of the purposes for  
7                which entry to the place is required;
- 8           (c)   the period, not exceeding 7 days, in which it may be  
9                executed;
- 10          (d)   the name of the justice of the peace who issued it;
- 11          (e)   the date and time when it was issued.

12   **128.    Effect of entry warrant**

- 13       (1)   An entry warrant has effect according to its content and this  
14       section.
- 15       (2)   An entry warrant comes into force when it is issued by a justice  
16       of the peace.
- 17       (3)   An entry warrant authorises the investigator executing the  
18       warrant to, during the period of the warrant —
- 19           (a)   enter the place described in the warrant; and
- 20           (b)   exercise the powers referred to in section 120.

21   **129.    Execution of entry warrant**

- 22       (1)   An entry warrant may be executed by the investigator to whom  
23       it is issued or by any other investigator.
- 24       (2)   An investigator executing an entry warrant must, at the  
25       reasonable request of a person apparently in charge of the place,  
26       produce the warrant.

**Division 5 — Seized things and forfeiture**

**130. Forfeiture on conviction**

(1) On the conviction of a person for an offence under this Act, the court may order the forfeiture to the State of any thing that was the subject of, used in or otherwise involved in, the commission of the offence.

(2) The court may make the order —

(a) whether or not the thing was seized in the course of the investigation of the offence; and

(b) if the thing was seized, whether or not it has been returned to its owner.

(3) The court may make any order it considers appropriate to enforce the forfeiture.

**131. Disposal of seized and forfeited property**

The Department, when assisting the Minister in the administration of this Act, is a prescribed agency for the purposes of the *Criminal and Found Property Disposal Act 2006*.

**Division 6 — Penalties and other orders**

**132. General penalties**

(1) The penalty for an offence under a provision listed in the Table is —

(a) if the offence relates to —

(i) a drug of addiction within the meaning given in section 94; or

(ii) a Schedule 9 poison; or

(iii) a strictly controlled substance,  
a fine of \$45 000 and imprisonment for 3 years; or

(b) otherwise — a fine of \$45 000.

**Table**

s. 14(1), (2), (3) and (4)	s. 16(1), (2) and (3)
s. 17	s. 18(1) and (2)
s. 21(1) and (3)	s. 22(1)
s. 24(2) and (4)	

(2) The penalty for an offence under a provision listed in the Table is \$30 000.

**Table**

s. 13(1) and (4)	s. 15(1) and (2)
s. 19	s. 20(1)
s. 23(1) and (2)	s. 64
s. 95	s. 100(2)
s. 104(2)	

(3) The penalty for an offence under a provision listed in the Table is \$15 000.

**Table**

s. 54(1)	s. 69
s. 70(1)	s. 115(3)
s. 123(1)	s. 124(2)
s. 151(2)	

- 1 (4) The penalty for an offence under a provision listed in the Table  
2 is \$5 000.

3 **Table**

s. 97(1)	s. 101(1)
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4 **133. Order as to costs of analysis**

- 5 (1) In any proceedings under this Act, if evidence is given of an  
6 analysis made for the purposes of this Act, the court may, in  
7 addition to any other order as to costs, make an order as to the  
8 costs of, and incidental to, the obtaining of the analysis and the  
9 giving of evidence as to the analysis.
- 10 (2) An order may be made under subsection (1) regardless of the  
11 outcome of the proceedings.

12 **134. Court to notify CEO of conviction of licensee, permit holder**  
13 **or authorised health professional**

14 If a court convicts a licensee, a permit holder or an authorised  
15 health professional of an offence under this Act, the registrar of  
16 the court is to send to the CEO notice of the findings and the  
17 penalty imposed.

18 **Division 7 — Liability of certain persons**

19 **135. Liability of corporate officers for acts of body corporate**

- 20 (1) If a body corporate is alleged to have committed an offence  
21 under this Act, every person who was a corporate officer of the  
22 body corporate at the time of the alleged offence may be  
23 charged with the offence whether or not the body corporate is  
24 charged with the offence.
- 25 (2) Subject to subsection (3), a corporate officer is to be taken to  
26 have committed an offence if —
- 27 (a) the corporate officer is charged with the offence as  
28 permitted under subsection (1); and



1           (b) it is proved that the body corporate committed the  
2           offence.

3       (3) If a corporate officer is charged as permitted under  
4       subsection (1) it is a defence to prove that —

5           (a) the offence was committed without the officer's  
6           knowledge, authority or consent; and

7           (b) the officer took all the measures to prevent the  
8           commission of the offence that the officer could  
9           reasonably be expected to have taken having regard to  
10          the officer's functions and to all the circumstances.

11   **136. Liability of members of partnership for acts of other**  
12   **members of partnership**

13       (1) If a member of a partnership is alleged to have committed an  
14       offence under this Act, every person who was a member of the  
15       partnership at the time of the alleged offence may be charged  
16       with the offence whether or not the person who is alleged to  
17       have committed the offence is charged with the offence.

18       (2) Subject to subsection (3), a member of a partnership is to be  
19       taken to have committed an offence if —

20           (a) the member of a partnership is charged with the offence  
21           as permitted under subsection (1); and

22           (b) it is proved that another member of the partnership  
23           committed the offence.

24       (3) If a member of a partnership is charged as permitted under  
25       subsection (1) it is a defence to prove that —

26           (a) the offence was committed without the member's  
27           knowledge, authority or consent; and

28           (b) the member took all the measures to prevent the  
29           commission of the offence that the member could  
30           reasonably be expected to have taken having regard to  
31           all the circumstances.

1     **137.     Liability of principal for acts of agent**

- 2         (1) If a person (the *agent*) acting, otherwise than as an employee,  
3             for or on behalf of another person (the *principal*) is charged  
4             with an offence under this Act, the principal may also be  
5             charged with the offence.
- 6         (2) If an agent is convicted of an offence and the principal is also  
7             charged with the offence as permitted under subsection (1) then,  
8             subject to subsection (5), the principal is to be taken to have also  
9             committed the offence.
- 10        (3) If a person (the *agent*) acting, otherwise than as an employee,  
11            for or on behalf of another person (the *principal*) is alleged to  
12            have committed an offence under this Act, the principal may be  
13            charged with the offence whether or not the agent is charged  
14            with the offence.
- 15        (4) Subject to subsection (5), a principal is to be taken to have  
16            committed an offence if —
- 17            (a) the principal is charged with an offence as permitted  
18                under subsection (3); and
- 19            (b) it is proved that the agent committed the offence.
- 20        (5) If under this section a principal is charged with an offence it is a  
21            defence to prove that —
- 22            (a) the offence was committed without the principal's  
23                knowledge, authority or consent; and
- 24            (b) the principal took all the measures to prevent the  
25                commission of the offence that the principal could  
26                reasonably be expected to have taken having regard to  
27                all the circumstances.

28     **138.     Liability of employer for acts of employee**

- 29        (1) If an employee of another person (the *employer*) is charged as  
30            an employee with an offence under this Act, the employer may  
31            also be charged with the offence.

- 1       (2) Subject to subsection (5), an employer is to be taken to have  
2       committed an offence if —
- 3           (a) the employer is charged with the offence as permitted  
4           under subsection (1); and
- 5           (b) it is proved that the employee committed the offence.
- 6       (3) If an employee of another person (the *employer*) is alleged to  
7       have committed an offence under this Act as an employee, the  
8       employer may be charged with the offence —
- 9           (a) whether or not the employee is charged with the  
10          offence; and
- 11          (b) whether or not the employee acted without the  
12          employer's authority or contrary to the employer's  
13          orders or instructions.
- 14       (4) Subject to subsection (5), an employer is to be taken to have  
15       committed an offence if —
- 16           (a) the employer is charged as permitted under  
17           subsection (3); and
- 18           (b) it is proved that the employee committed the offence.
- 19       (5) If under this section an employer is charged with an offence it is  
20       a defence to prove that —
- 21           (a) the offence was committed without the employer's  
22           knowledge, authority or consent; and
- 23           (b) the employer took all the measures to prevent the  
24           commission of the offence that the employer could  
25           reasonably be expected to have taken having regard to  
26           all the circumstances.

27                           **Division 8 — Legal proceedings**

28       **139. Who may commence proceedings**

29           A prosecution for an offence under this Act may only be  
30           commenced by the CEO or by a person authorised by the CEO  
31           to do so.

1     **140.     Time limit for prosecutions**

2         (1)     A prosecution for an offence under this Act must be  
3                 commenced within 2 years after the day on which the offence is  
4                 alleged to have been committed.

5         (2)     However, if a prosecution notice alleging an offence specifies  
6                 the day on which evidence of the alleged offence first came to  
7                 the attention of a person authorised under section 139 to  
8                 institute the prosecution —

9                 (a)     the prosecution may be commenced within 2 years after  
10                         that day; and

11                 (b)     the prosecution notice need not contain particulars of the  
12                         day on which the offence is alleged to have been  
13                         committed.

14         (3)     The day on which evidence first came to the attention of a  
15                 person authorised under section 139 to institute a prosecution, in  
16                 the absence of evidence to the contrary, is the day specified in  
17                 the prosecution notice.

18                         **Division 9 — Evidentiary matters**

19     **141.     Terms used**

20                 In this Division —

21                 *approved analyst* means a person, or a person in a class of  
22                 person, approved by the CEO to carry out analysis for the  
23                 purposes of this Act or specified provisions of this Act;

24                 *specified*, in relation to a prosecution notice, certificate or other  
25                 document, means specified in that prosecution notice, certificate  
26                 or document;

27                 *specified time* includes a specified period.

28     **142.     Application of Division**

29         (1)     This Division applies for the purpose of proceedings for an  
30                 offence under this Act.

1       (2) A provision of this Division that provides for a matter to be  
2       taken to be proved applies only in the absence of evidence to the  
3       contrary.

4       (3) This Division is in addition to and does not affect the operation  
5       of the *Evidence Act 1906*.

6       **143. Evidence of various matters**

7       An allegation in a prosecution notice of any of the following  
8       matters is to be taken to be proved —

- 9           (a) that the prosecutor is authorised to commence the  
10          prosecution;
- 11          (b) that something is a specified substance;
- 12          (c) that at a specified time a specified substance was a  
13          poison included in a specified Schedule;
- 14          (d) that an act done in relation to a poison was done as part  
15          of the process of producing the poison or bringing it to  
16          its final state;
- 17          (e) that a document is or is not a prescription;
- 18          (f) that at a specified time a specified person was or was not  
19          any of the following —
- 20              (i) a registered health practitioner;
- 21              (ii) a veterinary surgeon;
- 22              (iii) a member of a class of person prescribed for the  
23              purposes of the definition of ***health professional***  
24              in section 3;
- 25              (iv) a member of a class of person prescribed for the  
26              purposes of section 25;
- 27              (v) the holder of a licence of a specified kind;
- 28              (vi) the holder of a permit of a specified kind;
- 29              (vii) a corporate officer of a body corporate;
- 30              (viii) an employee or agent of another specified  
31              person;

- 1 (ix) a patient of another specified person;  
2 (x) an investigator;  
3 (xi) the holder of a specified office;  
4 (g) that at a specified time a licence, permit or professional  
5 authority —  
6 (i) did or did not authorise a specified person to  
7 manufacture, supply, use or prescribe a specified  
8 poison; or  
9 (ii) was subject to a specified condition; or  
10 (iii) was cancelled, suspended or for any other reason  
11 of no effect;  
12 (h) that at a specified time —  
13 (i) a poison was or was not packaged in a specified  
14 manner; or  
15 (ii) a container containing a poison was or was not  
16 labelled in a particular manner;  
17 (i) that at a specified time the name of a specified person  
18 was or was not included on the drugs of addiction record  
19 as —  
20 (i) a drug dependent person; or  
21 (ii) an oversupplied person.

22 **144. Evidence of purpose or intent**

- 23 (1) In this section —  
24 **act** includes having possession of a thing.  
25 (2) An allegation in a prosecution notice that an act was done by a  
26 person for a specified purpose or with a specified intent or  
27 knowledge is, on proof of the act being done by the person, to  
28 be taken to be proved.

1     **145.     Evidence in relation to documents**

2           (1)   A document certified by the CEO to be a true copy of a  
3               document of a kind described in subsection (2) as at a specified  
4               date —

5               (a)   is to be taken to be proved to be a copy of the original  
6               document as at that date; and

7               (b)   is admissible in the same way, and has the same  
8               evidentiary value, as the original.

9           (2)   Subsection (1) applies to each of the following —

10               (a)   a licence;

11               (b)   a permit;

12               (c)   a notice given by the CEO under Part 4 Division 8;

13               (d)   a designation under section 112;

14               (e)   a code adopted by the regulations.

15           (3)   A document certified by the CEO to be a true copy of the  
16               register, or any part of the register, as at a specified date is proof  
17               of the contents of the register, or that part of the register, as at  
18               that date.

19           (4)   A document certified by the CEO to be a true copy of  
20               information recorded in the drugs of addiction record in relation  
21               to a particular person or matter as at a specified date is proof of  
22               the information recorded in the drugs of addiction record in  
23               relation to that person or matter as at that date.

24           (5)   A document purporting to have been signed or certified by the  
25               CEO, an investigator or an approved analyst is to be taken to  
26               have been signed or certified by someone who was, at the time,  
27               such a person.

28           (6)   A document purporting to have been signed by a delegate of the  
29               CEO is to be taken to have been signed by a person who at the  
30               time was such a delegate and was authorised to sign it.

1       (7) If it is necessary to prove that a document was given to a person  
2       (the *recipient*), a copy of the document certified by a person  
3       authorised to give it to be a true copy of the document as given  
4       to the recipient on a specified date is proof that the document  
5       was given to the recipient on that date.

6       (8) A copy of a document or record obtained by an investigator  
7       exercising a power under Part 8 Division 3 is admissible in  
8       evidence if it is certified by the investigator as having been  
9       obtained in the exercise of that power.

10   **146. Evidence of analysis of substance**

11       (1) In this section —

12       *prescribed manner* means the manner, if any, prescribed by the  
13       regulations;

14       *report* means a report by an approved analyst of the results of an  
15       analysis of a sample of a substance.

16       (2) A report in respect of a sample of a substance is proof of the  
17       matters stated in it if the sample was —

18           (a) taken in the prescribed manner; and

19           (b) analysed in the prescribed manner.

20       (3) A statement in a report certifying that a sample was taken and  
21       analysed in the prescribed manner, is proof that the sample was  
22       taken and analysed in that manner.

23       (4) If it is proved that a sample of a substance was taken in the  
24       prescribed manner, it is to be taken to be proved that the sample  
25       is representative of all of the substance from which the sample  
26       was taken.

27   **147. Presumptions arising from labels**

28       (1) In this section —

29       *label*, in relation to a container, means any label, marking or  
30       other information on the container.



- 1       (2) If a label on a container states or indicates that the container  
2       contains a poison, it is to be taken to be proved that the  
3       container contains a poison of the description and in the  
4       quantity, if any, stated on the label.
- 5       (3) If there is a label on a container that contains a poison, it is to be  
6       taken to be proved —
- 7           (a) if a person is named or identified on the label as a  
8           manufacturer or supplier of the poison — that the person  
9           manufactured or supplied the poison; and
- 10          (b) if the label identifies the poison as part of a batch, lot or  
11          consignment — that the poison is part of that batch, lot  
12          or consignment; and
- 13          (c) that all other information on the label about the poison is  
14          true.
- 15       (4) If it is proved that poison is part of a batch, lot or consignment,  
16       it is to be taken to be proved that the poison is representative of  
17       all of the poison in that batch, lot or consignment.

**Part 9 — Regulations**

**148. General power to make regulations**

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) The regulations may —

(a) provide that a contravention of a regulation is an offence; and

(b) prescribe for such an offence a penalty not exceeding a fine of \$15 000.

**149. Regulations may adopt codes**

(1) In this section —

*adopted code* means a code that is adopted by regulations made under this section;

*code* means a code, standard, rule, specification or other document;

*code documents*, in relation to an adopted code means —

(a) the adopted code; and

(b) if the code is adopted as amended from time to time, either —

(i) the amendments to the code; or

(ii) the code as amended.

(2) The regulations may adopt a code —

(a) either wholly or in part; and

(b) with or without modifications.

(3) If the regulations adopt a code, it is adopted as in force from time to time unless the regulations provide otherwise.

- 1       (4) If the regulations adopt a code, the CEO must ensure that the  
2       code documents relating to the adopted code —  
3           (a) are available for inspection by members of the public  
4           during normal office hours; and  
5           (b) can be acquired by members of the public.

**Part 10 — Miscellaneous**

**150.      Protection from liability for wrongdoing**

- (1) No action or claim for damages lies against a person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) Despite subsection (1), the State is not relieved of any liability that it might otherwise have had for another person having done anything described in that subsection.
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

**151.      Information officially obtained to be confidential**

- (1) In this section —  
*repealed Act* means the *Poisons Act 1964*.
- (2) A person who misuses information obtained by the person in the exercise of any function that the person has, or at any time had, in the administration of this Act or the repealed Act commits an offence.  
Penalty: see section 132.
- (3) A person misuses information if the person, directly or indirectly, records, uses or discloses the information, other than —
- (a) for the purpose of, or in connection with, performing a function under this Act; or
  - (b) as required or allowed by this Act or under another written law; or

1           (c) with the express consent of each person to whom the  
2           information relates.

3       (4) This section does not apply to the disclosure of information in a  
4       form that could not reasonably be expected to result in the  
5       identification of any person to whom the information relates.

6       **152. Review of Act**

7       (1) The Minister is to carry out a review of the operation and  
8       effectiveness of this Act as soon as is practicable after —

9           (a) the fifth anniversary of its commencement; and

10          (b) the expiry of each 5 yearly interval after that  
11          anniversary.

12       (2) The Minister is to prepare a report based on the review and, as  
13       soon as is practicable after the report is prepared, cause it to be  
14       laid before each House of Parliament.

1 **Part 11 — Repeals and transitional provisions**

2 **Division 1 — General**

3 **153. *Interpretation Act 1984* not affected**

4 Except where the contrary intention appears, this Part does not  
5 prejudice or affect the application of the *Interpretation Act 1984*  
6 to or in relation to the repeals effected by sections 154 and 155.

7 **Division 2 — Repeals**

8 **154. *Poisons Act 1964* repealed**

9 The *Poisons Act 1964* is repealed.

10 **155. *White Phosphorus Matches Prohibition Act 1912* repealed**

11 The *White Phosphorus Matches Prohibition Act 1912* is  
12 repealed.

13 **156. Regulations repealed**

14 These regulations are repealed:

- 15 (a) *Drugs of Addiction Notification Regulations 1980*;  
16 (b) *Health (Drugs and Allied Substances) Regulations 1961*.

17 **Division 3 — Saving and transitional matters**

18 **Subdivision 1 — *Poisons Act 1964***

19 **157. Terms used**

20 In this Part —

21 ***commencement day*** means the day on which section 154 comes  
22 into operation;

23 ***repealed Act*** means the *Poisons Act 1964*.

1     **158.     Continuation of licences and permits**

2           (1)    A licence of a type prescribed by the regulations that was  
3                   granted and in force under the repealed Act immediately before  
4                   commencement day is to be taken on and from commencement  
5                   day to be a licence of a type prescribed by the regulations  
6                   granted under this Act, for the same term and subject to the  
7                   same conditions as applied to the licence under the repealed  
8                   Act.

9           (2)    A permit of a type prescribed by the regulations that was  
10                  granted and in force under the repealed Act immediately before  
11                  commencement day is to be taken on and from commencement  
12                  day to be a permit of a type prescribed by the regulations  
13                  granted under this Act, for the same term and subject to the  
14                  same conditions as applied to the permit under the repealed Act.

15     **159.     Existing applications for licences or permits**

16           (1)    An application for a licence of a type prescribed by the  
17                   regulations that was made under the repealed Act before  
18                   commencement day and that was not finally determined before  
19                   commencement day is to be taken to be an application for a  
20                   licence of a type prescribed by the regulations made under this  
21                   Act on commencement day.

22           (2)    An application for a permit of a type prescribed by the  
23                   regulations that was made under the repealed Act before  
24                   commencement day and that was not finally determined before  
25                   commencement day is to be taken to be an application for a  
26                   permit of a type prescribed by the regulations made under this  
27                   Act on commencement day.

28     **160.     Continuation of notices given to health professionals**

29           (1)    In this section —  
30                   *notice under the repealed Act* means a notice given by the CEO  
31                   pursuant to regulations made under section 64(2)(ha) of the  
32                   repealed Act.

- 1 (2) If, immediately before commencement day, the authority  
2 conferred on a person by section 23 of the repealed Act was  
3 subject to a notice under the repealed Act, then on and from  
4 commencement day —
- 5 (a) for the purposes of this Act —
- 6 (i) the notice is to be taken to have been notice  
7 given in accordance with section 29; and
- 8 (ii) any condition or restriction imposed on the  
9 authority conferred on a person by section 23 of  
10 the repealed Act by the notice is to be taken to be  
11 a condition imposed by the CEO on the person's  
12 professional authority under this Act; and
- 13 (iii) if the notice totally revoked the authority  
14 conferred on a person by section 23 of the  
15 repealed Act, the CEO is to be taken to have  
16 cancelled the person's professional authority  
17 under this Act;
- 18 and
- 19 (b) the notice that is taken to have been given under this Act  
20 has effect for the same term as the notice under the  
21 repealed Act.

22 **161. Continuation of notices in relation to Schedule 6 poisons**

23 If the CEO gave a person a notice under regulations made under  
24 section 64(2)(hb) of the repealed Act in relation to a Schedule 6  
25 poison and that notice was in effect immediately before  
26 commencement day the CEO is to be taken to have given the  
27 person a compliance notice under this Act on the same terms as  
28 the notice given under the repealed Act.

29 **162. Continuation of notices in relation to Schedule 7 poisons**

30 A notice given by the CEO under section 24(5) of the repealed  
31 Act in relation to a Schedule 7 poison that was in effect  
32 immediately before commencement day continues to have effect



1 as if it was a Schedule 7 notice on the same terms as the notice  
2 given under the repealed Act.

3 **163. Minister may exempt certain therapeutic goods from**  
4 **requirements of *Therapeutic Goods Law (WA)***

5 (1) The Minister may, by notice published in the *Gazette*, exempt a  
6 therapeutic good from a requirement of the *Therapeutic Goods*  
7 *Law (WA)* if the Minister is satisfied that —

8 (a) the therapeutic good was being manufactured in  
9 Western Australia before commencement day; and

10 (b) the continued manufacture and use of the therapeutic  
11 good will not pose a risk to the health, safety and  
12 welfare of a person or of the public.

13 (2) A notice under subsection (1) must —

14 (a) describe with reasonable particularity the therapeutic  
15 good to which it applies; and

16 (b) specify the requirements of the *Therapeutic Goods Law*  
17 (*WA*) that do not apply in respect of the therapeutic  
18 good; and

19 (c) specify the period for which the exemption applies; and

20 (d) specify any conditions to be complied with in respect of  
21 the manufacture, supply or use of the therapeutic good.

22 **164. Transitional regulations**

23 (1) If there is no sufficient provision in this Part for dealing with a  
24 transitional matter, regulations under this Act may prescribe all  
25 matters that are required or necessary or convenient to be  
26 prescribed in relation to that matter.

27 (2) In subsection (1) —

28 ***transitional matter*** means a matter that needs to be dealt with  
29 for the transition required because of this Act.

- 1 (3) Regulations made under subsection (1) may provide that  
2 specific provisions of any written law —  
3 (a) do not apply in relation to any matter; or  
4 (b) apply with specific modifications in relation to any  
5 matter.
- 6 (4) If regulations made under subsection (1) provide that a specified  
7 state of affairs is to be taken to have existed, or not to have  
8 existed, on and from a day that is earlier than the day on which  
9 the regulations are published in the *Gazette* but not earlier than  
10 commencement day, the regulations have effect according to  
11 their terms.
- 12 (5) In subsection (4) —  
13 *specified* means specified or described in the regulations.
- 14 (6) If regulations contain a provision referred to in subsection (4),  
15 the provision does not operate so as —  
16 (a) to affect in a manner prejudicial to any person (other  
17 than the State or an authority of the State), the rights of  
18 that person existing before the regulations were  
19 published in the *Gazette*; or  
20 (b) to impose liabilities on any person (other than the State  
21 or an authority of the State) in relation to anything done  
22 or omitted to be done before the regulations were  
23 published in the *Gazette*.

24 **Subdivision 2 — *Drugs of Addiction Notification Regulations 1980***

25 **165. Transfer of information from former register to drugs of**  
26 **addiction record**

- 27 (1) In this section —  
28 *commencement day* means the day on which section 156 comes  
29 into operation;  
30 *former register* means the register kept under the *Drugs of*  
31 *Addiction Notification Regulations 1980* regulation 5.

- 1       (2)   The CEO must, within 12 months after the commencement day,  
2       destroy the former register and any information in it that has not  
3       been transferred under subsection (3).
- 4       (3)   The CEO may transfer information from the former register to  
5       the drugs of addiction record if the CEO is satisfied that the  
6       information is —
- 7           (a)   of a kind that could, had it been received by the CEO  
8           after the commencement day, be recorded in the drugs  
9           of addiction record; and
- 10          (b)   is accurate and up-to-date.
- 11       (4)   For the purposes of any provision in Part 7 or regulations made  
12       for the purposes of that Part that requires information to be  
13       removed from the drugs of addiction record after a specified  
14       period has elapsed, information recorded under subsection (3) is  
15       taken to have been recorded in the drugs of addiction record at  
16       the time it was recorded in the former register.

1 **Part 12 — Consequential amendments**

2 **Division 1 — *Health Act 1911* amended**

3 **166. Act amended**

4 This Division amends the *Health Act 1911*.

5 **167. Section 3 amended**

6 (1) In section 3(1) delete the definitions of:

7 *drug*

8 *false trade description*

9 *the Drug Advisory Committee*

10 *therapeutic substance*

11 *trade description*

12 (2) In section 3(1) in the definition of *meat* delete “except in  
13 Division 3A of Part VIIA,”.

14 **168. Section 5 amended**

15 In section 5(6):

16 (a) delete “food or drug,” and insert:

17

18 food,

19

20 (b) delete “or drug” (each occurrence).

21 **169. Part VIIA heading replaced**

22 Delete the heading to Part VIIA and insert:

23

24 **Part VIIA — Pesticides**

25

1   **170.   Part VIIA Division 1 heading replaced**

2           Delete the heading to Part VIIA Division 1 and insert:

3

4                           **Division 1 — Registration of analysts**

5

6   **171.   Section 202 deleted**

7           Delete section 202.

8   **172.   Part VIIA Divisions 5, 6 and 7 deleted**

9           Delete Part VIIA Divisions 5, 6 and 7.

10   **173.   Section 246A amended**

11           In section 246A(3) delete “*Poisons Act 1964.*” and insert:

12

13           *Medicines, Poisons and Therapeutic Goods Act 2013.*

14

15           Note: The heading to amended section 246A is to read:

16                           **Crown bound, but *Health Practitioner Regulation National Law***  
17                           **(*Western Australia*) and *Medicines, Poisons and Therapeutic***  
18                           ***Goods Act 2013* not affected by Division 8**

19   **174.   Part VIIA Division 9 deleted**

20           Delete Part VIIA Division 9.

21   **175.   Section 360 amended**

22           In section 360(4)(b) delete “246C or 246D(1).” and insert:

23

24           246C.

25

1 **176. Section 377 amended**

2 Delete section 377(10).

3 **177. Schedule 5 amended**

4 In Schedule 5:

- 5 (a) in Part I delete “225(1), 238(3) and (5),”;
- 6 (b) in Part II delete “224(2), 227(13),”;
- 7 (c) in Part IV delete “223(1), 225(2), 227(2), 231(2), 234(1),
- 8 240(1),”;
- 9 (d) in Part VI delete “221(1), 222, 236(1), 241(1),”;
- 10 (e) in Part VII delete “131(2), 228(2), 237(2), 238(1)” and
- 11 insert:

12

13 131(2)

14

15 **Division 2 — *Health Professionals (Special Events Exemption)***

16 ***Act 2000* amended**

17 **178. Act amended**

18 This Division amends the *Health Professionals (Special Events*

19 *Exemption) Act 2000*.

20 **179. Section 3 amended**

- 21 (1) In section 3(1) delete the definitions of:
- 22 ***drug of addiction***
- 23 ***restricted substance***
- 24 ***substance***

1       (2) In section 3(1) insert in alphabetical order:

2

3                   *medicine* has the meaning given in the *Medicines,*  
4                   *Poisons and Therapeutic Goods Act 2013* section 3;

5

6       **180. Section 8 amended**

7               In section 8(2):

8               (a) delete “possess, use or supply a substance” and insert:

9

10                   administer, possess, prescribe or supply a medicine

11

12               (b) delete “substance that may be lawfully possessed, used”  
13                   and insert:

14

15                   medicine that may lawfully be administered, possessed,  
16                   prescribed

17

18       **181. Section 9 replaced**

19               Delete section 9 and insert:

20

21       **9. Supply of medicines**

22               (1) The Minister may, by an order under section 6,  
23                   authorise a person, or a class of persons, to supply a  
24                   medicine —

25                   (a) in accordance with a prescription issued by a  
26                   visiting health professional; or

27                   (b) to a visiting health professional as if the visiting  
28                   health professional were a registered health  
29                   professional of the like profession.

- 1           (2) The Minister is not to make an order containing an  
2           authorisation referred to in subsection (1) unless —  
3               (a) the person or the class of persons authorised to  
4               supply the medicine is authorised under the  
5               *Medicines, Poisons and Therapeutic Goods*  
6               *Act 2013* to supply the medicine to, or in  
7               accordance with a prescription issued by, a  
8               registered health professional of the like  
9               profession; and  
10              (b) the Minister is satisfied that adequate  
11              arrangements are in place to ensure that the  
12              medicines concerned will only be used in  
13              connection with the provision of health services  
14              that are authorised under this Act.  
15           (3) An order under section 6 may impose conditions on  
16           any authorisation referred to in this section that is  
17           conferred by the order.  
18

19 **182. Section 11 amended**

- 20           (1) In section 11(1):  
21               (a) delete “*Poisons Act 1964*,” and insert:  
22                 
23               *Medicines, Poisons and Therapeutic Goods Act 2013*,  
24                 
25              (b) delete paragraphs (b) and (c) and insert:  
26                
27              (b) administering, possessing, prescribing or  
28              supplying a medicine in the course of providing  
29              those authorised health care services where the  
30              medicine is —  
31                      (i) lawfully imported or lawfully obtained  
32                      in Australia by the visiting health  
33                      professional; and



- 1 (ii) a medicine that may lawfully be  
2 administered, possessed, prescribed or  
3 supplied by a registered health  
4 professional of the like profession;  
5 or  
6  
7 (c) after each of paragraphs (a) and (d) insert:  
8  
9 or  
10  
11 (2) In section 11(2):  
12 (a) delete “*Poisons Act 1964*” and insert:  
13  
14 *Medicines, Poisons and Therapeutic Goods Act 2013*  
15  
16 (b) delete “substance” and insert:  
17  
18 medicine  
19  
20 (3) Delete section 11(3) and insert:  
21  
22 (3) A person does not commit an offence under the  
23 *Medicines, Poisons and Therapeutic Goods Act 2013*  
24 or the *Misuse of Drugs Act 1981* for supplying a  
25 medicine in accordance with a prescription issued by a  
26 visiting health professional if —  
27 (a) the visiting health professional is authorised  
28 under this Act to issue the prescription; and  
29 (b) the person is authorised under this Act to  
30 supply the medicine in accordance with such a  
31 prescription; and

- 1 (c) the supply would be lawful under the  
2 *Medicines, Poisons and Therapeutic Goods*  
3 *Act 2013* if the prescription had been issued by  
4 a registered health professional of the like  
5 profession.
- 6 (4A) A person does not commit an offence under the  
7 *Medicines, Poisons and Therapeutic Goods Act 2013*  
8 or the *Misuse of Drugs Act 1981* for supplying a  
9 medicine to a visiting health professional if —
- 10 (a) the person is authorised under this Act to  
11 supply the medicine; and
- 12 (b) the supply would be lawful under the  
13 *Medicines, Poisons and Therapeutic Goods*  
14 *Act 2013* if the visiting health professional were  
15 a registered health professional of the like  
16 profession.  
17
- 18 (4) In section 11(4) delete “(2) or (3)” and insert:  
19
- 20 (2), (3) or (4A)  
21

22 **Division 3 — *Misuse of Drugs Act 1981* amended**

23 **183. Act amended**

24 This Division amends the *Misuse of Drugs Act 1981*.

25 **184. Section 3 amended**

- 26 (1) In section 3(1) delete the definitions of:  
27 *authorised prescription*  
28 *dentist*  
29 *drug of addiction*  
30 *nurse practitioner*

***Poisons Act 1964***  
***regulations***  
***specified drug***  
***veterinary surgeon***

(2) In section 3(1) insert in alphabetical order:

***authorised prescription*** means a prescription issued by  
a prescriber as those terms are defined in the  
*Medicines, Poisons and Therapeutic Goods Act 2013*  
section 7(1);

***drug of addiction*** means —

- (a) a Schedule 8 poison as defined in the  
*Medicines, Poisons and Therapeutic Goods*  
*Act 2013* section 3; or
- (b) a Schedule 9 poison as defined in the  
*Medicines, Poisons and Therapeutic Goods*  
*Act 2013* section 3;

***specified drug*** means a substance that is prescribed to  
be a specified drug by regulations made under  
section 3B;

(3) In section 3(1) in the definition of ***undercover operation*** delete  
“section 5;” and insert:

section 5.

1 **185. Section 3B inserted**

2 After section 3A insert:

3

4 **3B. Specified drugs**

5 (1) The Governor may, on the recommendation of the  
6 Minister and the Minister responsible for administering  
7 the *Medicines, Poisons and Therapeutic Goods*  
8 *Act 2013*, make regulations prescribing a substance to  
9 be a specified drug for the purposes of this Act.

10 (2) A recommendation that a substance be prescribed to be  
11 a specified drug may only be made if the relevant  
12 Minister is satisfied that there is high propensity for the  
13 substance to be misused, abused, used illicitly or  
14 diverted for the manufacture of a substance with a high  
15 propensity for misuse, abuse or illicit use.

16

17 **186. Section 4 amended**

18 Delete section 4(2)(a) and (b) and insert:

19

20 (a) plants from which a drug of addiction may be  
21 obtained, derived or manufactured; and

22 (b) whether or not they are also plants referred to in  
23 paragraph (a), the plants specified in  
24 Schedule II.

25

1   **187.   Section 5B inserted**

2           At the end of Part I insert:

3

4           **5B.       Authorisation under *Medicines, Poisons and***  
5                       ***Therapeutic Goods Act 2013***

6           (1) In this section —

7                       ***appropriate licence*** has the meaning given in the  
8                       *Medicines, Poisons and Therapeutic Goods Act 2013*  
9                       section 12;

10                      ***appropriate permit*** has the meaning given in the  
11                      *Medicines, Poisons and Therapeutic Goods Act 2013*  
12                      section 12;

13                      ***professional authority*** has the meaning given in the  
14                      *Medicines, Poisons and Therapeutic Goods Act 2013*  
15                      section 3.

16           (2) For the purposes of this Act the manufacture or  
17                      preparation of a prohibited drug is authorised under the  
18                      *Medicines, Poisons and Therapeutic Goods Act 2013* if  
19                      the prohibited drug is manufactured —

20                      (a) under an appropriate licence or a professional  
21                          authority; and

22                      (b) in accordance with regulations made under that  
23                          Act.

24           (3) For the purposes of this Act, the sale or supply of a  
25                      prohibited drug is authorised under the *Medicines,*  
26                      *Poisons and Therapeutic Goods Act 2013* if the  
27                      prohibited drug is supplied —

28                      (a) under an appropriate licence, an appropriate  
29                          permit or a professional authority; and

30                      (b) in accordance with regulations made under that  
31                          Act.

- 1           (4) For the purposes of this Act, a person is authorised  
2           under the *Medicines, Poisons and Therapeutic Goods*  
3           *Act 2013* to manufacture, prepare, sell or supply a  
4           prohibited drug if —
- 5           (a) the person —
- 6               (i) holds an appropriate licence or an  
7               appropriate permit that authorises the  
8               manufacture or supply of the drug; or
- 9               (ii) is authorised by a professional authority  
10              to manufacture or supply the drug; or
- 11              (iii) is an employee or agent of a person  
12              referred to in subparagraph (i) or (ii);
- 13           and
- 14           (b) the manufacture, preparation, sale or supply is  
15           in accordance with the licence, permit or  
16           authority.
- 17           (5) For the purposes of this Act, a person is authorised  
18           under the *Medicines, Poisons and Therapeutic Goods*  
19           *Act 2013* to possess a prohibited drug if —
- 20           (a) the drug is a Schedule 4 or 8 poison as defined  
21           in the *Medicines, Poisons and Therapeutic*  
22           *Goods Act 2013* section 3 and possession of the  
23           drug by the person would not be an offence  
24           under the *Medicines, Poisons and Therapeutic*  
25           *Goods Act 2013* section 14(4); or
- 26           (b) the drug is a Schedule 9 poison as defined in  
27           the *Medicines, Poisons and Therapeutic Goods*  
28           *Act 2013* section 3 and possession of the drug  
29           by the person would not be an offence under  
30           *Medicines, Poisons and Therapeutic Goods*  
31           *Act 2013* section 17.
- 32           (6) For the purposes of this Act a person is authorised  
33           under the *Medicines, Poisons and Therapeutic Goods*  
34           *Act 2013* to use a prohibited drug if the drug is

1           prescribed for the person by the holder of a  
2           professional authority who is authorised under the  
3           *Medicines, Poisons and Therapeutic Goods Act 2013*  
4           to prescribe the drug to the person and the use is in  
5           accordance with the instructions of the prescriber.

- 6           (7) For the purposes of this Act, an investigator as defined  
7           in the *Medicines, Poisons and Therapeutic Goods*  
8           *Act 2013* section 3 is authorised to supply, obtain or  
9           possess a prohibited drug if the drug is supplied,  
10          obtained or possessed in the course of conducting an  
11          investigation under that Act.

12  
13   **188.   Section 5 amended**

- 14          (1) In section 5(1) delete “except when he is authorised by or under  
15          this Act or by or under the *Poisons Act 1964* to do so,”.

- 16          (2) After section 5(2) insert:  
17

- 18          (3) A person does not commit a simple offence under  
19          subsection (1)(a), (b) or (c) by reason only that  
20          premises are being used for the purpose of the  
21          manufacture, preparation, sale, supply or use of a  
22          prohibited drug or prohibited plant if the person  
23          proves —

24                  (a) that the manufacture, preparation, sale or  
25                  supply of the drug or plant was authorised  
26                  under this Act or the *Medicines, Poisons and*  
27                  *Therapeutic Goods Act 2013*; or

28                  (b) that the use of the drug or plant was by a person  
29                  authorised under this Act or the *Medicines,*  
30                  *Poisons and Therapeutic Goods Act 2013* to  
31                  use the drug or plant.  
32

1     **189.     Sections 6 and 7 replaced**

2             Delete sections 6 and 7 and insert:

3

4             **6.             Offences concerned with prohibited drugs generally**

5             (1)    A person commits a crime if the person —

6                   (a)   with intent to sell or supply it to another, has in  
7                         his or her possession a prohibited drug; or

8                   (b)   manufactures or prepares a prohibited drug; or

9                   (c)   sells or supplies, or offers to sell or supply, a  
10                        prohibited drug to another person.

11            (2)    A person who has in his or her possession or uses a  
12                    prohibited drug commits a simple offence.

13            (3)    A person does not commit a crime under subsection (1)  
14                    or a simple offence under subsection (2) by reason only  
15                    of the person having in his or her possession a  
16                    prohibited drug if the person proves that —

17                   (a)   he or she was authorised by or under this Act or  
18                         the *Medicines, Poisons and Therapeutic Goods*  
19                         *Act 2013* to have possession of the drug; or

20                   (b)   he or she had possession of the drug only for  
21                         the purpose of delivering it to a person  
22                         authorised to possess the drug under this Act or  
23                         the *Medicines, Poisons and Therapeutic Goods*  
24                         *Act 2013* and he or she took all reasonable steps  
25                         to deliver the drug to the person; or

26                   (c)   he or she had possession of the drug for the  
27                         purpose of analysing, examining or otherwise  
28                         dealing with it for the purposes of this Act in  
29                         his or her capacity as an analyst, botanist or  
30                         other expert.

31            (4)    A person does not commit a crime under subsection (1)  
32                    by reason only that the person manufactures, prepares,



1 sells or supplies a prohibited drug if the person proves  
2 that he or she was authorised to manufacture, prepare,  
3 sell or supply the drug under this Act or the *Medicines,*  
4 *Poisons and Therapeutic Goods Act 2013.*

- 5 (5) A person does not commit a simple offence under  
6 subsection (2) by reason only of using a prohibited  
7 drug if the person proves that he or she was a person  
8 authorised under this Act or the *Medicines, Poisons*  
9 *and Therapeutic Goods Act 2013.*

10 **7. Offences concerned with prohibited plants generally**

- 11 (1) A person commits a crime if the person —  
12 (a) with intent to sell or supply a prohibited plant,  
13 or any prohibited drug obtainable from a  
14 prohibited plant, to another person, has in his or  
15 her possession or cultivates the prohibited  
16 plant; or  
17 (b) sells or supplies, or offers to sell or supply, a  
18 prohibited plant to another person.
- 19 (2) A person who has in his or her possession or cultivates  
20 a prohibited plant commits a simple offence.
- 21 (3) A person does not commit a crime under subsection (1)  
22 or a simple offence under subsection (2) by reason only  
23 of the person having in his or her possession a  
24 prohibited plant if the person proves that —  
25 (a) he or she was authorised by or under this Act or  
26 the *Medicines, Poisons and Therapeutic Goods*  
27 *Act 2013* to have possession of a prohibited  
28 drug obtainable from the plant; or  
29 (b) he or she had possession of the plant only for  
30 the purpose of delivering it to a person  
31 authorised to have possession of a drug  
32 obtainable from the plant under this Act or the  
33 *Medicines, Poisons and Therapeutic Goods*

1                                    *Act 2013* and he or she took all reasonable steps  
2                                    to deliver the drug to the person; or

3                                    (c) he or she had possession of the plant for the  
4                                    purpose of analysing, examining or otherwise  
5                                    dealing with it for the purposes of this Act in  
6                                    his or her capacity as an analyst, botanist or  
7                                    other expert.  
8

9        **190.     Section 7B amended**

10                                  In section 7B(7) delete “*Poisons Act 1964*” (each occurrence)  
11                                  and insert:  
12

13                                  *Medicines, Poisons and Therapeutic Goods Act 2013*  
14

15        **191.     Section 8 deleted**

16                                  Delete section 8.

17        **192.     Section 14 amended**

18                                  (1) In section 14(3) delete “*Poisons Act 1964*” and insert:  
19

20                                  *Medicines, Poisons and Therapeutic Goods Act 2013*  
21

22                                  (2) Delete section 14(4) and insert:  
23

24                                  (4) A person does not commit an offence under  
25                                  subsection (1) or (2) by reason only of the person  
26                                  having in the person’s possession a category 1 item, a  
27                                  category 2 item or a particular substance if the person  
28                                  proves that —

29    (a) he or she was authorised by or under this Act or  
30    the *Medicines, Poisons and Therapeutic Goods*

- 1                    *Act 2013* to have possession of the item or  
2                    substance; or
- 3                    (b) he or she had possession of the item or  
4                    substance only for the purpose of delivering it  
5                    to a person authorised to have possession of the  
6                    item or substance under this Act or the  
7                    *Medicines, Poisons and Therapeutic Goods*  
8                    *Act 2013* and he or she took all reasonable steps  
9                    to deliver the item or substance to the person;  
10                   or
- 11                   (c) he or she had possession of the item or  
12                   substance for the purpose of analysing,  
13                   examining or otherwise dealing with it for the  
14                   purposes of this Act in his or her capacity as an  
15                   analyst, botanist or other expert.

17   **193.    Section 27 amended**

18                   In section 27(1):

- 19                   (a) delete paragraph (a)(ii) and insert:
- 20
- 21                                    (ii) if a person who is authorised by or  
22                                    under this Act or under the *Medicines,*  
23                                    *Poisons and Therapeutic Goods*  
24                                    *Act 2013* to have possession thereof is  
25                                    entitled to have possession of that  
26                                    relevant thing, release that relevant  
27                                    thing to that person;
- 28
- 29                   (b) in paragraph (b) delete the passage that begins with  
30                   “Act,” and ends with “prescription” and insert:
- 31
- 32                                    Act or by or under the *Medicines, Poisons and*  
33                                    *Therapeutic Goods Act 2013*
- 34

1     **194.     Section 38D amended**

2             Delete section 38D(2) and insert:

3

4             (2)   In any proceedings under this Act, production of a  
5                   copy of any code adopted under the *Medicines, Poisons*  
6                   *and Therapeutic Goods Act 2013* section 149  
7                   purporting to be certified by the CEO (Health) to be a  
8                   true copy of the code as at any date or during any  
9                   period is, without proof of the signature of the CEO  
10                  (Health), sufficient evidence of the contents of the code  
11                  as at that date or during that period.

12

13     **195.     Section 41 amended**

14             In section 41(2):

15             (a)   delete “*Poisons Act 1964*,” and insert:

16

17                   *Medicines, Poisons and Therapeutic Goods Act 2013*,

18

19             (b)   delete “*Poisons Act 1964*” and insert:

20

21                   *Medicines, Poisons and Therapeutic Goods Act 2013*

22

23     **196.     Schedule I heading amended**

24             In the heading to Schedule I delete “*Poisons Act 1964*” and  
25             insert:

26

27                   *Medicines, Poisons and Therapeutic Goods Act 2013*

28

1 **197. Schedule II heading replaced**

2 Delete the heading to Schedule II and insert:

3

4 **Schedule II — Plants to which this Act applies**

5

6 **198. Schedule III amended**

7 (1) In Schedule III delete item 2 and insert:

8

2. ACETYLDIHYDROCODEINE (except when a  
Schedule 2 or 4 poison as defined in the *Medicines,*  
*Poisons and Therapeutic Goods Act 2013*) 6.0

9

10 (2) In Schedule III delete item 30 and insert:

11

30. CODEINE (except when a Schedule 2, 3 or 4 poison  
as defined in the *Medicines, Poisons and Therapeutic*  
*Goods Act 2013*) 30.0

12

13 (3) In Schedule III delete item 40 and insert:

14

40. DIHYDROCODEINE (except when a Schedule 2 or 4  
poison as defined in the *Medicines, Poisons and*  
*Therapeutic Goods Act 2013*) 30.0

15

16 (4) In Schedule III delete item 90 and insert:

17

90. MORPHINE DERIVATIVES (not specifically  
included elsewhere in this Schedule or not a  
Schedule 2, 3, 4, 5, 6, 7, 8 or 9 poison as defined in  
the *Medicines, Poisons and Therapeutic Goods*  
*Act 2013*) 6.0

18

**Medicines, Poisons and Therapeutic Goods Bill 2013**

**Part 12** Consequential amendments

**Division 3** Misuse of Drugs Act 1981 amended

**s. 199**

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- 1 (5) In Schedule III delete items 96 and 97 and insert:  
2
96. NICOCODINE (except when a Schedule 2 or 4  
poison as defined in the *Medicines, Poisons and  
Therapeutic Goods Act 2013*) 6.0
97. NICODICODINE (except when a Schedule 2 or 4  
poison as defined in the *Medicines, Poisons and  
Therapeutic Goods Act 2013*) 6.0
- 3  
4 (6) In Schedule III delete item 100 and insert:  
5
100. NORCODEINE (except when a Schedule 2 or 4  
poison as defined in the *Medicines, Poisons and  
Therapeutic Goods Act 2013*) 6.0
- 6  
7 (7) In Schedule III delete item 123 and insert:  
8
123. PHOLCODINE (except when a Schedule 2 or 4  
poison as defined in the *Medicines, Poisons and  
Therapeutic Goods Act 2013*) 15.0
- 9
- 10 **199. Schedule V amended**
- 11 (1) In Schedule V delete item 2 and insert:  
12
2. ACETYLDIHYDROCODEINE (except when a  
Schedule 2 or 4 poison as defined in the *Medicines,  
Poisons and Therapeutic Goods Act 2013*) 2.0
- 13  
14 (2) In Schedule V delete item 30 and insert:  
15
30. CODEINE (except when a Schedule 2 or 4 poison as  
defined in the *Medicines, Poisons and Therapeutic  
Goods Act 2013*) 10.0
- 16

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**Division 4 — Other Acts amended**

**200. Biosecurity and Agriculture Management Act 2007 amended**

(1) This section amends the *Biosecurity and Agriculture Management Act 2007*.

(2) In section 4(2) delete paragraph (g) and insert:

(g) the *Medicines, Poisons and Therapeutic Goods Act 2013*;

(3) In section 40(3) delete “*Poisons Act 1964*.” and insert:

*Medicines, Poisons and Therapeutic Goods Act 2013*.

**201. Constitution Acts Amendment Act 1899 amended**

(1) This section amends the *Constitution Acts Amendment Act 1899*.

(2) In Schedule V Part 3 delete the item relating to The Poisons Advisory Committee.

**202. Emergency Management Act 2005 amended**

(1) This section amends the *Emergency Management Act 2005*.

(2) At the end of Part 6 Division 2 insert:

**76A. Manufacture, supply and prescription of poisons**

(1) In this section each of the following terms has the meaning given in the *Medicines, Poisons and Therapeutic Goods Act 2013* section 3 —

***CEO***

***manufacture***

***poison***



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*prescribe*

*supply*

- (2) For the purposes of emergency management —
- (a) the CEO may authorise a person to administer, manufacture, supply or prescribe a poison; and
  - (b) during a state of emergency a person authorised under paragraph (a) may administer, manufacture, supply or prescribe a poison.
- (3) An authorisation under subsection (2)(a) is to specify —
- (a) whether it applies to any state of emergency or is limited to a particular state of emergency; and
  - (b) the person, or class of persons, to whom it applies; and
  - (c) the poison, or a class of poisons, to which it applies; and
  - (d) the terms and conditions to which it is subject.
- (4) An authorisation under subsection (2)(a) may be given orally or in writing but if given orally is to be put in writing as soon as is practicable.
- (5) A failure to put an authorisation in writing does not invalidate the authorisation or anything done under the authorisation.
- (6) When exercising a power under subsection (2)(b) a person is to comply with —
- (a) the terms and conditions of the authorisation; and
  - (b) any directions of the CEO or State Emergency Coordinator.

- 1 (7) This section applies despite any provision of the  
2 *Medicines, Poisons and Therapeutic Goods Act 2013*  
3 or the *Misuse of Drugs Act 1981*.  
4

5 **203. *Fair Trading Act 2010* amended**

- 6 (1) This section amends the *Fair Trading Act 2010*.

- 7 (2) In Schedule 1:

- 8 (a) delete “*Poisons Act 1964*”;  
9 (b) insert in alphabetical order:

10  
11 *Medicines, Poisons and Therapeutic Goods Act 2013*  
12

13 **204. *Pharmacy Act 2010* amended**

- 14 (1) This section amends the *Pharmacy Act 2010*.

- 15 (2) In section 3(1) delete the definition of *the practice of pharmacy*  
16 and insert:

17  
18 *the practice of pharmacy* includes to —

- 19 (a) compound, dispense or otherwise supply  
20 medicines or drugs; and  
21 (b) advise or counsel on the effective and safe use  
22 of medicines or drugs.  
23

- 24 (3) In section 3(1) in the definition of *dispense* delete “*Poisons*  
25 *Act 1964* section 5(1),” and insert:

26  
27 *Medicines, Poisons and Therapeutic Goods Act 2013* section 3,  
28

- 1       (4) In section 3(1) in the definition of *pharmacy business*  
2       paragraph (d) delete “*Poisons Act 1964*” and insert:

3  
4       *Medicines, Poisons and Therapeutic Goods Act 2013*  
5

- 6       (5) After section 50 insert:  
7

8       **51A. Requirement to notify recording of information on**  
9       **register**

- 10       (1) In this section —  
11       *CEO* has the meaning given in the *Medicines, Poisons*  
12       *and Therapeutic Goods Act 2013* section 3.  
13       (2) The Board is required to notify the CEO of information  
14       recorded in the register as soon as is practicable after  
15       the information is recorded.  
16

17       **205. Police (Medical and Other Expenses for Former Officers)**  
18       **Act 2008 amended**

- 19       (1) This section amends the *Police (Medical and Other Expenses*  
20       *for Former Officers) Act 2008*.  
21       (2) In section 4(3)(a) delete “*Poisons Act 1964* section 5(1),” and  
22       insert:  
23

24       *Medicines, Poisons and Therapeutic Goods Act 2013*  
25       section 94(1),  
26

27       **206. Road Traffic Act 1974 amended**

- 28       (1) This section amends the *Road Traffic Act 1974*.

1       (2) In section 65 in the definition of **drug** delete paragraph (b) and  
2       insert:

3  
4                   (b) a Schedule 4 poison as defined in the  
5                   *Medicines, Poisons and Therapeutic Goods*  
6                   *Act 2013* section 3; or  
7

8   **207.    *Tobacco Products Control Act 2006* amended**

9       (1) This section amends the *Tobacco Products Control Act 2006*.

10      (2) In the Glossary in the definition of **tobacco product** delete  
11      paragraph (d) and insert:

12  
13                   (d) nicotine, or a product that contains nicotine, in a  
14                   form that is a poison within the meaning of the  
15                   *Medicines, Poisons and Therapeutic Goods*  
16                   *Act 2013* section 3; or  
17

18   **208.    *Veterinary Chemical Control and Animal Feeding Stuffs***  
19   ***Act 1976* amended**

20      (1) This section amends the *Veterinary Chemical Control and*  
21      *Animal Feeding Stuffs Act 1976*.

22      (2) In section 9 delete “*Poisons Act 1964*,” (each occurrence) and  
23      insert:

24  
25                   *Medicines, Poisons and Therapeutic Goods Act 2013*,  
26

27   **209.    *Workers’ Compensation and Injury Management Act 1981***  
28   **amended**

29      (1) This section amends the *Workers’ Compensation and Injury*  
30      *Management Act 1981*.

- 1       (2) In section 5(1) delete the definition of *drug of addiction* and  
2       insert:

3

- 4                   *drug of addiction* has the meaning given in the *Misuse*  
5                   *of Drugs Act 1981* section 3(1);

6

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**Defined terms**

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**Defined terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
act.....	144(1)
adopted code .....	3, 149(1)
agent.....	13(3), 14(2), 137(1), 137(3)
Agvet Code of Western Australia .....	3
application to vary conditions .....	52(1)
appropriate licence .....	12, 74
appropriate permit.....	12, 74
approved analyst .....	141
authorised health professional.....	3
authorised person .....	88(1)
authorised supplier .....	14(2)
CEO .....	3
change of management .....	53
client .....	94(1)
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code documents.....	149(1)
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Commonwealth authority.....	77
Commonwealth Director.....	92
Commonwealth Minister .....	77
Commonwealth officer .....	77
Commonwealth Secretary.....	77
compliance notice .....	3
confer .....	77
control day .....	5(6)
corporate officer.....	3
Department .....	3
drug dependent person .....	94(1)
drug of addiction.....	94(1)
drugs of addiction record .....	3
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entry warrant.....	110
executor.....	59(1)
expiry day .....	40(1)
former register.....	165(1)
fraudulent means.....	21(4)
grounds for taking action .....	28(1), 28(3), 60(1), 60(3)

**Defined terms**

health professional .....	3
in accordance with a prescription.....	7(3)
investigator .....	3
label .....	147(1)
licence .....	3
licensee .....	3
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medicine.....	3
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pharmacy.....	3
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relevant regulatory authority.....	31(1)
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Schedule 3 poison .....	3
Schedule 4 poison .....	3
Schedule 4 reportable poison .....	94(1)
Schedule 5 poison .....	3

**Defined terms**

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Schedule 6 poison .....	3
Schedule 7 notice .....	3
Schedule 7 poison .....	3
Schedule 8 poison .....	3
Schedule 9 poison .....	3
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substance .....	3
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supply .....	3, 8(1)
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