



New South Wales

# Drug Misuse and Trafficking Regulation 2006

under the

Drug Misuse and Trafficking Act 1985

## Explanatory note

The object of this Regulation is to remake, with substantial changes, the *Drug Misuse and Trafficking Regulation 2000*, which is repealed on 1 September 2006 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation:

- (a) provides for the Director-General of the Department of Health to approve needle exchange programs and to authorise persons to participate in such programs (clause 4), and
- (b) exempts members of NSW Police who are Crime Scene Officers from certain provisions of the *Drug Misuse and Trafficking Act 1985* (***the Act***) that might otherwise prohibit them from possessing prohibited drugs or performing other aspects of their duties (clause 5), and
- (c) exempts certain persons from the provisions of the Act that might otherwise prohibit them from possessing and supplying syringes, needles and associated equipment, and giving information, in connection with an approved needle exchange program (clauses 6 and 7), and
- (d) exempts pharmacists, and persons who act under the supervision of pharmacists, from certain provisions of the Act that might otherwise prohibit them from possessing and supplying equipment that can be used to administer prohibited drugs (clause 8), and
- (e) specifies certain substances as precursors (clause 9 and Schedules 1 and 2), and
- (f) regulates the sale and storage of such precursors (clauses 10 and 11), and
- (g) provides for the analysis of drug exhibits by an analyst (Part 4) whenever:
  - (i) a traffickable quantity of a prohibited drug is seized or comes into the possession of a member of NSW Police, or
  - (ii) the seal on a package previously so analysed is broken, or
  - (iii) the package is opened or tampered with, or

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Explanatory note

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(iv) an order is made under Part 3A of the Act for the destruction of the drug

At present, section 24A (2A) of the Act empowers the Governor to make regulations for or with respect to prohibiting or regulating the cash sale of precursors. The *Drug Misuse and Trafficking Amendment Act 2006*, which has not commenced, extends that power to include the making of regulations for or with respect to prohibiting or regulating the sale and storage of precursors. It also increases the amount of penalty that the regulation may create an offence punishable by. Clauses 10 and 11 of this Regulation, and the penalties for breaching them, rely on that extension of the regulation-making power and that increase in permissible penalty. If the proposed amendments to section 24A (2A) and 45 have not commenced before this Regulation is required to be made, this Regulation will reinstate the provision regulating the cash sale of precursors (in a form identical to clause 7B of the *Drug Misuse and Trafficking Regulation 2000*).

This Regulation is made under the *Drug Misuse and Trafficking Act 1985*, as amended by the *Drug Misuse and Trafficking Amendment Act 2006*, including sections 11 (1B), 24A, 35A, 39S and 45 (the general regulation-making power).

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Drug Misuse and Trafficking Regulation 2006

Clause 1

Preliminary

Part 1

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## Drug Misuse and Trafficking Regulation 2006

under the

Drug Misuse and Trafficking Act 1985

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Drug Misuse and Trafficking Regulation 2006*.

#### 2 Commencement

- (1) This Regulation commences on 1 September 2006, except as provided by subclause (2).

**Note.** This Regulation replaces the *Drug Misuse and Trafficking Regulation 2000*, which is repealed on 1 September 2006 by section 10 (2) of the *Subordinate Legislation Act 1989*.

- (2) Clauses 10 (1) (b) and (c), (2)–(5) and (7) and 11 and Schedule 2 commence on 1 March 2007.

#### 3 Definitions

- (1) In this Regulation:
- analyst* has the same meaning as in section 43 of the Act.
  - approved needle exchange program* means a program approved by the Director-General of the Department of Health, as referred to in clause 4.
  - authorised person* means a person who is authorised by the Director-General of the Department of Health to participate in an approved needle exchange program, as referred to in clause 4.
  - the Act* means the *Drug Misuse and Trafficking Act 1985*.
- (2) In this Regulation, a reference to anything done by an analyst includes a reference to anything done by a person under the supervision of an analyst.
- (3) Notes included in this Regulation do not form part of this Regulation.

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Drug Misuse and Trafficking Regulation 2006

Clause 4

General

Part 2

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## **Part 2 General**

### **4 Approval by Director-General of Health of needle exchange programs**

- (1) The Director-General of the Department of Health may authorise a specified person or a specified class of persons to participate in a program approved by the Director-General to facilitate:
  - (a) the supply to intravenous drug users of sterile hypodermic syringes and sterile hypodermic needles, and any associated equipment, to prevent the spread of contagious disease and minimise health risks associated with intravenous drug use, and
  - (b) the giving out of information concerning hygienic practices in the use of hypodermic syringes and hypodermic needles to prevent the spread of contagious disease.
- (2) An authorisation under this clause is to be granted, and may be revoked, in the same manner as an authorisation under the Act.

### **5 Exemption for Crime Scene Officers**

A member of NSW Police who has been designated by the Commissioner for Police as a Crime Scene Officer is exempt from the provisions of sections 10, 23 (1) and (2) and 25 (1) and (2) of the Act in relation to every prohibited plant or prohibited drug to the extent necessary to enable the member to carry out his or her duties as such an officer.

### **6 Exemption for authorised persons participating in approved program**

- (1) An authorised person is exempt from the provisions of sections 11, 19 and 20 of the Act, to the extent necessary to authorise the person:
  - (a) to have in his or her possession, and to distribute, hypodermic syringes and hypodermic needles, and any associated equipment, for use in the administration of a prohibited drug capable of being so administered, and
  - (b) to give out information concerning hygienic practices in the use of hypodermic syringes and hypodermic needles to prevent the spread of contagious disease.
- (2) The exemption applies only for the purpose of enabling the authorised person to participate in an approved needle exchange program.

### **7 Exemption for giving out information about approved program**

Any person is exempt from the provisions of sections 19 and 20 of the Act, to the extent necessary to authorise the person to give out information about the location and hours of operation of an approved needle exchange program.

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Clause 8            Drug Misuse and Trafficking Regulation 2006

Part 2             General

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## **8    General exemption for pharmacists and staff**

A pharmacist acting in the ordinary course of his or her profession, and any person acting under the supervision of the pharmacist, is exempt from the provisions of sections 11, 19 and 20 of the Act, to the extent necessary to authorise the pharmacist or person:

- (a) to have in his or her possession, and to distribute, hypodermic syringes and hypodermic needles, and any associated equipment, for use in the administration of a prohibited drug capable of being so administered, and
- (b) to give out information concerning hygienic practices in the use of hypodermic syringes and hypodermic needles to prevent the spread of contagious disease.

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Drug Misuse and Trafficking Regulation 2006

Clause 9

Precursors

Part 3

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## Part 3 Precursors

### 9 Precursors

- (1) For the purposes of section 24A (1) of the Act, the substances listed in Schedule 1, and any preparation, admixture, extract or other substance containing any proportion of a substance listed in Schedule 1, are specified as precursors.
- (2) For the purposes of section 24A (2A) and (3) of the Act, the substances listed in Schedules 1 and 2, and any preparation, admixture, extract or other substance containing any proportion of a substance listed in Schedule 1 or 2, are specified as precursors.

**Note.** The term **substance** is defined in section 3 of the Act as including preparation and admixture and all salts, isomers, esters or ethers of any substance and all salts of those isomers, esters and ethers.

### 10 Sales and storage of Schedule 1 precursors

- (1) A person (*supplier*) must not supply any Schedule 1 precursor to a person (*receiver*) unless the receiver:
  - (a) has an account with the supplier and payment for the supply is made through the account, and
  - (b) has provided the supplier with an end user declaration, and
  - (c) has furnished the supplier with proof of the receiver's identity (for example, a driver licence or passport).
- (2) A supplier must not supply any Schedule 1 precursor to a receiver unless at least 24 hours have passed following the completion by the receiver of the requirements set out in subclause (1) (b) and (c).
- (3) A supplier of any Schedule 1 precursor must store the precursor in a manner that prevents any access to it by any person other than:
  - (a) the supplier, or
  - (b) a person authorised in writing by the supplier to have access to the precursor.
- (4) A supplier who authorises in writing another person to have access to any Schedule 1 precursor in accordance with subclause (3) (b) must:
  - (a) keep a copy of that authorisation for the period of its effect and the period of at least 2 years following the authorisation ceasing to have effect, and
  - (b) make any such copy available for inspection on request by a police officer during business hours.
- (5) A supplier must not supply any Schedule 1 precursor to a person unless the supplier has recorded:

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Clause 10 Drug Misuse and Trafficking Regulation 2006

Part 3 Precursors

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- (a) the name and quantity of the Schedule 1 precursor supplied, and
  - (b) the date of supply of the Schedule 1 precursor from the supplier's premises.
- (6) Subclauses (1), (2), (4) and (5) do not apply to the supply of a substance referred to in paragraph (b) of the definition of ***Schedule 1 precursor*** in subclause (8) if:
- (a) the substance is supplied for therapeutic use within the meaning of the relevant therapeutic goods laws, and
  - (b) the substance is packaged and labelled in accordance with the relevant therapeutic goods laws, and
  - (c) the supplier is authorised, by the relevant therapeutic goods laws, to supply the substance.
- (7) A supplier must keep each end user declaration provided to the supplier in accordance with subclause (1) (b), and each record made under subclause (5), for a period of at least 5 years.
- (8) In this clause:

***end user declaration*** means a document, completed by a proposed receiver of a Schedule 1 precursor, that specifies the following:

- (a) the name and address of the receiver,
- (b) details of the receiver's proof of identity furnished to the supplier concerned (for example, details of a driver licence or passport),
- (c) the name and quantity of the Schedule 1 precursor to be supplied,
- (d) the proposed date of supply of the Schedule 1 precursor from the supplier's premises.

***relevant therapeutic goods laws*** means:

- (a) the *Poisons and Therapeutic Goods Act 1966*, and
- (b) the regulations under that Act, and
- (c) the Commonwealth therapeutic goods laws within the meaning of that Act as those laws apply as a law of this State.

***Schedule 1 precursor*** means any of the following substances:

- (a) a substance listed in Schedule 1 (other than a substance referred to in paragraph (b) or (c)),
- (b) Ephedrine, Phenylpropanolamine or Pseudoephedrine or a salt of Ephedrine, Phenylpropanolamine or Pseudoephedrine,
- (c) Phenylacetic acid or a salt or ester of Phenylacetic acid.

**Note.** The term ***substance*** in this section does not including a preparation, admixture, salts, isomers, esters or ethers of any substance or a salts of those isomers, esters and ethers (see subclause (9)). Accordingly, the definition of



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Drug Misuse and Trafficking Regulation 2006

Clause 11

Precursors

Part 3

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**Schedule 1 precursor** does not include a preparation, admixture, salts, isomers, esters or ethers of any substance or a salts of those isomers, esters and ethers, except where specifically provided for.

- (9) In this clause, a reference to a substance does not include a reference to a preparation, admixture, salt, isomer, ester or ether of a substance listed in Schedule 1 or a salt of such an isomer, ester or ether, unless otherwise specified.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units for a first offence or 150 penalty units for a second or subsequent offence, or
- (b) in the case of an individual—30 penalty units for a first offence or 50 penalty units for a second or subsequent offence.

## 11 Sales of Schedule 2 precursors and apparatus

- (1) A person (**supplier**) must not supply any Schedule 2 precursor or apparatus to a person (**receiver**) unless the receiver:
  - (a) has an account with the supplier and payment for the supply is made through the account, or
  - (b) has provided the supplier with an end user declaration, and
  - (c) has furnished the supplier with proof of the receiver's identity (for example, a driver licence or passport).
- (2) A supplier must not supply any Schedule 2 precursor to a person unless the supplier has recorded:
  - (a) the name and quantity of the Schedule 2 precursor or apparatus supplied, and
  - (b) the date of supply of the Schedule 2 precursor or apparatus from the supplier's premises.
- (3) A supplier must keep each end user declaration provided to the supplier in accordance with subclause (1) (b), and each record made under subclause (2), for a period of at least 2 years.
- (4) In this clause:

**end user declaration** means a document, completed by a proposed receiver of a Schedule 2 precursor or apparatus, that specifies the following:

  - (a) the name and address of the receiver,
  - (b) details of the receiver's proof of identity furnished to the supplier concerned (for example, details of a driver licence or passport),
  - (c) the name and quantity of the Schedule 2 precursor or apparatus to be supplied.

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Clause 11      Drug Misuse and Trafficking Regulation 2006

Part 3          Precursors

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*Schedule 2 precursor or apparatus* means any substance or apparatus listed in Schedule 2.

*supply*, in relation to a round bottom reaction flask or heating mantle, includes supply after the repair or modification of either of those apparatus.

- (5) In this clause, a reference to a substance does not include a reference to a preparation, admixture, salt, isomer, ester or ether of a substance listed in Schedule 2 or a salt of such an isomer, ester or ether, unless otherwise specified.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units for a first offence or 150 penalty units for a second or subsequent offence, or
- (b) in the case of an individual—30 penalty units for a first offence or 50 penalty units for a second or subsequent offence.

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Drug Misuse and Trafficking Regulation 2006

Clause 12

Custody and analysis of drug exhibits

Part 4

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## **Part 4 Custody and analysis of drug exhibits**

### **12 Application of this Part**

- (1) This Part applies to a substance that a member of NSW Police knows or suspects to be a prohibited drug and:
  - (a) that is in the custody of a member of NSW Police, and
  - (b) the quantity of which is not less than the traffickable quantity for the prohibited drug concerned.
- (2) It is immaterial whether a prohibited drug to which this Part applies is or has come into the custody of a member of NSW Police through seizure or other means.

### **13 Delivery of substance for analysis**

- (1) As soon as practicable (but in no case later than 14 days) after a substance to which this Part applies comes into the custody of a member of NSW Police, the whole of the substance must be given to an analyst for analysis.
- (2) Immediately after a member of NSW Police opens a package that has been sealed under this Part or becomes aware that a package sealed under this Part has been opened or tampered with, the whole of the contents of the package must be given to an analyst for analysis.

### **14 Order for destruction**

- (1) Immediately after an order is made under Part 3A of the Act for the destruction of a prohibited drug to which this Part applies, the person having the custody of the prohibited drug must arrange for an analyst to inspect the package or packages containing the prohibited drug to determine whether or not any package has been opened or tampered with since it was last sealed.
- (2) The person having the custody of the prohibited drug must give the whole of the contents of a package that is found to have been opened or tampered with to the analyst for analysis.

### **15 Carrying out of analysis**

- (1) An analyst to whom a substance is given for analysis under clause 13 or 14 must carry out an analysis of it to determine whether it is a prohibited drug and, if it is, to determine:
  - (a) the identity of the prohibited drug, and
  - (b) the quantity or mass of the prohibited drug, and
  - (c) the purity of the prohibited drug.

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Clause 16 Drug Misuse and Trafficking Regulation 2006

Part 4 Custody and analysis of drug exhibits

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- (2) If the substance is cannabis leaf, the analyst, after identifying the substance, need only determine the quantity or mass of the cannabis leaf.

## **16 Procedure after analysis**

- (1) After removing a sample of a substance that is given to an analyst for analysis under clause 13 or 14, the analyst must place the balance of the substance not required for analysis into one or more packages, securely seal each package and mark each package with an identifying mark.
- (2) After complying with subclause (1), the analyst must deliver each sealed package, or cause each sealed package to be delivered, to the Commissioner of Police or to a person, or to a person of a class of persons, specified by the Commissioner for the purpose.

## **17 Storage of sealed packages**

- (1) A person to whom a package is delivered under clause 16 (2) must store the package in a secure place determined by the Commissioner of Police.
- (2) Subclause (1) has effect subject to any order made under Part 3A of the Act requiring destruction of the prohibited drug concerned, and, accordingly, does not have effect to the extent that is necessary to secure compliance with the order.

## **18 Analyst's certificate**

An analyst who, under this Part, analyses a substance that is a prohibited drug must prepare a certificate under section 43 (1) of the Act of the result of the analysis that includes the following:

- (a) the identity of the prohibited drug,
- (b) the quantity or mass of the prohibited drug,
- (c) except in the case of cannabis leaf, the purity of the prohibited drug.

## **19 Significant variations in analysts' certificates**

If a difference occurs between the findings recorded in two or more certificates of an analyst concerning the same drug exhibit and the analyst providing the later or latest certificate is of the opinion that the difference is significant, that analyst must immediately forward a copy of all certificates relating to the drug exhibit to the Director of Public Prosecutions.

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Drug Misuse and Trafficking Regulation 2006

Clause 20

Miscellaneous

Part 5

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## **Part 5 Miscellaneous**

### **20 Savings**

Any act, matter or thing that, immediately before the repeal of the *Drug Misuse and Trafficking Regulation 2000*, had effect under that Regulation is taken to have effect under this Regulation.

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Drug Misuse and Trafficking Regulation 2006

Schedule 1 Precursors

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## Schedule 1 Precursors

(Clauses 9 and 10)

4-Amino butanoic acid (also known as Piperidinic acid)  
Acetic anhydride  
Bromo safrole  
Bromobenzene  
Boron tribromide  
1, 4 butanediol (also known as Tetramethylene glycol)  
1-Chlorophenyl-2-aminopropane  
Ephedrine  
Ephedrone  
Ethyl phenyl acetate  
Gamma butyrolactone (also known as 4-Hydroxy-butanoic acid lactone)  
Gamma hydroxybutanoic acid (including salts) (also known as Gamma hydroxybutyric acid)  
Hydriodic acid  
4-Hydroxybutanal (also known as 4-Hydroxybutyraldehyde)  
4-Hydroxy-butanoic acid nitrile (also known as 4-Hydroxybutyronitrile)  
2-Hydroxytetrahydrofuran (also known as Tetrahydro-2-furanol)  
4-Hydroxy-pentanoic acid (also known as Gamma valerolactone)  
Hypophosphite salts  
Hypophosphorous acid  
3, 4-Methylenedioxyphenylpropan-2-one (also known as 3, 4-Methylenedioxy-phenyl-2-propanone)  
N-Methylephedrine  
Methyl phenyl acetate  
N-Methyl pseudoephedrine  
Norpseudoephedrine  
Phenylacetamide  
Phenylacetic acid

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Drug Misuse and Trafficking Regulation 2006

Precursors

Schedule 1

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Phenylacetonitrile

Phenylacetyl chloride

Phenylpropanolamine

1-Phenyl-2-chloropropane

1-Phenyl-2-nitropropene

1-Phenyl-1-propanone (also known as Phenylethylketone, Propiophenone)

1-Phenyl-2-propanone

1-Phenyl-2-propanone oxime

1-Phenyl-2-propanol

Phosphorus (red or white)

Phosphorous acid (also known as Phosphonic acid)

Piperonal (also known as 3, 4-Methylenedioxy-benzaldehyde or Heliotopine)

Pseudoephedrine

Pyridine

2-Pyrrolidone (also known as Gamma butyrolactam)

Safrole (also known as 5-(2-Propenyl)-1, 3-Benzodioxide)

Sassafras oil

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Drug Misuse and Trafficking Regulation 2006

Schedule 2 Precursors and apparatus

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## Schedule 2 Precursors and apparatus

(Clauses 9 and 11)

### Substances

N-Acetylanthranilic acid (also known as 2-Acetamidobenzoic acid)

Allylbenzene (also known as 3-Phenyl-1-propene or 2-Propenyl-benzene)

Ammonium formate

Anthranilic acid (also known as 2-Aminobenzoic acid)

Benzaldehyde

Benzyl bromide (also known as  $\alpha$ -Bromotoluene)

Benzyl chloride (also known as  $\alpha$ -Chlorotoluene)

Calcium

Chromic acid (including salts)

Chromium trioxide (also known as Chromium (VI) oxide)

Ergometrine (also known as Ergonovine)

Ergotamine

Ethanamine (also known as Monoethylamine)

N-Ethylephedrine

N-Ethylpseudoephedrine

Formamide

Hydrobromic acid (also known as Hydrogen bromide solution)

Iodine (including iodine salts)

Isosafrole (also known as 5-(1 Propenyl)-1, 3-benzodioxile)

Lithium

Lysergic acid

Magnesium

Mercuric chloride (also known as Mercury (II) chloride or Mercury bichloride)

Methylamine (gas) (also known as Aminomethane or Monomethylamine)

Methylammonium salts

N-Methylformamide



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Drug Misuse and Trafficking Regulation 2006

Precursors and apparatus

Schedule 2

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Nitroethane

Nitromethane

Palladium (including salts)

Phenylalanine

Piperidine

Potassium

Propionic anhydride

Raney nickel

Sodium

Sodium borohydride

Thionyl chloride

Thorium (including salts)

## **Apparatus**

### **Gas cylinders**

Ammonia

Hydrogen

Hydrogen chloride

Hydrogen sulfide

Methylamine

### **Glassware**

Condenser: joint size B19 or greater

Round bottom reaction flask: capacity 500ml or greater

Splash heads or distillation heads

### **Scientific apparatus**

Heating mantles: capacity 500ml or greater (including parts of such mantles)

Pill presses: manual or mechanical

Rotary evaporators