

Drugs, Poisons and Controlled Substances Bill

EXPLANATORY NOTES

The objective of this Bill is to revise the statute law with regard to manufacture, distribution, sale, possession and use of drugs, poisons and other potentially dangerous substances and to strengthen the law as it relates to the illicit trade in drugs, and particularly, drugs of addiction.

Among other things, the Bill will repeal the *Poisons Act* 1962 and Part XVIII. of the *Health Act* 1958 and consolidate in the one piece of legislation the law relating to drugs, poisons and narcotic plants.

PART I.—INTRODUCTORY AND TRANSITIONAL

Clause 1 is the usual citation clause. It provides for the Act to come into operation on a day or respective days to be proclaimed.

Clause 2 repeals the *Poisons Act* 1962 and all proclamations amending the schedules to that Act.

Clause 3 contains various continuing provisions in respect of references in other Acts to various poisons and in regard to licences, &c. issued under the Poisons Act and membership of the Poisons Advisory Committee.

Clause 4 is the interpretation provision.

Clause 5 defines the meaning of "possession" which is used in various clauses of the Bill and especially in those provisions dealing with the illicit use of drugs. The clause is based on section 28 of the Poisons Act with amendments as recommended by the Interdepartmental Working Party on the Drug Problem in Victoria.

Clause 6 defines the meaning of "corresponding law", and follows the present interpretation in section 36 of the Poisons Act. The expression is used in clauses 97 and 98 of the Bill.

Clause 7 provides that the Act shall be read and construed as being in aid and not in derogation of the Acts referred to in the clause.

Clause 8 states that a reference in any other Act or rule regulation or by law to any narcotic or dangerous drug within the meaning of the Poisons Act shall be deemed and taken to be a reference to any drug of addiction or drug of dependence as the case may be.

Clause 9 enables any proclamations and Orders in Council made for the purposes of the Act to be in like manner amended, varied or revoked and deems any amendment to a schedule to be a statutory rule.

Clause 10 empowers the Governor in Council to amend Schedule Eleven by proclamation by altering, or deleting any item in the Schedule or by adding any item to the Schedule.

Clause 11 is a new provision and has the effect of binding the Crown.

PART II.—POISONS AND CONTROLLED SUBSTANCES

Part II of the Bill consists of 17 Divisions and its object is to express the law in respect to the legitimate use of poisons and controlled substances and allied matters.

DIVISION 1—CLASSIFICATION

Clause 12 declares the substances in Schedules One to Eight to the Bill, inclusive, to be poisons or controlled substances and sets out the classifications and descriptions of those poisons and substances.

The clause also enables the Schedules to be amended by proclamation of the Governor in Council.

The clause is based on section 4 of the Poisons Act with appropriate amendments.

DIVISION 2—AUTHORIZED PERSONS

Clause 13 is based on section 9 of the Poisons Act and authorizes medical practitioners, pharmacists, veterinary surgeons and dentists to use, sell or supply poisons or controlled substances. The clause also empowers authorized officers to have, sell or supply any poison or controlled substance in the performance of a duty.

Clause 14 provides that where the Medical Board has prohibited a medical practitioner from prescribing a drug or class of drugs, that medical practitioner shall be deemed not to be authorized for the purposes of the Act or the regulations to have, use, sell or supply such drug or class of drugs in the lawful practice of his profession.

This is a new provision.

DIVISION 3—POISONS ADVISORY COMMITTEE

Clause 15 establishes a Poisons Advisory Committee. Its membership is the same as that of the present committee constituted under section 5 of the Poisons Act except that the Bill provides for the appointment of an additional member—a medical practitioner who is an officer or employee of the Health Commission who has an expertise in the treatment and rehabilitation of alcoholics and drug-dependent persons.

The quorum of the committee will be varied to the extent that it is to include at least one pharmacist, one medical practitioner and one other person with an appropriate qualification in lieu of the existing requirement that two shall be pharmacists and one a medical practitioner.

The Bill also provides for the election of a person to preside at meetings of the committee when the chairman is absent. Section 5 (7) of the Poisons Act currently requires the chairman to be present in order for there to be a quorum of the committee.

Clause 16 sets out the functions of the committee. These are essentially the same as the functions of the present committee as referred to in section 6 of the Poisons Act.

Clause 17 requires the committee to consider and make recommendations to the Commission in respect to applications for licences and permits.

While the provision is based on section 7 of the Poisons Act, it has been broadened to the extent the committee will also be empowered to advise the Minister or the Commission on any matter referred to it by the Minister or Commission, as the case may be, or on any matter relating to poisons or controlled substances which it considers should be reported to the Minister or the Commission.

Clause 18 provides for the appointment of a secretary to the committee and such other officers as is necessary for the carrying out of the Act. The clause follows section 8 of the Poisons Act.

DIVISION 4—LICENCED PERSONS

Clause 19 empowers the Health Commission to licence fit and proper persons to manufacture or sell various classes of poisons or controlled substances.

The clause is based on section 10 of the Poisons Act with various changes to take account of other amendments proposed in the Bill.

DIVISION 5—SPECIAL POISONS

Clause 20 is a new provision and is designed to empower the Commission to grant permits for the manufacture, possession or use of special poisons (i.e. poisons in Part 2 of Schedule Seven) and to issue warrants for the purchase of such substances from manufacturers or wholesale dealers or pharmacists.

DIVISION 6—INDUSTRIAL, EDUCATIONAL AND LABORATORY PERMITS

Clause 21 empowers the Commission to grant permits for the purchase of poisons or controlled substances (other than hazardous substances and industrial and agricultural poisons) for industrial purposes or for use for educational, advisory or research purposes, or for the provision of health services.

The clause is based on section 11 of the Poisons Act but it should be noted that permits will not be required for the purchase of hazardous substances and industrial and agricultural poisons from wholesalers for industrial purposes, for educational, advisory or research purposes, or for the provision of health services provided such substances and poisons will not be resold.

DIVISION 7—ISSUE OF LICENCES AND PERMITS

Clause 22 follows sections 12 (1) to 12 (7) of the Poisons Act and deals with the issue of licences and permits by the Health Commission.

The major change proposed in the new section is that licence fees will be prescribed by regulation rather than fixed in the Act itself.

DIVISION 8—MANUFACTURE AND SALE OF POISONS AND CONTROLLED SUBSTANCES

Clause 23 prohibits the manufacture sale or supply of a poison or controlled substance except by a licensed person.

The clause is essentially the same as section 15 of the Poisons Act except that hazardous substances have been excluded from its scope.

Clause 24 prohibits the sale or supply of a poison or controlled substance by wholesale to an unauthorized or unlicensed person.

The clause follows section 16 of the Poisons Act but excludes hazardous substances and industrial and agricultural poisons.

Clause 25 is a new provision and prohibits the sale or supply of an industrial and agricultural poison by wholesale to any person for the purpose of resale unless the person is authorized or licensed under the Act.

As indicated earlier, permits will not be required for the purchase of such substances from a wholesaler if they are not going to be resold.

Clause 26 follows section 17 of the Poisons Act and prohibits the sale or supply of a poison or controlled substance by a manufacturer or wholesaler by retail.

As in the case of earlier clauses, hazardous substances will be excluded from the prohibition.

Clause 27 prohibits the sale or supply of a poison or controlled substance other than a hazardous substance by an unlicensed person.

The clause is based on section 18 of the Poisons Act.

Clause 28 prohibits the hawking of poisons or controlled substances from door to door.

The clause follows section 48 of the Poisons Act but, in addition, will also make it an offence for any person to purchase a poison or controlled substance from a hawker.

Clause 29 makes it an offence to sell or supply any drug or medicine for internal use or to sell any food drink or condiment in a container in which any poison or controlled substance for external use may be sold.

The clause is essentially the same as section 47 of the Poisons Act.

Clause 30 re-enacts section 49 of the Poisons Act and prohibits the sale or supply of poisons or controlled substances by automatic machine.

DIVISION 9—TRADE OR PROPRIETARY POISONS

Clause 31 requires the manufacturer, importer or distributor of a substance, preparation or mixture which contains a poison or controlled substance to notify the Commission of the name under which it is to be sold or supplied and the nature and percentage of the poisons or controlled substances it contains unless the composition of substance, preparation or mixture is required to be registered under any other Act or is disclosed on the container.

The clause is based on section 13 of the Poisons Act.

DIVISION 10—DRUGS OF ADDICTION

Clause 32 requires every person licensed to manufacture sell supply or distribute a drug of addiction to keep a record in a book for the purpose of the quantities obtained or sold. The clause is derived from section 29 (1) of the Poisons Act.

Clause 33 and related clauses are new provisions based on existing regulations under the Poisons Act. They will replace section 21 of that Act. *Clause 33* requires a medical practitioner to notify the Health Commission if he has reason to believe that one of his patients is a drug-dependent person or if he proposes to prescribe or has administered a drug dependence for a patient for a period of eight weeks or more.

Clause 34 empowers the Commission to issue permits to a medical practitioner for the supply of a drug of dependence to a drug-dependent person for up to eight weeks, or for the supply of a drug of dependence to a period greater than eight weeks.

Clause 35 prohibits the supply of a drug of dependence by a medical practitioner to a drug dependent person or for a period greater than eight weeks unless the practitioner holds a permit from the Commission.

Clause 36 follows section 22 of the Poisons Act and requires a pharmacist to notify the Commission if he is called upon to dispense such quantities of, or more frequently than it appears reasonably necessary, any drug of dependence or restricted substance.

DIVISION 11—APPEALS

Clause 37 gives any person aggrieved by the refusal of the Commission to issue or renew any licence or permit, or the cancelling, suspension or revocation of a licence or permit, a right of appeal to a stipendiary magistrate.

In effect, the clause will re-enact sections 12 (8) and 12 (9) of the Poisons Act.

DIVISION 12—SALE OF POISONS BOOK

Clause 38 requires any person who sells a dangerous poison or any prescribed industrial and agricultural poison to keep a record of such sale in a Sale of Poisons book.

The clause is based on section 14 (1) of the Poisons Act.

Clause 39 re-enacts section 14 (2) of the Poisons Act in a slightly modified form. The clause prohibits the sale or supply of any poison or controlled substance, the sale of which is required to be recorded in a Sale of Poisons book, by letter, cable, telegram, radio-gram or telex unless the purchaser is known to the vendor.

Clause 40 prohibits the sale or supply of a dangerous poison or any prescribed industrial and agricultural poison to a person under 18, or to a person unknown to the vendor unless in the presence of an adult witness known to the vendor and who knows the purchaser or in the presence of a member of the police force.

The clause follows section 20 of the Poisons Act except that hazardous substances have been excluded from the scope of the provision.

DIVISION 13—AUTHORIZED OFFICERS

Clause 41 is a new provision and provides for the appointment of authorized officers by the Health Commission. It will replace the present interpretation of “officer” in section 59 (6) of the Poisons Act.

The clause will enable any officer or employee of the Commission or of the public service to be authorized by the Commission to exercise the powers duties and functions of an authorized officer under the Act or the regulations.

An authority may be for a specified period or for an indefinite period.

Members of the police force are deemed to be authorized officers.

Clause 42 sets out the powers of authorized officers. Under the section authorized officers will be empowered to enter any premises occupied by persons licensed or authorized under the Act to have possession of any poison or controlled substance, to examine such premises and to obtain samples of any poison or controlled substance.

It will be an offence to refuse admittance to an authorized officer demanding entry under the section.

The clause essentially re-enacts sections 58 (1) and 58 (2) of the Poisons Act but will also vest in authorized officers a power to seize in respect of any poison or controlled substance or document with respect to which he believes there has been a contravention of the Act.

Clause 43 is a new provision setting out the procedure to be followed when a poison or controlled substance or document is seized under the preceding section.

The authorized officer concerned will be required to give notice of the seizure to the person apparently in charge or, if there is no person apparently in charge, to any person appearing to be owner or consignor of any package containing the poison or controlled substance.

Any person claiming ownership may complain within 72 hours to a clerk of a magistrates’ court and a magistrates’ court may confirm or disallow the seizure.

Clause 44 re-enacts section 59 of the Poisons Act. The clause sets out the liability of the various parties when any poison or controlled substance in connexion with which there has been a contravention of the Act or regulations is sold or supplied to an authorized officer in an unopened package.

DIVISION 14—OFFENCES

Clause 45 is a new provision. It will have the effect of extending to three years the period in which summary proceedings may be commenced.

Without the inclusion of such a provision, section 165 of the *Magistrates (Summary Proceedings) Act 1975* would apply and fix a maximum period of twelve months in which such proceedings may be initiated.

Clause 46 is the general offence provision and re-enacts section 24 (1) of the Poisons Act.

Clause 47 fixes a maximum penalty of \$500 for contravening any regulation relating to the keeping of books or the issuing or dispensing of prescriptions if the court is satisfied that such offence was committed through inadvertence.

The clause is based on section 34 (4) of the Poisons Act.

Clause 48 re-enacts section 18A of the Poisons Act. The clause provides that where a person is proved to have in his possession or has received money or other valuable thing in connexion with the manufacture, sale or supply of any poison or controlled substance in contravention of the Act, that person shall be deemed to have sold that poison or controlled substance.

Clause 49 makes it an offence to make any false declaration or statement for the purpose of obtaining the issue or renewal of a licence or permit.

The clause re-enacts section 19 of the Poisons Act.

Clause 50 exempts an authorized officer from any penalty in respect of anything done by him in the exercise of a power or duty conferred or imposed on him.

Section 58 (3) of the Poisons Act contains a similar exemption.

Clause 51 inserts in the Bill a new provision based on section 58 of the *Summary Offences Act 1966*.

It has the effect of exempting from liability any member of the police force or any accomplice acting under the written instruction of a policeman of at least the rank of senior sergeant who otherwise would be deemed to be an offender or accomplice.

DIVISION 15—POISON BAITS

Clause 52 makes it an offence to lay a poison bait on any road, street, or land. Exceptions are made in the case of baits for the purpose of destroying vermin, or for disinfecting, sterilizing or cleansing, or for manuring the land, or for agricultural, pastoral or horticultural purposes.

The clause transfers into the Bill the existing sections 53 (1) to 53 (3) of the Poisons Act in a modified form.

Clause 53 which is based on section 53 (4) of the Poisons Act, gives the Governor in Council a capacity to make regulations prohibiting the use of any poison or controlled substance for the purpose of destroying any animal or bird.

DIVISION 16—POISONS IN ROADS AND WATERCOURSES

Clause 54 re-enacts section 52 of the Poisons Act and enables the Governor in Council to make regulations in the interests of public safety prohibiting or controlling the putting or discharging of poisons or controlled substances in streets, sewers, drains or watercourses.

DIVISION 17—PROHIBITION OF POISONS AND CONTROLLED SUBSTANCES

Clause 55 enables the Governor in Council to act in an emergency. The clause empowers the Governor in Council on the recommendation of the Minister after consulting the Commission to prohibit or restrict the sale or use of a poison or controlled substance in the whole or in part of the State if such urgent action is necessary in the interests of the health or safety of the public.

The clause is derived from section 23A of the Poisons Act.

PART III.—MANUFACTURE OF HEROIN

The objective of this Part of the Bill is to enable the manufacture of limited quantities of heroin (diacetyl morphine) for restricted medical use.

Clause 56 empowers the Governor in Council on the recommendation of the Minister after consulting the Health Commission to license a fit and proper person to manufacture and sell or supply heroin by wholesale and also to license another such person to formulate the heroin into a form suitable for human therapeutic use.

Not more than one of each licence shall be in force at the one time.

The clause goes on to authorize the Commission to issue permits to medical practitioners or pharmacists to purchase or obtain specified quantities of the heroin from a licensed person for such medicinal purposes as are set out in the permit.

The clause also re-enacts in a modified form section 30 (3) of the Poisons Act which currently enables heroin to be manufactured or prepared for educational experimental or research purposes in an approved university, school or institution.

In this respect, the clause will enable the Commission to issue a permit to a university or other institution for the purpose or supply of heroin from a licensed person for such educational experimental or research purposes as are specified in the permit.

PART IV.—METHYLATED SPIRIT

The object of this Part of the Bill is to re-enact those provisions of the Poisons Act relating to the use of methylated spirit.

Clause 57 contains a definition of “methylated spirit”. The interpretation follows section 39 of the Poisons Act.

Clause 58 re-enacts section 40 of the Poisons Act to make it an offence to drink methylated spirit.

Clause 59 follows section 41 of the Poisons Act and prohibits the sale of methylated spirit for drinking.

Clause 60 has the effect of re-enacting sections 42 and 43 of the Poisons Act. The section prohibits the sale or disposal of methylated spirit during any hours during which such sale or disposal is prohibited except sale by wholesale and in retail quantities of more than 1·5 litres.

Clause 61 fixes a penalty of \$500 or one month’s imprisonment for breaches of the Act in respect of methylated spirit. The clause is based on section 44 of the Act.

Clause 62 follows section 45 of the Act and sets out the heads of power for the making of regulations regarding the sale or disposal of methylated spirit.

PART V.—VOLATILE SOLVENTS

This Part contains a number of new provisions designed to deal with the problem of “glue sniffing”.

Clause 63 sets out an interpretation of “volatile solvent” which includes adhesive cements, glue, nail polish remover and gasoline.

Clause 64 empowers the Governor in Council by Order published in the *Government Gazette* to declare a substance to be a volatile solvent for the purposes of the Part and in like manner to vary or revoke such an Order.

Clause 65 makes it an offence for a person to use or have a volatile solvent in his possession for the purposes of self-inhalation or otherwise administering or introducing the solvent into his body.

It will also be an offence under the clause to aid, abet, counsel or procure another person to use a volatile solvent for such purposes.

Clause 66 provides where an offence against the provisions of proposed section 65 is proved to the satisfaction of the court, the court may require the person charged to present himself for assessment as to his suitability for a programme of treatment, counselling or education.

The designated officer of the institution will be required to report on the results of the assessment to the court which, in addition to or in lieu of any penalty or other action it can take, may order the person concerned to undertake any programme recommended in the report.

It will be an offence for a person to fail to undergo such a programme if ordered by the court.

Clause 67 makes it an offence to manufacture or prepare a volatile solvent for self-inhalation or otherwise introducing the solvent into the human body.

Clause 68 fixes a penalty of \$5000 or two years' imprisonment for any person who sells or supplies a volatile solvent if he knows or ought to have known or has reasonable cause to believe that it is to be used for inhalation.

Clause 69 provides that the production of evidence that a statement on an article or substance or on a package or container that the article or substance is or contains a volatile solvent or that an article contains or that a substance is a residue or vapour of a volatile solvent is evidence that the article or substance is or contains a volatile solvent.

The clause also excludes from the part the manufacture, sale, supply, possession or use of a volatile solvent for a purpose authorized by or under the Act or the use of a volatile solvent by or under the supervision of a medical practitioner or dentist.

PART VI.—DRUGS OF DEPENDENCE AND NARCOTIC PLANTS

This part deals with illicit manufacture and trafficking in various drugs, particularly drugs of dependence, and related matters.

DIVISION 1—OFFENCES

Clause 70 provides that the Part shall be read and construed as in aid of any other provisions of the Act.

The clause follows section 26 (2) of the Poisons Act.

Clause 71 is an interpretation provision in respect to the Part and among other things, defines “cannabis”, “drug of dependence”, and “hallucinogenic drug”.

Clause 72 empowers the Governor in Council to declare any plant from which a drug of dependence may be obtained to be a narcotic plant.

A similar power exists in section 364 of the Health Act.

Clause 73 makes it an offence to traffick in a drug of dependence. The clause replaces the offence under section 32 (2) (b) of the Poisons Act.

Clause 74 makes it an offence to traffick in cannabis. The new offence will replace the offence of trafficking in cannabis resin in section 32 (2) (a) of the Poisons Act and trafficking in the fresh or dried parts of cannabis in section 32 (1).

Clause 75 makes it an offence to traffick in an hallucinogenic drug. This will replace the comparable offence in section 25A (1) of the Poisons Act.

Clause 76 creates a new offence of trafficking in a restricted substance.

Clause 77 is an evidentiary provision. It provides that where a person is proved to have in his possession or to have received any money or valuable thing in connexion with the commission of an offence against the Part, or evidence that a person is not authorized or licensed under the Act and has in his possession a drug of dependence, cannabis, an hallucinogenic drug or a restricted substance in more than the quantity specified in Schedule Eleven, that person shall be deemed to be trafficking in that drug or substance unless the court is satisfied to the contrary.

Section 32 (5) of the Poisons Act contains a similar provision.

Clause 78 makes it an offence to be in possession of a drug of dependence without being authorized or licensed under the Act. An exception is made in the case of a drug of dependence contained in a medicine for a specific case.

The provision is drawn from section 27 (1) and 27 (2) of the Poisons Act.

Clause 79 makes it an offence to be in possession of cannabis without being authorized or licensed under the Act.

A similar offence is contained in section 27 (1) of the Poisons Act.

Clause 80 makes it an offence to be in possession of an hallucinogenic drug without being authorized or licensed under the Act.

The comparable existing provision is section 25A (3) of the Poisons Act.

Clause 81 creates a new offence of being in possession of a restricted substance except in a medicine for a specific case without being authorized or licensed under the Act.

Clause 82 is derived from section 33 (1) of the Poisons Act and makes it an offence to forge a prescription for a drug of dependence or to utter a forged prescription.

Clause 83 establishes a new offence of forging or uttering a forged prescription for a restricted substance.

Clause 84 is based on sections 33 (2) and 33 (3) of the Poisons Act.

It makes it an offence to obtain a drug of dependence or a prescription for such a drug by false representation or to cause or induce a medical practitioner to administer a drug of dependence by false representation.

It will also be an offence to induce a pharmacist to dispense a forged prescription by false representation.

Clause 85 is a new provision and creates similar offences in respect to restricted substances as those expressed in clause 84.

Clause 86 makes it an offence to cultivate a narcotic plant.

The clause will replace sections 365 (1) and 365 (3) of the *Health Act 1958*.

Clause 87 prohibits the smoking of cannabis or any drug of dependence. The clause will replace section 31 of the Poisons Act.

Clause 88 re-enacts, with amendments, section 27 (3) of the Poisons Act which makes it an offence to administer, sell, prescribe or dispense a drug of dependence merely for the purpose of addiction.

Clause 89 is a new provision and makes it an offence for a medical practitioner to administer, sell, prescribe, dispense, offer or supply a drug of dependence or restricted substance other than for the medical treatment of a patient under his care.

Clause 90 is also a new provision and makes it an offence for a pharmacist to administer, sell, dispense, offer or supply a drug of dependence or restricted substance except on the prescription of a medical practitioner, veterinary surgeon or dentist or by written order to a medical practitioner, pharmacist, veterinary surgeon or dentist.

Clause 91 makes it an offence for a veterinary surgeon to administer, sell, prescribe, dispense, offer or supply any drug of dependence or restricted substance other than for the treatment of an animal under his care.

Clause 92 makes it an offence for a dentist to administer, sell, prescribe, dispense, offer or supply a drug of dependence or restricted substance other than for the dental treatment of a patient under his care.

Clause 93 makes it an offence to prescribe a drug of dependence or restricted substance for the purpose of self-administration.

Clause 94 makes it an offence to use or attempt to use cannabis, a drug of dependence or restricted substance for the purpose of self-administration except a drug of dependence or restricted substance prescribed for a patient by a medical practitioner or dentist to the extent and for the purpose prescribed.

This and the preceding clause are derived from section 23 of the Poisons Act.

Clause 95 creates a new offence of using or attempting to use an hallucinogenic drug without being authorized or licensed under the Act or regulations.

Clause 96 re-enacts section 34 (5) of the Poisons Act to provide that any person who attempts to commit an offence, or solicits or incites another person to commit an offence under Part VI. of the Act shall be liable to the same punishment and forfeitures as he had committed the offence.

However, the provision has been extended to create a statutory offence of conspiring, confederating and agreeing to commit an offence under the Part.

Clause 97 re-enacts section 34 (1) of the Poisons Act with amendments to make it an offence to conspire, or aid, abet, counsel or procure the commission of an offence outside Victoria which is punishable under any corresponding law.

DIVISION 2—SEIZURE

Clause 98 substantially re-enacts section 62 of the Poisons Act to authorize the issue of warrants to members of the police force by justices of the peace if there are reasonable grounds for suspecting an offence against the Act or regulations in or on any house or premises.

A warrant will empower the member to whom the warrant is addressed to enter the house or premises, if need be by force, to arrest all persons found offending against the Act, and to search the house or premises and any person found therein.

As in the present provision, the police will be empowered to seize any substance or plant suspected to be or contain a poison or controlled substance or narcotic plant, any money or valuable thing, and any pipe or device used in contravention of the Act.

However, the scope of the present section will be broadened to also enable the seizure of instruments, equipment, plant, vehicles, boats or aircraft.

Goods seized under the section will be forfeited to the Crown where an offence is proved but, as in the existing section, any poison or controlled substance, other than cannabis, a drug of dependence or narcotic plant, may be returned to the owner, on application, with the approval of the Minister.

Where the Minister is satisfied that any substance containing cannabis or a drug of dependence could be useful or made useful to a public institution, he may authorize the delivery of the substance to that institution.

The definition of "public institution" used in the clause follows that in section 3 (1) of the Poisons Act.

Sub-clauses (9) to (12) inclusive are new provisions and deal with the situation where no person is charged with an offence.

They are designed to enable any money or goods seized under the section to be forfeited to the Crown if the owner is unknown.

Clause 99 extends to every member of the police force the powers of search currently vested in authorized members under section 62A of the Poisons Act.

The present section empowers members authorized by the Minister to search and seize vehicles, boats or persons in a public place if he suspects that there is a poison or controlled substance in contravention of the Act or regulations.

The new provision will extend the power to include animals and aircraft.

Clause 100 re-enacts in a modified form section 365 (4) of the Health Act.

It empowers an authorized officer, with such assistance as he thinks necessary, to seize and destroy any narcotic plant or seed of a narcotic plant where he is satisfied that no offence has been committed under the Act.

Clause 101 is a new provision and gives effect to recommendation 7 of the Interdepartmental Working Party on the Drug Problem in Victoria.

The clause is designed to avoid the need for police to hold large quantities of drugs or narcotic plants as evidence pending trial and empowers the court to order the destruction of part or parts of the substance and to make a finding of fact as to that part which has been destroyed.

In such instances a contravention in relation to part of such substance shall be deemed to be a contravention of the whole of the substance.

PART VII.—PROCEEDINGS

This part of the Bill contains various provisions in respect to proceedings under the Act.

Clause 102 provides, in part, that for the purpose of the Act, any person on whose behalf a sale is made shall be deemed to be the person who sells.

The clause re-enacts section 57 of the Poisons Act.

Clause 103 deals with the situation where a company is convicted of an offence and provides that the chairman, every director and every officer concerned of the management of the company shall be guilty of a like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

The clause is modelled on section 34 (6) of the Poisons Act.

Clause 104 re-enacts section 34 (7) of the Poisons Act and provides that the onus of proof of any matter of exception qualification or defence lies on the person seeking to avail himself thereof.

Clause 105 re-enacts section 35 of the Poisons Act and vests in a magistrates' court a capacity to deal with a misdemeanour in a summary way unless either the defendant objects or the court considers the charge should be dealt with by indictment.

However, the maximum penalty which may be imposed by the court is being increased from twelve months and/or \$500 to two years and/or \$5000.

Clause 106 gives effect to the recommendation of the Interdepartmental Working Party that a "Notice to Admit" as provided for in section 149A of the Evidence Act should be introduced in relation to the identity of drugs which are subject to court charges.

The clause will enable the courts to accept an admission of any relevant fact or matter as sufficient evidence of the fact or matter without the need for further proof.

Clause 107 complements clause 98 (4) of the Bill.

The earlier provision empowers the courts to confiscate goods seized under warrant. Clause 107 will enable the court to order the forfeiture of other articles involved in the offence.

The clause is based on sections 25A (1B) and 34 (3) of the Poisons Act.

Clause 108 is a new provision which will enable the court to order the forfeiture or destruction of a restricted substance at any time during the trial or summary hearing where a person has been charged with an offence against any of the provisions of Part VI. of the Act.

Clause 109 is also a new provision designed to direct the attention of the court to section 13 of the Alcoholics and Drug-dependent Persons Act under which treatment may be ordered by the court in lieu of a prison sentence if drug dependence contributed to the commission of an offence.

PART VIII.—SEQUESTRATION

This Part contains a number of new clauses designed to enable the courts to confiscate any of the assets of a drug trafficker derived from the illicit trafficking in drugs.

Clause 110 empowers a Judge of the Supreme Court (before his trial) or the court (during his trial) to appoint a trustee over the financial affairs of a defendant charged with a drug trafficking offence.

A trustee may also be appointed by the court even if the defendant has absconded if the court is satisfied that it could be reasonably assumed that if tried, the defendant would be convicted.

The provision goes on to require the order appointing the trustee to be published in the *Government Gazette* and in a newspaper circulating throughout Victoria and service of a copy of the notice on the defendant if he can be found.

It also requires the person charged with the offence to deliver up to the trustee all books, papers and documents relating to his financial affairs and all money and property within seven days of being notified of the order.

Clause 111 empowers the trustee to require any person holding any books, papers, documents, money or property on behalf of the defendant to deliver them up to the trustee.

Clause 112 enables a justice to grant a warrant authorizing any member of the police force and the trustee to enter the house or premises named in the warrant to search for and to seize any books, money, &c. believed to be held by another person on behalf of the defendant.

The clause requires any books, money, &c. seized under the warrant to be brought before a magistrates' court which may order the books, money, &c. to be delivered to the trustee or returned to the person from whom it was taken.

Any person claiming ownership, other than the defendant, will have the right to show cause to the court why the books, money, &c. should not be dealt with as property held by the trustee.

Clause 113 puts an onus on any person convicted of a trafficking offence to prove that assets being held by the trustee were not derived from drug trafficking. If this cannot be established to the satisfaction of the court, the assets are forfeit to the Crown.

If the person is acquitted, the assets must be immediately returned to him and the cost of administering his affairs will be met from the Consolidated Fund.

The clauses will, among other things, empower the court to confiscate the assets of a person who has absconded if the court is satisfied there is a reasonable presumption that the defendant would have been convicted.

Clause 114 voids any arrangement made in relation to money or property with intent to defeat the foregoing provisions and also makes it an offence to make such an arrangement or, where a trustee has been appointed to destroy, conceal or remove to another place or deliver into the possession of another person such property or money.

Clause 115 gives a magistrate a capacity to order the examination of the defendant, and any other person ordered to appear before the court in regard to any property or money held by him or believed by the trustee to be in his possession.

The clause also bars any action against a trustee while carrying out a function or exercising a power under the Act and provides that if the defendant dies, the trustee shall not be taken as the legal personal representative of the deceased person.

Clause 116 fixes a penalty of two years' imprisonment for any person who fails to comply with an order of the court made under this Part or who contravenes or fails to comply with any provisions of the Part.

Clause 117 enables reciprocal arrangements to be made in respect to the other States or Territories in regard to the seizure and forfeiture of assets in such States or Territories.

PART IX.—EVIDENTIARY

This Part contains a number of provisions designed to facilitate proceedings before the courts by providing for the acceptance of various documents and certificates as evidence.

Clause 118 re-enacts section 54 of the Poisons Act and requires the Health Commission to publish annually in the *Government Gazette* a correct list of the names of persons who hold licences or permits under the Act.

The holders of licences to manufacture heroin or medical practitioners who hold permits to administer or prescribe a drug of addiction under section 34 or for the supply of heroin under section 56 will, inter alia, be excluded from the scope of the clause.

The production of a copy of *Government Gazette* will be *prima facie* evidence that the persons specified in the list hold such licences or permits.

Clause 119 enables proof that a person is or is not a medical practitioner, pharmacist, dentist or veterinary surgeon or the holder of a licence permit or authority under the Act to be established by the production of the appropriate registers or lists as published in the *Government Gazette* or by certificate from the relevant registration board.

The clause follows section 55 of the Poisons Act.

Clause 120 provides for the acceptance in legal proceedings of certificates of a Government analyst or botanist.

The clause substantially re-enacts section 56 of the Poisons Act but has been varied to enable copies of certificates to be lodged at the court of hearing provided that prior notice of intention to do so has been given to the defendant if it is not intended to call the analyst or botanist concerned.

Under the present Act, copies of such certificates must be served on the defendant.

Clause 121 replaces section 51 of the Poisons Act which sets out the method of calculating percentages in the case of liquid preparations.

The clause requires details of statements of quantity or proportion in relation to the total ingredients of a preparation to be expressed in one of the forms specified in Schedule Twelve.

This schedule reflects the statements of strength of preparations which have been recommended by the National Health and Medical Research Council.

Clause 122 re-enacts, with amendments, section 60 of the Poisons Act and provides that evidence that any article or substance sold under the same name or description of a substance which is poison or controlled substance shall be *prima facie* evidence that the article or substance conforms to the same description,

and that evidence that an article is labelled "Poison" or "Poisonous, not to be taken" or includes a reference to Schedules One, Two, Three, Four, Five, Six, Seven or Eight shall be *prima facie* evidence that it is a poison or controlled substance.

Clause 123 is the general penalty clause and provides a maximum penalty of \$2000 if no penalty is expressly provided.

The clause replaces section 61 of the Poisons Act.

PART IX.—DRUG REHABILITATION AND RESEARCH FUND

This Part consists of a number of new provisions to establish a fund for the purposes of promoting drug education and assisting in the rehabilitation of drug-dependent persons.

Clause 124 constitutes a "Drug Rehabilitation and Research Fund" as a trust fund in the Public Account.

Clause 125 appropriates all fines, penalties and forfeitures under the Act for the purpose of the fund.

Clause 126 provides for the payment of such moneys into the fund together with any moneys appropriated by Parliament and any other moneys received for the purposes of the fund and sets out the objects of the fund.

Clause 127 enables moneys held in the possession of the Police at the time of commencement of the section relating to an offence involving drugs to be credited to the fund.

Clause 128 empowers the Minister to accept gifts, devises, bequests and assignments of real or personal property on behalf of the fund and to act as an executor or administrator of an estate or as a trustee if it is expedient to do so in connexion with the objects of the fund.

PART X.—REGULATIONS

This part contains the heads of power for the making of regulations under the Act.

Clause 129 which is based on section 37 of the Poisons Act, enables regulations to be made for the purpose of preventing the improper use of drugs of dependence or restricted substances.

Clause 130 enables a breach of any of the regulations made under clause 129 to be regarded as infamous, discreditable or immoral conduct in accordance with the various professional registration Acts.

The clause follows section 38 of the Poisons Act.

Clause 131 enables the Governor in Council to make regulations in relation to the manufacture, sale, use or distribution of special poisons.

The clause replaces section 25 of the Poisons Act.

Clause 132 contains the general heads of power to make regulations under the Act.

Although the clause largely follows section 63 of the Poisons Act it has been extended particularly to provide for the making of regulations in respect of the dispensing of interstate prescriptions, the prescribing of proportionate licence fees where a permit is granted during the currency of a year, prohibiting and controlling the advertising of Schedule Three poisons (Potent Substances) and the emergency dispensing of Restricted Substances.

Clause 133 re-enacts section 64 of the Poisons Act and provides that forms set out in any regulations or forms to like effect may be used for the purposes thereof and shall be sufficient in law.

Clause 134 repeals Part XVIII. of the Health Act which relates to prohibited plants.

Clause 135 amends the interpretation of "Drug of Addiction" in section 2A (1) of the Crimes Act. This interpretation was inserted by the *Crimes (Sexual Offences) Act 1980*.

Schedule 1 relates to dangerous poisons. The Schedule at present does not list any substances, but substances can be added to the Schedule by proclamation.

Schedule 2 sets out a list of medicinal poisons.

Schedule 3 sets out a list of potent substances.

Schedule 4 sets out a list of restricted substances.

Schedule 5 sets out a list of hazardous substances.

Schedule 6 sets out a list of industrial and agricultural poisons.

Schedule 7 contains two parts. Part 1 is a list of dangerous poisons. Part 2 is a list of special poisons.

Schedule 8 sets out a list of drugs of addiction.

Schedule 9 prescribes the form of entries to be included in the sale of poisons book.

Schedule 10 prescribes the form of the warrant to enter premises issued pursuant to section 98.

Schedule 11 contains a list of substances. In relation to each substance, the Schedule specifies a quantity. Possession of more than the specified quantity of that substance is deemed to be trafficking in that substance.

Schedule 12 prescribes a method for calculating the quantity of any poison or controlled substance contained in specified substances.