



**CONTROLLED SUBSTANCES (FORFEITURE AND DISPOSAL)  
AMENDMENT ACT 1999**

**No. 59 of 1999**

**SUMMARY OF PROVISIONS**

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6. Amendment of s. 31—Prohibition of possession or consumption of drug of dependence and prohibited substance
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**PART 6**

**OFFENCES, PENALTIES, etc.**

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**SCHEDULE**

*Statute Law Revision Amendments*



ANNO QUADRAGESIMO OCTAVO

**ELIZABETHAE II REGINAE**

A.D. 1999

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No. 59 of 1999

**An Act to amend the Controlled Substances Act 1984.**

[Assented to 19 August 1999]

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Controlled Substances (Miscellaneous) Amendment Act 1999*.

(2) The *Controlled Substances Act 1984* is referred to in this Act as "the principal Act".

**Amendment of s. 13—Manufacture, production and packing**

2. Section 13 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) In proceedings for an offence against subsection (1), the paragraphs of the subsection are to be treated as providing exceptions, and, if the complaint negatives the exceptions or alleges that the defendant acted without lawful authority, no proof will be required in relation to the exceptions by the prosecution but the application of an exception will be a matter for proof by the defendant.

**Amendment of s. 14—Sale by wholesale**

3. Section 14 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) In proceedings for an offence against subsection (1), the paragraphs of the subsection are to be treated as providing exceptions, and, if the complaint negatives the exceptions or alleges that the defendant acted without lawful authority, no proof will be required in relation to the exceptions by the prosecution but the application of an exception will be a matter for proof by the defendant.

**Amendment of s. 15—Sale or supply to end user**

4. Section 15 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) In proceedings for an offence against subsection (1), the paragraphs of the subsection are to be treated as providing exceptions, and, if the complaint negatives the exceptions or alleges that the defendant acted without lawful authority, no proof will be required in relation to the exceptions by the prosecution but the application of an exception will be a matter for proof by the defendant.

**Amendment of s. 18—Sale, supply, administration and possession of prescription drugs**

5. Section 18 of the principal Act is amended by striking out subsection (4) and substituting the following subsection:

(4) In proceedings for an offence against subsection (1) or (3), the paragraphs of the subsection are to be treated as providing exceptions, and, if the complaint negatives the exceptions or alleges that the defendant acted without lawful authority and, in the case of a complaint for an offence against subsection (3), without reasonable excuse, no proof will be required in relation to the exceptions by the prosecution but the application of an exception will be a matter for proof by the defendant.

**Amendment of s. 31—Prohibition of possession or consumption of drug of dependence and prohibited substance**

6. Section 31 of the principal Act is amended by inserting after subsection (4) the following subsection:

(5) In proceedings for an offence against subsection (2), subsections (3) and (4) are to be treated as providing exceptions, and no proof will be required in relation to the exceptions by the prosecution but the application of an exception will be a matter for proof by the defendant.

**Amendment of s. 32—Prohibition of manufacture, sale etc., of drug of dependence or prohibited substance**

7. Section 32 of the principal Act is amended by inserting after subsection (6) the following subsection:

(7) In proceedings for an offence against this section, subsection (2) is to be treated as providing exceptions, and no proof will be required in relation to the exceptions by the prosecution but the application of an exception will be a matter for proof by the defendant.

**Substitution of Part heading**

8. The heading to Part 6 of the principal Act is repealed and the following heading is substituted:

**PART 6  
OFFENCES, PENALTIES, ETC.**

**Repeal of Divisional heading**

9. The heading to Division 1 of Part 6 of the principal Act is repealed.

**Repeal of Division 2**

10. Division 2 of Part 6 of the principal Act is repealed.

**Substitution of Part heading**

11. The heading to Part 7 of the principal Act is repealed and the following heading is substituted:

**PART 7  
SEARCH, SEIZURE, FORFEITURE AND ANALYSIS**

**Substitution of s. 52A**

12. Section 52A of the principal Act is repealed and the following section is substituted:

**Seized property and forfeiture**

52A. (1) Subject to this section, seized property must be held pending proceedings for an offence against this Act relating to the property.

(2) If seized property—

- (a) is a prohibited substance or a drug of dependence or other poison; or
- (b) is, in the opinion of the Commissioner of Police, likely to constitute a danger if stored pending proceedings for an offence against this Act relating to the property,

the Commissioner of Police may direct that the property be destroyed, whether or not a person has been or is to be charged with an offence in relation to it.

(3) Property referred to in subsection (2) may be destroyed at the place at which it was seized or at any other suitable place.

(4) If a charge is laid, or is to be laid, for an offence in relation to property referred to in subsection (2)—

- (a) samples of the property that provide a true representation of the nature of the property must be taken and kept for evidentiary purposes; and
- (b) the defendant is entitled to have a portion of the sample analysed by an analyst (*see section 53*); and
- (c) the defendant must be given written notice of that entitlement.

(5) Possession of samples taken under this section must remain at all times within the control of the Commissioner of Police or his or her nominee.

(6) The regulations may make provision relating to the taking of samples of seized property and analysis of those samples.

(7) If the Magistrates Court on application by an authorised officer, or any court hearing proceedings under this Act, finds that seized property—

- (a) was the subject of an offence against this Act; or

- (b) consists of equipment, devices, substances, documents or records acquired, used or intended for use for, or in connection with, the manufacture or production, or the smoking, consumption or administration, of a prohibited substance or drug of dependence,

the court may, by order, forfeit the property to the Crown.

(8) Property that is the subject of an order for forfeiture under this section may be sold, destroyed or otherwise disposed of as the Commissioner of Police directs.

(9) Subject to subsections (10) and (11), if seized property has not been forfeited to the Crown in proceedings under this Act commenced within the prescribed period after its seizure, a person from whose lawful possession the property was seized, or a person with legal title to it, is entitled to recover from the Commissioner of Police (if necessary, by action in a court of competent jurisdiction) the property itself, or if it has been damaged or destroyed or has deteriorated, compensation of an amount equal to its market value at the time of its seizure.

(10) Subsection (9) does not apply to property that has been destroyed under subsection (2) if the property—

- (a) was the subject of an offence against this Act; or
- (b) consists of equipment, devices, substances, documents or records acquired, used or intended for use for, or in connection with, the manufacture or production, or the smoking, consumption or administration, of a prohibited substance or drug of dependence.

(11) Despite subsection (9), a court hearing proceedings under that subsection in relation to property that has not been destroyed under subsection (2) may, if it thinks fit, make an order under subsection (7) for forfeiture of the property to the Crown.

(12) The operation of the provisions of the *Criminal Assets Confiscation Act 1996* relating to forfeiture of property referred to in section 4(a), (b) or (c) of that Act or any other provisions of that Act is not affected by this section.

(13) In this section—

**"the prescribed period"** means two years or such longer period as the Magistrates Court may, on application by an authorised officer, allow;

**"seized property"** means anything—

- (a) seized under this Act; or
- (b) seized otherwise than under this Act that is evidence of an offence against this Act.

#### Statute law revision amendments

13. The principal Act is further amended in the manner indicated in the Schedule.

## SCHEDULE

## Statute Law Revision Amendments

Provision Amended	How Amended
Long title	Strike out "and the <i>Narcotic and Psychotropic Drugs Act 1934</i> ".
Section 2	Strike out this section.
Section 3(2)	Strike out this subsection.
Section 4(1) definition of "dentist"	Strike out " <i>Dentists Act 1931</i> " and substitute " <i>Dentists Act 1984</i> ".
definition of "medical practitioner"	Strike out " <i>Medical Practitioners Act 1982</i> " and substitute " <i>Medical Practitioners Act 1983</i> ".
definition of "veterinary surgeon"	Strike out " <i>Veterinary Surgeons Act 1935</i> " and substitute " <i>Veterinary Surgeons Act 1985</i> ".
Section 5(2)	Strike out "shall be" and substitute "are".  Strike out "shall" (second occurring) and substitute "do".
Section 5(3)	Strike out "shall" and substitute "do".
Section 6(1)	Strike out this subsection and substitute:  (1) The <i>Controlled Substances Advisory Council</i> is established.
Section 6(2)	Strike out "shall consist" and substitute "consists".
Section 6(2)(a)	Strike out "Chairman" and substitute "presiding member".
Section 6(4)	Strike out "in his capacity".  Insert "or her" after "his" (second occurring).
Section 7(1)	Strike out "shall" (twice occurring) and substitute, in each case, "will".  Strike out "his".
Section 7(2)(a)	Strike out "his".
Section 7(3)	Insert "the member" after "if".
Section 7(3)(a)	Strike out "he".
Section 7(3)(b)	Strike out this paragraph and substitute:  (b) completes a term of office and is not reappointed; or.
Section 7(3)(c) and (d)	Strike out "he" (twice occurring).
Section 7(4)	Strike out "shall" and substitute "must".
Section 8	Strike out "shall not be" and substitute "is not".
Section 9	Strike out "shall be" and substitute "is".
Section 10(1)	Strike out this subsection and substitute:  (1) The presiding member or, in the presiding member's absence, his or her deputy, will preside at any meeting of the Advisory Council.

Section 10(2)	Strike out "Chairman" and substitute "presiding member". Strike out "his" and substitute "the presiding member's". Strike out "shall" and substitute "may".
Section 10(3)	Strike out "shall" (first occurring). Strike out "shall" (second occurring) and substitute "may".
Section 10(4)	Strike out "shall be" and substitute "is".
Section 10(5)	Strike out "shall" and substitute "will".
Section 10(6)	Strike out "shall" and substitute "may".
Section 11(3)	Strike out "shall" and substitute "must".
Section 11(5)	Strike out "shall" and substitute "will".
Section 11(6)	Strike out "shall" and substitute "must".  Strike out "the thirty-first day of" and substitute "31".
Section 11(7)	Strike out "shall" and substitute "must".  Strike out "his".  Strike out "to him".
Section 12(1), (3) - (7)	Strike out "his" (wherever occurring) and substitute, in each case, "the Governor's".
Section 13(1)	Strike out "shall" and substitute "must".  Insert "the person" after "unless".
Section 13(1)(a) and (b)	Strike out "he" (twice occurring).
Section 13(1)(a)	Insert "or her" after "his".
Section 13(1)	Strike out "Penalty" and substitute "Maximum penalty".
Section 14(1)	Strike out "shall" and substitute "must".  Insert "the person" after "unless".
Section 14(1)(a) and (b)	Strike "he" (twice occurring).
Section 14(1)(a)	Insert "or her" after "his".
Section 14(1)	Strike out "Penalty" and substitute "Maximum penalty".
Section 15(1)	Strike out "shall" and substitute "must".  Insert "the person" after "unless".
Section 15(1)(a) and (b)	Strike out "he" (twice occurring).
Section 15(1)(a)	Insert "or her" after "his".
Section 15(1)	Strike out "Penalty" and substitute "Maximum penalty".
Section 16(1)	Strike out "shall" and substitute "must".  Strike out "Penalty" and substitute "Maximum penalty".
Section 16(2)	Strike out "shall" and substitute "must".

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- Section 16(2)(b) Insert "or her" after "his".
- Strike out "Penalty" and substitute "Maximum penalty".
- Section 16(3) Strike out "shall" (twice occurring) and substitute, in each case, "must".
- Strike out "he requires the poison" and substitute "the poison is required".
- Strike out "Penalty" and substitute "Maximum penalty".
- Section 16(4) Strike out "shall" and substitute "must".
- Section 16(4)(a) Strike out "such" and substitute "those".
- Section 16(4)(b) Strike out "those poisons" and substitute "they".
- Section 16(4) Strike out "Penalty" and substitute "Maximum penalty".
- Section 17 Strike out "shall" and substitute "must".
- Insert "or her" after "his".
- Strike out "Penalty" and substitute "Maximum penalty".
- Section 18(1) - (3) Strike out "Penalty" (wherever occurring) and substitute, in each case, "Maximum penalty".
- Section 19 Strike out "shall" and substitute "must".
- Insert "or she" after "he".
- Strike out "Penalty" and substitute "Maximum penalty".
- Section 20(1) Strike out "No person shall" and substitute "A person must not".
- Section 20(1)(a) Strike out "he" and substitute "the person".
- Section 20(1)(b) Insert "or she" after "he".
- Section 20(1) Strike out "Penalty" and substitute "Maximum penalty".
- Section 21(1)(a) Strike out "his" and substitute "the Minister's".
- Section 21(2) Strike out "shall" and substitute "must".
- Strike out "Penalty" and substitute "Maximum penalty".
- Section 21(4) Strike out "shall" and substitute "must".
- Section 22(1) Strike out "shall" and substitute "must".
- Insert "or her" after "his".
- Strike out "he is".
- Strike out "Penalty" and substitute "Maximum penalty".
- Section 23(1) Strike out "shall" and substitute "must".
- Strike out "Penalty" and substitute "Maximum penalty".
- Section 23(2) Insert "or she" after "he".
- Section 24 Strike out "Penalty" and substitute "Maximum penalty".



Section 25	Strike out "shall" and substitute "must".
	Strike out "Penalty" and substitute "Maximum penalty".
Section 26	Strike out "shall" and substitute "must".
	Strike out "Penalty" and substitute "Maximum penalty".
Section 27	Strike out "Penalty" and substitute "Maximum penalty".
Section 28(1)	Strike out "shall" and substitute "must".
	Strike out "Penalty" and substitute "Maximum penalty".
Section 29	Strike out "Penalty" and substitute "Maximum penalty".
Section 30(1)	Strike out "shall" and substitute "must".
	Insert "or her" after "his".
	Strike out "Penalty" and substitute "Maximum penalty".
Section 30(2)	Strike out "shall" and substitute "must".
	Strike out "Penalty" and substitute "Maximum penalty".
Section 30(2a)	Strike out "Penalty" and substitute "Maximum penalty".
Section 30(3)	Strike out "shall" (twice occurring) and substitute, in each case, "must".
	Insert "or she" after "he".
Section 31(1)	Strike out "shall" and substitute "must".
Section 31(1)(a)	Insert "or her" after "his".
Section 31(1)(b)	Insert "or herself" after "himself".
	Insert "or her" after "him".
Section 31(1)(c)	Insert "or her" after "his".
Section 31(2)	Strike out "shall be" and substitute "is".
Section 31(3)(a) and (d)	Insert "or her" after "his" (twice occurring).
Section 31(4)	Insert "or herself" after "himself" (twice occurring).
Section 32(1)	Strike out "shall" and substitute "must".
Section 32(1)(e)	Insert "or her" after "his".
Section 32(2)(a)	Insert "or her" after "his".
Section 32(2)(b)	Strike out "his" and substitute "that".
Section 32(3)	Insert "or her" after "his" (twice occurring).
	Strike out "shall" and substitute "will".
	Strike out "deemed" and substitute "presumed".
Section 32(4)	Insert "the person" after "if".
Section 32(4)(a) and (b)	Strike out "he" (twice occurring).
Section 32(4)(c)	Strike out "he" (first occurring).
	Insert "or she" after "he" (second and third occurring).

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Section 32(5)	Strike out "shall be" and substitute "is".  Strike out "shall" (second occurring) and substitute "is".  Strike out "be" (second occurring).
Section 32(5)A(2)(b)(ii)	Strike out "both".
Section 33(1)	Strike out "shall" and substitute "must".
Section 33(1)(a)	Strike out "his" and substitute "the practitioner's".
Section 33(1)(b)	Strike out "whom he" and substitute "who the practitioner".
Section 33(1)	Strike out "he" (second occurring) and substitute "the practitioner".  Strike out "Penalty" and substitute "Maximum penalty".
Section 33(1a)	Strike out "shall" and substitute "must".  Strike out "Penalty" and substitute "Maximum penalty".
Section 33(2)	Insert "the person" after "if".
Section 33(2)(a) and (b)	Strike out "he" (twice occurring).
Section 33(6)	Strike out "shall" and substitute "must".
Section 34(1)	Strike out "shall" and substitute "are to".
Section 34(2)	Strike out "shall" and substitute "must".
Section 34(3)	Strike out "shall" and substitute "will".
Section 34(4)	Strike out "shall" and substitute "is to".
Section 35(1)	Strike out "shall" and substitute "must".
Section 35(3)	Strike out "superintendent" and substitute "manager".  Strike out "he" and substitute "the person".  Strike out "shall cause him" and substitute "must cause the person".
Section 35(4) - (6)	Strike out "shall" (wherever occurring) and substitute, in each case, "must".
Section 36(1)(b)	Strike out "he has been".
Section 36(1)(c)	Insert "or she" after "he".
Section 36(2)	Strike out "shall" and substitute "must".
Section 36(2)(a) and (b)	Strike out "him" (twice occurring) and substitute, in each case, "the person".
Section 36(2)	Strike out "Penalty" and substitute "Maximum penalty".
Section 36(3)	Strike out "to him".  Strike out "him" (second occurring) and substitute "the person".
Section 37(1)(a)	Strike out "he" and substitute "the person".
Section 37(1)(b)	Strike out "his participation" and substitute "participation by the person".
Section 37(2)	Strike out "shall" and substitute "will".

Section 38(1)	Strike out "shall" and substitute "will".
Section 38(2) and (3)	Strike out "shall" (twice occurring) and substitute, in each case, "must".
Section 38(4) and (6)	Strike out "shall" (twice occurring) and substitute, in each case, "may".
Section 39(1)	Strike out "shall not" and substitute "cannot".
Section 39(2)(a)	Strike out "him" and substitute "the person".
Section 39(2)(b)	Strike out "against him".
Section 39(3)	Insert "or her" after "his".
	Strike out "shall not" and substitute "cannot".
Section 39(4)	Strike out "shall" (twice occurring) and substitute, in each case, "must".
	Strike out "he has been remanded".
	Strike out "recognizance" and substitute "agreement".
	Strike out "by him".
Section 39(5)	Strike out "recognizance" (first occurring) and substitute "bail agreement".
	Strike out "shall" and substitute "does".
	Strike out "recognizance" (second occurring) and substitute "agreement".
Section 39(6) and (7)	Strike out "shall" (wherever occurring) and substitute, in each case, "must".
Section 41	Strike out "shall be" and substitute "is".
Section 42	Strike out "he" (twice occurring) and substitute, in each case, "the person".
Section 43(3)	Strike out " <i>Crimes (Confiscation of Profits) Act 1986</i> " and substitute " <i>Criminal Assets Confiscation Act 1996</i> ".
Section 44	Strike out "shall" and substitute "must".
Section 44(c)	Strike out "his" and substitute "the person's".
Section 44(d)(ii)	Strike out "section 47" and substitute "section 46".
Section 45	Strike out "shall be" and substitute "is".
	Strike out "he" (first occurring) and substitute "the member".
	Insert "or she" after "he" (second occurring).
Section 45A(1)	Strike out "shall not" and substitute "cannot".
Section 45A(2)	Strike out " <i>Expiation of Offences Act 1995</i> " and substitute " <i>Expiation of Offences Act 1996</i> ".
Section 45A(8) definition of "simple cannabis offence" paragraph (c)	Strike out "possession for" and substitute "possession of".
Section 50(2)	Strike out "shall" and substitute "must".

- Section 50(3) Strike out "shall" and substitute "must".  
Strike out "he" and substitute "the officer".  
Strike out "of his".  
Strike out "his" (second occurring) and substitute "the".
- Section 51(1) Strike out "he" and substitute "the Governor".
- Section 51(2) Strike out "shall" and substitute "may".
- Section 52(2) Strike out "he" and substitute "the officer".
- Section 52(2)(h) Strike out "his".
- Section 52(2)(i) Strike out "he" (twice occurring) and substitute, in each case, "the officer".
- Section 52(2)(j) Strike out "his" and substitute "the officer's".
- Section 52(4) Strike out "shall" and substitute "must".
- Section 52(5) Strike out "shall" and substitute "must".  
Strike out "he is".
- Section 52(6) Strike out "he" and substitute "the officer".  
Insert "or her" after "his".
- Section 52(7) Strike out "he shall" and substitute "the person must".  
Insert "or she" after "he" (second occurring).
- Section 52(8) Strike out "that he".  
Insert "or she" after "he" (second occurring).
- Section 52(9) Strike out "he" (twice occurring) and substitute, in each case, "the officer".
- Section 52(10) Strike out "to him".  
Strike out "*Police Offences Act 1953*" and substitute "*Summary Offences Act 1953*".
- Section 52(11) Strike out "his".  
Strike out "he" and substitute "the officer".
- Section 52(12) Strike out "shall" and substitute "must".
- Section 52(12)(b) Strike out "him" (twice occurring) and substitute, in each case, "the person".
- Section 52(12) Strike out "Penalty" and substitute "Maximum penalty".
- Section 53(1) Strike out "by him".
- Section 53(4) Strike out "shall" (wherever occurring) and substitute, in each case, "must".

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Section 54(1)	Strike out "shall attach" and substitute "attaches". Insert "honest" after "for an". Strike out "on his part, in good faith,". Strike out "conferred or imposed upon him".
Section 54(2)	Strike out "shall lie" and substitute "lies instead".
Section 55(2a)	Strike out "Penalty" and substitute "Maximum penalty".
Section 55(3)	Strike out "shall" and substitute "must".
Section 55(4)	Insert "or" between paragraphs (a), (b) and (c).
Section 56(1)	Insert "or her" after "his".
Section 56(2)	Strike out "Notwithstanding" and substitute "Despite". Strike out "shall not be" and substitute "is not". Strike out "by him".
Section 57(3) and (4)	Strike out "shall" (wherever occurring) and substitute, in each case, "must".
Section 57(4)	Strike out "Penalty" and substitute "Maximum penalty".
Section 57(6)	Strike out "shall continue" and substitute "continues".
Section 58(3)	Strike out "shall" and substitute "must".
Section 59	Strike out "No person shall" and substitute "A person must not". Strike out "his" (first occurring) and substitute "the person's". Strike out "him" and substitute "the person". Insert "or she" after "he". Insert "or her" after "his" (second occurring). Strike out "Penalty" and substitute "Maximum penalty".
Section 60(2)	Insert "or her" after "him" (wherever occurring).
Section 60(4)	Strike out "shall" and substitute "must". Strike out "Penalty" and substitute "Maximum penalty".
Section 61(1) - (3)	Strike out "shall" (wherever occurring) and substitute, in each case, "will".
Section 62	Strike out "moneys" (wherever occurring) and substitute, in each case, "money". Strike out "shall" and substitute "will".
Section 63(2)	Strike out "shall" and substitute "must".
Section 63(3)	Strike out "shall" and substitute "may".

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In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor