

1994—No. 683

**DRUG MISUSE AND TRAFFICKING ACT 1985—
REGULATION**

(Relating to the custody and analysis of drug exhibits)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council and in pursuance of the Drug Misuse and Trafficking Act 1985, has been pleased to make the Regulation set forth hereunder.

JOHN HANNAFORD
Attorney General.

Commencement

1. This Regulation commences on 1 January 1995.

Amendments

2. The Drug Misuse and Trafficking Regulation 1994 is amended:

(a) by inserting before clause 1 the following heading:

PART 1—PRELIMINARY

(b) by inserting the following definition in clause 3 in alphabetical order:

“**analyst**” has the same meaning as in section 43 of the Act;

(c) by inserting at the end of clause 3 the following subclause:

(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.

(d) by inserting before clause 4 the following heading:

PART 2—GENERAL

- (e) by inserting after clause 6 the following Part:

PART 3—CUSTODY AND ANALYSIS OF DRUG EXHIBITS

Application of this Part

7. (1) This Part applies to a substance that a member of the Police Service knows or suspects to be a prohibited drug and:

(a) that is in the custody of a member of the Police Service; and

(b) the quantity of which is not less than the commercial quantity for the prohibited drug concerned.

(2) This Part extends to a substance that a member of the Police Service knows or suspects to be a prohibited drug, the quantity of which is not less than the commercial quantity for the prohibited drug concerned, and that, before the commencement of this Part, has come into the custody of a member of the Police Service but has not been analysed by an analyst.

(3) It is immaterial whether a prohibited drug to which this Part applies is or has come into the custody of a member of the Police Service through seizure or other means.

Delivery of substance for analysis

8. (1) Immediately after a substance to which this Part applies comes into the custody of a member of the Police Service, the whole of the substance must be given to an analyst for analysis.

(2) Immediately after the commencement of this Part, the whole of a substance to which clause 7 (2) applies must be given to an analyst for analysis.

(3) Immediately after a member of the Police Service 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.

Order for destruction

9. (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.

Carrying out of analysis

10. (1) An analyst to whom a substance is given for analysis under clause 8 or 9 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.

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

Procedure after analysis

11. (1) After removing a sample of a substance that is given to an analyst for analysis under clause 8 or 9, 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.

Storage of sealed packages

12. (1) A person to whom a package is delivered under clause 11 (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.

Analyst's certificate

13. The 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.

Significant variations in analysts' certificates

14. 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.

EXPLANATORY NOTE

The object of this Regulation is to provide for the analysis of drug exhibits by an analyst whenever a commercial quantity of a prohibited drug is seized or comes into the possession of a member of the Police Service, the seal on a package previously so analysed is broken or the package is opened or tampered with or an order is made under Part 3A of the Drug Misuse and Trafficking Act 1985 for the destruction of the drug exhibit. The Regulation also requires drug exhibits to be securely stored after analysis.

The Regulation is made under sections 39S and 45 of the Drug Misuse and Trafficking Act 1985.
