

PARLIAMENT OF VICTORIA

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**Drugs, Poisons and Controlled Substances  
Amendment (Decriminalisation of Possession and  
Use of Drugs of Dependence) Bill 2022**

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PARLIAMENT OF VICTORIA

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Introduced in the Council by Ms Fiona Patten

**Drugs, Poisons and Controlled  
Substances Amendment  
(Decriminalisation of Possession and  
Use of Drugs of Dependence) Bill 2022**

A Bill for an Act to amend the **Drugs, Poisons and Controlled Substances Act 1981** to provide for certain offences to be dealt with by way of a drug education or treatment notice and to make consequential and related amendments and for other purposes.

**The Parliament of Victoria enacts:**

**Part 1—Preliminary**

**1 Purpose**

The purpose of this Act is to amend the **Drugs, Poisons and Controlled Substances Act 1981**—

- 5 (a) to reduce to 1 penalty unit the penalty for the following offences—
- 10 (i) the offence of possessing a drug of dependence in a quantity that is not more than the small quantity applicable to that drug;

Part 1—Preliminary

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- 5
- (ii) the offence of using or attempting to use a drug of dependence; and
- (b) to make the offence of using or attempting to use a drug of dependence a summary offence; and
- (c) to provide for those offences to be dealt with by way of a drug education or treatment notice; and
- 10 (d) to make consequential and related amendments.

**2 Commencement**

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- 15 (2) If a provision of this Act does not come into operation before 1 July 2022, it comes into operation on that day.

**3 Principal Act**

In this Act, the **Drugs, Poisons and Controlled Substances Act 1981** is called the Principal Act.

## **Part 2—Amendment of Principal Act**

### **4 New heading to Division 1 of Part V inserted**

After the heading to Part V of the Principal Act **insert** the following heading—

5 **"Division 1—Preliminary".**

### **5 Definitions**

In section 70(1) of the Principal Act **insert** the following definition—

10 **"drug education or treatment notice** has the meaning given in section 80AAB;"

### **6 New heading to Division 2 of Part V inserted**

After section 70 of the Principal Act **insert** the following heading—

15 **"Division 2—Offences".**

### **7 Possession of a drug of dependence**

(1) **Insert** the following heading to section 73 of the Principal Act—

**"Possession of more than a small quantity of a drug of dependence".**

20 (2) In section 73(1) of the Principal Act—

(a) after "a drug of dependence" **insert** "in a quantity that is more than the small quantity applicable to that drug";

(b) paragraph (a) is **repealed**;

25 (c) in paragraph (b) **omit** "subject to paragraph (a)".

**8 New section 73A inserted**

After section 73 of the Principal Act **insert—**

**"73A Possession of a drug of dependence in not more than a small quantity**

- 5 (1) A person must not have in the person's possession a drug of dependence in a quantity that is not more than the small quantity applicable to that drug, without being authorised by or licensed under—
- 10 (a) this Act or the regulations; or
- (b) the **Voluntary Assisted Dying Act 2017** or the regulations under that Act.
- Penalty: 1 penalty unit.
- 15 (2) No proceeding may be commenced against a person for an offence against subsection (1) unless—
- 20 (a) the person has been served a drug education or treatment notice under section 80AAC in respect of the offence; and
- (b) that notice has not been withdrawn under section 80AAF; and
- (c) either—
- 25 (i) the person has failed to comply with that notice; or
- (ii) the person has elected, under section 80AAE, to have a charge for the offence heard and
- 30 determined in a court.

Part 2—Amendment of Principal Act

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- 5 (3) Notwithstanding anything to the contrary in any Act, a proceeding for an offence against subsection (1) may be commenced in accordance with subsection (2) no later than 24 months after the commission of the alleged offence."

**9 Section 75 substituted**

For section 75 of the Principal Act **substitute—**

**"75 Use of drug of dependence**

- 10 (1) A person must not use or attempt to use a drug of dependence without being authorised by or licensed under—
- 15 (a) this Act or the regulations; or
  - (b) the **Voluntary Assisted Dying Act 2017** or the regulations under that Act.
- Penalty: 1 penalty unit.
- 20 (2) No proceeding may be commenced against a person for an offence against subsection (1) unless—
- 25 (a) a drug education or treatment notice has been served on the person under section 80AAC in respect of the offence; and
  - (b) that notice has not been withdrawn under section 80AAF; and
  - 30 (c) either—
    - (i) the person has failed to comply with that notice; or
    - (ii) the person has elected, under section 80AAE, to have a charge for the offence heard and determined in a court.
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Part 2—Amendment of Principal Act

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5 (3) Notwithstanding anything to the contrary in any Act, a proceeding for an offence against subsection (1) may be commenced in accordance with subsection (2) no later than 24 months after the commission of the alleged offence."

**10 Adjourned bonds to be given in certain cases**

- 10 (1) In section 76(1)(a) of the Principal Act—
- (a) in subparagraphs (i) and (ii), after "cannabis;" **insert** "or";
  - (b) after subparagraph (ii) **insert**—
    - 15 "(ia) a person is charged with an offence under section 73A and at the hearing the court is satisfied on the balance of probabilities that the offence was not committed by the person for any purpose relating to trafficking in cannabis; or";
  - (c) for subparagraph (iv) **substitute**—
    - 20 "(iv) a person is charged with an offence under section 79 or 80 that relates to an offence referred to in subparagraph (i), and the court is satisfied on the balance of probabilities that the offence referred to in subparagraph (i)—
      - 25 (A) would not have been committed by the person for any purpose relating to trafficking in cannabis; or
      - 30 (B) would, if committed, have related to a quantity of cannabis which would not have been more than the small quantity applicable to cannabis; or
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Part 2—Amendment of Principal Act

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5 (v) a person is charged with an offence under section 79 or 80 that relates to an offence referred to in subparagraph (ii), and the court is satisfied on the balance of probabilities that the offence referred to in subparagraph (ii) would not have been committed by the person for any purpose relating to trafficking in cannabis; and".

10 (2) In section 76(1)(ab) of the Principal Act—

(a) for subparagraph (i) **substitute**—

15 "(i) a person is charged with an offence under section 73A and at the hearing the court is satisfied on the balance of probabilities that the offence was not committed for any purpose relating to trafficking in that drug; or";

(b) in subparagraph (ii), for "drug; or" **substitute** "drug; and";

20 (c) subparagraph (iii) is **repealed**.

**11 Conspiring**

In section 79(2) of the Principal Act **omit** "75,".

**12 Inciting etc.**

25 (1) In section 80(2) of the Principal Act **omit** "75," (where twice occurring).

(2) In section 80(4) of the Principal Act **omit** "75,".



**13 New Division 3 of Part V inserted**

After section 80 of the Principal Act **insert—**

**"Division 3—Drug education or treatment notice**

5

**80AA Purpose of Division**

The purpose of this Division is to provide for persons who are reasonably suspected of having committed—

10

(a) the offence of possessing a drug of dependence in a quantity that is not more than the small quantity applicable to that drug; or

15

(b) the offence of using a drug of dependence—

to be directed to drug education or treatment.

**80AAB What is a *drug education or treatment notice*?**

20

(1) A *drug education or treatment notice* is a notice that directs the person on whom it is served—

25

(a) to engage with services or programs in order to address the person's use of drugs of dependence through education or treatment; and

(b) to do so for a period that—

(i) is specified in the order; and

(ii) does not exceed 12 months.

**Note**

30

The consequence of non-compliance with a drug education or treatment notice is that a proceeding may be commenced in respect of the alleged offence for which the notice was served. See sections 73A(2)(c)(i) and 75(2)(c)(i).

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Part 2—Amendment of Principal Act

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(2) A drug education or treatment notice must—

5

- (a) specify, in accordance with the regulations, the person to whom an election under section 80AAE may be made; and

**Note**

10

Section 80AAE provides for the person on whom the notice is served to elect to have a court hear and determine a charge for the alleged offence to which the notice relates.

- (b) otherwise be in accordance with the regulations.

15

(3) Without limiting subsection (2), regulations made for the purposes of that provision may do any of the following—

20

- (a) specify, or provide for the determination of, the services and programs with which a drug education or treatment notice may require engagement;

25

- (b) provide for the outcomes, kinds and modes of engagement that a drug education or treatment notice may require, including the extent, frequency and timing of any such engagement;

30

- (c) provide for a drug education or treatment notice to require that the person on whom it is served must provide evidence of engagement with a service or program to a prescribed person;

- (d) specify, or provide for the determination of, the period referred to in subsection (1)(b);
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Part 2—Amendment of Principal Act

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- 5
- (e) prescribe the form of a drug education or treatment notice;
  - (f) prescribe information that must be included in a drug education or treatment notice;
  - (g) leave any matter or thing that is to be specified in a drug education or treatment notice to be determined by the Secretary or the Minister.

10 **80AAC When police officer may serve drug education or treatment notice**

15 A police officer may serve a drug education or treatment notice on a person in accordance with the regulations if the officer believes on reasonable grounds that the person has committed an offence against section 73A or 75.

20 **80AAD Effect of compliance with drug education or treatment notice**

20 If the period specified in a drug education or treatment notice under section 80AAB(1)(b) expires, and the person on whom the notice was served complied with the notice—

- 25
- (a) no proceeding may be commenced against the person for the alleged offence in respect of which the notice was served; and
  - (b) no conviction is to be taken to have been recorded against that person for that offence; and
  - (c) compliance with the notice is not and must not be taken to be—
    - 30 (i) an admission of guilt for that offence; or
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Part 2—Amendment of Principal Act

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- 5 (ii) an admission of liability for the purpose of any civil claim or proceeding arising out of the same occurrence; and
- (d) compliance with the notice does not in any way affect or prejudice any claim or proceeding referred to in paragraph (c)(ii); and
- 10 (e) anything that was seized in connection with the alleged offence is subject to forfeiture to the Crown and disposal or destruction in the same way that it would be if—
- 15 (i) the person had been convicted of the offence; and
- (ii) the thing were no longer required for the purpose of any subsequent proceedings.

**80AAE Person may elect to have matter heard in court**

- 20 (1) A person on whom a drug education or treatment notice is served may elect to have a charge for the offence in respect of which the notice was served heard and determined
- 25 by a court.

**Note**

The effect of the election is that a proceeding for the offence may be commenced. See sections 73A(2)(c)(ii) and 75(2)(c)(ii).

- 30 (2) An election under subsection (1) is to be made by giving notice of the election, in writing, to the person specified for that purpose in the notice under section 80AAB(2)(a).

**80AAF Withdrawal of drug education or treatment notice**

- 5
- (1) A police officer may withdraw a drug education or treatment notice that was served on a person if the police officer believes on reasonable grounds that the person did not commit the alleged offence in respect of which the notice was served.
- 10
- (2) A police officer who withdraws a drug education or treatment notice under subsection (1) must notify, in writing, the person on whom the drug education or treatment notice was served.
- 15
- (3) A drug education or treatment notice that is withdrawn has no effect.

**Note**

20

Proceedings for an offence in respect of which a drug education or treatment notice is served cannot be commenced if the notice is withdrawn. See sections 73A(2)(b) and 75(2)(b)."

**14 New section 132AAB inserted**

After section 132AA of the Principal Act **insert—**

**"132AAB Interpretation of regulations that prohibit certain actions in relation to drugs of dependence**

25

- (1) Regulations under this Act that prohibit the possession of a substance (however described) are not to be taken to prohibit the possession of a drug of dependence in a quantity that is not more than the small quantity applicable to that drug.
- 30

**Note**

Possession of a drug of dependence in such a quantity is dealt with by section 73A.

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Part 2—Amendment of Principal Act

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- (2) Regulations under this Act that prohibit a person from using a substance (however described) are not to be taken to prohibit the person from using a drug of dependence.

5

**Note**

Use of a drug of dependence is dealt with by section 75.

- (3) In this section—

10

*small quantity* has the same meaning as in section 70(1);

*use* of a substance by a person means—

15

- (a) smoking that substance; or
- (b) inhaling the fumes caused by heating or burning that substance; or
- (c) otherwise introducing that substance into that person's body."

Part 3—Repeal of this Act

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**Part 3—Repeal of this Act**

**15 Repeal of this Act**

This Act is **repealed** on 1 July 2023.

**Note**

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The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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Drugs, Poisons and Controlled Substances Amendment (Decriminalisation of Possession and Use of Drugs of Dependence) Bill 2022

Endnotes

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

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