



# **Narcotic Drugs Legislation Amendment Act 2016**

**No. 76, 2016**

**An Act to amend the *Narcotic Drugs Act 1967*, and  
for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# **Narcotic Drugs Legislation Amendment Act 2016**

**No. 76, 2016**

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## **An Act to amend the *Narcotic Drugs Act 1967*, and for related purposes**

[Assented to 23 November 2016]

The Parliament of Australia enacts:

### **1 Short title**

This Act is the *Narcotic Drugs Legislation Amendment Act 2016*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	23 November 2016
2. Schedule 1	The later of: (a) immediately after the commencement of Schedule 1 to the <i>Narcotic Drugs Amendment Act 2016</i> ; and (b) the start of the day this Act receives the Royal Assent.	23 November 2016 (paragraph (b) applies)
3. Schedule 2	At the same time as the provisions covered by table item 2.	23 November 2016
4. Schedule 3	The later of: (a) immediately after the commencement of section 1 of the <i>Narcotic Drugs (Licence Charges) Act 2016</i> ; and (b) the start of the day this Act receives the Royal Assent.	23 November 2016

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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### **3 Schedules**

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Amendments relating to sensitive law enforcement information

### *Narcotic Drugs Act 1967*

#### 1 Subsection 4(1)

Insert:

***law enforcement agency*** means the following:

- (a) a body, agency or organisation that is responsible for, or deals with, law enforcement, criminal intelligence, criminal investigation, fraud or security intelligence in, or in a part of, Australia;
- (b) a body, agency or organisation prescribed by the regulations.

***sensitive law enforcement information*** means information the disclosure of which is reasonably likely to prejudice Australia's law enforcement interests, including Australia's interests in the following:

- (a) avoiding disruption to national and international efforts relating to law enforcement, criminal intelligence, criminal investigation, foreign intelligence, security intelligence or the integrity of law enforcement agencies;
- (b) protecting the technologies and methods used to collect, analyse, secure or otherwise deal with, criminal intelligence, foreign intelligence, security intelligence or intelligence relating to the integrity of law enforcement agencies;
- (c) the protection and safety of:
  - (i) informants or witnesses, or persons associated with informants or witnesses; or
  - (ii) persons involved in the protection or safety of informants or witnesses;
- (d) ensuring that intelligence and law enforcement agencies are not discouraged from giving information to a nation's government and government agencies.

#### 2 Paragraph 11(2)(a)

Omit “, and the reasons for the proposed revocation”.

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### **3 After paragraph 11(2)(a)**

Insert:

- (aa) subject to subsection (5)—state the reasons for the proposed revocation; and

### **4 At the end of section 11**

Add:

- (5) If subsection (1) requires a notice to be given to a licence holder stating the reasons for a proposed revocation as mentioned in paragraph (2)(aa), the Secretary:
  - (a) must not disclose information identified as sensitive law enforcement information under subsection 14LA(1) or (2) in the notice; and
  - (b) if the Secretary relies upon such information in relation to the proposed revocation—must, in the case of information identified under subsection 14LA(1), consult the giver of the information before giving the notice.

### **5 Paragraph 13(2)(a)**

Omit “, and the reasons for the proposed revocation”.

### **6 After paragraph 13(2)(a)**

Insert:

- (aa) subject to subsection (5)—state the reasons for the proposed revocation; and

### **7 At the end of section 13C**

Add:

- (5) If subsection (1) requires a notice to be given to a licence holder stating the reasons for a proposed revocation as mentioned in paragraph (2)(aa), the Secretary:
    - (a) must not disclose information identified as sensitive law enforcement information under subsection 14LA(1) or (2) in the notice; and
    - (b) if the Secretary relies upon such information in relation to the proposed revocation—must, in the case of information identified under subsection 14LA(1), consult the giver of the information before giving the notice.
-

## **8 At the end of section 14K**

Add:

- (3) This section is not limited by section 14L.

## **9 After subsection 14L(3)**

Insert:

- (3A) Despite subsection (3), the head of an agency is not required to give the Secretary information if:
- (a) the holder of the information has advised the head of the agency that the holder knows or believes that the information is sensitive law enforcement information; and
  - (b) the head of the agency informs the Secretary of that advice.

## **10 After section 14L**

Insert:

### **14LA Identification of sensitive law enforcement information**

- (1) If:
- (a) the Secretary:
    - (i) requests a Commonwealth, State or Territory law enforcement agency to give information, documents or advice to the Secretary under section 14K; or
    - (ii) requires the head of a State or Territory law enforcement agency to give information or documents to the Secretary under section 14L; and
  - (b) such information, documents or advice is given to the Secretary; and
  - (c) the person who gave the information, documents or advice to the Secretary knows or believes that the information is, or the documents or advice include information that is, sensitive law enforcement information;
- the person must, at the time of giving the information, documents or advice or subsequently, identify the information that the person knows or believes is sensitive law enforcement information.
- (2) If:
- (a) the Secretary has information; and

- (b) the information was not given to the Secretary by a Commonwealth, State or Territory law enforcement agency; and
  - (c) the Secretary knows or believes that the information is sensitive law enforcement information;
- the Secretary must identify the information that the Secretary knows or believes is sensitive law enforcement information.

## **11 Before section 14N**

Insert:

### **14MA Secrecy—unauthorised disclosures of sensitive law enforcement information**

- (1) A person commits an offence if:
  - (a) the person has information obtained in connection with the performance of a function, or the exercise of a power, by the person under this Act; and
  - (b) the information is information identified as sensitive law enforcement information under subsection 14LA(1) or (2); and
  - (c) the person:
    - (i) discloses the information to another person; or
    - (ii) uses the information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) Subsection (1) does not apply if:
  - (a) the disclosure or use by the person is for the purposes of, or in connection with, the performance of a function or the exercise of a power under this Act; or
  - (b) the disclosure or use by the person is in compliance with a requirement under a law of the Commonwealth; or
  - (c) the person or agency that gave the information to the Secretary consents to the disclosure or use; or
  - (d) the disclosure or use is required by a court or tribunal for the purposes of, or in connection with, proceedings for the purposes of giving effect to this Act or another law of the Commonwealth; or

- (e) the information, or a document or advice that included the information, was given to the Secretary by a person or an agency under section 14K or 14L, and the use or disclosure is by that person or that agency.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

## 12 Section 14N

Omit “A”, substitute “Subject to section 14MA, a”.

## 13 Paragraph 14N(f)

Repeal the paragraph, substitute:

- (f) the disclosure is to a Commonwealth, State or Territory law enforcement agency; or

## 14 Paragraph 15F(1)(b)

Before “the reasons”, insert “subject to subsection (2A)—”.

## 15 Paragraph 15F(2)(e)

Before “the reasons”, insert “subject to subsection (2A)—”.

## 16 After subsection 15F(2)

Insert:

- (2A) If subsection (1) or (2) requires a notice to be given stating the reasons for a reviewable decision as mentioned in paragraph (1)(b) or (2)(e), the person who made the decision:
  - (a) must not disclose information identified as sensitive law enforcement information under subsection 14LA(1) or (2) in the notice; and
  - (b) if the person who made the decision relies upon such information in making the reviewable decision—must, in the case of information identified under subsection 14LA(1), consult the giver of the information before giving the notice.

## 17 Paragraph 15J(1)(b)

Before “the reasons”, insert “subject to subsection (4)—”.

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## **18 At the end of section 15J**

Add:

- (4) If subsection (1) requires a notice to be given stating the reasons for a decision on review as mentioned in paragraph (1)(b), the Minister or internal reviewer:
  - (a) must not disclose information identified as sensitive law enforcement information under subsection 14LA(1) or (2) in the notice; and
  - (b) if the Minister or internal reviewer relies upon such information in making the decision on review—must, in the case of information identified under subsection 14LA(1), consult the giver of the information before giving the notice.

## **19 At the end of Part 4 of Chapter 4**

Add:

### **15M Application by Secretary to Administrative Appeals Tribunal**

- (1) This section applies if an application is made to the Administrative Appeals Tribunal for review of a decision of the Minister, or an internal reviewer, that relates to a reviewable decision.
- (2) The Secretary may, at any time, apply to the Administrative Appeals Tribunal to make an order under subsection 35(2), (3) or (4) of the *Administrative Appeals Tribunal Act 1975* in relation to the review including, but not limited to, an order in relation to information identified as sensitive law enforcement information under subsection 14LA(1) or (2).
- (3) If the Secretary makes an application under subsection (2), the Administrative Appeals Tribunal may make an order of a kind referred to in that subsection if the Tribunal is satisfied that to do so is necessary in order to:
  - (a) avoid disruption to national or international efforts relating to law enforcement, criminal intelligence, criminal investigation, foreign intelligence, security intelligence or the integrity of law enforcement agencies; or
  - (b) protect the technologies and methods used to collect, analyse, secure or otherwise deal with criminal intelligence, foreign

- intelligence, security intelligence or intelligence relating to the integrity of law enforcement agencies; or
- (c) protect and ensure the safety of:
    - (i) informants or witnesses, or persons associated with informants or witnesses; or
    - (ii) persons involved in the protection or safety of informants or witnesses; or
  - (d) ensure that intelligence and law enforcement agencies are not discouraged from giving information to a nation's government and government agencies.

**15N Failure to include information identified as sensitive law enforcement information in certain statements**

- (1) This section applies if an application may be made by a person (the *applicant*) to the Administrative Appeals Tribunal for review of a decision of the Minister, or an internal reviewer, that relates to a reviewable decision.
- (2) The applicant is not entitled to make a request for a statement under subsection 28(1) of the *Administrative Appeals Tribunal Act 1975*, in relation to the decision, merely because a document or statement referred to in subsection 28(4) of that Act does not include information identified as sensitive law enforcement information under subsection 14LA(1) or (2) of this Act.
- (3) If, despite subsection (2), the applicant is entitled to make a request under subsection 28(1) of the *Administrative Appeals Tribunal Act 1975* for a statement in relation to the decision:
  - (a) the statement is not required to include information identified as sensitive law enforcement information under subsection 14LA(1) or (2) of this Act; and
  - (b) the applicant is not entitled to be given such information; and
  - (c) merely because the statement does not include such information, the statement is not to be taken to fail to include:
    - (i) adequate particulars of findings on material questions of fact; or
    - (ii) an adequate reference to the evidence or other material on which those findings were based; or
    - (iii) adequate particulars of the reasons for the decision.

## **20 After section 21**

Insert:

### **21A Operation of natural justice hearing rule**

If the natural justice hearing rule would, but for the provisions of this Act, require the disclosure of information identified as sensitive law enforcement information under subsection 14LA(1) or (2), this Act is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the disclosure of that information.

## **21 At the end of section 25**

Add:

- (5) The Secretary must not delegate a power or function under subsection 14LA(2) (identifying sensitive law enforcement information) to a person other than an SES employee, or acting SES employee, in the Department.

Note: The expressions **SES employee** and **acting SES employee** are defined in the *Acts Interpretation Act 1901*.

## Schedule 2—Other amendments

### Part 1—Amendments relating to timing of notification of certain matters

#### *Narcotic Drugs Act 1967*

##### **1 Section 10K**

Before “It”, insert “(1)”.

##### **2 Section 10K**

Omit “as soon as reasonably practicable after”, substitute “if”.

##### **3 At the end of section 10K**

Add:

- (2) The licence holder must notify the Secretary of a matter referred to in subsection (1):
  - (a) if the regulations prescribe a period within which the matter must be notified to the Secretary—before the end of that period; or
  - (b) otherwise—as soon as reasonably practicable after the matter comes to the attention of the licence holder.

##### **4 Section 12N**

Before “It”, insert “(1)”.

##### **5 Section 12N**

Omit “as soon as reasonably practicable after”, substitute “if”.

##### **6 At the end of section 12N**

Add:

- (2) The licence holder must notify the Secretary of a matter referred to in subsection (1):
    - (a) if the regulations prescribe a period within which the matter must be notified to the Secretary—before the end of that period; or
-



- (b) otherwise—as soon as reasonably practicable after the matter comes to the attention of the licence holder.

## Part 2—Amendments relating to guidelines and standards

### *Narcotic Drugs Act 1967*

#### 7 Subsection 4(1)

Insert:

*guidelines* means guidelines issued by the Minister under section 26C.

#### 8 Subsection 4(1)

Insert:

*standards* means standards issued by the Minister under section 26B.

#### 9 At the end of section 8F

Add:

Note: The Secretary must have regard to any applicable guidelines (see subsection 26C(2)).

#### 10 After paragraph 8G(1)(e)

Insert:

- (ea) the Secretary is not satisfied on reasonable grounds that applicable standards have been or will be met, as the case requires; or

#### 11 After paragraph 9(4)(a)

Insert:

- (aa) the Secretary is not satisfied on reasonable grounds that applicable standards have been or will be met, as the case requires; or
- (ab) the Secretary is satisfied on reasonable grounds that one or more circumstances exist that are prescribed by the regulations as circumstances in which a permit must not be granted; or

**12 At the end of section 9**

Add:

Note: The Secretary must have regard to any applicable guidelines (see subsection 26C(2)).

**13 At the end of section 9E**

Add:

Note: The Secretary must have regard to any applicable guidelines (see subsection 26C(2)).

**14 After paragraph 9F(1)(e)**

Insert:

(ea) the Secretary is not satisfied on reasonable grounds that applicable standards have been or will be met, as the case requires; or

**15 After paragraph 9P(4)(a)**

Insert:

- (aa) the Secretary is not satisfied on reasonable grounds that applicable standards have been or will be met, as the case requires; or
- (ab) the Secretary is satisfied on reasonable grounds that one or more circumstances exist that are prescribed by the regulations as circumstances in which a permit must not be granted; or

**16 At the end of section 9P**

Add:

Note: The Secretary must have regard to any applicable guidelines (see subsection 26C(2)).

**17 Paragraph 10D(1)(p)**

Repeal the paragraph, substitute:

(p) compliance with a code of practice;

**18 After paragraph 10P(2)(g)**

Insert:

(ga) that applicable standards have not been met; or

**19 At the end of subsection 10P(2)**

Add:

Note: The Secretary must have regard to any applicable guidelines (see subsection 26C(2)).

**20 At the end of section 11H**

Add:

Note: The Secretary must have regard to any applicable guidelines (see subsection 26C(2)).

**21 After paragraph 11J(1)(e)**

Insert:

- (ea) the Secretary is not satisfied on reasonable grounds that applicable standards have been or will be met, as the case requires; or

**22 Subsection 11K(2)**

Omit “if the Secretary is not satisfied on reasonable grounds of one”, substitute “unless the Secretary is satisfied on reasonable grounds of at least one”.

**23 After paragraph 12A(4)(a)**

Insert:

- (aa) the Secretary is not satisfied on reasonable grounds that applicable standards have been or will be met, as the case requires; or
- (ab) the Secretary is satisfied on reasonable grounds that one or more circumstances exist that are prescribed by the regulations as circumstances in which a permit must not be granted; or

**24 At the end of section 12A**

Add:

Note: The Secretary must have regard to any applicable guidelines (see subsection 26C(2)).

**25 Paragraph 12F(p)**

Repeal the paragraph, substitute:

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(p) compliance with a code of practice;

## **26 After paragraph 13B(2)(g)**

Insert:

(ga) that applicable standards have not been met; or

## **27 At the end of subsection 13B(2)**

Add:

Note: The Secretary must have regard to any applicable guidelines (see subsection 26C(2)).

## **28 After section 26A**

Insert:

### **26B Minister may issue standards**

- (1) The Minister may, by legislative instrument, issue standards for the purposes of this Act.
- (2) Despite section 14 of the *Legislation Act 2003*, the standards may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

### **26C Minister may issue guidelines**

- (1) The Minister may, by written instrument, issue guidelines for the purposes of this Act.

Note: For variation and revocation of the instrument, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- (2) A person who performs a function or exercises a power under this Act must have regard to any guidelines that are applicable.
- (3) Guidelines are not legislative instruments.
- (4) Despite section 46AA of the *Acts Interpretation Act 1901*, the guidelines may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

**Schedule 2** Other amendments

**Part 2** Amendments relating to guidelines and standards

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**29 Paragraph 27(4)(c)**

Repeal the paragraph.

## **Part 3—Amendments relating to the supply of seeds**

### *Narcotic Drugs Act 1967*

#### **30 After subparagraph 9D(1)(c)(i)**

Insert:

- (ia) the supply of cannabis plants to the holder of a medicinal cannabis licence, or to the holder of another cannabis research licence, but only if the licence concerned authorises the cultivation of cannabis plants;

## Part 4—Miscellaneous amendments

### *Narcotic Drugs Act 1967*

#### **31 Subsection 4(1) (definition of *drug*)**

Omit all the words from and including “includes”, substitute:

“includes the following:

- (a) any substance prescribed by the regulations for the purposes of this paragraph;
- (b) any substance prescribed by the regulations under section 8 of this Act.”.

#### **32 Subsection 7A(1)**

After “purports”, insert “(whether expressly or impliedly)”.

#### **33 Section 8C (heading)**

Repeal the heading, substitute:

#### **8C Act does not affect spent conviction provisions**

#### **34 Section 8C**

Omit “Part”, substitute “Act”.

#### **35 Paragraph 8G(1)(g)**

Before “has”, insert “, or any other fee that has become payable,”.

#### **36 After paragraph 8G(1)(g)**

Insert:

- (ga) the Secretary is satisfied on reasonable grounds that the application for the licence contains information, or information has been given by the applicant in relation to the application, that:
  - (i) is false or misleading in a material particular; or
  - (ii) omits any matter or thing without which the application is misleading in a material respect; or



**37 Before paragraph 9(4)(b)**

Insert:

- (ac) the Secretary is satisfied on reasonable grounds that the application for the permit contains information, or information has been given by the applicant in relation to the application, that:
  - (i) is false or misleading in a material particular; or
  - (ii) omits any matter or thing without which the application is misleading in a material respect; or

**38 Paragraph 9F(1)(g)**

Before “has”, insert “, or any other fee that has become payable,”.

**39 After paragraph 9F(1)(g)**

Insert:

- (ga) the Secretary is satisfied on reasonable grounds that the application for the licence contains information, or information has been given by the applicant in relation to the application, that:
  - (i) is false or misleading in a material particular; or
  - (ii) omits any matter or thing without which the application is misleading in a material respect; or

**40 Before paragraph 9P(4)(b)**

Insert:

- (ac) the Secretary is satisfied on reasonable grounds that the application for the permit contains information, or information has been given by the applicant in relation to the application, that:
  - (i) is false or misleading in a material particular; or
  - (ii) omits any matter or thing without which the application is misleading in a material respect; or

**41 Subsection 11(4)**

Omit “vary or”.

**42 After paragraph 11J(1)(g)**

Insert:

- (ga) the Secretary is satisfied on reasonable grounds that the application for the licence contains information, or information has been given by the applicant in relation to the application, that:
- (i) is false or misleading in a material particular; or
  - (ii) omits any matter or thing without which the application is misleading in a material respect; or

**43 Before paragraph 12A(4)(b)**

Insert:

- (ac) the Secretary is satisfied on reasonable grounds that the application for the permit contains information, or information has been given by the applicant in relation to the application, that:
- (i) is false or misleading in a material particular; or
  - (ii) omits any matter or thing without which the application is misleading in a material respect; or

**44 Subsection 13C(4)**

Omit “vary or”.

**45 Before section 25**

Insert:

**24C Licences not transferable**

Nothing in this Act permits a licence to be transferred from a licence holder to another person.

**46 At the end of subsection 28(1)**

Add:

- ; and (d) matters relating to the payment of fees, including the following:
- (i) time and manner of payment;
  - (ii) pro-rating, refunds, reduction, remission or waiving.

## **Part 5—Amendments relating to therapeutic goods**

### *Therapeutic Goods Act 1989*

#### **47 Subsection 19(1A)**

Omit “for the purpose mentioned in paragraph (1)(b) is subject to the conditions (if any) specified in the regulations”, substitute “mentioned in paragraph (1)(a) or (b) is subject to the conditions (if any) specified in the regulations for the purposes of that paragraph”.

#### **48 Subsection 19(8)**

Repeal the subsection, substitute:

- (8) The regulations may prescribe the circumstances in which an approval under paragraph (1)(a) must not be given, including but not limited to, circumstances relating to the following:
  - (a) therapeutic goods included in a specified class;
  - (b) therapeutic goods when used in the treatment of a specified class of persons;
  - (c) therapeutic goods when used for a particular indication.

## Schedule 3—Amendments relating to licence charges

### *Narcotic Drugs Act 1967*

#### **1 Subsection 4(1)**

Insert:

*charge* means charge imposed by the *Narcotic Drugs (Licence Charges) Act 2016*.

#### **2 After paragraph 10P(2)(c)**

Insert:

(ca) that any charge payable in respect of the licence is not paid within 28 days after the due date; or

#### **3 After paragraph 13B(2)(c)**

Insert:

(ca) that any charge payable in respect of the licence is not paid within 28 days after the due date; or

#### **4 At the end of subsection 28(1)**

Add:

; and (e) matters relating to the payment of charge, including the following:  
(i) the time and manner of payment;  
(ii) pro-rating, refunds, reduction, remission or waiving.

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[Minister's second reading speech made in—  
House of Representatives on 14 September 2016  
Senate on 8 November 2016]

(130/16)

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