



PLANT FREEDOM ALLIANCE

---Celebrating our right to plant culture---



Legal Framework Affecting Plants in Aus

By Stephanie Barlow

Introduction

This document is an attempt to put all the laws that restrict the use and sale of plants in Australia in one place. Although it covers most plants and restrictions, and will give you a good overview, please do not use this as a definitive resource. If you are using, growing or selling a plant you fear may be restricted, do go to the specific legislation in question and read it carefully and completely!

Australia is in many ways one of the world's most restrictive places when it comes to using and cultivating plants. There are a number of ethnobotanical plants that are illegal only in Australia, yet legal all over the rest of the world.

Since our governments claim to be philosophically based on a rational scientific world-view, we should theoretically have laws that are made based on the most up-to-date and rigorous science available. Nonetheless, it seems that our government tends to make laws about herbs, medicines and drugs based on media hype and sensationalism, leading to far greater restrictions than are actually necessary to ensure the safety of the average citizen.

If we want to see laws about plants change to become more rational and less restrictive, we first need to understand the legal framework that already exists.

There are three levels of laws that affect our use of plants:

- State legislation:
 - Each state and Territory has its own statutes pertaining to drugs, poisons, smoking products, and medicines. These are named and divided differently in each state.
- Federal legislation:
 - The Criminal Code Act covers a core range of inebriating plants that are considered illegal in most of the Western world.
 - The Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP) is the most comprehensive list of medicinal, poisonous and psychoactive substances in Australia. It is created and updated by the Therapeutic Goods Administration.
 - The Customs Act controls what can be imported to and exported from Australia. Some things that are legal to possess or consume inside the country cannot be imported.
- International Treaties:
 - International Narcotics Convention
 - International Declaration of Human Rights
 - Codex Alimentarius

The TGA and the SUSMP

Who is the TGA?

The Therapeutic Goods Administration (TGA) is the national regulatory body for therapeutic goods (including medicines, medical devices, gene technology, and blood products) in Australia. It is a Division of the Australian Department of Health and Ageing established under the *Therapeutic Goods Act 1989 (Cth)*. The TGA is responsible for conducting assessment and monitoring activities to ensure that therapeutic goods available in Australia are of an acceptable standard and that access to therapeutic advances is in a timely manner. The TGA regulates import, export and supply of therapeutic goods, as well as the manufacturing and advertising of therapeutic goods.

This includes goods that the public rely on every day, such as sunscreens, through to goods used to treat serious conditions, for example prescription medicines, vaccines, blood products and implants. Essentially, any product for which therapeutic claims are made must be listed, registered or included in the [Australian Register of Therapeutic Goods \(ARTG\)](#) before it can be supplied in Australia. The TGA has the power to cancel a product from the ARTG if their stipulated regulations are not complied with.

Getting goods listed on the ARTG is a lengthy and costly process that involves using clinical trials to confirm any of the claims about or recommended uses for a product.

The Therapeutic Goods Advertising Code Committee monitors and enforces the advertising of therapeutic goods. This includes general information about therapeutic goods, whether you sell them or not. Their definition of 'therapeutic good' is actually quite broad and many people in Australia sell products that would come under this definition without realising it.

The TGA Executive has overall responsibility for the management of the TGA's regulatory functions and activities and works closely with the pharmaceutical industry. Some plant-loving groups in Australia claim that the TGA actively makes laws that repress herbal medicinal products to protect the pharmaceutical industry, but this is unproven.

What is the SUSMP?

The [Therapeutic Goods Act 1989 \(Cth\)](#), and the accompanying schedule, *The Standard for the Uniform Scheduling of Medicines and Poisons* or the [Poisons Standard 2010 \(Cth\)](#) or the SUSMP (they are all different names for the same thing) categorise different plants and chemicals as 'therapeutic goods', 'dangerous drugs', 'poisons' etc.

The SUSMP is the most comprehensive list of plants, medicines, drugs and poisons in the country and is what most legislation, both national and state, look to for guidance when making laws about these things (except for what is considered internationally recognised illicit drugs such as cocaine and marijuana), which are covered by the Drug acts of the various states.

How does the SUSMP become law in the States?

The Federation of Australia saw the unification of diverse British colonies into one country, and a key concern of the different states who agreed to become part of the federation was the preservation of the independence of those states. For this reason, the State governments and the Federal government have power to legislate about different and specific topics in order to maintain a suitable degree of State autonomy. This is outlined in Section 51 of the Australian Constitution.

Any area of law listed under s51 of the Constitution can be legislated by the Federal government. Since drugs, medicines and poisons are not listed in s51, only the State governments can legislate about these issues.

Theoretically, this means that the SUSMP is only a recommendation, and that the State governments must create laws based on these recommendations in order for them to come into effect. Realistically though, the SUSMP acts as law because the State governments all have legislation that says something along the lines of “anything in Schedule 7 of the SUSMP is considered an illegal drug in this state”.

Please note that although the SUSMP is not ‘law’ per se, anything that goes into one of the Schedules automatically becomes law in all the states, without the need for it to be announced in the State gazette.

The Schedules themselves:

Schedule 1 is intentionally left blank. Schedules 5-7 deal with household and industrial chemicals only. That leaves schedules 2, 3, 4, 8, and 9 and Appendix C.

Schedule 2: Pharmacy only - This schedule covers medicines that should be only available from a pharmacy as it may require pharmacy advice (this is a recommendation and not necessary). It is still legal to possess, sell, consume and grow anything in this schedule.

Schedule 3: Pharmacist only - This schedule covers medicines that are available only upon advice from a pharmacist. There are no plants included here.

Schedule 4: Prescription only - This schedule covers medicines that are available from a pharmacy, only with a doctor’s prescription. Ironically, a number of plants are included here even though doctors never prescribe plants. This essentially makes them unavailable.

Schedule 5: Caution - Substances with a low potential for causing harm, the extent of which can be reduced through the use of appropriate packaging with simple warnings and safety directions on the label.

Schedule 8: Controlled Drug – Substances which require restriction of manufacture, supply, distribution, possession and use to reduce abuse, misuse and physical or psychological dependence.

Schedule 9: Prohibited Substance – Substances which may be abused or misused, the manufacture, possession, sale or use of which should be prohibited by law except when required for medical or scientific research, or for analytical, teaching or training purposes with approval of Commonwealth and/or State or Territory Health Authorities.

Appendix C: Is generally used for toxic chemicals that have some research benefits, however a few plants are listed here as well. In most states, Appendix C substances are treated like schedule 9 substances.

Plants Listed in the SUSMP:

Latin name	Common name	Uses	Schedule
Acokanthera ouabaio	Akokanthera	South African arrow poison	s4 in all forms for all uses
Acokanthera schimperi	Akokanthera	South African arrow poison	s4 in all forms for all uses
Abrus precatorius	Jequirity, precatory pea, gidee gidee and many more!	An Indonesian vine most commonly used for its pretty red seeds as beads. These seeds are poisonous, but the leaves are used in both Ayurvedic and Siddha medicine to treat fevers, coughs and colds.	Appendix C seed or root for therapeutic use.
Aconitum spp	Aconite,	The root is analgesic,	S2 in preparations for oral use in

	Monk's hood, Wolfsbane.	anodyne, antirheumatic, diaphoretic, diuretic, irritant and sedative. All parts of the plant are highly toxic, irritating nerve centres, and can even cause death. As such, its use should only be with supervision from an experienced practitioner.	packs each containing 0.2 mg or less of total alkaloids except in packs containing 0.02 mg or less of total alkaloids; or in preparations for dermal use containing 0.02 per cent or less of total alkaloids, in packs each containing 0.2 mg or less of total alkaloids except in packs containing 0.02 mg or less of total alkaloids. S4 for all other quantities and purposes.
Acorus calamus	Sweet flag/ calamus	Long history of use in Chinese and Ayurvedic herbal medicine. Used for its sedative, laxative, diuretic and carminative properties	Appendix C for human therapeutic use
Adonis vernalis	false hellebore/ sweet vernal	cardiac medicine	S4 in all forms for all uses
Atropa belladonna	Deadly nightshade	Although it is poisonous, deadly nightshade has a long history of medicinal use and has a wide range of applications, in particular it is used to dilate the pupils in eye operations, to relieve intestinal colic and to treat peptic ulcers. The plant can be used to treat the symptoms of Parkinson's disease. This is a very poisonous plant, it should be used with extreme caution and only under the supervision of a qualified practitioner. All parts of the plant are analgesic, antidote, antispasmodic, diuretic, hallucinogenic, mydriatic, narcotic and sedative.	s2 for (a) external use in preparations containing 0.03 per cent or less of total solanaceous alkaloids; or (b) for oral use: (i) in undivided preparations containing 0.03 per cent or less of total solanaceous alkaloids when labelled with a dose of 0.3 mg or less of total solanaceous alkaloids and a recommended daily dose of 1.2 mg or less of total solanaceous alkaloids; or (ii) in divided preparations containing 0.3 mg or less of total solanaceous alkaloids per dosage unit, when labelled with a recommended daily dose of 1.2 mg or less of total solanaceous alkaloids. S4 for all other uses / forms
Betel nut	Aka Areca nut, paan etc.	This nut is chewed with spices, lime and wrapped in betel leaves in many parts of India and South East Asia, where it is a cultural	S4 This is an interesting case, as Betel nut is not actually listed, but rather arecoline, the active ingredient in betel nuts is listed.

		<p>tradition. Areca nuts are for their effects as a mild stimulant, causing a warming sensation in the body and slightly heightened alertness, although the effects vary from person to person. The effect of chewing betel leaf and areca nut together is relatively mild, and could be compared to that of drinking a cup of coffee.</p> <p>Some studies done have suggested that regular and excessive chewing of Areca nuts can cause cancer of the mouth, oesophagus and throat, although other studies dispute this.</p>	<p>Previously it was considered that an actual plant had to be listed in order for it to be affected by the SUSMP, but a few years ago the listing on arecoline was used as a reason for restricting the use and import of Betel nut. Whether this principle is now applicable to other plants that contain a listed substance is unclear, but definitely possible.</p>
Bragantia spp containing aristolochic acids			Appendix C for human therapeutic use
Cacalia spp		<i>Cacalia atriplicifolia</i> has been used as a poultice for cuts, bruises and cancers.	Appendix C for human therapeutic use
Cannabis	Pot/ weed / marijuana	Pain, epilepsy, cancer. Used as an inebriant. Used in ritual. ETC!!!	S9 except: processed hemp fibre containing 0.1 per cent or less of tetrahydrocannabinol and products manufactured from such fibre (unscheduled)
Cephaelis acuminata	?		S4 for all uses in all forms, except in preparations containing 0.2 per cent or less of emetine
Cephalis ipecacuanha	Ipecachuana	Very famous in Europe and the Americas from mid 17 th Century to mid 20 th Century. This remedy used to induce vomiting in cases of poisoning.	S4 for all uses in all forms, except in preparations containing 0.2 per cent or less of emetine
Croton tiglium		A fundamental herb in Traditional Chinese Medicine. Used to induce vomiting.	Appendix C for human therapeutic use
Datura spp.		When smoked or drunk as a tea can induce powerful hallucinations and delusions.	s2 for oral use: (a) in undivided preparations containing

		(Not recommended!) Some traditional uses as an aphrodisiac. Quite toxic.	0.03 per cent or less of total solanaceous alkaloids when labelled with a dose of 0.3 mg or less of total solanaceous alkaloids and a recommended daily dose of 1.2 mg or less of total solanaceous alkaloids, or (b) in divided preparations containing 0.3 mg or less of total solanaceous alkaloids per dosage unit when labelled with a recommended daily dose of 1.2 mg or less of total solanaceous alkaloids, Otherwise s4 for all other uses/ forms
Datura stramonium And / or Datura Tatula		As above	Unscheduled for smoking or burning purposes S2 for oral use: (a) in undivided preparations containing 0.03 per cent or less of total solanaceous alkaloids when labelled with a dose of 0.3 mg or less of total solanaceous alkaloids and a recommended daily dose of 1.2 mg or less of total solanaceous alkaloids; or (b) in divided preparations containing 0.3 mg or less of total solanaceous alkaloids per dosage unit when labelled with a recommended daily dose of 1.2 mg or less of total solanaceous alkaloids. Otherwise s4 for all other uses / forms.
Delphinium staphisagria		Used since Greek Antiquity to kill body lice. Also considered to kill parasites and worms. Violently emetic and	Unscheduled for preparations containing 0.2 % or less of <i>Delphinium staphisagria</i> ; Otherwise, S2 for all other

		cathartic.	uses / forms.
Duboisia leichhardtii And Duboisia myoporoides	Pituri	An indigenous Australian plant, used by Indigenous Australian peoples as a chew or snuff. Contains nicotine and scopolamine.	S2 for oral use: (a) in undivided preparations containing 0.03 per cent or less of total solanaceous alkaloids when labelled with a dose of 0.3 mg or less of total solanaceous alkaloids and a recommended daily dose of 1.2 mg or less of total solanaceous alkaloids; or (b) in divided preparations containing 0.3 mg or less of total solanaceous alkaloids per dosage unit when labelled with a recommended daily dose of 1.2 mg or less of total solanaceous alkaloids. Otherwise, s4 in all other forms / uses.
Erythroxylum coca and other cocaine-containing coca species	Coca	Known for its cocaine content, the Coca plant is extremely important in the social, ritual, cultural and spiritual traditions of the Indigenous people of the Andes. It is a stimulant, used for altitude sickness, and can induce feelings of euphoria. It helps you work long and hard with a reduced need for food, water or rest.	S9 in all forms for all uses.
Eupatorium cannabinum	Hemp agrimony	Maude Grieve claims: "Alternative and febrifuge. Though now little used medicinally, herbalists recognize its cathartic, diuretic and anti-scorbutic properties, and consider it a good remedy for purifying the blood, either used by itself, or in combination with other herbs." Contains pyrrolizidine alkaloids (like comfrey et al).	Appendix C for human therapeutic use

Gelsemium sempervirens	False Jasmine	Possibly the most powerful central nervous system depressor. Extremely helpful for pain and muscular spasms. All parts are considered highly toxic and an incorrect dose can easily be lethal.	S2 for all uses and in all forms
Heliotropium spp	Heliotrope	Used for fever. The seeds are poisonous.	Appendix C for human therapeutic use
Hyoscyamus niger	Henbane	Extensive history of use in European herbal medicine, especially for pain. All parts of the plant are considered toxic and can easily cause death.	Unscheduled when in a pack containing 0.03mg or less total solanaceous alkaloids. S2 for oral use: (a) in undivided preparations containing 0.03 per cent or less of total solanaceous alkaloids when labelled with a dose of 0.3 mg or less of total solanaceous alkaloids and a recommended daily dose of 1.2 mg or less of total solanaceous alkaloids; or (b) in divided preparations containing 0.3 mg of total solanaceous alkaloids or less per dosage unit when labelled with a recommended daily dose of 1.2 mg or less of total solanaceous alkaloids,
Juniperus sabine [savine]	Savina	Powerful irritant used for external problems. Internally, a very strong emmenagogue, but can easily cause gastroenteric collapse and death.	Appendix C for human therapeutic use
Ligularia dentate	Summer ragwort, leopard plant	Contains pyrrolizidine alkalkoids (like comfrey et al).	Appendix C for human therapeutic use
Lobelia inflata	Lobelia	One of the star herbal medicines of the Thomsonian school of American herbalism (19 th Century). Used as an emetic to induce purging.	S2 for all uses except for smoking or burning

Nerium oleander	Oleander	Poisonous. No known use.	S4 for all uses in all forms.
Piper methysticum	Kava	Kava is a crucial inebriating plant in Pacific Islander cultures. It causes muscle relaxation, pleasant mood and social behaviour. Medicinally used for anxiety, insomnia, urinary tract infections and pain, including arthritic pain.	S4 for all uses and in all forms UNLESS included on the Australian Register of Therapeutic Goods in preparations: for dermal use, rectal, oral or vaginal use; for oral use in teabag, tablet or capsule with a maximum daily dose of 250mg or less of kavalactones / 3g of dried rhizome.
Podophyllum emodi And/ or Podophyllum peltatum	Himalayan May Apple And/ or May Apple	Used for cancer, rheumatism and as a purgative. Also considered toxic, so must be used with care. Affects mitosis of cells.	s2 in preparations containing 10 per cent or less of podophyllin for human use for the treatment of warts other than anogenital warts. S4 for any internal use or for use on anogenital warts, or any other purpose except in s2.
Pteridium spp	Bracken	Used as a food and medicine in many traditional cultures, but there is some concern that overuse can cause stomach cancers. Medicinal uses: poultice for broken bones and sores, shoots as diuretic and refrigerant.	Appendix C for human therapeutic use
Pulmonaria spp	lungwort	Excellent remedy for chronic coughs, chronic bronchitis and other lung conditions. High mucilage content. No known hazards	Appendix C for human therapeutic use
Rauwolfia serpentine	Snakeroot	Used for high blood pressure and mental disorders	S4 for any use in any form
Rauwolfia vomitoria	Poison devil's pepper	Used for high blood pressure and mental disorders	S4 for any use in any form
Schoenocaulon officinale	Sabadilla	Seeds used as a pesticide	S4 for any use in any form
Scopolia carniolica	Scopolia	Antispasmodic, hypnotic, mydriatic, narcotic	S4 for any therapeutic use in any form
Senecio spp	Ragworts, groundsels	Some used for strengthening eyes, some used for fever. All contain some pyrrolizidine alkaloids, considered to have	Appendix C for human therapeutic use

		a cumulative toxicity on the liver.	
Symphytum spp	Comfrey	Extremely useful medicinal plant, used for centuries. Externally as a poultice, used for bruises, sprains, strains, varicose veins, broken bones etc. Internally used as an anodyne, astringent (mild), demulcent, emollient, expectorant, haemostatic, refrigerant, vulnerary. Contains some pyrroizilidine alkaloids that are considered to have a cumulative toxic effect on the liver, though this is mainly the roots.	Appendix C for human therapeutic use or cosmetic use except when in s5.
Tanacetum vulgare	Tansy	Used for worms, blood pressure and as an abortifacient. Can be toxic	S4 for any use in any form
Tussilago farfara	Coltsfoot	Excellent lung herb used for centuries in European herbalism. Useful in asthma, chronic cough, chronic bronchitis and virtually all other lung complaints. Contains pyrroizilidine alkaloids.	Appendix C for human therapeutic use

Essential Oil Restrictions:

The TGA also lists a number of essential oils in schedules 5 and 6, which carries restrictions on the quantity of oil that can be in a bottle, and what kinds of warnings the bottle must carry.

These essential oils are listed:

- Basil Oil
- Bay Oil
- Bergamot oil
- Cajeput oil
- Camphor
- Cassia oil
- Clove oil
- Cinnamon leaf oil
- Eucalyptus oil
- Lemon oil
- Lime oil
- Marjoram oil

- Nutmeg oil
- Orange oil (bitter)
- Pennyroyal oil
- Pine oils
- Sage oil (Dalmatian)
- Sassafras oil
- Star Anise Oil
- Tea Tree Oil (melaleuca)
- Thyme Oil

- ***State Drug & Therapeutic Goods Laws***

- A general point to understand about the State Drug and Therapeutic laws is that whereas the Acts dealing with poisons and therapeutic goods carry civil penalties, if you break a law in the one of the drugs acts, then this is a criminal offence. This means that for the first category you are looking at hefty fines, convictions and a record, however for the second category you are facing jail time as well.

- **NSW**

- The two main acts of concern are: the [*Drugs Misuse and Trafficking Act 1985*](#) and the [*Poisons and Therapeutic Goods Act 1966*](#).
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- The NSW *Poisons and Therapeutic Goods Act 1966 NSW* (TGAct 1966 NSW) specifically incorporates only schedules 2 – 8 of the SUSMP via the *Poisons and Therapeutic Goods Regulation*, however s9 substances are included in the definition of the word ‘poison’ in this Act. This implies that general restrictions on poisons automatically apply to s9 substances, but these carry much lighter penalties and restrictions than are usually seen for s9.
- The [*Poisons and Therapeutic Goods Regulation*](#)(2008) is the place where all the restrictions on different schedules are explained.
- Some main points:
 - All scheduled substances have labelling and packaging restrictions as per the SUSMP; s3, s6 and s7 have storage restrictions too
 - S3 substances must be supplied with the dealer’s name and address
 - Only authorised practitioners may prescribe s2 or s3 substances
 - S3 substances must be personally supplied by a pharmacist to only authorised practitioners or to someone with a prescription
 - Prescriptions for restricted substances in general can only be issued by an authorised practitioner only (this seems to be only pharmacists, doctors, nurses, vets and dentists, not herbalists), for appropriate purposes only.
 - In general, it seems that all the SUSMP restrictions apply, as well as some extra storage restrictions.
- The place that s9 is specifically dealt with is in the Drugs Misuse and Trafficking Act. S9 substances are not automatically incorporated into either of the legislations, but rather are eventually included in the list of scheduled substances under the *Drugs Misuse and Trafficking Act 1985 NSW* (DMT Act NSW). Unlike the way the other states operate, where changes to any schedule in the SUSMP are virtually automatic, this process takes time, and requires an order to be made to amend the DMT Act NSW.
- That order and its commencement must be gazetted. After this happens the substance and any manufacture, possession, supply or sale of that good is treated under the criminal legislation and code as mandated by the DMT Act NSW.

- Please note that Appendix C (SUSMP) substances are treated as being part of s9 in NSW.
- According to the DMT Act NSW, it is illegal to possess, manufacture (or take part in any step in the process of manufacture), sell, or advertise any substance listed in either the [SUSMP \(Schedule 9\)](#) or in [Schedule 1 of the Drugs Misuse Act](#). Herbal or other preparations containing traces of listed substances are not exempt.
- In 2013, new provisions were crafted outlaw what have come to be known as ‘designer drugs’. These extremely strict provisions essentially make it illegal to sell or advertise any substance that might cause (amongst other things) [a significant change to, motor function, thinking, behaviour, perception, awareness or mood](#).
- According to letters received by the Happy Herb Company from the NSW state government upon enquiry, herbal extracts and herbs are exempt from having these new provisions applied to them.

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• **Victoria**

- Drugs and poisons are controlled in Victoria under the [Drugs, Poisons and Controlled Substances Act 1981](#) and the [Drugs, Poisons and Controlled Substances Regulations 2006](#), and the Therapeutic Goods (Victoria) Act 2010.
- All of the SUSMP schedules are included in the Therapeutic Goods Act as they appear in the commonwealth legislation.
- An interesting point is that under the Therapeutic Goods (Victoria) Act, any offences against the Act are treated as offences against the Commonwealth, rather than against Victoria. This means that federal courts would pursue the matter, which costs more and the penalties can be higher.
- Any reference in either document to ‘poison’ includes all substances scheduled in the SUSMP, unless a specific schedule is mentioned.
- Recently, the definition of “drug of dependence” was expanded to include not just substances listed in column 1 part 1 of this Act’s schedule 11 but also any salts, derivatives or isomers of those listed substances. This change is unlikely to affect plants in their natural state.
- There is a difference with Victorian law and that of the other states: Vic legislation specifically names herbal medicine practitioners and Chinese medicine practitioners as being allowed to sell substances that are listed in Schedule 1 of the Victorian Act, as long as they are therapeutically necessary.

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• **Queensland**

- According to the [Health \(Drugs and Poisons\) Regulation \(1996\)](#), it states specifically in Part 4 Section 217 that a person cannot legally buy, own or sell a regulated substance that is classified as a Poison. Poison is defined as an s2, s3, s5, s6, s7, s9 or appendix C substance.
- There is also an appendix that lists ‘drugs of dependence’, none of which appear to be plants, however there may be some chemicals listed that are contained in plants.

- The [Drugs Misuse Act 1986](#) is the main legislation regarding drugs in Queensland. Section 5 makes it an offence for anyone to carry on the business of unlawfully trafficking dangerous drugs. The maximum penalty varies from 20 – 25 years, depending on the type of drug.
- [Section 4](#) *Drugs Misuse Act 1986* defines *dangerous drug* as -
 - a) a thing specified in the Drugs Misuse Regulation 1987, schedule 1 or 2 or, where the thing so specified is a plant, any part of the thing; and
 - b) a thing being a salt, derivative or stereo-isomer of a thing referred to in paragraph (a) or any salt of such a derivative or stereo-isomer; and
 - c) a thing that-
 - (c.i.1.a.i) has a chemical structure that is substantially similar to the chemical structure of a thing referred to in paragraph (a) or (b); or
 - (c.i.1.a.ii) has a pharmacological effect that is substantially similar to the pharmacological effect of a thing referred to in paragraph (a) or (b); or
 - (c.i.1.a.iii) is intended to have a pharmacological effect that is substantially similar to the pharmacological effect of a thing referred to in paragraph (a) or (b);
- and includes a thing referred to in paragraph (a), (b) or (c) that is contained in a natural substance or in any preparation, solution or admixture.
- If a thing is intended to have a pharmacological effect that is substantially similar to the pharmacological effect of a thing referred to in paragraph (a) or (b), it is also considered a drug.
- **This definition of dangerous drug was expanded in 2013 and potentially has severe effects on plants. Essentially, in the QLD government's attempt to prevent the rise of designer drugs they have made the definition of 'drug' so vague as to include virtually any plant that has any kind of mood-altering effect. These recent changes expanding the meaning of 'drug' has not actually been tested in court, so whether or not this would be applied to whole plant preparations is not actually clear.**

- **South Australia**

- Substances that are controlled under the Controlled Substances legislation include:
 - scheduled medicines including prescription medicines, pharmacist only medicines and pharmacy medicines
 - some poisons such as weed killers and pesticides
 - some volatile solvents in products such as glues, lighter fluid and petrol
 - illegal drugs such as cannabis, ecstasy and heroin
 - plants such as opium poppies
 - precursor chemicals such as pseudoephedrine, that are used to make drugs such as methamphetamine.
- They do not include herbs or herbal preparations.
- Certain defined poisons, devices, volatile solvents, pesticides, drugs, plants and precursors are controlled under the [Controlled Substances Act 1984](#) and regulations. The poisons which are controlled under the Act are all those listed in the SUSMP. The controls over poisons are detailed in the [Controlled Substances \(Poisons\) Regulations 2011](#).

- The controlled drugs, controlled plants and controlled precursors that are controlled under the Act are listed in Schedules 1, 2 & 3 of the [Controlled Substances \(Controlled Drugs Precursors and Plants\) Regulations 2000](#).
 - One novel aspect of the Controlled Drugs legislation in SA is (under s 33LE *Controlled Substances Act 1984*) is to make it illegal for a supplier to use the name of any controlled drug in reference to any product (even if to differentiate that product as being a 'legal alternative' to the controlled drug).
 - This means no retailer can use the actual name of any controlled drug such as: cocaine, cannabis, LSD, speed, meth, weed, pot, coke, opium, DMT, ecstasy etc in any association with a product that infers it is similar to that substance or is an alternative to that named controlled substance.
 - As in Victoria and Tasmania, offences against this act are considered offences against the Commonwealth Therapeutic Goods Act, which means they are handled by the Federal courts.
- **Western Australia**
 - The *Misuse of Drugs Act 2010* outlaws the manufacture, possession, use, or sale of *category 1 & category 2* items. These categories are outlined in the *Misuse of Drugs Regulation*. Substances need to be individually incorporated into this legislation to be illegal (there is no automatic incorporation of substances)
 - The recent *Medicines, Poisons and Therapeutic Goods Act 2013* simply brings WA into line with many other states in Australia regarding controlled substances and poisons. It provides that all the substances listed at the Commonwealth level shall also enjoy listing as a prohibited substance in WA. It makes it prohibited to sell, manufacture, distribute, supply any poison unless licensed to do so. Every person who contravenes or fails to comply with any provision of this Act or any regulation made under this Act commits an offence against this Act and if no penalty is expressly provided with respect to that offence is liable on conviction to a penalty not exceeding \$5 000 and, if the offence is a continuing offence, to a daily penalty not exceeding \$500.
 - NOTE: Under the new legislation an act of 'supply' includes agreeing to supply, advertising, or possession for the purpose of supply
 - **Tasmania**
 - The Commonwealth act is fully incorporated into Tasmanian legislation, and all the penalties apply in the same way. Any offence against this act is considered an offence against the Commonwealth, similarly to Victoria, and dealt with by the Federal courts.
 - **Australian Capital Territory**
 - Medicines, Poisons and Therapeutic Goods Act (A.C.T) 2008

- It appears that the ACT act effectively incorporates the TGAct 1989 and the SUSMP as the law of the ACT, although there are some situations where specific differentiation is made, in which case the ACT law overrides the SUSMP.
- Furthermore, SUSMP appendices (and notably appendix C) are expressly referred to noting that derivatives of the prohibited substance may also fall within the scope of the act (see meaning s.13 below).
- "prohibited substance" means a substance to which the [medicines and poisons standard](#), schedule 9 [applies](#).

- Any substance listed in any of the SUSMP schedules cannot be supplied by someone who does not have appropriate licences to do so, nor to someone who does not have an appropriate prescription or similar.
- It is an offence to possess, use, sell or manufacture a prohibited substance.
- [The Criminal Code \(ACT\) 2002](#) could also apply with some s9 substances being individually added to the code, available here: http://www.austlii.edu.au/au/legis/act/consol_reg/ccr2005206/sch1.html
- If substances are included in the schedule, charges may be brought under both the MPTGAct (outlined above) and under the Criminal Code 2002 for manufacture, supply, trafficking, sale and possession. Penalties available in Ch. 6 of the CCAct 2002 (ACT) available at: http://www.austlii.edu.au/au/legis/act/consol_act/cc200294/

- **Northern Territory**

- [Misuse of Drugs Act \(1990\)](#)

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- Dangerous drug means a substance or thing specified in Schedule 1 or 2 of the NT Act or, where the substance or thing so specified is a prohibited plant, any part of the plant, being a part not specified in Schedule 1 or 2, from which a substance or thing referred to in Schedule 1 or 2 can be extracted or obtained. These schedules are not the SUSMP schedules, but rather the schedules in the NT Act.
- The [Poisons and Dangerous Drugs Act](#) also regulates plants. In this act, "poison" means a substance specified in Schedule 1, 2, 3, 4, 6, 7, 8 or 9 or in Appendix C of the SUSMP.
- Similar restrictions apply to those schedules as are in the Therapeutic Goods Act (Cth).

- **State Tobacco Acts**

- A major area of law that affects plants in Australia is that that deals with tobacco and smoking products. Tobacco products are heavily regulated by State legislation, however, the extent to which non-tobacco smoking products are regulated changes state by state. In some states, the definition of 'Tobacco product' in the act includes non-tobacco smoking herbs, which means that technically all of the same licensing, display, packaging and sale restrictions apply to, eg, Lion's Tail that is sold for smoking, as do to tobacco.

- **NSW**

- The [Public Health \(Tobacco\) Act 2008](#) is the principal legislation.

- The [Public Health \(Tobacco\) Regulation 2009](#) supports the Act.
- **Main points:**
- **Note that in NSW, non-tobacco smoking products are not lumped in with tobacco products, however the two acts above contain provisions that specifically deal with non-tobacco smoking products.**
- Any herbal product that is sold with a recommendation (verbal or on packaging), or a herbal product that is obviously being used for smoking will fall under this category. Since virtually all herbs that can be smoked are also medicinal herbs with applications as a tea, the division between smoking herbs and tea herbs is much blurrier than legislation allows for.
- No display of tobacco products, non-tobacco smoking products and smoking accessories in shops – shopkeepers can only show these items on request from a customer
- Minors cannot purchase tobacco products or non-tobacco smoking products
- Police can seize tobacco products (including herbal smoking products) from someone using or possessing them in a public space if they are reasonably sure that the person is a minor
- One point of sale for tobacco products and non-tobacco smoking products in retail outlets
- A licence is only required for sale of tobacco, not herbal smoking products

- **VIC – Tobacco Legislation**

- The [Tobacco Amendment \(Protection of Children\) Act 2009](#) is the principal legislation.
- The [Tobacco Regulations 2007](#) supports the Act.
 - **Main points:**
 - Victorian Legislation and Regulation regarding Tobacco and smoking products are far less onerous than are similar provisions in many other Australian jurisdictions. There is no longer a requirement to hold a licence to sell tobacco or tobacco products in Victoria.
 - These Acts deal specifically with tobacco and do not impose restrictions on herbal smoking products. This means that a herb will be restricted because it is listed in the SUSMP or the State drug act, not because it is sold for smoking purposes.
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- **Queensland – Tobacco legislation**

- The [Tobacco and Other Smoking Products Act 1998](#) is the principal legislation.
- The [Tobacco and Other Smoking Products Regulation 2010](#) supports the Act.
 - **Main Points:**
 - **The Queensland Government has the nation's toughest anti-smoking laws. Be aware that the definition of 'tobacco product' includes non-tobacco herbal smoking products.**
 - Any person selling tobacco products (or herbal smoking products) must have a tobacco seller's licence or be an employee of the person who holds a tobacco seller's licence
 - no sales of tobacco/ herbal smoking products to children under 18 years of age

- restrictions on how tobacco products can be displayed at retail outlets: all smoking products must be hidden from display and shown to a customer only on request
- no tobacco advertising or competitions; this includes herbal smoking products

- **South Australia – Tobacco legislation**

- The [Tobacco Products Regulation Act 1997](#) is the principal legislation.
- The [Tobacco Products Regulations 2004](#) & [Tobacco Products \(Smoking Bans in Public Areas - Longer Term\) Regulations 2012](#) support the Act.

- **Main Points:**

- **South Australia also defines tobacco products as including any product that does not contain tobacco but is designed for smoking, meaning any herb sold for or labelled as being for smoking purposes.**
- Anyone who wishes to sell a tobacco product in South Australia must have a license
- A vendor must not sell a tobacco product by retail if the order for the tobacco product was placed by mail, telephone, facsimile transmission or internet or other electronic communication.
- No customer loyalty programs, rewards or promotions can be done using tobacco products
- Cigarettes, including herbal cigarettes, must be sold in packages of 20 or more.
- All activities intended to publicise or promote the purchase or use of tobacco products are banned.
- It is an offence to sell or supply tobacco products to a minor

- **Western Australia – Tobacco legislation**

- The [Tobacco Products Control Act 2006](#) is the principal legislation.
- The [Tobacco Products Control Regulations 2006](#) support the Act.

- **Main Points:**

- In Western Australia, Tobacco products are defined in such a way as to include any herbal product that is designed or labelled for smoking
- retailers, wholesalers, and indirect tobacco product sellers must hold an appropriate licence..
- Retail outlets in Western Australia are prohibited from displaying tobacco products and smoking implements. This means that tobacco products, including individual packets and cartons as well as smoking implements cannot be seen by the public from inside or outside the premises.
- Supply to anyone under 18 is illegal.
- Advertisements about tobacco products cannot be made
- Any premises selling tobacco products must display warning signs (addiction hotline, etc)

- Cigarettes (tobacco or herbal) can only be sold in packets of 20 or more
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- **Tasmania – Tobacco legislation**

- Part 4 of the [Public Health Act 1997](#) & the [Public Health Amendment \(Smoke-Free Areas\) Act 2001](#) are the principal Acts.
- The [Public Health \(Tobacco Seller's Licence\) Regulations 2009](#) & the [Public Health \(Tobacco Advertisements\) Order 2012 \(S.R. 2012, No. 17\)](#) support the Act.

- **Main Point:**

- The definition of tobacco products does NOT include herbal smoking products, so the restrictions placed upon tobacco products do not extend to non-tobacco herbal smoking products.
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- **Australian Capital Territory – Tobacco legislation**

- The [Tobacco Act 1927](#) is the principal Act.
- The [Magistrates Court \(Tobacco Infringement Notices\) Regulation 2010](#) (plus other regulations) supports the Act.

- **Main Points:**

- **The ACT is less confusing in its legislation, as it talks about smoking products, which includes tobacco products and non-tobacco herbal smoking products**
 - In order to sell *smoking products* in the ACT, a license is required.
 - Tobacco must not be supplied to anyone under 18 (the specific use of the word tobacco here seems to suggest that herbal smoking products *can* be sold to minors!)
 - It is illegal to sell, distribute or give away an item or entitlement in association with a smoking product,
 - Cigarettes (herbal or tobacco) can only be sold in packets of 20 or more
 - Smoking products must be kept out of public view except on request by the customer
 - Advertising of smoking products is illegal in the ACT however ‘a factual statement’ can be made. For example, *milk, cigarettes, newspapers, available here*; or, *We stock smoking implements, bongs & herbal smoking products*, etc
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- **Northern Territory – Tobacco legislation**

- The [Tobacco Control Act \(NT\)](#) is the principal Act.
- The [Tobacco Control Regulations 2002, No. 59](#) support the Act.

▪ **Main Points:**

- The legislation defines a ***tobacco product*** as any product which is intended to be used for human consumption by smoking
- Retailers must ensure that all tobacco products, including individual packets, cartons, single cigars and loose tobacco cannot be seen by the public.
- Tobacco products cannot be sold or supplied to a minor.

- ***National Customs Act***

- There are also restrictions placed on the importation of herbal products into Australia, that in some ways differ from the restrictions placed on use or sale within the country. For example, Kava is a restricted import, and its sale is regulated strictly, but its use is not restricted.
- Since Customs falls under s52 of the Constitution, it is a federal area of law. This means that the penalties for customs breaches are dealt with by the federal police and courts and are generally more severe than state law penalties.
- The list of prohibited imports is contained in the [*Customs \(Prohibited Imports\) Regulation \(1956\)*](#).
- Some of the plants or plant constituents contained in this list are:
 - Cannabis,
 - Coca leaves,
 - Cannabis resin,
 - Cathinone (unclear as to whether this includes the plant Khat, which contains Cathinones, or just the isolated substance itself),
 - ibogaine,
 - isosafrole,
 - ephedrine,
 - heroin,
 - kava,
 - mescaline,
 - muscimol (amanitas),
 - morphine,
 - poppy straw,
 - psilocine (including all fungi that contain psilocine),
 - psilocybin (including all fungi that contain psilocybin), seeds of the plant papaver somniferum.
 - Yohimbine
 - Anything containing calamus or oil of calamus
 - Preparations that purport to be a remedy for drunkenness, alcoholic habit or drug habit.
 - Plants and parts of plants of the following genus or species: *Argyrea nervosa*; *Ephedra sinica*; *Ipomoea hederacea*; *Ipomoea tricolor*; *Ipomoea violacea*; *Lophophora*; *Mitragyna speciosa*; *Papaver bracteatum*; *Piptadenia peregrina* (*Anadenanthera peregrina*); *Rivea corymbosa*; *Salvia divinorum*
 - Abortifacients, that is, substances that purport to produce abortion.

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