

South Australia

Controlled Substances (Serious Drug Offences) Amendment Act 2005

An Act to amend the *Controlled Substances Act 1984*; and to make related amendments to the *Correctional Services Act 1982*, the *Criminal Assets Confiscation Act 2005*, the *Criminal Law Consolidation Act 1935*, the *Criminal Law (Sentencing) Act 1988* and the *Listening and Surveillance Devices Act 1972*.

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The Parliament of South Australia enacts as follows:**Part 1—Preliminary****1—Short title**

This Act may be cited as the *Controlled Substances (Serious Drug Offences) Amendment Act 2005*.

2—Commencement

- (1) Subject to this section, this Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to Schedule 1 Part 3.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Controlled Substances Act 1984***4—Amendment of section 4—Interpretation**

- (1) Section 4(1)—after the definition of *child* insert:

commercial quantity of a controlled drug, controlled precursor or controlled plant means—

- (a) in relation to a controlled drug contained in a mixture—
 - (i) a quantity of the drug that equals or exceeds the amount prescribed as a commercial quantity for the drug in its pure form; or
 - (ii) a quantity of the mixture that equals or exceeds the amount (if any) prescribed as a commercial quantity for any mixture containing the drug; or

- (b) in any other case—a quantity of the drug, precursor or plant that equals or exceeds the amount prescribed as a commercial quantity for the drug, precursor or plant (as the case may be) in its pure form;

controlled drug means—

- (a) a drug of dependence; or
- (b) a substance declared by the regulations to be a controlled drug for the purposes of this Act,

but does not include a controlled plant;

controlled plant means a growing cannabis plant or a cutting of a cannabis plant (provided that the cutting has been planted or otherwise placed in a growing medium) or any other plant declared by the regulations to be a controlled plant for the purposes of this Act;

controlled precursor means a substance declared by the regulations to be a controlled precursor for the purposes of this Act;

cultivate a controlled plant means—

- (a) plant a seed, seedling or cutting of the plant or transplant the plant; or
- (b) nurture, tend or grow the plant; or
- (c) harvest the plant (including pick any part of the plant or separate any resin or other substance from the plant); or
- (d) dry the harvested plant or part of the plant; or
- (e) take part in the process of cultivation of the plant;

- (2) Section 4(1), definition of ***dentist***—delete "*Dentists Act 1984*" and substitute:

Dental Practice Act 2001

- (3) Section 4(1)—after the definition of ***the Health Commission*** insert:

large commercial quantity of a controlled drug, controlled precursor or controlled plant means—

- (a) in relation to a controlled drug contained in a mixture—
 - (i) a quantity of the drug that equals or exceeds the amount prescribed as a large commercial quantity for the drug in its pure form; or
 - (ii) a quantity of the mixture that equals or exceeds the amount (if any) prescribed as a large commercial quantity for any mixture containing the drug; or
- (b) in any other case—a quantity of the drug, precursor or plant that equals or exceeds the amount prescribed as a large commercial quantity for the drug, precursor or plant (as the case may be) in its pure form;

manufacture, in relation to a controlled drug means—

- (a) undertake any process by which the drug is extracted, produced or refined; or

- (b) take part in the process of manufacture of the substance;
- (4) Section 4(1), definition of *nurse*—delete "1984" and substitute:
1999
- (5) Section 4(1), definition of *possession*—delete the definition and substitute:
possession of a substance or thing includes—
- (a) having control over the disposition of the substance or thing; and
 - (b) having joint possession of the substance or thing;
- (6) Section 4(1), definition of *produce*—delete the definition and substitute:
product of a controlled plant includes—
- (a) a seed of the plant; and
 - (b) a part of the plant (whether live or dead); and
 - (c) a substance separated from the plant;
- (7) Section 4(1), definition of *prohibited substance*—delete the definition
- (8) Section 4(1), definition of *sell*—delete the definition and substitute:
sell means sell, barter or exchange, offer or agree to sell, barter or exchange or expose for sale, barter or exchange;
- (9) Section 4(1), definition of *simple possession offence*—delete the definition and substitute:
simple possession offence means an offence against section 33L(1) other than an offence relating to a prescribed controlled drug;
- (10) Section 4(1), definition of *supply*—delete the definition and substitute:
supply means provide or distribute or offer to provide or distribute;
- (11) Section 4(1)—after the definition of *therapeutic substance* insert:
traffic in a controlled drug means—
- (a) sell the drug; or
 - (b) have possession of the drug intending to sell it; or
 - (c) take part in the process of sale of the drug;
- trafficable quantity* of a controlled drug or controlled plant means—
- (a) in relation to a controlled drug contained in a mixture—
 - (i) a quantity of the drug that equals or exceeds the amount prescribed as a trafficable quantity for the drug in its pure form; or
 - (ii) a quantity of the mixture that equals or exceeds the amount (if any) prescribed as a trafficable quantity for any mixture containing the drug; or
 - (b) in any other case—a quantity of the drug or plant that equals or exceeds the amount prescribed as a trafficable quantity for the drug or plant (as the case may be) in its pure form;

(12) Section 4(3)—delete subsection (3) and substitute:

- (3) Subject to the regulations, an analogue of a controlled drug (not being an analogue that is itself declared by regulation to be a drug of dependence or a controlled drug) is by virtue of this subsection a controlled drug.
- (4) For the purposes of this Act, a person takes part in the process of sale, manufacture or cultivation of a controlled drug or controlled plant if the person directs, takes or participates in any step, or causes any step to be taken, in the process of sale, manufacture or cultivation of the drug or plant.
- (5) For the purposes of this Act, a step in the process of sale of a controlled drug includes, without limitation, any of the following when done for the purpose of sale of the drug:
 - (a) storing the drug;
 - (b) carrying, transporting, loading or unloading the drug;
 - (c) packaging the drug, separating the drug into discrete units or otherwise preparing the drug;
 - (d) guarding or concealing the drug;
 - (e) providing or arranging finance (including finance for the acquisition of the drug);
 - (f) providing or allowing the use of premises or jointly occupying premises.
- (6) For the purposes of this Act, a step in the process of manufacture of a controlled drug includes, without limitation, any of the following when done for the purpose of manufacture of the drug:
 - (a) acquiring equipment, substances or materials;
 - (b) storing equipment, substances or materials;
 - (c) carrying, transporting, loading or unloading equipment, substances or materials;
 - (d) guarding or concealing equipment, substances or materials;
 - (e) providing or arranging finance (including finance for the acquisition of equipment, substances or materials);
 - (f) providing or allowing the use of premises or jointly occupying premises.
- (7) For the purposes of this Act, a step in the process of cultivation of a controlled plant includes, without limitation, any of the following when done for the purpose of cultivation of the plant:
 - (a) acquiring the plant or equipment, substances or materials;
 - (b) storing the plant or equipment, substances or materials;
 - (c) carrying, transporting, loading or unloading the plant or equipment, substances or materials;

- (d) guarding or concealing the plant or equipment, substances or materials;
 - (e) providing or arranging finance (including finance for the acquisition of the plant or equipment, substances or materials);
 - (f) providing or allowing the use of premises or jointly occupying premises.
- (8) In subsection (7)—
materials includes seeds, seedlings and cuttings.

5—Amendment of section 6—The Controlled Substances Advisory Council

- (1) Section 6(2)—delete "9 members" and substitute:
10 members
- (2) Section 6(2)—after paragraph (c) insert:
 - (ca) 1 is a legal practitioner who, in the opinion of the Minister, has experience in the administration and operation of this Act; and

6—Amendment of section 10—Conduct of business

- Section 10(3)—delete "Five" and substitute:
Six

7—Amendment of section 12—Declaration of poisons, prescription drugs, drugs of dependence, controlled drugs etc

- (1) Section 12(4)—delete "prohibited substance" and substitute:
controlled drug
- (2) Section 12—after subsection (4) insert:
 - (4a) The Governor may, by regulation, declare, individually or by class, a substance that in the Governor's opinion may be used in the manufacture of a controlled drug to be a controlled precursor for the purposes of this Act.
 - (4b) The Governor may, by regulation, declare, individually or by class, a plant that in the Governor's opinion has the potential if it, or any product of it, is smoked or consumed by, or administered to, humans to lead to dependence in humans to be a controlled plant for the purposes of this Act.

8—Amendment of section 13—Manufacture and packing

- (1) Section 13(1)—delete ", produce"

(2) Section 13—after subsection (3) insert:

(4) In this section—

manufacture—

- (a) in relation to a substance, means undertake any process by which the substance is extracted, produced, refined, separated into discrete units or otherwise prepared; and
- (b) in relation to a device, means undertake any process by which the device is produced.

9—Amendment of section 18—Sale, supply, administration and possession of prescription drugs

Section 18(3)—after "prescription drug" insert:

(not being a drug of dependence)

10—Insertion of section 18A

After section 18 insert:

18A—Restriction of supply of drug of dependence in certain circumstances

- (1) A medical practitioner or dentist must not prescribe any drug of dependence for, or supply any drug of dependence to—
 - (a) a person for regular use by the person during a period exceeding 2 months, or during a period that, together with any other period for which a drug of dependence has, to the practitioner's or dentist's knowledge, been prescribed or supplied by a medical practitioner or dentist, would result in drugs of dependence being regularly used by the person during a period exceeding 2 months; or
 - (b) a person who the practitioner or dentist knows or has reasonable cause to believe is dependent on drugs,

unless the practitioner or dentist prescribes or supplies the drug in accordance with an authority granted by the Minister under this section or in circumstances that are exempted from this subsection by the regulations.

Maximum penalty: \$4 000 or imprisonment for 4 years.

- (2) For the purposes of this section, a person is dependent on drugs if—
 - (a) the person—
 - (i) has acquired, as a result of the repeated administration of prescription drugs or controlled drugs, an overpowering desire for the continued administration of such drugs; and
 - (ii) is likely to suffer mental or physical distress or disorder on cessation of the administration of such drugs; or

- (b) the person has a history of consuming or using prescription drugs or controlled drugs in a quantity or manner that—
 - (i) in the case of drugs lawfully supplied to the person—is contrary to the prescribing medical practitioner's or dentist's instructions relating to consumption or use of the drug; and
 - (ii) in any case—presents a risk to the person's health.
- (3) An application for the authority of the Minister to prescribe or supply a drug of dependence under this section must—
 - (a) be in writing and be signed by the medical practitioner or dentist who proposes to prescribe or supply the drug; and
 - (b) contain such information as may be prescribed.
- (4) The Minister may give an authority to the medical practitioner or dentist by whom any such application is made to prescribe for or supply to the person to whom the application relates a drug of dependence specified in the authority for therapeutic purposes.
- (5) Any such authority must be in writing and must specify—
 - (a) the quantity of the drug of dependence that may be so prescribed or supplied by the medical practitioner or dentist; and
 - (b) the period for which any such drug may be so prescribed or supplied.
- (6) In the case of an emergency, a member or officer of the Department, authorised generally or specifically by the Minister to do so, may issue a temporary authority to a person to prescribe or supply a drug of dependence under this section.
- (7) A temporary authority—
 - (a) may be applied for, and given, orally; and
 - (b) cannot operate in respect of a period longer than 2 months.
- (8) An authority or temporary authority given under this section may be revoked by the Minister at any time by notice in writing given personally or by post to the holder of the authority or temporary authority.

11—Amendment of section 20—Prohibition of automatic vending machines

- (1) Section 20(1)(a)(i)—delete "or of a therapeutic substance to which this section applies" and substitute:
 - therapeutic substance or therapeutic device
- (2) Section 20(1)(a)(ii)—delete subparagraph (ii) and substitute:
 - (ii) sell or supply a poison, therapeutic substance or therapeutic device by means of an automatic vending machine; or

(3) Section 20(2)—delete subsection (2) and substitute:

- (2) This section does not apply to a poison, therapeutic substance or therapeutic device prescribed, or of a class prescribed, by regulation.

12—Amendment of section 21—Sale, supply, possession or administration of other potentially harmful substances or devices

(1) Section 21(1)—delete "sale or the supply" and substitute:

sale, supply, possession or administration

(2) Section 21(1)(a)—delete "sold or supplied" and substitute:

sold, supplied, possessed or administered

13—Substitution of heading to Part 5

Heading to Part 5—delete the heading and substitute:

Part 5—Offences relating to controlled drugs, precursors and plants

14—Substitution of Part 5 Division 1 and heading to Part 5 Division 2

Part 5 Division 1 and heading to Part 5 Division 2—delete Division 1 and the heading to Division 2 and substitute:

Division 1—Preliminary

31—Application of Part

(1) This Part does not apply to—

- (a) the sale, manufacture, supply, administration or possession of a drug of dependence, the sale or possession of equipment for use in connection with the consumption or administration of such a drug or the preparation, for consumption or administration, of such a drug by—
- (i) a medical practitioner, dentist, veterinary surgeon, pharmacist or nurse acting in the ordinary course of his or her profession; or
 - (ii) a member of any other prescribed profession acting in the course of that profession; or
 - (iii) a person acting in accordance with a licence issued by the Minister under this Act; or
- (b) the possession of a drug of dependence, or of equipment for use in connection with the consumption or administration of a drug of dependence, by—
- (i) a person—
 - (A) for whom the drug has been lawfully prescribed; or

- (B) to whom the drug has been lawfully supplied for the purpose of consumption or administration by the person; or
 - (ii) a person—
 - (A) being the owner of an animal for whom the drug has been lawfully prescribed; or
 - (B) to whom the drug has been lawfully supplied for the purpose of consumption by or administration to an animal owned by the person; or
 - (iii) a person acting of behalf of a person referred to in subparagraph (i) or (ii); or
 - (c) the administration or supply, or the giving of permission for the administration or supply, of a drug of dependence to a person—
 - (i) for whom the drug has been lawfully prescribed; or
 - (ii) to whom the drug has been lawfully supplied for the purpose of consumption or administration by the person; or
 - (d) the consumption or administration of a drug of dependence by a person—
 - (i) for whom the drug has been lawfully prescribed; or
 - (ii) to whom the drug has been lawfully supplied for the purpose of consumption or administration by the person.
- (2) In proceedings for an offence against this Part, subsection (1) is to be treated as providing exceptions, and no proof will be required in relation to any exception by the prosecution but the application of an exception will be a matter for proof by the defendant.

Division 2—Commercial offences

Subdivision 1—Trafficking in controlled drugs

32—Trafficking

- (1) A person who traffics in a large commercial quantity of a controlled drug is guilty of an offence.
Maximum penalty: \$500 000 or imprisonment for life, or both.
- (2) A person who traffics in a commercial quantity of a controlled drug is guilty of an offence.
Maximum penalty: \$200 000 or imprisonment for 25 years, or both.
- (3) A person who traffics in a controlled drug is guilty of an offence.
Maximum penalty: \$50 000 or imprisonment for 10 years, or both.

- (4) An offence against subsection (3) involving cannabis, cannabis resin or cannabis oil (and not involving any other controlled drug) must be prosecuted, and dealt with by the Magistrates Court, as a summary offence but if the Court determines that a person found guilty of such an offence should be sentenced to a term of imprisonment exceeding 2 years, the Court must commit the person to the District Court for sentence.
- (5) If, in any proceedings for an offence against subsection (1), (2) or (3) it is proved that the defendant had possession of a trafficable quantity of a controlled drug, it is presumed, in the absence of proof to the contrary—
 - (a) in a case where it is alleged that the defendant was taking part in the process of sale of the drug, that the defendant—
 - (i) was acting for the purpose of sale of the drug; and
 - (ii) had the relevant belief concerning the sale of the drug necessary to constitute the offence; or
 - (b) in any other case—that the defendant had the relevant intention concerning the sale of the drug necessary to constitute the offence.

Subdivision 2—Manufacture of controlled drugs

33—Manufacture of controlled drugs for sale

- (1) A person who manufactures a large commercial quantity of a controlled drug intending to sell any of it or believing that another person intends to sell any of it is guilty of an offence.
Maximum penalty: \$500 000 or imprisonment for life, or both.
- (2) A person who manufactures a commercial quantity of a controlled drug intending to sell any of it or believing that another person intends to sell any of it is guilty of an offence.
Maximum penalty: \$200 000 or imprisonment for 25 years, or both.
- (3) A person who manufactures a controlled drug intending to sell any of it or believing that another person intends to sell any of it is guilty of an offence.
Maximum penalty: \$50 000 or imprisonment for 10 years, or both.
- (4) If, in any proceedings for an offence against subsection (1), (2) or (3) it is proved that the defendant manufactured a trafficable quantity of a controlled drug, it is presumed, in the absence of proof to the contrary that the defendant had the relevant intention or belief concerning the sale of the drug necessary to constitute the offence.

33A—Sale, manufacture etc of controlled precursor

- (1) A person who sells a large commercial quantity of a controlled precursor, believing that the person to whom it is sold or another person intends to use any of it to unlawfully manufacture a controlled drug is guilty of an offence.
Maximum penalty: \$200 000 or imprisonment for 25 years, or both.
- (2) A person who sells a commercial quantity of a controlled precursor, believing that the person to whom it is sold or another person intends to use any of it to unlawfully manufacture a controlled drug is guilty of an offence.
Maximum penalty: \$75 000 or imprisonment for 15 years, or both.
- (3) A person who sells a controlled precursor, believing that the person to whom it is sold or another person intends to use any of it to unlawfully manufacture a controlled drug is guilty of an offence.
Maximum penalty: \$50 000 or imprisonment for 10 years, or both.
- (4) A person who manufactures a controlled precursor—
 - (a) intending to unlawfully manufacture a controlled drug; and
 - (b) intending to sell any of the drug so manufactured or believing that another person intends to sell any of it,is guilty of an offence.
Maximum penalty: \$50 000 or imprisonment for 10 years, or both.
- (5) A person who manufactures a controlled precursor—
 - (a) intending to sell any of the precursor to another person; and
 - (b) believing that that person, or another person, intends to use the controlled precursor to unlawfully manufacture a controlled drug,is guilty of an offence.
Maximum penalty: \$50 000 or imprisonment for 10 years, or both.

Subdivision 3—Cultivation and sale of controlled plants

33B—Cultivation of controlled plants for sale

- (1) A person who cultivates a large commercial quantity of a controlled plant intending to sell any of them or their products or believing that another person intends to sell any of them or their products is guilty of an offence.
Maximum penalty: \$500 000 or imprisonment for life, or both.
- (2) A person who cultivates a commercial quantity of a controlled plant intending to sell any of them or their products or believing that another person intends to sell any of them or their products is guilty of an offence.
Maximum penalty: \$200 000 or imprisonment for 25 years, or both.

- (3) A person who cultivates a controlled plant intending to sell it or any of its products or believing that another person intends to sell it or any of its products is guilty of an offence.
Maximum penalty: \$50 000 or imprisonment for 10 years, or both.
- (4) An offence against subsection (3) involving a cannabis plant (and not involving any other controlled plant) must be prosecuted, and dealt with by the Magistrates Court, as a summary offence but if the Court determines that a person found guilty of such an offence should be sentenced to a term of imprisonment exceeding 2 years, the Court must commit the person to the District Court for sentence.
- (5) If, in any proceedings for an offence against subsection (1), (2) or (3), it is proved that the defendant cultivated a trafficable quantity of a controlled plant, it is presumed, in the absence of proof to the contrary, that the defendant had the relevant intention or belief concerning the sale of the plants or their products necessary to constitute the offence.

33C—Sale of controlled plants

- (1) A person who—
 - (a) sells a large commercial quantity of a controlled plant; or
 - (b) has possession of a large commercial quantity of a controlled plant intending to sell any of them or their products,is guilty of an offence.
Maximum penalty: \$500 000 or imprisonment for life, or both.
- (2) A person who—
 - (a) sells a commercial quantity of a controlled plant; or
 - (b) has possession of a commercial quantity of a controlled plant intending to sell any of them or their products,is guilty of an offence.
Maximum penalty: \$200 000 or imprisonment for 25 years, or both.
- (3) A person who—
 - (a) sells a controlled plant; or
 - (b) has possession of a controlled plant intending to sell it or its products,is guilty of an offence.
Maximum penalty: \$50 000 or imprisonment for 10 years, or both.
- (4) An offence against subsection (3) involving a cannabis plant (and not involving any other controlled plant) must be prosecuted, and dealt with by the Magistrates Court, as a summary offence but if the Court determines that a person found guilty of such an offence should be sentenced to a term of imprisonment exceeding 2 years, the Court must commit the person to the District Court for sentence.

- (5) If, in any proceedings for an offence against subsection (1), (2) or (3) it is proved that the defendant had possession of a trafficable quantity of a controlled plant, it is presumed, in the absence of proof to the contrary, that the defendant had the relevant intention concerning the sale of the plants or their products necessary to constitute the offence.

Subdivision 4—Sale of equipment for use in connection with consumption of controlled drugs

33D—Sale of equipment

A person who—

- (a) sells a piece of equipment for use in connection with the smoking, consumption or administration of a controlled drug, or the preparation of such a drug for smoking, consumption or administration; or
- (b) has possession of a piece of equipment, intending to sell it for such use,

is guilty of an offence.

Maximum penalty: \$2 000 or imprisonment for 2 years, or both.

Division 3—Offences involving children and school zones

33E—Application of Division

- (1) A person is not guilty of an offence against this Division if, at the time of the offence, the person was a child.
- (2) Subject to subsection (3), a person may be guilty of an offence against this Division involving another person who was a child whether or not the person knew that the other person was a child.
- (3) However, it is a defence to a charge of an offence against this Division involving another who was a child if it is proved that the defendant believed on reasonable grounds that the other person had attained 18 years of age.

33F—Sale, supply or administration of controlled drug to child

A person who—

- (a) sells, supplies or administers a controlled drug to a child; or
- (b) has possession of a controlled drug intending to sell, supply or administer the drug to a child,

is guilty of an offence.

Maximum penalty: \$1 000 000 or imprisonment for life, or both.

33G—Sale, supply or administration of controlled drug in school zone

- (1) A person who—
- (a) sells, supplies or administers a controlled drug to another person in a school zone; or
 - (b) has possession, in a school zone, of a controlled drug intending to sell, supply or administer the drug to another person,

is guilty of an offence.

Maximum penalty: \$1 000 000 or imprisonment for life, or both.

- (2) If, in any proceedings for an offence against this section it is proved that the defendant had possession of a trafficable quantity of a controlled drug, it is presumed, in the absence of proof to the contrary that the defendant had the relevant intention concerning the sale or supply of the drug necessary to constitute the offence.

33H—Procuring child to commit offence

A person who procures a child to commit an offence against this Part is guilty of an offence.

Maximum penalty: \$1 000 000 or imprisonment for life, or both.

Division 4—Other offences

33I—Supply or administration of controlled drug

- (1) A person who—
- (a) supplies or administers a controlled drug (other than cannabis, cannabis resin or cannabis oil) to another person; or
 - (b) has possession of a controlled drug (other than cannabis, cannabis resin or cannabis oil) intending to supply or administer the drug to another person,

is guilty of an offence.

Maximum penalty: \$50 000 or imprisonment for 10 years, or both.

- (2) A person who—
- (a) supplies or administers cannabis, cannabis resin or cannabis oil to another person; or
 - (b) has possession of cannabis, cannabis resin or cannabis oil intending to supply or administer the cannabis, cannabis resin or cannabis oil to another person,

is guilty of an offence.

Maximum penalty: \$2 000 or imprisonment for 2 years, or both.

33J—Manufacture of controlled drugs

A person who manufactures a controlled drug is guilty of an offence.

Maximum penalty: \$35 000 or imprisonment for 7 years, or both.

33K—Cultivation of controlled plants

(1) A person who—

- (a) cultivates a controlled plant (other than a cannabis plant); or
- (b) cultivates more than the prescribed number of cannabis plants; or
- (c) cultivates a cannabis plant intending to supply the plant or to supply or administer any product of the plant to another person,

is guilty of an offence.

Maximum penalty: \$2 000 or imprisonment for 2 years, or both.

(2) A person who cultivates not more than the prescribed number of cannabis plants is guilty of an offence.

Maximum penalty: \$500.

33L—Possession or consumption of controlled drug etc

(1) A person who—

- (a) has possession of a controlled drug (other than cannabis, cannabis resin or cannabis oil); or
- (b) smokes, consumes or administers to himself or herself, or permits another person to administer to him or her, a controlled drug (other than cannabis, cannabis resin or cannabis oil); or
- (c) has possession of any piece of equipment for use in connection with the smoking, consumption or administration of a controlled drug (other than cannabis, cannabis resin or cannabis oil), or the preparation of such a drug for smoking, consumption or administration,

is guilty of an offence.

Maximum penalty: \$2 000 or imprisonment for 2 years, or both.

(2) A person who—

- (a) has possession of any cannabis, cannabis resin or cannabis oil; or
- (b) smokes or consumes any cannabis, cannabis resin or cannabis oil; or

- (c) has possession of any piece of equipment for use in connection with the smoking or consumption of cannabis, cannabis resin or cannabis oil, or the preparation of cannabis, cannabis resin or cannabis oil for smoking or consumption,

is guilty of an offence.

Maximum penalty: \$500.

Division 5—General provisions relating to offences

33M—Interpretation

In this Division—

controlled substance means a controlled drug, controlled precursor or controlled plant.

33N—Aggregation of offences

(1) If—

- (a) a person has committed offences against this Part in relation to different batches of controlled substances (whether or not controlled substances of the same kind); and
- (b) the offences were committed by the person on the same occasion or within 7 days of each other or in the course of an organised commercial activity relating to controlled substances carried on by the person,

the person may be charged with a single offence against this Part in respect of all of the different batches of controlled substances and, subject to section 33O, the quantity of controlled substances concerned for the purposes of that offence is the total quantity of the controlled substances in the different batches.

(2) If the prosecution seeks to rely on this section to charge a person with a single offence in respect of different batches of controlled substances—

- (a) the fact that the prosecution intends to do so must be set out in the charge; and
- (b) the charge must contain adequate particulars of the defendant's conduct in relation to each of the batches or in relation to the total quantity of the controlled substances in the different batches; and
- (c) it is not necessary for the prosecution to specify, if the charge relates to conduct of the defendant on different occasions, the exact dates of each occasion or to specify the exact quantity of each batch.

- (3) The presumption under section 32(5), 33(4) or 33B(5) may only apply in a case where the prosecution seeks to rely on this section if—
 - (a) the charge relates to conduct of the defendant on the same occasion; or
 - (b) the charge relates to conduct of the defendant on different occasions within 7 days of each other and on at least one occasion involved a trafficable quantity of a controlled substance.
- (4) Nothing in this section prevents a person being charged with separate offences in respect of different batches of controlled substances.
- (5) However, if a person has been convicted or acquitted of a single offence against this Part in respect of different batches of controlled substances, the person may not be charged with a separate offence in respect of any of the batches.
- (6) A person may not be charged with a single offence against this Part in respect of different batches of controlled substances if the person has been convicted or acquitted of a separate offence in respect of any of the batches.

330—Offences involving more than one kind of substance

- (1) If a person is charged with a single offence against this Part and the charge relates to more than one kind of controlled substance, the quantity of the controlled substances for the purposes of the charge is to be determined as follows:
 - (a) the quantity is a trafficable quantity if the sum of the fractions obtained by dividing the actual quantity of each kind of controlled substance by the quantity prescribed in relation to that kind of controlled substance (in its pure form) for the purposes of the definition of *trafficable quantity* in section 4 is equal to or greater than 1;
 - (b) the quantity is a commercial quantity if the sum of the fractions obtained by dividing the actual quantity of each kind of controlled substance by the quantity prescribed in relation to that kind of controlled substance (in its pure form) for the purposes of the definition of *commercial quantity* in section 4 is equal to or greater than 1;
 - (c) the quantity is a large commercial quantity if the sum of the fractions obtained by dividing the actual quantity of each kind of controlled substance by the quantity prescribed in relation to that kind of controlled substance (in its pure form) for the purposes of the definition of *large commercial quantity* in section 4 is equal to or greater than 1.

- (2) Where there is no quantity prescribed in relation to a particular kind of controlled substance in its pure form for the purposes of the relevant definition, the quantity of that controlled substance must be disregarded for the purposes of a calculation under this section.

33P—Knowledge or recklessness with respect to identity or quantity

- (1) In any proceedings against a person for an offence against this Part relating to a controlled substance, the prosecution must establish that the person knew, or was reckless with respect to, the fact that the substance was or was to be a controlled substance.
- (2) The prosecution need not establish that the person knew, or was reckless with respect to, the particular identity of the controlled substance.

33Q—Alternative conviction—mistake as to identity of controlled substance

- (1) If, in any proceedings against a person for an offence against this Part relating to a particular quantity of a controlled substance—
 - (a) the court is satisfied that, at the time of the conduct constituting the offence, the person was under a mistaken belief about the identity of the controlled substance; and
 - (b) the person would have been guilty of another equivalent or lesser offence against this Part if his or her mistaken belief had been correct,

the court may find the person not guilty of the offence charged but guilty of the other equivalent or lesser offence (and the person is liable to be punished accordingly).

- (2) The burden of proving a mistaken belief as to the identity of a controlled substance lies on the defendant.
- (3) For the purposes of this section, an equivalent or lesser offence is an offence for which the maximum penalty is the same as or less than the maximum penalty for the offence charged.

33R—Alternative verdicts

- (1) If, in any proceedings against a person for an offence against this Part, the court is not satisfied that the person committed the offence but is satisfied that the person committed another equivalent or lesser offence against this Part, the court may find the person not guilty of the offence charged but guilty of the other equivalent or lesser offence (and the person is liable to be punished accordingly).
- (2) For the purposes of this section, an equivalent or lesser offence is an offence for which the maximum penalty is the same as or less than the maximum penalty for the offence charged.

33S—No accessorial liability for certain offences

Section 267 of the *Criminal Law Consolidation Act 1935* does not apply—

- (a) in relation to an offence against section 32, 33 or 33B; or
- (b) in circumstances prescribed by regulation.

Division 6—Procedure in relation to simple possession offences

15—Repeal of sections 41 and 42

Sections 41 and 42—delete the sections

16—Amendment of section 44—Matters to be considered when court fixes penalty

- (1) Section 44(c)—delete "drug of dependence or prohibited substance" and substitute:
controlled drug
- (2) Section 44(d)—delete "involving the manufacture, production, sale or supply of a drug of dependence or prohibited substance, or the possession of a drug of dependence or prohibited substance with intent to sell or supply it to another" and substitute:
against Part 5 Division 2 or 3
- (3) Section 44(da) and (db)—delete paragraphs (da) and (db) and substitute:
 - (da) in the case of an offence against section 33F, 33H or 33I—whether the offence occurred within a school zone or at or near any prescribed place; and

17—Amendment of section 45A—Expiation of simple cannabis offences

Section 45A(8), definitions of *child* and *simple cannabis offence*—delete the definitions and substitute:

simple cannabis offence means—

- (a) an offence against section 33K(2) involving the cultivation (not being artificially enhanced cultivation) of cannabis plants other than an offence involving the cultivation of a number of cannabis plants in excess of the number prescribed by regulation for the purposes of this paragraph; or
- (b) an offence against section 33L(2)(a) other than an offence involving the possession of quantities of cannabis, cannabis resin or cannabis oil in excess of the quantity prescribed by regulation for the purposes of this paragraph; or
- (c) an offence against section 33L(2)(b) other than an offence alleged to have been committed in—
 - (i) a public place; or
 - (ii) a place of a kind prescribed by regulation; or

- (d) an offence against section 33L(2)(c).

18—Amendment of section 52—Power to search, seize etc

- (1) Section 52(2)(b)—after "documents" insert:
(including a written record that reproduces, in an understandable form, information stored by computer, microfilm or other process)
- (2) Section 52(2)(c)—after "documents" insert:
(including a written record that reproduces, in an understandable form, information stored by computer, microfilm or other process)
- (3) Section 52(2)(g)—after "photographs" insert:
or films or make any audio or audiovisual record
- (4) Section 52(4)—delete "relation to premises that are being used in the course of an activity in respect of which a licence, authority or permit has been granted under this Act." and substitute:
relation to—
(a) premises that are used by a medical practitioner, pharmacist, dentist or veterinary surgeon in the ordinary course of his or her profession; or
(b) premises that are used in the course of an activity in respect of which a licence, authority or permit has been granted under this Act; or
(c) premises that are used for a non-residential purpose and in which the authorised officer reasonably suspects poisons, therapeutic substances, therapeutic devices or volatile solvents are being stored, used or sold,
provided that the powers are exercised during ordinary business hours.
- (5) Section 52(11)—delete subsection (11) and substitute:
(11) An authorised officer may, in exercising powers pursuant to a warrant issued under subsection (4) or any other powers under this Part, be assisted by such persons as the authorised officer considers necessary or desirable in the circumstances.

19—Amendment of section 52A—Seized property and forfeiture

- (1) Section 52A(2)(a)—delete paragraph (a) and substitute:
(a) is a controlled drug, controlled plant, controlled precursor or a poison; or
- (2) Section 52A—after subsection (6) insert:
(6a) Where a person is convicted of an offence in relation to property destroyed in accordance with subsection (2), the court may order the convicted person to pay the reasonable costs of destruction to the Commissioner of Police.

- (3) Section 52A(7)(b)—delete "or production, or the smoking, consumption or administration, of a prohibited substance or drug of dependence" and substitute:
- , or the smoking, consumption or administration, of a controlled drug or the cultivation of a controlled plant
- (4) Section 52A(10)(b)—delete "or production, or the smoking, consumption or administration, of a prohibited substance or drug of dependence" and substitute:
- , or the smoking, consumption or administration, of a controlled drug or the cultivation of a controlled plant

20—Amendment of section 53—Analysis

Section 53(2)—delete "prohibited substance" and substitute:

controlled drug, controlled precursor, controlled plant

21—Amendment of section 55—Licences, authorities and permits

- (1) Section 55(4)—after "Act," insert:
- suspend or
- (2) Section 55(5), (6) and (7)—delete subsections (5), (6) and (7) and substitute:
- (5) A person whose licence, authority or permit is suspended or revoked under subsection (4)(c) may appeal to the Administrative and Disciplinary Division of the District Court against the suspension or revocation.
- (6) Subject to subsection (8), an appeal must be instituted within 1 month of the suspension or revocation.
- (7) The Minister must, if required by the appellant, state in writing the reasons for the suspension or revocation.
- (8) If the reasons of the Minister are not given to the appellant, in writing, at the time of making the decision to suspend or revoke and the appellant (within 1 month of the making of the decision) requires the Minister to state the reasons in writing, the time for instituting the appeal runs from the time at which the appellant receives the written statement of those reasons.

22—Amendment of section 56—Permits

Section 56(1)—delete subsection (1) and substitute:

- (1) The Minister may issue a permit authorising, subject to such conditions as may be specified in the permit, the person named in the permit to manufacture, cultivate, sell, supply, administer or have in his or her possession a poison, controlled drug, controlled plant, therapeutic substance or therapeutic device for the purposes of analysis, research, instruction or training.

23—Amendment of section 57—Power of Minister to prohibit certain activities

Section 57(5), (6) and (7)—delete subsections (5), (6) and (7) and substitute:

- (5) A person to whom an order under subsection (1) applies may appeal to the Administrative and Disciplinary Division of the District Court against the order.
- (6) Subject to subsection (8), an appeal must be instituted within 1 month of the making of the order.
- (7) The Minister must, if required by the appellant, state in writing the reasons for the order.
- (8) If the reasons of the Minister are not given to the appellant, in writing, at the time of making the order and the appellant (within 1 month of the making of the order) requires the Minister to state the reasons in writing, the time for instituting the appeal runs from the time at which the appellant receives the written statement of those reasons.

24—Insertion of section 57A

After section 57 insert:

57A—Warnings

- (1) Subject to this section, if the Minister is satisfied that—
 - (a) a substance or device might be dangerous to persons consuming or using the substance or device (whether because of a failure to comply with a requirement under this Act or otherwise); or
 - (b) an advertisement or other published material relating to a substance or device contains instructions or other material that might be dangerous to persons consuming or using the substance or device,

the Minister may take such action as the Minister thinks fit to warn the public against the risks or potential risks.

- (2) The Minister may only take action under this section—
 - (a) in relation to a substance, if the substance is a poison or therapeutic substance or is a substance that the Minister is satisfied has the potential to be harmful to humans or is or may be used, or is designed to be used, as a therapeutic substance; or
 - (b) in relation to a device, if the device is a therapeutic device or is a device that the Minister is satisfied is or may be used, or is designed to be used—
 - (i) for a purpose related to the physical or mental health or hygiene of humans; or
 - (ii) for the purposes of contraception; or

(iii) for cosmetic purposes.

- (3) For the purpose of subsection (1), the Minister may publish the trade name or description of a substance or device and may identify manufacturers, sellers, suppliers or importers of the substance or device.

25—Amendment of section 58—Publication of information

- (1) Section 58(1)—delete "has obtained or attempted to obtain a prescription drug by false pretences or other unlawful means" and substitute:

has a history of consuming poisons or therapeutic substances in a quantity or manner that presents a risk to the person's health or has obtained or attempted to obtain a poison, therapeutic substance or therapeutic device by false pretences or other unlawful means or for an unlawful purpose

- (2) Section 58(1)—delete "such a drug" and substitute:

such a substance or device

- (3) Section 58(1)(a) and (f)—delete "drugs" wherever occurring and substitute in each case:

such substances or devices

- (4) Section 58—after subsection (1) insert:

(1a) The Minister may publish information to a class of persons referred to in subsection (1)—

- (a) by publishing the information to a professional association prescribed by regulation whose members belong to that class of persons; or
(b) in any other manner the Minister thinks fit.

26—Repeal of section 59

Delete section 59

27—Amendment of section 60—Minister may require certain information to be given

Section 60(1)—delete subsection (1) and substitute:

- (1) For the purpose of ascertaining—
(a) whether any substance or device is, or ought to be, one to which this Act applies; or
(b) whether any requirements under this Act relating to a substance or device are appropriate and effective,

the Minister may, by notice in writing given personally or by post to a person who manufactures, produces, packs, sells, supplies, imports or advertises a substance or device, require that person to furnish to the Minister such information relating to the substance or device as may be specified in the notice.

28—Insertion of sections 60A and 60B

After section 60 insert:

60A—Confidentiality

- (1) A person must not divulge—
 - (a) information relating to trade processes; or
 - (b) medical records or details of medical treatment of a person, obtained (whether by that person or some other person) in the administration or enforcement of this Act except—
 - (c) in connection with the administration or enforcement of this Act; or
 - (d) as authorised or required by law; or
 - (e) with the consent of the person from whom the information was obtained or to whom the information relates; or
 - (f) for the purpose of any legal proceedings arising out of the administration or enforcement of this Act; or
 - (g) to a law enforcement, prosecution or health authority of another jurisdiction as may be reasonably required for the purpose of the administration or enforcement of a law of that jurisdiction.

Maximum penalty: \$10 000

- (2) Subsection (1)(b) does not prevent the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

60B—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided, or record kept, under this Act.

Maximum penalty: \$5 000.

29—Amendment of section 61—Evidentiary provisions

- (1) Section 61—after subsection (2) insert:
 - (2a) In any proceedings for an offence against this Act, an apparently genuine document purporting to be a certificate issued under a corresponding law and to certify that an analysis of a substance referred to in the certificate was carried out in accordance with the corresponding law will, in the absence of proof to the contrary, be proof of any facts stated in the certificate—
 - (a) tending to identify the substance analysed; and
 - (b) relating to the nature and results of the analysis.

(2) Section 61—after subsection (3) insert:

(4) In this section—

corresponding law means a law of the Commonwealth, another State, or a Territory that is prescribed by regulation for the purposes of this definition.

30—Amendment of section 63—Regulations

(1) Section 63(3)—delete "drug of dependence or prohibited substance for the purposes of section 32" and substitute:

controlled drug, controlled precursor or controlled plant for the purposes of Part 5

(2) Section 63(4)(a)—after "poison," insert:

controlled precursor,

(3) Section 63(4)(b)—after "poison," insert:

controlled precursor,

(4) Section 63(4)(f)—delete "prohibited substance" and substitute:

controlled drug, controlled precursor, controlled plant

(5) Section 63(4)(h)—after "poison," insert:

controlled precursor,

(6) Section 63(6)(a)—after "poisons," insert:

controlled drugs, controlled precursors, controlled plants,

Schedule 1—Related amendments and transitional provisions

Part 1—Amendment of *Correctional Services Act 1982*

1—Amendment of section 4—Interpretation

Section 4(1), definition of *drug*—delete the definition and substitute:

drug means—

(a) alcohol; or

(b) a substance that is a prescription drug or a controlled drug under the *Controlled Substances Act 1984*;

Part 2—Amendment of *Criminal Assets Confiscation Act 2005*

2—Amendment of section 3—Interpretation

(1) Section 3, definition of *drug*—delete "drug of dependence or a prohibited substance" and substitute:

controlled drug

(2) Section 3, definition of *serious drug offence*—delete the definition

- (3) Section 3, definition of *serious offence*, (b)—delete paragraph (b) and substitute:
- (b) an offence of a kind that is required to be prosecuted, and dealt with by the Magistrates Court, as a summary offence under a provision of Part 5 Division 2 of the *Controlled Substances Act 1984*; or

Part 3—Amendment of *Criminal Law Consolidation Act 1935*

3—Amendment of section 138A—Dealing in instruments of crime

- (1) Section 138A(3), definition of *crime*, (b)(i)—delete subparagraph (i) and substitute:
- (i) an offence of a kind that is required to be prosecuted, and dealt with by the Magistrates Court, as a summary offence under a provision of Part 5 Division 2 of the *Controlled Substances Act 1984*; or
- (2) Section 138A(3), definition of *serious drug offence*—delete the definition

Part 4—Amendment of *Criminal Law (Sentencing) Act 1988*

4—Amendment of section 20A—Interpretation

Section 20A(1), definition of *serious drug offence*—delete the definition and substitute:

serious drug offence means—

- (a) an offence against Part 5 Division 2 or 3 of the *Controlled Substances Act 1984*; or
- (b) a conspiracy to commit, or an attempt to commit, such an offence;

Part 5—Amendment of *Listening and Surveillance Devices Act 1972*

5—Amendment of section 3—Interpretation

Section 3, definition of *serious offence*, (c)—delete "10 years" and substitute:

7 years

Part 6—Transitional provision

6—Transitional provision

An amendment to the principal Act effected by a provision of this Act only applies in relation to an offence if the offence is committed on or after the commencement of the provision.