

South Australia

## Statutes Amendment (Drug Offences) Act 2018

An Act to amend the *Controlled Substances Act 1984* and the *Sentencing Act 2017*.

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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 *Statutes Amendment (Drug Offences) Act 2018*.

#### 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

#### 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

Section 4—after subclause (7) insert:

- (7a) For the purposes of this Act, in determining the maximum penalty for an offence against this Act, an offender is a *serious drug offender* if the offender has, within 10 years of the commission of the offence, been previously convicted of—
- (a) 2 or more offences against Part 5 Division 2 (other than Subdivision 4) or Division 3, being offences arising out of separate incidents; or
  - (b) 3 or more offences against Part 5 (other than sections 33D, 33DA, 33I(2), 33K, 33L, 33LA, 33LAB or 33LB), being offences arising out of separate incidents.

#### 5—Amendment of section 32—Trafficking

- (1) Section 32(1), penalty provision—delete "\$500 000" and substitute:

\$1 000 000

- (2) Section 32(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$500 000 or imprisonment for life, or both; or
  - (ii) in any other case—\$200 000 or imprisonment for 25 years, or both;
- (b) for an aggravated offence—\$500 000 or imprisonment for life, or both.

- (3) Section 32(2a), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
    - (i) if the offender is a serious drug offender—\$200 000 or imprisonment for 25 years, or both; or
    - (ii) in any other case—\$75 000 or imprisonment for 15 years, or both;
  - (b) for an aggravated offence—\$200 000 or imprisonment for 25 years, or both.
- (4) Section 32(3), penalty provision—delete the penalty provision and substitute:  
Maximum penalty:
- (a) for a basic offence—
    - (i) if the offender is a serious drug offender—\$75 000 or imprisonment for 15 years, or both; or
    - (ii) in any other case—\$50 000 or imprisonment for 10 years, or both;
  - (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

#### **6—Amendment of section 33—Manufacture of controlled drugs for sale**

- (1) Section 33(1), penalty provision—delete "\$500 000" and substitute:  
\$1 000 000
- (2) Section 33(2), penalty provision—delete the penalty provision and substitute:  
Maximum penalty:
- (a) for a basic offence—
    - (i) if the offender is a serious drug offender—\$500 000 or imprisonment for life, or both; or
    - (ii) in any other case—\$200 000 or imprisonment for 25 years, or both;
  - (b) for an aggravated offence—\$500 000 or imprisonment for life, or both.
- (3) Section 33(3), penalty provision—delete the penalty provision and substitute:  
Maximum penalty:
- (a) for a basic offence—
    - (i) if the offender is a serious drug offender—\$75 000 or imprisonment for 15 years, or both; or
    - (ii) in any other case—\$50 000 or imprisonment for 10 years, or both;
  - (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

**7—Amendment of section 33A—Sale, manufacture etc of controlled precursor**

- (1) Section 33A(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$500 000 or imprisonment for life, or both; or
  - (ii) in any other case—\$200 000 or imprisonment for 25 years, or both;
- (b) for an aggravated offence—\$500 000 or imprisonment for life, or both.

- (2) Section 33A(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$200 000 or imprisonment for 25 years, or both; or
  - (ii) in any other case—\$75 000 or imprisonment for 15 years, or both;
- (b) for an aggravated offence—\$200 000 or imprisonment for 25 years, or both.

- (3) Section 33A(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$75 000 or imprisonment for 15 years, or both; or
  - (ii) in any other case—\$50 000 or imprisonment for 10 years, or both;
- (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

- (4) Section 33A(4), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$75 000 or imprisonment for 15 years, or both; or
  - (ii) in any other case—\$50 000 or imprisonment for 10 years, or both;
- (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

- (5) Section 33A(5), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$75 000 or imprisonment for 15 years, or both; or
  - (ii) in any other case—\$50 000 or imprisonment for 10 years, or both;
- (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

### **8—Amendment of section 33B—Cultivation of controlled plants for sale**

- (1) Section 33B(1), penalty provision—delete "\$500 000" and substitute:  
\$1 000 000
- (2) Section 33B(2), penalty provision—delete the penalty provision and substitute:  
Maximum penalty:
  - (a) for a basic offence—
    - (i) if the offender is a serious drug offender—\$500 000 or imprisonment for life, or both; or
    - (ii) in any other case—\$200 000 or imprisonment for 25 years, or both;
  - (b) for an aggravated offence—\$500 000 or imprisonment for life, or both.
- (3) Section 33B(3), penalty provision—delete the penalty provision and substitute:  
Maximum penalty:
  - (a) for a basic offence—
    - (i) if the offender is a serious drug offender—\$75 000 or imprisonment for 15 years, or both; or
    - (ii) in any other case—\$50 000 or imprisonment for 10 years, or both;
  - (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

### **9—Amendment of section 33C—Sale of controlled plants**

- (1) Section 33C(1), penalty provision—delete "\$500 000" and substitute:  
\$1 000 000
- (2) Section 33C(2), penalty provision—delete the penalty provision and substitute:  
Maximum penalty:
  - (a) for a basic offence—
    - (i) if the offender is a serious drug offender—\$500 000 or imprisonment for life, or both; or
    - (ii) in any other case—\$200 000 or imprisonment for 25 years, or both;

- (b) for an aggravated offence—\$500 000 or imprisonment for life, or both.
- (3) Section 33C(3), penalty provision—delete the penalty provision and substitute:  
Maximum penalty:
  - (a) for a basic offence—
    - (i) if the offender is a serious drug offender—\$75 000 or imprisonment for 15 years, or both; or
    - (ii) in any other case—\$50 000 or imprisonment for 10 years, or both;
  - (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

### **10—Amendment of section 33D—Sale of equipment**

Section 33D, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$20 000 or imprisonment for 5 years, or both; or
  - (ii) in any other case—\$15 000 or imprisonment for 3 years, or both;
- (b) for an aggravated offence—\$20 000 or imprisonment for 5 years, or both.

### **11—Amendment of section 33DA—Sale of instructions**

Section 33DA(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$20 000 or imprisonment for 5 years, or both; or
  - (ii) in any other case—\$15 000 or imprisonment for 3 years, or both;
- (b) for an aggravated offence—\$20 000 or imprisonment for 5 years, or both.

### **12—Amendment of section 33GA—Sale of equipment to child for use in connection with consumption of controlled drugs**

Section 33GA, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$30 000 or imprisonment for 7 years, or both; or

- (ii) in any other case—\$20 000 or imprisonment for 5 years, or both;
- (b) for an aggravated offence—\$30 000 or imprisonment for 7 years, or both.

### **13—Amendment of section 33GB—Sale of instructions to a child**

Section 33GB(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$30 000 or imprisonment for 7 years, or both; or
  - (ii) in any other case—\$20 000 or imprisonment for 5 years, or both;
- (b) for an aggravated offence—\$30 000 or imprisonment for 7 years, or both.

### **14—Amendment of section 33I—Supply or administration of controlled drug**

- (1) Section 33I(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$75 000 or imprisonment for 15 years, or both; or
  - (ii) in any other case—\$50 000 or imprisonment for 10 years, or both;
- (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

- (2) Section 33I(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$15 000 or imprisonment for 3 years, or both.

### **15—Amendment of section 33J—Manufacture of controlled drugs**

- (1) Section 33J(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$75 000 or imprisonment for 15 years, or both; or
  - (ii) in any other case—\$30 000 or imprisonment for 7 years, or both;
- (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

- (2) Section 33J(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$30 000 or imprisonment for 7 years, or both; or
  - (ii) in any other case—\$20 000 or imprisonment for 5 years, or both;
- (b) for an aggravated offence—\$30 000 or imprisonment for 7 years, or both.

### **16—Amendment of section 33K—Cultivation of controlled plants**

- (1) Section 33K(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$5 000 or imprisonment for 5 years, or both; or
  - (ii) in any other case—\$2 000 or imprisonment for 2 years, or both;
- (b) for an aggravated offence—\$5 000 or imprisonment for 5 years, or both.

- (2) Section 33K(2), penalty provision—delete the penalty provision and substitute:

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

### **17—Amendment of section 33L—Possession or consumption of controlled drug etc**

Section 33L(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$2 000.

### **18—Amendment of section 33LA—Possession or supply of prescribed equipment**

Section 33LA, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$20 000 or imprisonment for 5 years, or both; or
  - (ii) in any other case—\$10 000 or imprisonment for 2 years, or both;
- (b) for an aggravated offence—\$20 000 or imprisonment for 5 years, or both.

### **19—Amendment of section 33LAB—Possession or supply of instructions**

Section 33LAB(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—



- (i) if the offender is a serious drug offender—\$20 000 or imprisonment for 5 years, or both; or
  - (ii) in any other case—\$10 000 or imprisonment for 2 years, or both;
- (b) for an aggravated offence—\$20 000 or imprisonment for 5 years, or both.

**20—Amendment of section 33LB—Possession or supply of prescribed quantity of controlled precursor**

- (1) Section 33LB(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$20 000 or imprisonment for 5 years, or both; or
  - (ii) in any other case—\$15 000 or imprisonment for 3 years, or both;
- (b) for an aggravated offence—\$20 000 or imprisonment for 5 years, or both.

- (2) Section 33LB(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$30 000 or imprisonment for 7 years, or both; or
  - (ii) in any other case—\$20 000 or imprisonment for 5 years, or both;
- (b) for an aggravated offence—\$30 000 or imprisonment for 7 years, or both.

**21—Amendment of section 33LD—Intentional manufacture of controlled drug alternative**

Section 33LD, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$30 000 or imprisonment for 7 years, or both; or
  - (ii) in any other case—\$20 000 or imprisonment for 5 years, or both;
- (b) for an aggravated offence—\$30 000 or imprisonment for 7 years, or both.

**22—Amendment of section 33LE—Promoting controlled drug alternative**

Section 33LE(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$20 000 or imprisonment for 5 years, or both; or
  - (ii) in any other case—\$10 000 or imprisonment for 2 years, or both;
- (b) for an aggravated offence—\$20 000 or imprisonment for 5 years, or both.

**23—Amendment of section 33LF—Manufacturing, packaging, selling or supplying substance promoted as controlled drug alternative**

Section 33LF(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
  - (i) if the offender is a serious drug offender—\$30 000 or imprisonment for 7 years, or both; or
  - (ii) in any other case—\$20 000 or imprisonment for 5 years, or both;
- (b) for an aggravated offence—\$30 000 or imprisonment for 7 years, or both.

**24—Amendment of section 34—Application of Division**

Section 34(1)—after paragraph (b) insert:

or

- (c) a person who is alleged to have committed a simple possession offence but who has, in the 4 years preceding the date of the alleged simple possession offence, been referred to a nominated assessment service under this Division on 2 or more occasions (with each referral being in respect of a separate alleged simple possession offence).

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

Section 44(1)—after paragraph (d) insert:

- (daa) in the case of an offence against section 33—whether a child was present at any stage when the offence occurred; and

### **Part 3—Amendment of *Sentencing Act 2017***

#### **26—Amendment of section 71—Home detention orders**

Section 71(5), definition of *serious and organised crime offence*, (b)—after subparagraph (v) insert:

- (vi) an offence under section 33F, 33G or 33H;

#### **27—Amendment of section 96—Suspension of imprisonment on defendant entering into bond**

Section 96(9), definition of *serious and organised crime offence*, (b)—after subparagraph (v) insert:

- (vi) an offence under section 33F, 33G or 33H;