

South Australia

Controlled Substances (Youth Treatment Orders) Amendment Act 2019

An Act to amend the *Controlled Substances Act 1984*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Controlled Substances Act 1984*

- 4 Amendment of section 4—Interpretation
- 5 Repeal of section 35
- 6 Amendment of section 38—Undertakings
- 7 Insertion of Part 7A

Part 7A—Youth treatment orders

- 54 Interpretation
- 54A Best interests of child are paramount consideration
- 54B Orders that may be made under this Part
- 54C Application for order
- 54D Making of orders
- 54E Proceedings in the absence of child
- 54F Variation or revocation of order
- 54G Service
- 54H Effect of order
- 54I Detention
- 54J Treatment may continue after 18th birthday
- 54K Costs of assessment or treatment
- 54L Special provisions relating to detention of children
- 54M Legal representation
- 54N Regulations
- 54O Reports
- 54P Review of Part
- 8 Insertion of section 56A
 - 56A Accreditation of drug assessment and treatment services
- 9 Amendment of section 63—Regulations

Schedule 1—Transitional provision

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Controlled Substances (Youth Treatment Orders) Amendment Act 2019*.

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

- (1) Section 4(1), definition of *assessment service*—delete "Division 6 of Part 5" and substitute:

section 56A

- (2) Section 4(1)—after the definition of *trafficable quantity* insert:

treatment service means a drug treatment service accredited under section 56A;

5—Repeal of section 35

Section 35—delete the section

6—Amendment of section 38—Undertakings

Section 38(2)—delete "drug treatment service that is accredited under this Division" and substitute:

treatment service

7—Insertion of Part 7A

After section 53 insert:

Part 7A—Youth treatment orders

54—Interpretation

In this Part—

assessment order—see section 54B(1)(a);

business day means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday;

Court means the Youth Court of South Australia;

detention order—see section 54B(1)(c);

domestic partner—a person is the domestic partner of a child if the person lives with the child in a close personal relationship;

family member in relation to a child means—

- (a) a spouse or domestic partner of the child; or
- (b) a parent or guardian of the child; or
- (c) a person held to be related to the child according to Aboriginal or Torres Strait Islander kinship rules and observances;

spouse—a person is the spouse of a child if the person is legally married to the child;

treatment order—see section 54B(1)(b).

54A—Best interests of child are paramount consideration

The paramount consideration in the administration, operation and enforcement of this Part must always be the best interests of the child that is, or is proposed to be, subject to an order under this Part.

54B—Orders that may be made under this Part

- (1) The following orders may be made by the Court under this Part:
 - (a) an order (an *assessment order*) requiring—
 - (i) a specified child to attend a nominated assessment service in accordance with any requirements specified in the order; and
 - (ii) the nominated assessment service to provide a report to the applicant, the child (or a person representing the child) and the Court following its assessment of the child;
 - (b) an order (a *treatment order*) requiring—
 - (i) a specified child to attend a nominated treatment service in accordance with any requirements specified in the order; and
 - (ii) the nominated treatment service to provide a report to the applicant, the child (or a person representing the child) and the Court following its treatment of the child;
 - (c) an order (a *detention order*) authorising the detention of a specified child for the purpose of ensuring compliance with an assessment order or a treatment order made in relation to the child;
 - (d) any consequential or ancillary orders.

- (2) An order may only be made under this Part in relation to a person who is a child at the time the order is made (but an order can be made despite the fact that the person will cease to be a child during the term of the order - see section 54J).
- (3) Until the prescribed day, an order may only be made under this Part in relation to a child who is subject to detention in a training centre at the time the order is made (whether or not the child has commenced the period of detention).
- (4) Subject to subsections (5) and (6), an order operates for the period specified in the order which—
 - (a) must end at 2 pm on a business day; and
 - (b) in the case of a detention order, must be the shortest period the Court thinks appropriate in the circumstances; and
 - (c) in any case, must not exceed 12 months.
- (5) A detention order must be reviewed by the Court, at regular intervals determined by the Court, until the child is released from detention (and the Court must, when making a detention order, make appropriate orders to ensure this will occur).
- (6) Until the prescribed day, an order made under this Part will cease when the child is released from detention (if the order has not ceased at an earlier time).
- (7) In this section—

prescribed day means a day declared by the Governor by proclamation.

54C—Application for order

An order under this Part may be made by the Court of its own motion if there are proceedings before the Court involving the relevant child, or may be made on application by—

- (a) if there are proceedings before the Court in which the relevant child is being prosecuted for an offence—a person authorised by the Director of Public Prosecutions or the Commissioner of Police to make such applications; or
- (b) if there are proceedings before the Court under the *Children and Young People (Safety) Act 2017*, or any other child protection law, relating to the relevant child—the Chief Executive of the administrative unit of the Public Service responsible for assisting a Minister in the administration of the *Children and Young People (Safety) Act 2017*; or
- (c) in any case—
 - (i) a family member of the relevant child; or
 - (ii) the person holding or acting in the office of Public Advocate under the *Guardianship and Administration Act 1993*; or

- (iii) an officer of the Department; or
- (iv) the Chief Executive of the administrative unit of the Public Service responsible for assisting a Minister in the administration of the *Youth Justice Administration Act 2016*; or
- (v) a medical practitioner who is providing treatment to the relevant child in relation to the child's use of controlled drugs; or
- (vi) a person who satisfies the Court that he or she has a proper interest.

54D—Making of orders

- (1) The Court may make an assessment order in relation to a child if satisfied that—
 - (a) there is a reasonable likelihood that the child is habitually using 1 or more controlled drugs; and
 - (b) the child may be a danger to themselves or to others; and
 - (c) the child has refused to voluntarily seek a relevant assessment; and
 - (d) no other appropriate and less restrictive means is available to ensure the child receives a relevant assessment.
- (2) The Court may make a treatment order in relation to a child if—
 - (a) the child has been assessed by a medical practitioner (pursuant to an assessment order or otherwise) as being dependent on 1 or more controlled drugs in accordance with the diagnostic criteria for a dependence syndrome specified in the *International Classification of Diseases and Health Problems* published by the World Health Organization (being the revision of that document that is current at the time of the order); and
 - (b) the Court is satisfied that—
 - (i) the child may be a danger to themselves or to others; and
 - (ii) the child has refused to voluntarily seek relevant treatment; and
 - (iii) no other appropriate and less restrictive means is available to ensure the child receives relevant treatment; and
 - (iv) the treatment and care of the child pursuant to the order will be governed by an appropriate treatment and care plan directed towards treating the child's dependency on controlled drugs.

- (3) The Court may make a detention order in relation to a child if—
 - (a) the Court has made an assessment or treatment order in relation to the child and either the child has failed to comply with that order or the Court is satisfied that it is likely that the child will fail to comply with that order; and
 - (b) no other appropriate and less restrictive means is available to ensure the child complies with the order.
- (4) The Court may, before making an order under this Part, request that the Department provide information to the Court about available assessment or treatment services (and the Chief Executive of the Department must ensure that the Court is provided with any information so requested).
- (5) Before making an order in relation to a child who is in the custody, or under the guardianship, of the Chief Executive of the administrative unit of the Public Service responsible for assisting a Minister in the administration of the *Children and Young People (Safety) Act 2017*, the Court must ensure that that Chief Executive has been given notice of the proceedings and has been given an opportunity to make submissions in the proceedings.
- (6) If the Court makes a detention order, the Court must ensure that the Chief Executive of the Department is notified of the making of the order.

54E—Proceedings in the absence of child

- (1) Subject to this section, the Court must not make an order under this Part unless the Court is satisfied that the child is assisted or represented in the proceedings by a family member or advocate.
- (2) However, the Court may make an order under this Part in the absence of the child, or representation for the child, if—
 - (a) the Court is satisfied that the order should be made as a matter of urgency; or
 - (b) the child was required by summons to appear at the hearing and failed to appear at the time and place appointed for the purpose; or
 - (c) the Court is satisfied that the child has made an informed and independent decision not to be present or not to be represented (and that the child is capable of understanding the nature and possible consequences of the proceedings).
- (3) If the Court is making the order in accordance with subsection (2)(a), the Court must make an interim order and summon the child to appear before the Court at a hearing to show cause why the order should not be confirmed as a final order.

- (4) The Court may make an order under this section on the basis of evidence received in the form of an affidavit but, in that case—
 - (a) the deponent must, if the child (or the person representing the child) so requires, appear personally at the proceedings for confirmation of the order to give oral evidence of the matters referred to in the affidavit; and
 - (b) if the deponent does not so appear, the Court may not rely on the evidence contained in the affidavit for the purpose of confirming the order.
- (5) The Court may from time to time, without requiring the attendance of any party, adjourn the hearing to which a child is summoned to a later date if satisfied that the summons has not been served or that there is other adequate reason for the adjournment.
- (6) The date fixed in the first instance for the hearing to which the child is summoned must be within 7 days of the date of the order.
- (7) The date fixed for an adjourned hearing must be within 7 days of the date on which the adjournment is ordered unless the Court is satisfied that—
 - (a) a later date is required to enable the summons to be served; or
 - (b) there is other adequate reason for fixing a later date.
- (8) An interim order made under this section—
 - (a) continues in force until the conclusion of the hearing to which the child is summoned or, if the hearing is adjourned, until the conclusion of the adjourned hearing; but
 - (b) will not be effective after the conclusion of the hearing to which the child is summoned or the adjourned hearing unless the Court confirms the order as a final order—
 - (i) on the failure of the child to appear at the hearing in obedience to the summons; or
 - (ii) having considered any evidence given by or on behalf of the child; or
 - (iii) with the consent of the child (or the person representing the child).
- (9) The Court may confirm an order as a final order in an amended form.
- (10) If a hearing is adjourned, the Court need not be constituted at the adjourned hearing of the same judicial officer as constituted the Court when it ordered the adjournment.

54F—Variation or revocation of order

- (1) The Court may vary or revoke an order of its own motion (if there are proceedings before the Court involving the relevant child or proceedings referred to in section 54K(3)) or on application by—
 - (a) a person referred to in section 54C; or
 - (b) the child.
- (2) An application for variation or revocation of an order may only be made by the child with the permission of the Court and permission is only to be granted if the Court is satisfied there has been a substantial change in the relevant circumstances since the order was made or last varied.
- (3) The Court must, before varying or revoking an order under this section, allow all parties a reasonable opportunity to be heard on the matter.

54G—Service

- (1) An order must be served on the child personally and is not binding on the child until it has been so served.
- (2) If an order is confirmed in an amended form or is varied at any time, the order in its amended form must be served on the child personally and until so served—
 - (a) the variation is not binding on the child; and
 - (b) the order as in force prior to the variation continues to be binding on the child.
- (3) A copy of an order served on a child under this section must be accompanied by a statement, in a form approved by the Minister, outlining the relevant legal and other rights of the child in relation to the order.
- (4) An assessment order must be given to the assessment service nominated in the order.
- (5) A treatment order must be given to the treatment service nominated in the order.
- (6) The applicant for an order must provide a copy of the order, on request, to a medical practitioner treating the child subject to the order or to a family member of, or advocate for, the child who has a proper interest in the health, safety and welfare of the child.

54H—Effect of order

- (1) A child may be assessed or given treatment in accordance with an order under this Part, and reports may be provided as required by an order under this Part, despite the absence or refusal of consent by the child.

- (2) A child to whom a treatment order applies—
 - (a) may be given treatment for the child's dependency on controlled drugs; and
 - (b) may, in accordance with the *Consent to Medical Treatment and Palliative Care Act 1995*, be given treatment for any other condition or illness of a kind authorised by a medical practitioner who has examined the child.
- (3) This section does not apply to treatment of a kind prescribed by the regulations.

54I—Detention

- (1) Subject to subsection (2), a detention order made in relation to a child does not authorise the detention of a child in a place other than an assessment service or a treatment service.
- (2) If the child is, during the period of the detention order, otherwise subject to a period of detention in a training centre (the *other detention*), the child may be detained in a training centre for the purposes of the detention order (but only during the period of the other detention).

54J—Treatment may continue after 18th birthday

- (1) A person may be assessed, treated or detained in accordance with an order under this Part, and reports may be provided as required by an order under this Part, despite the fact that the person has reached 18 years of age and is no longer a child if—
 - (a) the order was made before the person reached 18 years of age; and
 - (b) the Court, in making the order, did not specify that the order was to expire on the person reaching 18 years of age.
- (2) A reference in this Part to a child (being a child in relation to whom an order was made or to whom an order applies) extends to a person who remains subject to an order in accordance with this section (subject to any express provision to the contrary).

54K—Costs of assessment or treatment

- (1) Subject to this section, the Court may, if it thinks fit, make an order in relation to the costs of any assessment, treatment or report provided under this Part.
- (2) The Court may not however make an order requiring—
 - (a) the relevant child; or
 - (b) an agency or instrumentality of the Crown,to pay the costs of any assessment, treatment or report provided under this Part.

- (3) A person who is required, by order under this section, to pay the costs of any assessment, treatment or report may apply to the Court for variation or revocation of the order.

54L—Special provisions relating to detention of children

- (1) The Chief Executive of the Department is responsible for ensuring that a child who is subject to a detention order receives appropriate care while so detained and, in particular, for ensuring—
- (a) that the child is able to receive family visits while detained (at reasonable times and in accordance with the best interests of the child); and
 - (b) that the child has access to appropriate courses of instruction or training while detained and, if the child is a child of compulsory school age or a child of compulsory education age, is able to continue or otherwise further his or her school education or vocational or other training (as the case requires); and
 - (c) that the person responsible for exercising functions under the visitor scheme (established under subsection (2)) has access to the child while the child is detained; and
 - (d) that the child is reviewed by a medical practitioner, with appropriate expertise in addiction, psychiatric or paediatric medicine or other expertise related to the order, when appropriate and at least after every 4 days of detention; and
 - (e) that a nurse is present in the same premises as the child, and that a medical practitioner is available on call to attend those premises, at all times while the child is detained; and
 - (f) if the child is detained for the purpose of ensuring compliance with an assessment order, that the assessment occurs as quickly as possible and the child is detained only for the minimum period necessary for that to occur; and
 - (g) if the child is detained for the purpose of ensuring compliance with a treatment order, that a treatment plan (developed after consultation with any medical practitioner who is currently providing treatment to the child) is implemented as soon as practicable after the child is detained under which—
 - (i) the child will receive relevant treatment from a health care professional on each day during which the child is detained; and
 - (ii) arrangements are made for the provision of ongoing treatment support to the child after the period of detention ends; and

- (h) that the child otherwise has rights while detained that the Chief Executive is satisfied are at least equivalent to the rights of a youth detained in a training centre under the *Youth Justice Administration Act 2016*.
- (2) The Minister must ensure that a visitor scheme is established, in accordance with the regulations, to monitor the health, safety and wellbeing of children who are detained pursuant to detention orders.
- (3) The regulations may confer functions under the visitor scheme on the Training Centre Visitor appointed under the *Youth Justice Administration Act 2016*, the Guardian for Children and Young People or a person appointed as the visitor for the purposes of the scheme by the Governor.
- (4) The Chief Executive of the Department must ensure that a website maintained by the Department provides up to date information as to the number of children who are currently detained pursuant to detention orders and the date on which each such child's period of detention commenced (without providing any additional information that might identify a child).

54M—Legal representation

- (1) In any proceedings under this Part, or in any appeal under section 22 of the *Youth Court Act 1993* relating to proceedings under this Part, the child to whom the proceedings relate is entitled to be represented by a legal practitioner provided (at no cost to the child) pursuant to a scheme established by the Minister for the purposes of this section.
- (2) A legal practitioner (not being an employee of the Crown or a statutory authority) who represents a child pursuant to this section is entitled to receive fees for the practitioner's services from the Minister, in accordance with a prescribed scale, and cannot demand or receive from any other person any further fee for those services.
- (3) Nothing in this section derogates from the right of the child to whom the proceedings relate to engage counsel at his or her own expense, or to appear personally, by the Public Advocate or by another person acting as an advocate for the child.

54N—Regulations

Without derogating from section 63, regulations made for the purposes of this Part may—

- (a) regulate any matter relating to assessments or treatment provided pursuant to an order under this Part;
- (b) make provision in relation to the apprehension and detention of children subject to a detention order;
- (c) provide for reporting by assessment services, treatment services and any other facilities in which children are detained pursuant to detention orders to the Minister or any other person;

- (d) require an assessment service, treatment service or other facility in which a child is detained pursuant to a detention order to comply with any prescribed agreement, code or charter or to obtain any specified type of accreditation (and to comply with any conditions of such accreditation);
- (e) make provision in relation to the operation and oversight of facilities in which children are detained pursuant to detention orders.

54O—Reports

- (1) An annual report of the Department required under section 12 of the *Public Sector Act 2009* must include the following information in respect of the period to which the report relates:
 - (a) the number of detention orders made during the period;
 - (b) the age and sex of each child who was subject to a detention order;
 - (c) the length of time each child who was subject to a detention order spent in detention and the number of ongoing detention orders at the time of the report;
 - (d) the number of children subject to a detention order who were of Aboriginal or Torres Strait Islander descent or who identified themselves as being of Aboriginal or Torres Strait Islander origin;
 - (e) the number of children subject to a detention order who absconded from detention;
 - (f) the outcome of each treatment order, including the number of children who failed to comply with a treatment order;
 - (g) the cost of the treatment provided to each child pursuant to a treatment order;
 - (h) the cost of detaining each child pursuant to a detention order.
- (2) A report must not include any information that might identify a child.

54P—Review of Part

- (1) The Minister must cause a review of the operation of this Part to be conducted and a report on the review to be prepared and submitted to the Minister.
- (2) The review and the report must be completed after the third, but before the fourth, anniversary of the commencement of this section.
- (3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

8—Insertion of section 56A

After section 56 insert:

56A—Accreditation of drug assessment and treatment services

- (1) The Minister may, by instrument in writing, accredit such suitably qualified persons or bodies as drug assessment services or drug treatment services as are necessary for the purposes of Part 5 Division 6 and Part 7A.
- (2) Without limiting subsection (1), the Minister may establish panels of persons with a view to the accreditation of such a panel as a drug assessment service under that subsection.
- (3) The Minister may, in an instrument of accreditation, impose conditions on the accreditation.
- (4) The Minister may, by notice in writing to an accredited drug assessment service or drug treatment service—
 - (a) vary or revoke any of the conditions imposed on the accreditation or impose further conditions; or
 - (b) revoke the accreditation.

9—Amendment of section 63—Regulations

- (1) Section 63(4)(i)—after "\$5 000" insert:
or 2 years imprisonment
- (2) Section 63(7)—after "Minister" insert:
or another person

Schedule 1—Transitional provision

An accreditation in force under section 35 of the *Controlled Substances Act 1984* immediately before the commencement of section 8 of this Act continues in force as if it were an accreditation under section 56A of the *Controlled Substances Act 1984* (as enacted by section 8 of this Act).