

Legislative Council—No 128

As received from the House of Assembly and read a first time, 6 May 2008

South Australia

**Controlled Substances (Controlled Drugs,
Precursors and Cannabis) Amendment Bill 2008**

A BILL FOR

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

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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 (Controlled Drugs, Precursors and Cannabis) Amendment Act 2008*.

5 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)—after the definition of *analyst* insert:

artificially enhanced cultivation means—

- 5 (a) cultivation in a solution comprised wholly or principally of water enriched with nutrients; or
(b) cultivation involving the application of an artificial source of light or heat;

- (2) Section 4(1), definition of *authorised officer*—delete the definition and substitute:

10 *authorised officer*—see section 50(1);

- (3) Section 4(1), definition of *commercial quantity*, (a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) in relation to a controlled drug or controlled precursor contained in a mixture—

- 15 (i) a quantity of the drug or precursor that equals or exceeds the amount prescribed as a commercial quantity for the drug or precursor (as the case may be) in its pure form; or
(ii) a quantity of the mixture that equals or exceeds the amount prescribed as a commercial quantity for any mixture containing the drug or precursor (as the case may be); or
20 (iii) a number of discrete dosage units of the mixture that equals or exceeds the number of discrete dosage units prescribed as a commercial quantity for any mixture containing the drug or precursor (as the case may be); or

25 (b) in relation to a controlled drug or controlled precursor that is not contained in a mixture—a quantity of the drug or precursor that equals or exceeds the amount prescribed as a commercial quantity for the drug or precursor (as the case may be) in its pure form; or

(c) in relation to a controlled plant—

- 30 (i) a number of the plant that equals or exceeds the number of plants prescribed as a commercial quantity for the plant; or
(ii) a weight of the plant that equals or exceeds the weight prescribed as a commercial quantity for the plant;

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

35 *discrete dosage unit*, in relation to a controlled drug or controlled precursor contained in a mixture, means an amount of the mixture which—

- (a) is prepared or apparently prepared for the purpose of being administered as a single dose; and

- (b) contains an amount of the controlled drug or controlled precursor (as the case may be) that is not more than the amount prescribed by regulation (if any) in relation to the drug or precursor for the purposes of this definition;

5 (5) Section 4(1), definition of *large commercial quantity*, (a) and (b)—delete paragraphs (a) and (b) and substitute:

- (a) in relation to a controlled drug or controlled precursor contained in a mixture—

- 10 (i) a quantity of the drug or precursor that equals or exceeds the amount prescribed as a large commercial quantity for the drug or precursor (as the case may be) in its pure form; or
- (ii) a quantity of the mixture that equals or exceeds the amount prescribed as a large commercial quantity for any mixture containing the drug or precursor (as the case may be); or
- 15 (iii) a number of discrete dosage units of the mixture that equals or exceeds the number of discrete dosage units prescribed as a large commercial quantity for any mixture containing the drug or precursor (as the case may be); or

- 20 (b) in relation to a controlled drug or controlled precursor that is not contained in a mixture—a quantity of the drug or precursor that equals or exceeds the amount prescribed as a large commercial quantity for the drug or precursor (as the case may be) in its pure form; or

- (c) in relation to a controlled plant—

- 25 (i) a number of the plant that equals or exceeds the number of plants prescribed as a large commercial quantity for the plant; or
- (ii) a weight of the plant that equals or exceeds the weight prescribed as a large commercial quantity for the plant;

30 (6) Section 4(1), definition of *trafficable quantity*, (a) and (b)—delete paragraphs (a) and (b) and substitute:

- (a) in relation to a controlled drug contained in a mixture—

- 35 (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 prescribed as a trafficable quantity for any mixture containing the drug; or
- 40 (iii) a number of discrete dosage units of the mixture that equals or exceeds the number of discrete dosage units prescribed as a trafficable quantity for any mixture containing the drug; or

- (b) in relation to a controlled drug that is not contained in a mixture—a quantity of the drug that equals or exceeds the amount prescribed as a trafficable quantity for the drug in its pure form; or

- (c) in relation to a controlled plant—
- (i) a number of the plant that equals or exceeds the number of plants prescribed as a trafficable quantity for the plant; or
 - (ii) a weight of the plant that equals or exceeds the weight prescribed as a trafficable quantity for the plant;

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

Section 6(2)(a)—after "the Department" insert:

or of another administrative unit of the Public Service, or body incorporated under the *South Australian Health Commission Act 1976*, involved in the administration of this Act

6—Insertion of sections 17A, 17B and 17C

After section 17 insert:

17A—Manufacture, sale, supply or possession of certain precursors

- (1) A person must not, unless he or she holds a permit from the Minister to do so, manufacture, sell or supply a poison to which this section applies (a *section 17A precursor*).

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

- (2) A person must not, unless he or she holds a permit from the Minister to do so, be in possession of a section 17A precursor.

Maximum penalty: \$10 000 or imprisonment for 2 years, or both.

- (3) A person must not sell a section 17A precursor unless the purchaser produces the permit under which the person is entitled to be in possession of the section 17A precursor.

Maximum penalty: \$10 000 or imprisonment for 2 years, or both.

- (4) This section applies to such poisons as may be prescribed, individually or by class, by the regulations.

17B—Storage and sale of certain precursors

- (1) A person must not sell a poison to which this section applies (a *section 17B precursor*) to another person unless—

- (a) the purchaser holds an account with the seller; and
- (b) the sale is transacted as a sale on account pursuant to a duly completed order form supplied by the purchaser; and
- (c) the order form is accompanied by a duly completed end user statement in the form prescribed by regulation; and
- (d) the person collecting the precursor produces his or her driver's licence, passport or other satisfactory evidence of the person's identity that includes a photograph; and
- (e) the seller is satisfied that the person collecting the precursor is the purchaser or is acting on behalf of the purchaser; and

- (f) the seller duly completes the seller's section of the end user statement.

Maximum penalty: \$10 000 or imprisonment for 3 years, or both.

- (2) A seller of section 17B precursors—

- (a) must, in relation to each sale of such a precursor, keep a record of—
 - (i) the name and address of the purchaser; and
 - (ii) the name of the precursor and the quantity sold; and
 - (iii) the date of the sale; and
- (b) must retain an end user statement for at least 5 years after the date of the sale to which it relates; and
- (c) must make the record referred to in paragraph (a) and the end user statements available for inspection at any time by an authorised officer.

Maximum penalty: \$10 000 or imprisonment for 3 years, or both.

- (3) A seller of section 17B precursors must, if at any time he or she forms a suspicion that an order or enquiry for the purchase of such a precursor may be connected to an unlawful use of the precursor, inform the Commissioner of Police of the suspicion.

Maximum penalty: \$1 000 or imprisonment for 12 months, or both.

- (4) A seller of section 17B precursors—

- (a) must keep those precursors in storage that is secure from access by any person other than the seller or a person who is authorised in writing by the seller to have such access; and
- (b) must retain such a written authorisation while it is current and for at least 5 years after it ceases to have effect and make it available for inspection at any time by an authorised officer; and
- (c) must cause the stock of those precursors to be checked, after each sale, by some person other than the person who directly handled the sale.

Maximum penalty: \$1 000 or imprisonment for 12 months, or both.

- (5) This section does not apply in relation to the sale of a section 17B precursor if the sale—

- (a) is of a section 17B precursor contained in a preparation designed, packaged and labelled for human or animal therapeutic use; and
- (b) is made to, or by, a medical practitioner, dentist, veterinary surgeon, pharmacist or nurse acting in the ordinary course of his or her profession or a member of any other prescribed profession acting in the ordinary course of that profession.

- (6) This section applies to such poisons as may be prescribed, individually or by class, by the regulations.

17C—Regulation of sale of certain precursors

- (1) A person must not sell a poison to which this section applies (a *section 17C precursor*) to another person unless—

- (a) the purchaser provides the seller with a duly completed end user statement in the form prescribed by regulation; and
- (b) the purchaser produces his or her driver's licence, passport or other satisfactory evidence of the person's identity that includes a photograph; and
- (c) the seller duly completes the seller's section of the end user statement.

Maximum penalty: \$10 000 or imprisonment for 3 years, or both.

- (2) A seller of section 17C precursors must, if at any time he or she forms a suspicion that an order or enquiry for the purchase of such a precursor may be connected to an unlawful use of the precursor, inform the Commissioner of Police of the suspicion.

Maximum penalty: \$1 000 or imprisonment for 12 months, or both.

- (3) This section does not apply in relation to the sale of a section 17C precursor if the sale—

- (a) is of a section 17C precursor contained in a preparation designed, packaged and labelled for human or animal therapeutic use; and
- (b) is made to, or by, a medical practitioner, dentist, veterinary surgeon, pharmacist or nurse acting in the ordinary course of his or her profession or a member of any other prescribed profession acting in the ordinary course of that profession.

- (4) This section applies to such poisons as may be prescribed, individually or by class, by the regulations.

7—Amendment of section 18A—Restriction of supply of drug of dependence in certain circumstances

- (1) Section 18A(6)—delete ", a member or officer of the Department, authorised generally or specifically by the Minister to do so," and substitute:

the Minister

- (2) Section 18A(8)—delete subsection (8) and substitute:

- (8) An authority or temporary authority given under this section—

- (a) may be subject to such conditions as the Minister thinks fit; and
- (b) may be varied or 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.

8—Amendment of section 31—Application of Part

(1) Section 31(1)(a)—delete paragraph (a) and substitute:

- 5 (a) the sale, manufacture, supply, administration or possession of any substance or the sale, manufacture, supply or possession of any equipment by a person who—
- (i) is acting in the ordinary course of his or her profession as a medical practitioner, dentist, veterinary surgeon, pharmacist, nurse or other prescribed profession; or
- 10 (ii) is acting in accordance with a licence or permit issued by the Minister under this Act; or

(2) Section 31(1)(b), (c) and (d)—delete "drug of dependence" wherever occurring and substitute in each case:

relevant controlled drug

(3) Section 31—after subsection (2) insert:

15 (3) In this section—

relevant controlled drug means a controlled drug other than a controlled drug of a kind excluded from this definition by regulation.

9—Amendment of section 33—Manufacture of controlled drugs for sale

Section 33(4)—delete subsection (4) and substitute:

20 (4) If—

- (a) 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; or
- 25 (b) in any proceedings for an offence of attempting or conspiring to commit an offence against subsection (1), (2) or (3) it is proved that the defendant attempted or conspired (as the case may require) to manufacture a trafficable quantity of a controlled drug,

30 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.

10—Amendment of section 33J—Manufacture of controlled drugs

Section 33J—after its present contents (now to be designated as subsection (1)) insert:

35 (2) A person who has possession of—

- (a) a controlled precursor; or
- (b) any prescribed equipment,

intending to use it to manufacture a controlled drug is guilty of an offence.

Maximum penalty: \$15 000 or imprisonment for 5 years, or both.

11—Amendment of section 33K—Cultivation of controlled plants

(1) Section 33K(1)—after paragraph (a) insert:

(ab) cultivates a cannabis plant by artificially enhanced cultivation; or

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

Maximum penalty: \$1 000 or imprisonment for 6 months, or both.

(3) Section 33K—after subsection (2) insert:

(3) A court sentencing a person for an offence against subsection (2) that is a simple cannabis offence (within the meaning of section 45A) must not impose any sentence of imprisonment in relation to the offence.

12—Insertion of section 33LB

After section 33LA insert:

33LB—Possession of a prescribed quantity of a controlled precursor

(1) Subject to subsection (3), a person who has possession of a prescribed quantity of a controlled precursor is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 3 years, or both.

(2) Subject to subsection (3), a person who has possession of a prescribed quantity of a controlled precursor and—

(a) a prescribed quantity of another kind of controlled precursor; or

(b) any prescribed equipment,

is guilty of an offence.

Maximum penalty: \$15 000 or imprisonment for 5 years, or both.

(3) A person is not guilty of an offence against this section if the person has a reasonable excuse for possession of the substances or equipment the subject of the alleged offence.

(4) In proceedings for an offence against this section, subsection (3) is to be treated as providing an exception and no proof will be required in relation to that exception by the prosecution but the application of the exception will be a matter of proof by the defendant.

(5) In this section—

prescribed quantity of a controlled precursor means—

(a) in relation to a controlled precursor contained in a mixture—

(i) a quantity of the precursor that equals or exceeds the amount prescribed for the purposes of this section for the precursor in its pure form; or

(ii) a quantity of the mixture that equals or exceeds the amount prescribed for the purposes of this section for a mixture containing the precursor; or

- (b) in relation to a controlled precursor that is not contained in a mixture—a quantity of the precursor that equals or exceeds the amount prescribed for the purposes of this section for the precursor in its pure form.

5 **13—Insertion of section 33OA**

After section 33O insert:

33OA—Basis for determining quantity of controlled substance

- 10 (1) If, for the purposes of the definition of *trafficable quantity*, *commercial quantity* or *large commercial quantity* in section 4(1) or the definition of *prescribed quantity* in section 33LB, the regulations prescribe more than 1 of the following in relation to a particular controlled drug or controlled precursor:

- (a) an amount for the drug or precursor in its pure form;
- (b) an amount for a mixture containing the drug or precursor;
- 15 (c) a number of discrete dosage units for a mixture containing the drug or precursor,

then, in proceedings for an offence against this Part involving that drug or precursor contained in a mixture, the question of whether or not the quantity of the drug or precursor the subject of the proceedings was a trafficable quantity, commercial quantity, large commercial quantity or prescribed quantity will be determined by reference to—

- 25 (d) if the charge alleges a particular quantity of the drug or precursor in its pure form—the prescribed amount for the drug or precursor in its pure form; or
- (e) if the charge alleges a particular quantity of the mixture containing the drug or precursor—the prescribed amount for a mixture containing the drug or precursor; or
- 30 (f) if the charge alleges a particular number of discrete dosage units of the mixture containing the drug or precursor—the prescribed number of discrete dosage units for a mixture containing the drug or precursor.

- 35 (2) If, for the purposes of the definition of *trafficable quantity*, *commercial quantity* or *large commercial quantity* in section 4(1), the regulations prescribe both a number of a particular controlled plant and a weight of that plant, then, in proceedings for an offence against this Part involving that plant, the question of whether or not the quantity of the plant the subject of the proceedings was a trafficable quantity, commercial quantity or large commercial quantity will be determined by reference to—

- 40 (a) if the charge alleges a particular number of the plant—the prescribed number for the plant; or

- (b) if the charge alleges a particular weight of the plant—the prescribed weight for the plant.

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

- (1) Section 44(a)—delete "the nature" and substitute:

subject to subsection (2), the nature

- (2) Section 44—after its present contents (now to be designated as subsection (1)) insert:

- (2) In determining the penalty to be imposed in respect of a summary or indictable offence against Part 5 involving a controlled drug (other than cannabis, cannabis resin or cannabis oil), the degree of physical or other harm generally associated with the consumption of that particular type of controlled drug, as compared with other types of controlled drugs, is not a relevant consideration and the court must determine the penalty on the basis that controlled drugs are all categorised equally as very harmful.

- (3) If a person is convicted by a court of an indictable offence against this Act and an offence against section 32 of the *Criminal Law Consolidation Act 1935* constituted of having the custody or control of a firearm or imitation firearm for the purpose of—

- (a) using, or causing or permitting another person to use, the firearm in the course of committing the indictable offence against this Act; or

- (b) carrying, or causing or permitting another person to carry, the firearm when committing the indictable offence against this Act,

the court must make any sentences of imprisonment imposed for the 2 offences cumulative unless the court is satisfied that special reasons exist for not doing so.

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

Section 45A(8), definition of *artificially enhanced cultivation*—delete the definition

16—Amendment of section 50—Authorised officers

Section 50(1)—delete "this Part" wherever occurring and substitute in each case:

this Act

17—Amendment of section 51—Analysts

Section 51(1)—delete "this Part" and substitute:

this Act

18—Amendment of section 56—Permits for research etc

Section 56(1)—after "controlled drug," insert:

controlled precursor,

19—Amendment of section 61—Evidentiary provisions

Section 61(1)—delete "a member or officer of the Department" and substitute:
the Minister

20—Amendment of section 63—Regulations

5 Section 63(5)—delete "and a code, standard, pharmacopoeia or other document so referred to or incorporated has effect, as amended from time to time by the authority responsible for its publication, as if it were a regulation made under this Act." and substitute:

10 , either as in force at the time the regulations are made or as in force from time to time.