

South Australia

Controlled Substances (Mandatory Treatment Orders) Amendment Bill 2015

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

- 5 This Act may be cited as the *Controlled Substances (Mandatory Treatment Orders) Amendment Act 2015*.

2—Commencement

This Act will come into operation 3 months after the day on which it is assented to by the Governor.

3—Amendment provisions

- 10 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(1)—after the definition of *trafficable quantity* insert:

- 15 *treatment service* means a drug treatment service accredited under Part 5 Division 6;

5—Insertion of Part 7A

After section 53 insert:

Part 7A—Mandatory treatment orders

54—Interpretation

In this Part—

assessment order—see section 54A(a);

Court means the Magistrates Court;

detention order—see section 54A(c);

domestic partner—a person is the domestic partner of a respondent if he or she lives with the respondent in a close personal relationship;

family member in relation to a respondent means—

- (a) a spouse or former spouse of the respondent;
- (b) a domestic partner or former domestic partner of the respondent;
- (c) a child of whom—
 - (i) the respondent; or
 - (ii) a spouse or former spouse of the respondent; or
 - (iii) a domestic partner or former domestic partner of the respondent,has care and control;
- (d) a child who normally or regularly resides with—
 - (i) the respondent; or
 - (ii) a spouse or former spouse of the respondent; or
 - (iii) a domestic partner or former domestic partner of the respondent;
- (e) a parent or guardian of the respondent;

respondent—see section 54A;

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

treatment order—see section 54A(b).

54A—Orders that may be made under this Part

The following orders may be made by the Court under this Part:

- (a) an order (an *assessment order*) requiring—
 - (i) a person (the *respondent*) 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 and the Court following its assessment of the respondent;
- (b) an order (a *treatment order*) requiring—
- (i) a person (the *respondent*) 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 and the Court following its treatment of the respondent;
- (c) an order (a *detention order*) authorising the detention of a person (the *respondent*) for the purpose of ensuring compliance with an assessment order or a treatment order;
- (d) any consequential or ancillary orders.

54B—Who may apply for order

An application for an order under this Part may be made by—

- (a) a family member of the respondent; or
- (b) an officer of the Department; or
- (c) the person holding or acting in the office of Public Advocate under the *Guardianship and Administration Act 1993*; or
- (d) a person who satisfies the Court that he or she has a proper interest.

54C—Making of orders

(1) The Court may make an assessment order if satisfied that—

- (a) there is a reasonable likelihood that the respondent is dependent on 1 or more controlled drugs; and
- (b) the respondent may be a danger to himself or herself, or to others; and
- (c) the respondent is unlikely to voluntarily seek a relevant assessment.

(2) The Court may make a treatment order if—

- (a) the respondent has been assessed (pursuant to an assessment order or otherwise) as being dependent on 1 or more controlled drugs; and
- (b) the Court is satisfied that—
- (i) the respondent may be a danger to himself or herself, or to others; and
- (ii) the respondent is unlikely to voluntarily seek relevant treatment.

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- (3) The Court may make a detention order if the Court has made an assessment or treatment order and the respondent has failed to comply with that 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).

54D—Proceedings in the absence of respondent

- 10
- (1) An order under this Part may be made in the absence of the respondent—
 - 15 (a) if the respondent was required by summons to appear at the hearing of the complaint and failed to appear at the time and place appointed for the purpose; or
 - (b) if the respondent was not, in fact, summoned to appear at the hearing (but, in that case, the Court must summon the respondent to appear before the Court to show cause why the order should not be confirmed).
 - 20 (2) 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—
 - 25 (a) the deponent must, if the respondent 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.
 - 30 (3) The Court may from time to time, without requiring the attendance of any party, adjourn the hearing to which a respondent 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.
 - (4) The date fixed in the first instance for the hearing to which the respondent is summoned must be within 7 days of the date of the order.
 - 35 (5) 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—
 - 40 (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.

- (6) An order made under this section—
- (a) continues in force until the conclusion of the hearing to which the respondent 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 respondent is summoned or the adjourned hearing unless the Court confirms the order—
 - (i) on the failure of the respondent to appear at the hearing in obedience to the summons; or
 - (ii) having considered any evidence given by or on behalf of the respondent; or
 - (iii) with the consent of the respondent.
- (7) The Court may confirm an order in an amended form.
- (8) If a hearing is adjourned, the Court need not be constituted at the adjourned hearing of the same magistrate as constituted the Court when it ordered the adjournment.

54E—Variation or revocation of order

- (1) The Court may vary or revoke an order on application by—
- (a) a person referred to in section 54B; or
 - (b) the respondent.
- (2) An application for variation or revocation of an order may only be made by the respondent 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.

54F—Service

- (1) An order must be served on the respondent personally and is not binding on the respondent 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 respondent personally and until so served—
- (a) the variation is not binding on the respondent; and
 - (b) the order as in force prior to the variation continues to be binding on the respondent.
- (3) An assessment order must be given to the assessment service nominated in the order.
- (4) A treatment order must be given to the treatment service nominated in the order.

54G—Effect of order

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- (1) A respondent 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 respondent.
- (2) A respondent to whom a treatment order applies may be given treatment for his or her dependency on controlled drugs or any other condition or illness of a kind authorised by a medical practitioner who has examined the patient.
- 10 (3) This section does not apply to treatment of a kind prescribed by the regulations.

54H—Costs of assessment or treatment

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.

15 **54I—Regulations**

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

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- (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 respondents subject to a detention order;
- (c) provide for reporting by assessment services and treatment services to the Minister or any other person.

6—Amendment of section 63—Regulations

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