

House of Assembly—No 188

As laid on the table and read a first time, 25 September 2013

South Australia

**Controlled Substances (Offences) Amendment
Bill 2013**

A BILL FOR

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 Insertion of section 12A
 - 12A Interim controlled drugs
 - 6 Amendment of section 33L—Possession or consumption of controlled drug etc
 - 7 Insertion of Part 5 Division 4A
 - Division 4A—Offences relating to controlled drug alternatives
 - 33LC Interpretation
 - 33LD Intentional manufacture of controlled drug alternative
 - 33LE Promoting controlled drug alternative
 - 33LF Manufacturing, packaging, selling or supplying substance promoted as controlled drug alternative
 - 8 Amendment of section 33S—No accessorial liability for certain offences
 - 9 Insertion of section 33T
 - 33T Power of court to prohibit certain activities
 - 10 Amendment of section 63—Regulations
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Controlled Substances (Offences) Amendment Act 2013*.

2—Commencement

- 5 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*

10 4—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *controlled drug*—after paragraph (b) insert:

or

- (c) an interim controlled drug,

(2) Section 4(1)—after the definition of *general drug detection* insert:

interim controlled drug means a substance declared to be an interim controlled drug by a notice under section 12A;

5—Insertion of section 12A

5 After section 12 insert:

12A—Interim controlled drugs

- (1) The Attorney-General may, if he or she is of the opinion that a substance may be of exceptional danger to humans, by notice in the Gazette, declare the substance to be an interim controlled drug.
- 10 (2) A notice under subsection (1)—
- (a) operates for a period specified in the notice (being a period of not more than 12 months); and
 - (b) may be varied or revoked at any time by the Attorney-General by further notice in the Gazette; and
 - 15 (c) may refer to a substance by its trade name or in any other manner.

6—Amendment of section 33L—Possession or consumption of controlled drug etc

Section 33L(1)(a), (b) and (c)—after "other than" (wherever occurring) insert:
20 an interim controlled drug,

7—Insertion of Part 5 Division 4A

After section 33LB insert:

Division 4A—Offences relating to controlled drug alternatives

25 33LC—Interpretation

- (1) In this Division—
- manufacture*, in relation to a substance, means—
- (a) undertake any process by which the substance is extracted, produced or refined; or
 - 30 (b) take part in the process of manufacture of the substance.
- (2) For the purposes of this Division, a person takes part in the process of manufacture of a substance if the person directs, takes or participates in any step, or causes any step to be taken, in the process of manufacture of the substance.

(3) For the purposes of this Division, a step in the process of manufacture of a substance includes, without limitation, any of the following when done for the purpose of manufacture of the substance:

- (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.

(4) A court may be satisfied that a person has committed an offence against this Division in relation to a substance despite any usage instruction concerning the substance (given in any manner, way, medium or form) that indicates that it is not a controlled drug or a legal alternative to a controlled drug or that it is not intended for human consumption.

33LD—Intentional manufacture of controlled drug alternative

A person who manufactures a substance intending that the substance—

- (a) will have pharmacological effects similar to those of a controlled drug; or
- (b) will be a legal alternative to a controlled drug,

is guilty of an offence.

Maximum penalty: \$15 000 or imprisonment for 4 years, or both.

33LE—Promoting controlled drug alternative

(1) A person who promotes a substance—

- (a) as having pharmacological effects similar to those of a controlled drug; or
- (b) as being a legal alternative to a controlled drug; or
- (c) in a way that is intended, or likely, to cause a person to believe that the substance—
 - (i) is a controlled drug; or
 - (ii) has pharmacological effects similar to those of a controlled drug; or
 - (iii) is a legal alternative to a controlled drug,

is guilty of an offence.

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

(2) In proceedings for an offence against subsection (1), the prosecution need not prove that the defendant promoted the substance—

(a) as having pharmacological effects similar to those of a particular controlled drug; or

(b) as being a legal alternative to a particular controlled drug; or

(c) in a way that is intended, or likely, to cause a person to believe that the substance—

(i) is a particular controlled drug; or

(ii) has pharmacological effects similar to those of a particular controlled drug; or

(iii) is a legal alternative to a particular controlled drug.

(3) For the purposes of subsection (1), a person *promotes* a substance if the person takes any action that is designed to publicise or promote the substance, whether visual or auditory means are employed and whether the substance is directly depicted or referred to or symbolism of some kind is employed, and includes taking any other action of a kind prescribed by regulation for the purposes of this subsection.

33LF—Manufacturing, packaging, selling or supplying substance promoted as controlled drug alternative

(1) If a police officer reasonably suspects that a person intends to manufacture, package, sell or supply a substance that is being, or is to be, promoted in a manner prohibited under section 33LE, the officer may give the person a notice (containing any particulars prescribed by the regulations) warning the person that if he or she manufactures, packages, sells or supplies the substance he or she will be guilty of an offence.

(2) A notice given to a person under subsection (1) may be revoked at any time by further notice given to the person by a police officer (and must be so revoked if a police officer is satisfied that the substance to which the notices relates is not being, and is not to be, promoted in a manner prohibited under section 33LE).

(3) A person who has been given a notice under subsection (1) and who subsequently manufactures, sells or supplies the substance specified in the notice is guilty of an offence.

Maximum penalty: \$15 000 or imprisonment for 4 years, or both.

(4) A notice to be given to a person under this section—

(a) in the case of a notice under subsection (1)—must be served on the person personally; or

(b) in the case of a notice under subsection (2)—may be served personally or by post.

8—Amendment of section 33S—No accessorial liability for certain offences

Section 33S(a)—delete "or 33B" and substitute:

, 33B or 33LD

9—Insertion of section 33T

After section 33S insert:

33T—Power of court to prohibit certain activities

- (1) A court may, on the application of a police officer, make an order under this section in relation to a person if satisfied that—
- (a) the person has been convicted of 1 or more offences against this Part committed in the course of carrying on a business; and
 - (b) the making of the order is reasonably necessary to ensure that the person does not engage in further conduct constituting an offence against this Part.
- (2) An order under this section may prohibit a person from—
- (a) engaging in specified conduct; or
 - (b) carrying on a specified business or a specified kind of business,
- at specified premises or in specified circumstances.
- (3) A court making an order under this section may make any ancillary orders that the court considers appropriate.
- (4) A court may, by subsequent order, vary or revoke an order made by the court under this section.

10—Amendment of section 63—Regulations

Section 63(4)(h)—delete "poison, controlled precursor, medicine or medical device" and substitute:

substance or device