

Legislative Council—No 70

As introduced and read a first time, 22 November 2006

South Australia

Monitored Treatment Programs Bill 2006

A BILL FOR

An Act to provide for properly monitored treatment programs for substance abuse; to make related amendments to the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*; the *Children's Protection Act 1993*; the *Controlled Substances Act 1984*; and the *Education Act 1972*; and for other purposes.

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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 *Monitored Treatment Programs Act 2006*.

2—Commencement

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

3—Interpretation

In this Act, unless the contrary intention appears—

approved service means an assessment or treatment service approved by the Minister for the purposes of this Act in accordance with section 6;

- 10 *intervention program manager* means a person employed by the South Australian Courts Administration Authority to have general oversight of intervention programs and coordinate the implementation of relevant court orders (and includes a delegate of such person);

- 15 *referral authority*, in relation to a person required to undergo assessment or treatment, means—

- (a) in the case of assessment or treatment required as a condition of a bail agreement or bond entered into in accordance with a court order—the intervention program manager;
- 20 (b) in the case of assessment or treatment required under any other court order—the court that made the order;
- (c) in the case of assessment or treatment required under an Act or law, or under the terms of a voluntary agreement entered into under an Act or law—the person or body with responsibility under the Act or law for issuing the requirement or entering into the agreement;

- 25 *substance abuse* means alcoholism, drug addiction and any other form of substance dependancy (whether physical or psychological).

4—Objects

The objects of this Act are to relieve the burdens placed on families and the wider community as a result of substance abuse by ensuring—

- (a) that proper systems are in place for the assessment and treatment of persons required under any Act or law to undergo treatment for substance abuse; and
- (b) that treatment programs provided for such persons are adequate and have as their goal the recovery of the persons undergoing the treatment (rather than being based on principles of harm minimisation); and
- (c) that persons required to attend such treatment receive proper assistance and support to maximise their chances of successfully completing the treatment program; and
- (d) that proper systems are in place for the ongoing monitoring of persons required to attend such treatment.

5—Application of Act

This Act applies to a person if—

- (a) the person is required in accordance with a court order to undergo assessment or treatment for substance abuse (including assessment or treatment required as a condition of a bail agreement or a bond entered into in accordance with a court order); or
- (b) the person is required under an Act or law, or under the terms of a voluntary agreement entered into under an Act or law, to undergo assessment or treatment for substance abuse.

6—Approval of assessment and treatment services

- (1) A person who provides an assessment or treatment service for substance abuse may apply to the Minister for approval of the service for the purposes of this Act.
- (2) The Minister must not grant an approval under this section in respect of an assessment or treatment service unless satisfied that the service is capable of providing assessments or treatment in accordance with the requirements of this Act.
- (3) An approval of the Minister under this section—
 - (a) must be in writing; and
 - (b) may be subject to such conditions as the Minister thinks fit.
- (4) The Minister may, by notice in writing to a person who provides an approved service—
 - (a) vary or revoke any of the conditions of the approval, or impose further conditions; or
 - (b) revoke the approval.

Part 2—Initial assessment

7—Referral for initial assessment

- 5 (1) Where this Act applies to a person, the referral authority must refer the person to an approved service for assessment and give the person a notice that sets out particulars of the date, place and time at which the person must attend the service.
- (2) A copy of the referral notice must be forwarded to the approved service.
- (3) On a person being referred to an approved service, the service must proceed to carry out and complete its initial assessment as expeditiously as reasonably practicable.
- 10 (4) For the purposes of carrying out the assessment, the approved service may, by notice in writing given personally or by post, require the person to do any of the following:
- (a) give written consent to—
 - (i) the release of the person's medical and other treatment records to the service and to any other approved service that is to provide treatment to the person in accordance with this Act; and
 - 15 (ii) the release to the service of—
 - (A) records held by or on behalf of an approved service or any agency or instrumentality of the Crown relating to previous assessments of or treatment provided to the person under this Act; and
 - 20 (B) the person's criminal record (ie, record of any convictions recorded against the person);
 - (b) submit to any testing or physical examinations;
 - (c) attend interviews, by the service or by any other person, to determine whether the person is experiencing physical, psychological or social problems connected with substance abuse and, if so, to determine the treatment (if any) appropriate for the person.
- 25

8—Report to referral authority

- 30 (1) On completion of the initial assessment of a person, the approved service must provide a report to the person and to the referral authority on the results of the assessment.
- (2) A report under this section must—
- (a) specify whether or not treatment is recommended; and
 - (b) if treatment is recommended, set out a treatment plan for the person in accordance with the requirements of this Act; and
 - 35 (c) comply with guidelines (if any) issued by the Minister for the purposes of this section.

Part 3—Treatment

9—Referral for treatment

- 5 (1) If a report provided to a referral authority under section 8 recommends that a person undergo treatment for substance abuse, the referral authority may refer the person to an approved service for treatment and give the person a notice that sets out particulars of the date, place and time at which the person must attend the service.
- (2) A copy of the referral notice and the report provided under section 8 must be forwarded to the approved service.
- 10 (3) On a person being referred to an approved service, the service must arrange a treatment program for the person in accordance with the recommendations contained in the report.
- (4) For the purposes of the treatment program, the approved service may, by notice in writing given personally or by post, require the person to do any of the following:
- 15 (a) give written consent to—
- (i) the release of the person's medical and other treatment records to the service and to any other approved service that is to provide treatment to the person in accordance with this Act; and
- (ii) the release to the service of—
- 20 (A) records held by or on behalf of an approved service or any agency or instrumentality of the Crown relating to previous assessments of or treatment provided to the person under this Act; and
- (B) the person's criminal record (ie, record of any convictions recorded against the person);
- 25 (b) submit to testing (including blood, saliva, urine or hair follicle testing) or physical examinations;
- (c) attend interviews, counselling sessions or programs of an educative, preventive or rehabilitative nature, provided by the service or by any other person, to deal with—
- 30 (i) any physical, psychological or social problems connected with substance abuse; or
- (ii) any other matters that will, in the opinion of the service, assist the person to overcome any personal problems that may tend to lead, or that may have led, to the substance abuse.

10—Treatment programs

A treatment program provided by an approved service in accordance with a referral under this Act must—

- (a) be for a period specified by the referral authority in the referral notice (being a period of not less than 15 months); and

- (b) be designed to assist the person to recover from the substance abuse by supporting abstinence from the substance and addressing the underlying causes of the substance abuse; and
- (c) include requirements relating to ongoing monitoring and assessment in accordance with section 11.

11—Ongoing monitoring and assessment

An approved service must, during the period of a person's treatment program, take reasonable steps to monitor the progress of the person in that treatment and in particular to monitor whether or not the person is abstaining from substance abuse (and must issue appropriate requirements under section 9(4) for that purpose).

12—Reports to referral authority

- (1) Following the completion of the treatment program, the approved service must provide a report to the person and to the referral authority on the results of the treatment.
- (2) A report under this section must comply with guidelines (if any) issued by the Minister for the purposes of this section.

Part 4—Miscellaneous

13—Matters to be considered in issuing referrals

In referring a person to an approved service under this Act, the referral authority must consider the following matters:

- (a) whether the approved service is the most appropriate service to which the person could be referred having regard to the purpose of the referral and the nature of the substance abuse (or suspected substance abuse);
- (b) whether the person being referred requires access to child care facilities and whether the approved service is able to provide such facilities;
- (c) the location of the approved service in relation to the person's usual place of residence and whether the person will be reasonably able to obtain transport to attend the service;
- (d) in relation to a referral for treatment—whether the approved service has treatment facilities and programs of a kind recommended for the person in the assessment report provided under section 8;
- (e) any other matters the referral authority considers relevant.

14—Release from custody for the purposes of assessment or treatment

If a person who is in custody is required, by notice under this Act, to attend an approved service or any other place for assessment or treatment in accordance with this Act, the manager of the place in which the person is being detained must cause the person to be brought to the service or other place as required by the notice.

15—Termination of referral

- (1) An approved service must, by notice in writing to the person given personally or by post, terminate a person's referral to the service—
- (a) if the person fails, without reasonable excuse, to attend the service in accordance with the referral notice or with any other notice requiring the person to attend; or
 - (b) if at any time during the assessment or treatment it becomes apparent to the service that—
 - (i) it would not, in the circumstances, be appropriate to require the person to undergo the assessment or to continue with the treatment program; or
 - (ii) the person does not want the service to deal with the matter.
- (2) An approved service may, by notice in writing to the person given personally or by post, terminate a person's referral to the service—
- (a) if the person hinders, or does not cooperate with, the service in carrying out the assessment or in providing the treatment program; or
 - (b) if the person, without reasonable excuse, refuses or fails to comply with a requirement issued by the approved service in accordance with section 7(4) or section 9(4); or
 - (c) if the person refuses to comply with the court order or other requirement in respect of which the referral was made.
- (3) A notice of termination under this section must set out a short statement of the service's reasons for the termination.
- (4) The service must give a copy of the notice of termination to the referral authority.

16—Referral following termination

- (1) On termination of a referral under section 15, the referral authority may, if it considers it appropriate in the circumstances, refer the person to another approved service to continue the assessment or treatment (as the case may be).
- (2) If a person is referred to an approved service for assessment or treatment under this section the following provisions apply:
- (a) subject to this subsection, this Act applies to the referral as if it were—
 - (i) in the case of a referral for assessment—a referral under Part 2; or
 - (ii) in the case of a referral for treatment—a referral under Part 3;
 - (b) a copy of the termination notice must be provided to the approved service (in addition to any other documents required under this Act to be provided to an approved service following referral of a person);
 - (c) in the case of a referral for treatment—the referral authority may, despite section 10(a), specify that the treatment program is to be for a period of less than 15 months if the referral authority thinks that would be appropriate, taking into account any period during which the person underwent treatment in accordance with the terminated referral.

17—Confidentiality

5 A person who is, or has been, engaged in duties related to the administration of this Act must not disclose information relating to a person referred for assessment or treatment under this Act, being information obtained in the course of those duties, unless the disclosure is made—

- (a) in the administration of this Act; or
- (b) as authorised or required by law; or
- (c) with the consent of the person to whom the information relates.

Maximum penalty: \$10 000.

10 18—Reports to Minister

- (1) An approved service must, on or before 30 September in each year, prepare and deliver to the Minister a report on the operations of the approved service during the previous financial year.
- 15 (2) The Minister must, within 12 sitting days after receiving a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

19—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- 20 (2) Without limiting subsection (1), regulations may be made empowering the Minister to require the provision of reports, statements, documents or other forms of information from approved services in connection with the administration or operation of this Act.

Schedule 1—Related amendments and transitional provision

Part 1—Preliminary

1—Amendment provisions

25 In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Related amendment to the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*

2—Amendment of section 43—Regulations

30 Section 43(10)—delete "or participate in a rehabilitation programme prescribed by the by-laws" and substitute:

for substance abuse (within the meaning of the *Monitored Treatment Programs Act 2006*)

Part 3—Related amendments to *Children's Protection Act 1993*

3—Insertion of Part 3A

After Part 3 insert:

Part 3A—Treatment agreements

9A—Voluntary assessment and treatment agreements

- (1) A guardian of a child and the Minister may—
- (a) enter into an agreement (an *assessment agreement*) under which the guardian is required to undergo assessment for substance abuse; or
 - (b) enter into an agreement (a *treatment agreement*) under which the guardian is required to undergo treatment for substance abuse.
- (2) An assessment or treatment agreement—
- (a) must be in writing; and
 - (b) may be terminated at any time—
 - (i) by the guardian who is a party to the agreement, by notice in writing to the Minister; or
 - (ii) by agreement between the parties to the agreement; or
 - (iii) if the Minister is satisfied that the guardian is unable or unwilling to comply with the agreement—by the Minister, by notice in writing to the guardian who is a party to the agreement.
- (3) In this section—
- substance abuse* has the same meaning as in the *Monitored Treatment Programs Act 2006*.

Part 4—Related amendments to *Controlled Substances Act 1984*

4—Amendment of section 4—Interpretation

Section 4(1), definition of *simple possession offence*—delete the definition and substitute:

simple possession offence means an offence against section 33L;

5—Substitution of Part 5 Division 6

Part 5 Division 6—delete Division 6 and substitute:

Division 6—Procedure in relation to simple possession offences

34—Commissioner of Police to issue requirement for assessment or treatment

- (1) If a person is alleged to have committed a simple possession offence, the Commissioner of Police must issue to the person a notice in writing requiring the person to undergo assessment for substance abuse (and must refer the person for such assessment in accordance with the *Monitored Treatment Programs Act 2006*).
- (2) The issue of a notice under subsection (1) operates as a stay of proceedings (if any) for the alleged offence.
- (3) If a report provided to the Commissioner of Police on the results of the assessment under the *Monitored Treatment Programs Act 2006* recommends that the person undergo treatment for substance abuse, the Commissioner of Police must issue to the person a notice in writing requiring the person to undergo treatment for substance abuse (and must refer the person for such treatment in accordance with the *Monitored Treatment Programs Act 2006*).
- (4) If the Commissioner of Police issues a notice to a person under subsection (3)—
- (a) any complaint laid against the person for the alleged simple possession offence must be withdrawn; and
 - (b) the person must, if remanded in custody for the alleged simple possession offence but not otherwise subject to detention, be released from detention or, if on bail for the offence, the bail agreement must be discharged.

- (5) In this section—

substance abuse has the same meaning as in the *Monitored Treatment Programs Act 2006*.

35—Prosecution of simple possession offences

- (1) A prosecution for a simple possession offence alleged to have been committed by a person cannot proceed unless the person has been referred for assessment or treatment in accordance with the *Monitored Treatment Programs Act 2006* and the referral for assessment or treatment has been terminated in accordance with that Act.

- 5
- (2) The fact that a person alleged to have committed a simple possession offence participates in an assessment or treatment in accordance with this Division does not constitute an admission of guilt, and will not be regarded as evidence tending to establish guilt, in relation to the alleged offence.
- (3) If the referral of a person is terminated under the *Monitored Treatment Programs Act 2006*, evidence—
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- (a) of anything said or done by the person in the course of being assessed or treated in accordance with the referral; or
- (b) of the reasons for the termination,
- is not admissible in any proceedings against the person for the alleged offence.
- (4) On the completion by a person of a treatment program in accordance with a requirement under section 34(3), the person is immune from prosecution for the alleged offence to which the requirement related.
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Part 5—Related amendments to *Education Act 1972*

6—Insertion of section 72Q

After section 72P insert:

72Q—Voluntary assessment and treatment agreements

- 20
- (1) The head teacher of a registered non-Government school and a student enrolled at the school, or a parent of such a student, may—
- (a) enter into an agreement (an *assessment agreement*) under which the student is required to undergo assessment for substance abuse; or
- 25
- (b) enter into an agreement (a *treatment agreement*) under which the student is required to undergo treatment for substance abuse.
- (2) An agreement under subsection (1) may only be entered into by the student if he or she is of or over 16 years of age.
- 30
- (3) An assessment or treatment agreement—
- (a) must be in writing; and
- (b) may be terminated at any time—
- (i) by the student or parent who is a party to the agreement, by notice in writing to the Minister; or
- 35
- (ii) by agreement between the parties to the agreement; or

- (iii) if the head teacher is satisfied that the student is unable or unwilling to comply with the agreement—by the head teacher, by notice in writing to the student or parent who is a party to the agreement.

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- (4) In this section—

substance abuse has the same meaning as in the *Monitored Treatment Programs Act 2006*.

7—Insertion of section 82B

10

After section 82A insert:

82B—Voluntary assessment and treatment agreements

- (1) The head teacher of a Government school and a student enrolled at the school, or a parent of such a student, may—

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- (a) enter into an agreement (an *assessment agreement*) under which the student is required to undergo assessment for substance abuse; or

- (b) enter into an agreement (a *treatment agreement*) under which the student is required to undergo treatment for substance abuse.

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- (2) An agreement under subsection (1) may only be entered into by the student if he or she is of or over 16 years of age.

- (3) An assessment or treatment agreement—

25

- (a) must be in writing; and

- (b) may be terminated at any time—

- (i) by the student or parent who is a party to the agreement, by notice in writing to the Minister; or

- (ii) by agreement between the parties to the agreement; or

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- (iii) if the head teacher is satisfied that the student is unable or unwilling to comply with the agreement—by the head teacher, by notice in writing to the student or parent who is a party to the agreement.

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- (4) If an assessment or treatment agreement is terminated in accordance with subsection (3), the head teacher of the school may exclude the student from attendance at the school for a period specified by the head teacher if the head teacher believes on reasonable grounds that the student is likely to engage in, or continue to engage in, substance abuse.

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- (5) However—

- (a) a student cannot be excluded from attendance at the school under subsection (4) on any one occasion for—

(i) less than 4 consecutive weeks, unless the exclusion is for the remainder of the school term during which the student is excluded and that period is less than 4 weeks; or

(ii) more than—

(A) 10 consecutive weeks; or

(B) the remainder of the school term or, in the case of a student above compulsory school age, semester,

(whichever is the longer period); and

(b) a student cannot, without the authorisation of the Director-General, be excluded from attendance at the school under subsection (4) for more than 20 weeks in a calendar year.

(6) The regulations may make further provision in relation to the exclusion of a student under subsection (4).

(7) In this section—

substance abuse has the same meaning as in the *Monitored Treatment Programs Act 2006*.

Part 6—Transitional provision

8—Act only applies if requirement made after commencement

This Act only applies to a person if—

(a) the person is required in accordance with a court order made after the commencement of this Act to undergo assessment or treatment for substance abuse (including assessment or treatment required as a condition of a bail agreement or a bond entered into in accordance with a court order made after the commencement of this Act); or

(b) the person is required under an Act or law, or under the terms of a voluntary agreement entered into under an Act or law, to undergo assessment or treatment for substance abuse and that requirement is made, or agreement is entered into, after the commencement of this Act.