

Legislative Council—No 10A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 8 December 2004

South Australia

Pitjantjatjara Land Rights (Regulated Substances) Amendment Bill 2004

A BILL FOR

An Act to amend the *Pitjantjatjara Land Rights Act 1981*.

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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 *Pitjantjatjara Land Rights (Regulated Substances) Amendment Act 2004*.

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.

10 **Part 2—Amendment of *Pitjantjatjara Land Rights Act 1981***

4—Amendment of section 4—Interpretation

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

motor vehicle means a vehicle built to be propelled by a motor that forms part of the vehicle;

(2) Section 4—after the definition of *Pitjantjatjara* insert:

regulated substance means petrol and any other substance declared by regulation to be a regulated substance for the purposes of this Act;

5—Amendment of section 19—Unauthorised entry on the lands

(1) Section 19(8)—after paragraph (d) insert:

(da) a representative of the news media who enters the lands for the purpose of investigating or reporting on a matter of public interest occurring on, or having a connection with, the lands;

(db) a person providing an assessment and treatment service established by the Minister in accordance with section 42BA;

(2) Section 19(9)—delete "or (d)" and substitute:

, (d), (da) or (db)

6—Repeal of section 38

Section 38—delete the section

7—Insertion of sections 42BA and 42C

After section 42B insert:

42BA—Regulated substance misuse offences—mandatory referral to assessment service

- (1) If a Pitjantjatjara who is of or over the age of 14 is alleged to have committed an offence on the lands constituted of the inhalation or consumption of a regulated substance (a *regulated substance misuse offence*), a police officer must refer him or her to an assessment and treatment service in accordance with Schedule 4.
- (2) A referral under this section operates as a stay of proceedings (if any) for the alleged offence.
- (3) A prosecution for a regulated substance misuse offence cannot proceed unless the alleged offender has been referred to an assessment and treatment service under this section in relation to the offence and the referral has been terminated by the service in accordance with Schedule 4.
- (4) The fact that a person alleged to have committed a regulated substance misuse offence participates in an assessment or enters into an undertaking under Schedule 4 does not constitute an admission of guilt, and will not be regarded as evidence tending to establish guilt, in relation to the alleged offence.
- (5) If the referral of a person in relation to an alleged offence is terminated under Schedule 4, evidence—
 - (a) of anything said or done by the person in the course of being assessed or carrying out an undertaking; or
 - (b) of the reasons for the termination,

is not admissible in any proceedings against the person for the alleged offence.

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- (6) On the expiry of an undertaking under Schedule 4, the person who entered into it is immune from prosecution for the alleged offence to which the undertaking related.
- (7) The Minister must establish such assessment and treatment services as are necessary for the purposes of this section to provide assessment and treatment programs on the lands.
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- (8) The Minister may, by notice in writing—
- (a) impose conditions on an assessment or treatment service established under subsection (7); and
- (b) vary or revoke any of the conditions imposed on such a service, or impose further conditions; and
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- (c) abolish an assessment or treatment service established under subsection (7) for any reason the Minister thinks fit.
- (9) However, the Minister must consult with Anangu Pitjantjatjara before—
- (a) establishing a regulated substance misuse assessment and treatment service under subsection (7); or
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- (b) abolishing a regulated substance misuse assessment and treatment service under subsection (8)(c).

42C—Offences relating to the supply of regulated substances

- (1) A person must not, on the lands—
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- (a) sell or supply a regulated substance to another person; or
- (b) take part in the sale or supply of a regulated substance to another person; or
- (c) have a regulated substance in his or her possession for the purpose of the sale or supply of the regulated substance to another person,

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knowing, or having reason to suspect, the regulated substance will be inhaled or consumed by any person.

Maximum penalty: \$50 000 or imprisonment for 10 years.

- (2) A police officer may seize and retain any motor vehicle that the police officer suspects on reasonable grounds—
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- (a) is being, or has been or is intended to be used for, or in connection with, an offence against this section; or
- (b) affords evidence of an offence against this section.

- (3) If a motor vehicle is seized under this section, the following provisions apply:
- (a) the motor vehicle is to be held by the Crown pending proceedings against a person for an offence against this section, unless the Minister, on application, authorises its release to the person from whom it was seized or any person who had legal title to it at the time of its seizure, subject to such conditions as the Minister thinks fit;
 - (b) if the person is convicted of the offence, the motor vehicle is, by force of this section, forfeited to the Crown—
 - (i) if an appeal has not been lodged within the period provided for lodging an appeal against the conviction—at the end of the period; or
 - (ii) if an appeal has been lodged within the period provided for lodging an appeal against the conviction—when the appeal lapses or is finally determined;
 - (c) where the motor vehicle is forfeited to the Crown under this section, it may be disposed of by way of sale, destruction or otherwise as the Minister directs;
 - (d) the proceeds of any sale under paragraph (c) (less any costs associated with towing, storage or sale of the motor vehicle) must be paid to Anangu Pitjantjatjara.
- (4) For the purposes of this section, a reference to a police officer includes a reference to a special constable authorised by a member of the police force to seize a motor vehicle under this section.

8—Amendment of section 43—Regulations

(1) Section 43(3)(b)—delete ", sale or supply"

(2) Section 43(7), (8) and (9)—delete subsections (7), (8) and (9) and substitute:

- (7) A police officer may seize and retain any motor vehicle that the police officer suspects on reasonable grounds—
- (a) is being, or has been or is intended to be used for, or in connection with the sale or supply of alcohol liquor in contravention of a by-law; or
 - (b) affords evidence of such a contravention.

(8) If a motor vehicle is seized under subsection (7), the following provisions apply:

5 (a) the motor vehicle is to be held by the Crown pending proceedings against a person for the contravention in respect of which the motor vehicle was seized, unless the Minister, on application, authorises its release to the person from whom it was seized or any person who had legal title to it at the time of its seizure, subject to such conditions as the Minister thinks fit;

10 (b) if the person is convicted of the contravention, the motor vehicle is, by force of this section, forfeited to the Crown—

(i) if an appeal has not been lodged within the period provided for lodging an appeal against the conviction—at the end of the period; or

15 (ii) if an appeal has been lodged within the period provided for lodging an appeal against the conviction—when the appeal lapses or is finally determined;

20 (c) where the motor vehicle is forfeited to the Crown under this section, it may be disposed of by way of sale, destruction or otherwise as the Minister directs;

(d) the proceeds of any sale under paragraph (c) (less any costs associated with towing, storage or sale of the motor vehicle) must be paid to Anangu Pitjantjatjara.

25 (3) Section 43(12) and (13)—delete subsections (12) and (13) and substitute:

(12) A person who contravenes a by-law regulating, restricting or prohibiting the sale or supply of alcohol liquor is guilty of an offence.

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

30 (13) For the purposes of this section, a reference to a police officer includes a reference to a special constable authorised by a member of the police force to seize a motor vehicle under this section.

9—Insertion of Schedule 4

After the last Schedule of the Act insert:

Schedule 4—Referral to assessment and treatment service (section 42BA)

1—Notice of referral for assessment

40 (1) The police officer referring a person to an assessment and treatment service in accordance with section 42BA must give the person a notice in writing that sets out particulars of the date, place and time at which the person must attend the service.

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- (2) If more than one assessment and treatment service has been established under section 42BA, the police officer referring a person under that section must refer the person to the service that is, in the opinion of the police officer, the most appropriate, having regard to cultural as well as practical matters.
- (3) A copy of the referral notice must be forwarded to the nominated assessment and treatment service.

2—Assessment of referred person

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- (1) On a person being referred to an assessment and treatment service under section 42BA, the service must proceed to carry out and complete its assessment as expeditiously as reasonably practicable.
- (2) For the purposes of carrying out the assessment, the service may, by notice in writing, require the person to—
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- (a) give written consent to the release to the service of—
- (i) the person's medical and other treatment records; and
- (ii) records held by or on behalf of an assessment and treatment service or any agency or instrumentality of the Crown relating to previous assessments of, or undertakings entered into by, the person under this Schedule; and
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- (iii) the person's criminal record (ie record of any convictions recorded against the person); and
- (b) attend the service for such further number of interviews as the service thinks fit; or
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- (c) submit to an examination, by the service or by any other person, to determine whether the person is experiencing physical, psychological or social problems connected with the misuse of a regulated substance and, if so, the treatment (if any) appropriate for the person.
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- (3) The assessment and treatment service must, by notice in writing, terminate the person's referral to the service if—
- (a) 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
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- (b) at any time during the assessment it becomes apparent to the service that—
- (i) it would not, in the circumstances, be appropriate to require the person to enter into an undertaking under this Schedule; or
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- (ii) the person does not admit to the allegation (but the service is not required to ascertain this); or

(iii) the person does not want the service to deal with the matter,

and may, in the same manner, terminate the referral if the person—

(c) hinders, or does not cooperate with, the service in carrying out the assessment; or

(d) without reasonable excuse, refuses or fails to comply with a requirement under this Schedule to give written consent to the release of records or to submit to an examination; or

(e) refuses to comply with a requirement to enter into an undertaking under this Schedule or, without reasonable excuse, contravenes or fails to comply with an undertaking entered into under this Schedule.

(4) A notice under subclause (3) must set out a short statement of the assessment and treatment service's reasons for the termination.

(5) The assessment and treatment service must give a copy of the notice of termination to the Commissioner of Police.

3—Undertakings

(1) An assessment and treatment service may, on the completion of an assessment of a person under this Schedule, require the person to enter into a written undertaking relating to one or more of the following:

(a) the treatment that the person will undertake;

(b) participation by the person in an approved program of an educative, preventive or rehabilitative nature;

(c) 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 misuse of a regulated substance.

(2) If the person enters into the undertaking—

(a) the person must be given a copy of the undertaking; and

(b) any proceedings against the person for the offence in relation to which the person was referred must be withdrawn; and

(c) the person must, if remanded in custody in relation to that offence but not otherwise subject to detention, be released from detention or, if on bail for the offence, the bail agreement must be discharged.

(3) The undertaking will be effective for a period, not exceeding 6 months, determined by the assessment and treatment service and specified in the undertaking.

(4) The assessment and treatment service may, at the request or with the consent of the person bound by the undertaking, vary the terms of the undertaking, but not so that the total period of the undertaking exceeds 6 months.

5 (5) The assessment and treatment service must notify the Commissioner of Police that the person has entered into an undertaking, of any extension to the period of the undertaking and, if it occurs, of the expiry of the undertaking.

(6) In this section—

10 *approved program* means a program, the contents of which have been approved by—

- (a) Anangu Pitjantjatjara; and
- (b) the Minister.

15 **4—Release from custody for the purposes of assessment or undertaking**

If a person who is in custody has been given a notice under this Schedule requiring the person to attend an assessment and treatment service, or has entered into an undertaking under this Schedule requiring the person to attend at an assessment and treatment service, the manager of the place in which the person is being detained must cause the person to be brought to the assessment and treatment service as required by the notice or undertaking.

25 **5—Confidentiality**

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

- (a) in the administration of this Schedule; 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.

35 **6—Manner of giving notices etc**

If this Schedule requires that a notice or other document be given to a person referred to an assessment and treatment service, the notice or document must be given to the person personally and the contents of the notice or document explained to the person (with the aid of an interpreter if necessary).