

Legislative Council—No 42

As received from the House of Assembly and read a first time, 2 August 2018

South Australia

Statutes Amendment (Drug Offences) Bill 2018

A BILL FOR

An Act to amend the *Controlled Substances Act 1984* and the *Sentencing Act 2017*.

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 Amendment of section 32—Trafficking
- 6 Amendment of section 33—Manufacture of controlled drugs for sale
- 7 Amendment of section 33A—Sale, manufacture etc of controlled precursor
- 8 Amendment of section 33B—Cultivation of controlled plants for sale
- 9 Amendment of section 33C—Sale of controlled plants
- 10 Amendment of section 33D—Sale of equipment
- 11 Amendment of section 33DA—Sale of instructions
- 12 Amendment of section 33GA—Sale of equipment to child for use in connection with consumption of controlled drugs
- 13 Amendment of section 33GB—Sale of instructions to a child
- 14 Amendment of section 33I—Supply or administration of controlled drug
- 15 Amendment of section 33J—Manufacture of controlled drugs
- 16 Amendment of section 33K—Cultivation of controlled plants
- 17 Amendment of section 33L—Possession or consumption of controlled drug etc
- 18 Amendment of section 33LA—Possession or supply of prescribed equipment
- 19 Amendment of section 33LAB—Possession or supply of instructions
- 20 Amendment of section 33LB—Possession or supply of prescribed quantity of controlled precursor
- 21 Amendment of section 33LD—Intentional manufacture of controlled drug alternative
- 22 Amendment of section 33LE—Promoting controlled drug alternative
- 23 Amendment of section 33LF—Manufacturing, packaging, selling or supplying substance promoted as controlled drug alternative
- 24 Amendment of section 34—Application of Division
- 25 Amendment of section 44—Matters to be considered when court fixes penalty

Part 3—Amendment of *Sentencing Act 2017*

- 26 Amendment of section 71—Home detention orders
 - 27 Amendment of section 96—Suspension of imprisonment on defendant entering into bond
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Drug Offences) Act 2018*.

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*

5 4—Amendment of section 4—Interpretation

Section 4—after subclause (7) insert:

- (7a) For the purposes of this Act, in determining the maximum penalty for an offence against this Act, an offender is a *serious drug offender* if the offender has, within 10 years of the commission of the offence, been previously convicted of—
- (a) 2 or more offences against Part 5 Division 2 (other than Subdivision 4) or Division 3, being offences arising out of separate incidents; or
 - (b) 3 or more offences against Part 5 (other than sections 33D, 33DA, 33I(2), 33K, 33L, 33LA, 33LAB or 33LB), being offences arising out of separate incidents.

5—Amendment of section 32—Trafficking

- (1) Section 32(1), penalty provision—delete "\$500 000" and substitute:
\$1 000 000
- (2) Section 32(2), penalty provision—delete the penalty provision and substitute:
Maximum penalty:
 - (a) for a basic offence—
 - (i) if the offender is a serious drug offender—\$500 000 or imprisonment for life, or both; or
 - (ii) in any other case—\$200 000 or imprisonment for 25 years, or both;
 - (b) for an aggravated offence—\$500 000 or imprisonment for life, or both.
- (3) Section 32(2a), penalty provision—delete the penalty provision and substitute:
Maximum penalty:
 - (a) for a basic offence—
 - (i) if the offender is a serious drug offender—\$200 000 or imprisonment for 25 years, or both; or
 - (ii) in any other case—\$75 000 or imprisonment for 15 years, or both;
 - (b) for an aggravated offence—\$200 000 or imprisonment for 25 years, or both.

- (4) Section 32(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—

- (i) if the offender is a serious drug offender—\$75 000 or imprisonment for 15 years, or both; or
(ii) in any other case—\$50 000 or imprisonment for 10 years, or both;

- (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

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

- (1) Section 33(1), penalty provision—delete "\$500 000" and substitute:

\$1 000 000

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

Maximum penalty:

- (a) for a basic offence—

- (i) if the offender is a serious drug offender—\$500 000 or imprisonment for life, or both; or
(ii) in any other case—\$200 000 or imprisonment for 25 years, or both;

- (b) for an aggravated offence—\$500 000 or imprisonment for life, or both.

- (3) Section 33(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—

- (i) if the offender is a serious drug offender—\$75 000 or imprisonment for 15 years, or both; or
(ii) in any other case—\$50 000 or imprisonment for 10 years, or both;

- (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

7—Amendment of section 33A—Sale, manufacture etc of controlled precursor

- (1) Section 33A(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—

- (i) if the offender is a serious drug offender—\$500 000 or imprisonment for life, or both; or
(ii) in any other case—\$200 000 or imprisonment for 25 years, or both;

(b) for an aggravated offence—\$500 000 or imprisonment for life, or both.

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

Maximum penalty:

5 (a) for a basic offence—

(i) if the offender is a serious drug offender—\$200 000 or imprisonment for 25 years, or both; or

(ii) in any other case—\$75 000 or imprisonment for 15 years, or both;

10 (b) for an aggravated offence—\$200 000 or imprisonment for 25 years, or both.

(3) Section 33A(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

(a) for a basic offence—

15 (i) if the offender is a serious drug offender—\$75 000 or imprisonment for 15 years, or both; or

(ii) in any other case—\$50 000 or imprisonment for 10 years, or both;

20 (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

(4) Section 33A(4), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

(a) for a basic offence—

25 (i) if the offender is a serious drug offender—\$75 000 or imprisonment for 15 years, or both; or

(ii) in any other case—\$50 000 or imprisonment for 10 years, or both;

(b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

30 (5) Section 33A(5), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

(a) for a basic offence—

35 (i) if the offender is a serious drug offender—\$75 000 or imprisonment for 15 years, or both; or

(ii) in any other case—\$50 000 or imprisonment for 10 years, or both;

(b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

8—Amendment of section 33B—Cultivation of controlled plants for sale

(1) Section 33B(1), penalty provision—delete "\$500 000" and substitute:

\$1 000 000

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

Maximum penalty:

(a) for a basic offence—

(i) if the offender is a serious drug offender—\$500 000 or imprisonment for life, or both; or

(ii) in any other case—\$200 000 or imprisonment for 25 years, or both;

(b) for an aggravated offence—\$500 000 or imprisonment for life, or both.

(3) Section 33B(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

(a) for a basic offence—

(i) if the offender is a serious drug offender—\$75 000 or imprisonment for 15 years, or both; or

(ii) in any other case—\$50 000 or imprisonment for 10 years, or both;

(b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

9—Amendment of section 33C—Sale of controlled plants

(1) Section 33C(1), penalty provision—delete "\$500 000" and substitute:

\$1 000 000

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

Maximum penalty:

(a) for a basic offence—

(i) if the offender is a serious drug offender—\$500 000 or imprisonment for life, or both; or

(ii) in any other case—\$200 000 or imprisonment for 25 years, or both;

(b) for an aggravated offence—\$500 000 or imprisonment for life, or both.

(3) Section 33C(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

(a) for a basic offence—

(i) if the offender is a serious drug offender—\$75 000 or imprisonment for 15 years, or both; or

- (ii) in any other case—\$50 000 or imprisonment for 10 years, or both;
- (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

5 **10—Amendment of section 33D—Sale of equipment**

Section 33D, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
 - 10 (i) if the offender is a serious drug offender—\$20 000 or imprisonment for 5 years, or both; or
 - (ii) in any other case—\$15 000 or imprisonment for 3 years, or both;
- (b) for an aggravated offence—\$20 000 or imprisonment for 5 years, or both.

15 **11—Amendment of section 33DA—Sale of instructions**

Section 33DA(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
 - 20 (i) if the offender is a serious drug offender—\$20 000 or imprisonment for 5 years, or both; or
 - (ii) in any other case—\$15 000 or imprisonment for 3 years, or both;
- (b) for an aggravated offence—\$20 000 or imprisonment for 5 years, or both.

25 **12—Amendment of section 33GA—Sale of equipment to child for use in connection with consumption of controlled drugs**

Section 33GA, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
 - 30 (i) if the offender is a serious drug offender—\$30 000 or imprisonment for 7 years, or both; or
 - (ii) in any other case—\$20 000 or imprisonment for 5 years, or both;
- (b) for an aggravated offence—\$30 000 or imprisonment for 7 years, or both.

35

13—Amendment of section 33GB—Sale of instructions to a child

Section 33GB(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
- (i) if the offender is a serious drug offender—\$30 000 or imprisonment for 7 years, or both; or
 - (ii) in any other case—\$20 000 or imprisonment for 5 years, or both;
- (b) for an aggravated offence—\$30 000 or imprisonment for 7 years, or both.

14—Amendment of section 33I—Supply or administration of controlled drug

- (1) Section 33I(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
- (i) if the offender is a serious drug offender—\$75 000 or imprisonment for 15 years, or both; or
 - (ii) in any other case—\$50 000 or imprisonment for 10 years, or both;
- (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

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

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

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

- (1) Section 33J(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
- (i) if the offender is a serious drug offender—\$75 000 or imprisonment for 15 years, or both; or
 - (ii) in any other case—\$30 000 or imprisonment for 7 years, or both;
- (b) for an aggravated offence—\$75 000 or imprisonment for 15 years, or both.

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

Maximum penalty:

- (a) for a basic offence—
- (i) if the offender is a serious drug offender—\$30 000 or imprisonment for 7 years, or both; or
 - (ii) in any other case—\$20 000 or imprisonment for 5 years, or both;
- (b) for an aggravated offence—\$30 000 or imprisonment for 7 years, or both.

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

(1) Section 33K(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

(a) for a basic offence—

(i) if the offender is a serious drug offender—\$5 000 or imprisonment for 5 years, or both; or

(ii) in any other case—\$2 000 or imprisonment for 2 years, or both;

(b) for an aggravated offence—\$5 000 or imprisonment for 5 years, or both.

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

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

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

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

Maximum penalty: \$2 000.

18—Amendment of section 33LA—Possession or supply of prescribed equipment

Section 33LA, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

(a) for a basic offence—

(i) if the offender is a serious drug offender—\$20 000 or imprisonment for 5 years, or both; or

(ii) in any other case—\$10 000 or imprisonment for 2 years, or both;

(b) for an aggravated offence—\$20 000 or imprisonment for 5 years, or both.

19—Amendment of section 33LAB—Possession or supply of instructions

Section 33LAB(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

(a) for a basic offence—

(i) if the offender is a serious drug offender—\$20 000 or imprisonment for 5 years, or both; or

(ii) in any other case—\$10 000 or imprisonment for 2 years, or both;

(b) for an aggravated offence—\$20 000 or imprisonment for 5 years, or both.

20—Amendment of section 33LB—Possession or supply of prescribed quantity of controlled precursor

(1) Section 33LB(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- 5 (a) for a basic offence—
- (i) if the offender is a serious drug offender—\$20 000 or imprisonment for 5 years, or both; or
 - (ii) in any other case—\$15 000 or imprisonment for 3 years, or both;
- 10 (b) for an aggravated offence—\$20 000 or imprisonment for 5 years, or both.

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

Maximum penalty:

- 15 (a) for a basic offence—
- (i) if the offender is a serious drug offender—\$30 000 or imprisonment for 7 years, or both; or
 - (ii) in any other case—\$20 000 or imprisonment for 5 years, or both;
- 20 (b) for an aggravated offence—\$30 000 or imprisonment for 7 years, or both.

21—Amendment of section 33LD—Intentional manufacture of controlled drug alternative

Section 33LD, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- 25 (a) for a basic offence—
- (i) if the offender is a serious drug offender—\$30 000 or imprisonment for 7 years, or both; or
 - (ii) in any other case—\$20 000 or imprisonment for 5 years, or both;
- 30 (b) for an aggravated offence—\$30 000 or imprisonment for 7 years, or both.

22—Amendment of section 33LE—Promoting controlled drug alternative

Section 33LE(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- 35 (a) for a basic offence—
- (i) if the offender is a serious drug offender—\$20 000 or imprisonment for 5 years, or both; or
 - (ii) in any other case—\$10 000 or imprisonment for 2 years, or both;

- (b) for an aggravated offence—\$20 000 or imprisonment for 5 years, or both.

23—Amendment of section 33LF—Manufacturing, packaging, selling or supplying substance promoted as controlled drug alternative

5 Section 33LF(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—
- (i) if the offender is a serious drug offender—\$30 000 or imprisonment for 7 years, or both; or
- 10 (ii) in any other case—\$20 000 or imprisonment for 5 years, or both;
- (b) for an aggravated offence—\$30 000 or imprisonment for 7 years, or both.

24—Amendment of section 34—Application of Division

15 Section 34(1)—after paragraph (b) insert:

or

- (c) a person who is alleged to have committed a simple possession offence but who has, in the 4 years preceding the date of the alleged simple possession offence, been referred to a nominated assessment service under this Division on 2 or more occasions (with each referral being in respect of a separate alleged simple possession offence).
- 20

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

25 Section 44(1)—after paragraph (d) insert:

- (daa) in the case of an offence against section 33—whether a child was present at any stage when the offence occurred; and

Part 3—Amendment of *Sentencing Act 2017*

26—Amendment of section 71—Home detention orders

30 Section 71(5), definition of *serious and organised crime offence*, (b)—after subparagraph (v) insert:

- (vi) an offence under section 33F, 33G or 33H;

27—Amendment of section 96—Suspension of imprisonment on defendant entering into bond

35 Section 96(9), definition of *serious and organised crime offence*, (b)—after subparagraph (v) insert:

- (vi) an offence under section 33F, 33G or 33H;