

Legislative Council—No 276

As received from the House of Assembly and read a first time, 14 November 2017

South Australia

**Summary Offences (Liquor Offences) Amendment
Bill 2017**

A BILL FOR

An Act to amend the *Summary Offences Act 1953*; and to make related amendments to the *Criminal Investigation (Covert Operations) Act 2009*, the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* and the *Liquor Licensing Act 1997*.

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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 *Summary Offences (Liquor Offences) Amendment Act 2017*.

2—Commencement

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

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 *Summary Offences Act 1953*

4—Insertion of Part 3B

After Part 3A insert:

Part 3B—Liquor etc

210A—Interpretation

In this Part—

designated area means an area of land designated by the Minister under section 210D;

liquor has the same meaning as in the *Liquor Licensing Act 1997*;

prescribed area means—

- (a) an area comprised of a public place or public places specified in a notice under section 131 of the *Liquor Licensing Act 1997*; or
- (b) Trust Land within the meaning of the *Aboriginal Lands Trust Act 2013*; or
- (c) "the lands" within the meaning of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*; or
- (d) "the lands" within the meaning of the *Maralinga Tjarutja Land Rights Act 1984*;

sale includes—

- (a) barter or exchange; or
- (b) offer or expose for sale, barter or exchange; or
- (c) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; or
- (d) supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom, or otherwise with a view to commercial gain.

210B—Possession, transportation of liquor for sale

(1) A person must not—

- (a) have possession of liquor for the purpose of sale; or
- (b) transport liquor for the purpose of sale; or
- (c) transport liquor, for the purpose of sale, to a place other than a place at or on which liquor may lawfully be sold.

Maximum penalty:

- (a) for a first offence—\$20 000;

(b) for a second or subsequent offence—\$40 000.

- (2) If liquor is possessed or transported by a person in contravention of subsection (1) and is so possessed or transported on behalf of another person, that other person is guilty of an offence.

Maximum penalty:

(a) for a first offence—\$20 000;

(b) for a second or subsequent offence—\$40 000.

- (3) If liquor is possessed or transported by a person in contravention of subsection (1) (the *first person*), a person who—

(a) would derive a direct or indirect pecuniary benefit from the sale of the liquor (if the sale were to occur); and

(b) knew, or ought reasonably to have known, that the first person was in possession of or transporting the liquor for the purpose of sale,

is guilty of an offence.

Maximum penalty:

(a) for a first offence—\$20 000;

(b) for a second or subsequent offence—\$40 000.

- (4) Subsections (1) and (2) do not apply to the possession or transportation of liquor for the purpose of a sale that may lawfully be made.

- (5) It is a defence to a prosecution for an offence against subsection (3) for the person to prove that the person believed on reasonable grounds that the liquor was possessed or transported by the first person for the purpose of a sale that may lawfully be made.

- (6) If, in proceedings for an offence against subsection (1) or (2), it is proved that the amount of liquor possessed or transported exceeds the prescribed amount, it is presumed, in the absence of proof to the contrary, that the liquor was possessed or transported (as the case requires) for the purpose of sale.

- (7) A regulation for the purposes of subsection (6) may vary according to the area, circumstances or any other specified factor to which the regulation is expressed to apply.

210C—Supply etc of liquor in certain areas

- (1) If—

(a) a person (the *first person*)—

(i) supplies liquor to another person (the *third person*);
or

(ii) transports liquor intending to supply any of it, or believing that another person intends to supply any of it, to the third person; or

(iii) possesses liquor intending to supply any of it to the third person; and

(b) the third person is in a prescribed area,
the first person is guilty of an offence.

Maximum penalty:

(a) for a first offence—\$20 000;

(b) for a second or subsequent offence—\$40 000.

(2) If, in proceedings for an offence against subsection (1), it is proved that a person possessed or transported liquor in a designated area, it is presumed, in the absence of proof to the contrary, that the person possessed or transported (as the case requires) the liquor intending to supply it to a third person.

21OD—Designated areas

(1) The Minister may, by notice published in the Gazette, designate an area of land as a designated area for the purposes of this Part.

(2) The Minister may, by further notice published in the Gazette, vary or revoke a notice published under subsection (1).

(3) A notice under subsection (1) or (2) cannot include within a designated area land that is more than 100km from the boundary of a prescribed area.

(4) A notice under subsection (1) or (2) takes effect on the day on which it is published in the Gazette, or on a later day as specified in the notice.

(5) If the Minister publishes a notice under subsection (1) or (2), the Minister must cause a copy of the notice to be laid before both Houses of Parliament.

(6) If either House of Parliament passes a resolution disallowing a notice laid before it under subsection (5), the notice will cease to have effect (and in the case of a notice under subsection (2) varying or revoking a notice under subsection (1), the notice under subsection (1) will, from that time, apply as if it had not been varied or revoked (as the case requires) by the notice under subsection (2)).

(7) A resolution is not effective for the purposes of subsection (6) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not fall within the same session of Parliament) after the day on which the notice was laid before the House under subsection (5).

21OE—Power to search vehicles for liquor in designated areas

(1) If a vehicle is in a designated area, a police officer may, for the purposes of ascertaining whether the provisions of this Part are being complied with or have been contravened—

(a) require the driver of the vehicle to stop the vehicle; and

(b) detain the vehicle and search the vehicle and any persons or property in or on the vehicle for liquor; and

(c) direct a person to open any part of the vehicle and give such other directions as are reasonably necessary for, or incidental to, the effective exercise of powers under this section; and

(d) seize any property that the police officer suspects on reasonable grounds may be intended to be used for the purpose of committing, or that may afford evidence as to the commission of, an offence against this Part.

(2) The Commissioner may, in relation to property seized by a police officer exercising search powers under this section in relation to a suspected offence against this Part (*seized property*), direct that the seized property be destroyed or otherwise disposed of, if a person has been or is to be charged with an offence in relation to it.

(3) Subsection (2) does not apply to a motor vehicle.

Note—

Powers may be exercised under the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* in relation to motor vehicles in connection with certain offences against this Part.

(4) Property referred to in subsection (2) may be destroyed or otherwise disposed of at the place at which it was seized or at any other suitable place.

(5) If a person is convicted of an offence in relation to property destroyed or otherwise disposed of in accordance with subsection (2), the court may order the convicted person to pay the reasonable costs of destruction or disposal to the Commissioner.

(6) If the Magistrates Court, on application by a police officer, or any court hearing proceedings for an offence relating to seized property, finds that seized property was the subject of an offence against this Part, the court may, by order, forfeit the property to the Crown.

(7) Property that is the subject of an order for forfeiture under this section may be sold, destroyed or otherwise disposed of as the Commissioner directs.

(8) Subject to subsections (9) and (10), if seized property has not been forfeited to the Crown in proceedings commenced within the prescribed period after its seizure, a person from whose lawful possession the property was seized, or a person with legal title to it, is entitled to recover from the Commissioner (if necessary, by action in a court of competent jurisdiction) the property itself, or if it has been damaged or destroyed or has deteriorated, compensation of an amount equal to its market value at the time of its seizure.

(9) Subsection (8) does not apply to property that has been destroyed or otherwise disposed of under subsection (2).

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- (10) Despite subsection (8), a court hearing proceedings under that subsection in relation to property that has not been destroyed or otherwise disposed of under subsection (2) may, if it thinks fit, make an order under subsection (6) for forfeiture of the property to the Crown.
- (11) Nothing in this section affects the operation of the *Criminal Assets Confiscation Act 2005* or the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*.
- 10 (12) The following information must be included in the annual report of the Commissioner under section 75 of the *Police Act 1998* (other than in the year in which this section comes into operation) in respect of the period to which the report relates (the **relevant period**):
- (a) the number of searches of vehicles under subsection (1) during the relevant period;
- 15 (b) the number of occasions on which liquor was detected in the course of such searches conducted during the relevant period;
- (c) any other information requested by the Minister.
- (13) In this section—
- 20 **motor vehicle** has the same meaning as in the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*;
- prescribed period** means 2 years or such longer period as the Magistrates Court may, on application by a police officer, allow.

210F—Analysis and evidence

- 25 (1) The Commissioner may appoint analysts for the purpose of analysing seized property.
- (2) The Commissioner must develop, and publish on a website determined by the Commissioner, guidelines in relation to—
- 30 (a) the manner in which seized property may be analysed; and
- (b) the keeping of records in relation to the analysis of seized property.
- (3) Guidelines published under subsection (2) may (without limitation) provide for an analysis of seized property to be undertaken by means of testing, examining the property, or in any other manner the Commissioner thinks fit.
- 35 (4) In proceedings for an offence against this Part, an apparently genuine document purporting to be signed by the Commissioner and to certify that a specified substance is liquor will, in the absence of proof to the contrary, be proof of the matter certified.

(5) If the label on a sealed container states or indicates that it contains liquor then, in proceedings for an offence against this Part, it is to be taken, in the absence of proof to the contrary, that the container contains liquor of the description and in the quantity and concentration stated on the label.

(6) In any proceedings for an offence against this Part, an apparently genuine document purporting to be signed by the Commissioner and to certify that a person named in the certificate is an analyst will, in the absence of proof to the contrary, be proof of the matter certified.

(7) In this section—

label, in relation to a container, means any label, marking, or other information on the container;

seized property means seized property within the meaning of section 210E.

210G—Regulations

The regulations may—

- (a) provide that this Part or specified provisions of this Part do not apply in prescribed circumstances or to a specified class of persons; or
- (b) provide for, or provide for the granting of, exemptions (either subject to specified conditions or otherwise) from the application of this Act or specified provisions of this Act in respect of classes of persons or activities.

Schedule 1—Related amendments

Part 1—Amendment of *Criminal Investigation (Covert Operations) Act 2009*

1—Amendment of section 3—Interpretation

(1) Section 3(1), definition of *serious criminal behaviour*—after paragraph (c) insert:

(ca) an offence against section 29 of the *Liquor Licensing Act 1997*; or

(2) Section 3(1), definition of *serious criminal behaviour*—after paragraph (e) insert:

or

(f) an offence against section 210B or 210C of the *Summary Offences Act 1953*;

Part 2—Amendment of *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*

2—Amendment of section 3—Interpretation

(1) Section 3(1)—after the definition of *credit provider* insert:

5 *designated liquor offence* means an offence against section 21OB(1) or 21OC(1) of the *Summary Offences Act 1953*;

(2) Section 3(1), definition of *forfeiture offence*—after "definition" insert:
or a designated liquor offence

Part 3—Amendment of *Liquor Licensing Act 1997*

10 3—Amendment of section 29—Requirement to hold licence

Section 29—after its present contents (now to be designated as subsection (1)) insert:

(2) An occupier or person in charge of premises on which liquor is sold in contravention of subsection (1) who knowingly permits the sale is guilty of an offence.

15 Maximum penalty:

- (a) for a first offence—\$20 000;
- (b) for a second or subsequent offence—\$40 000.

(3) If a prescribed person sells liquor to another person and—

20 (a) the prescribed person reasonably believes, or ought reasonably to believe, that the other person intends to sell the liquor in contravention of subsection (1); and

(b) that other person sells the liquor in contravention of subsection (1),

the prescribed person is guilty of an offence.

25 Maximum penalty:

- (a) for a first offence—\$20 000;
- (b) for a second or subsequent offence—\$40 000.

(4) In this section—

prescribed person means—

- 30 (a) a licensee; or
- (b) a person employed or engaged by a licensee; or
- (c) an agent of a licensee.