

South Australia

Summary Offences (Drug Paraphernalia) Amendment Act 2008

An Act to amend the *Summary Offences Act 1953*; and to make related amendments to the *Controlled Substances Act 1984*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Summary Offences Act 1953*

- 4 Insertion of section 9B
9B Sale of drug paraphernalia

Schedule 1—Related amendment

Part 1—Amendment of *Controlled Substances Act 1984*

- 1 Amendment of section 33D—Sale of equipment
- 2 Insertion of section 33GA
33GA Sale of equipment to child for use in connection with consumption of controlled drugs

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Summary Offences (Drug Paraphernalia) Amendment Act 2008*.

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 *Summary Offences Act 1953*

4—Insertion of section 9B

After section 9A insert:

9B—Sale of drug paraphernalia

- (1) Subject to this section, a person who—
 - (a) sells a prohibited item; or
 - (b) supplies a prohibited item in connection with the sale, or possible sale, of goods,is guilty of an offence.
Maximum penalty:
 - (a) if the offender is a body corporate—\$50 000;
 - (b) if the offender is a natural person—\$10 000 or imprisonment for 2 years.
- (2) A person who—
 - (a) sells a prohibited item to a minor; or
 - (b) supplies a prohibited item to a minor in connection with the sale, or possible sale, of goods,is guilty of an offence.
Maximum penalty:
 - (a) if the offender is a body corporate—\$100 000;
 - (b) if the offender is a natural person—\$20 000 or imprisonment for 2 years.
- (3) If a body corporate commits an offence against subsection (1) or subsection (2), any director or manager of the body corporate is also guilty of an offence and liable to the same penalty as may be imposed for the principal offence when committed by a natural person unless it is proved that he or she could not, by the exercise of reasonable diligence, have prevented the commission of the principal offence by the body corporate.
- (4) A person may be prosecuted and convicted of an offence under subsection (3) whether or not the body corporate has been prosecuted or convicted of the offence committed by the body corporate.
- (5) If a person is convicted of an offence against this section, any prohibited item seized as evidence of the offence may be retained by the Commissioner of Police and is forfeited to the Crown—
 - (a) 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

- (b) 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.
- (6) An item forfeited under subsection (5) may be dealt with and disposed of in such manner as the Commissioner of Police may direct.
- (7) In this section—

cocaine kit—a cocaine kit is constituted by 2 or more of the following items packaged as a unit apparently for use for the purposes of preparing for introduction, or for introducing, cocaine into the body of a person:

- (a) a razor blade;
- (b) a tube;
- (c) a mirror;
- (d) a scoop;
- (e) a glass bottle;
- (f) any other item apparently for use together with any item referred to in paragraphs (a) to (e) to prepare for introduction, or to introduce, cocaine into the body of a person;

prohibited item means—

- (a) a water pipe; or
- (b) a prohibited pipe; or
- (c) a cocaine kit;

prohibited pipe means—

- (a) a device (other than a water pipe) that is apparently intended for use or designed for use in smoking cannabis, cannabis resin or methamphetamine crystals; or
- (b) components that, when assembled together, form such a device,

and includes, without limitation, a device known as a hash pipe and a device known as an ice pipe;

sell means—

- (a) sell, barter or exchange; or
- (b) offer or agree to sell, barter or exchange; or
- (c) expose for sale, barter or exchange; or
- (d) have in possession for sale, barter or exchange;

supply includes offer to supply;

water pipe means—

- (a) a device capable of being used for smoking by means of the drawing of smoke fumes through water or another liquid; or
- (b) components that, when assembled together, form such a device; or
- (c) a device that is apparently intended to be such a device but that is not capable of being so used because it needs an adjustment, modification or addition,

and includes, without limitation, devices known as bongos, hookahs, narghiles, shishas and ghalyans.

Schedule 1—Related amendment

Part 1—Amendment of *Controlled Substances Act 1984*

1—Amendment of section 33D—Sale of equipment

Section 33D, penalty provision—delete "\$2 000" and substitute:

\$10 000

2—Insertion of section 33GA

After section 33G insert:

33GA—Sale of equipment to child for use in connection with consumption of controlled drugs

A person who—

- (a) sells a piece of equipment to a child for use in connection with the smoking, consumption or administration of a controlled drug, or the preparation of such a drug for smoking, consumption or administration; or
- (b) has possession of a piece of equipment, intending to sell it to a child for such use,

is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 2 years, or both.