

Legislative Council—No 103

As introduced and read a first time, 14 March 2007

South Australia

**Members of Parliament (Random Drug Testing)
Bill 2007**

A BILL FOR

An Act to provide for the random drug testing of Members of the Parliament of South Australia; 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 *Members of Parliament (Random Drug Testing) Act 2007*.

5 2—Interpretation

In this Act—

analyst means—

- (a) a person appointed as an analyst for the purposes of the *Road Traffic Act 1961*; or
- 10 (b) a person holding an office of a class approved for the purposes of the *Road Traffic Act 1961*;

authorised person means a person appointed by the Minister after consultation with the Presiding Officers of both Houses to be an authorised person for the purposes of this Act;

- 15 **drug testing procedure**—see section 4;

House means—

- (a) the House of Assembly; or
- (b) the Legislative Council;

Member means a person who is for the time being—

- 5 (a) a Member of the House of Assembly; or
- (b) a Member of the Legislative Council;

non-complying sample means a prescribed sample given by a Member in the course of a drug testing procedure under section 7 if the sample contains any trace of a prescribed drug;

10 *prescribed drug* means—

- (a) delta-9-tetrahydrocannabinol; or
- (b) methylamphetamine; or
- (c) 3, 4-methylenedioxymethamphetamine (MDMA); or
- (d) heroin (diacetylmorphine); or
- 15 (e) any other substance declared by the regulations to be a prescribed drug;

prescribed sample means a sample of a kind specified by the regulations in relation to a particular kind of drug testing procedure;

Presiding Officer, in relation to a House, means the Speaker of the House of Assembly or the President of the Legislative Council;

20 *relevant House*, in relation to a Member, means the House in which the Member occupies a seat;

testing period means a period during which Members directed in accordance with section 7 are subjected to drug testing procedures.

3—Interaction with other Acts

25 Except where the contrary intention is expressed in this or any other Act, this Act is in addition to and does not limit or derogate from the provisions of any other Act.

Part 2—Random drug testing

Division 1—Drug testing procedures

4—Drug testing procedures

- 30 (1) A drug testing procedure conducted under this Act for the purpose of determining the presence of any prescribed drug in a prescribed sample given by a Member will—
 - (a) be of a kind specified by the Governor, by notice in the Gazette, on the recommendation of the Premier and the Leader of the Opposition; and
 - (b) be conducted in accordance with the procedures set out in the regulations.

- (2) Without limiting subsection (1)(b), the regulations may provide for the conduct of a further drug testing procedure (whether of the same kind or otherwise) for the purposes of confirming the results of a drug testing procedure in which a non-complying sample is given.
- 5 (3) The Governor may from time to time, by further notice in the Gazette, on the recommendation of the Premier and the Leader of the Opposition, vary a drug testing procedure specified under subsection (1).
- (4) Drug testing procedures must be conducted on Members selected in accordance with section 6 during the testing periods in each calendar year determined by the Governor by notice in writing given to the Clerk of each House not less than 5 days before the commencement of the first such period.
- 10 (5) Except as may be required for the purposes of this Act, the Clerk of a House must not divulge the dates of a testing period to any person.

Division 2—Random drug testing of Members

5—Each Member to submit to drug testing procedure

- 15 (1) Subject to this Act, each Member of each House must submit to a drug testing procedure in each calendar year.
- (2) However, a Member is not required to submit to a drug testing procedure during a particular calendar year if the Member's seat is vacated prior to the Member submitting to a drug testing procedure during that year.
- 20 (3) A Member must not be required to submit to more than 1 drug testing procedure in a particular calendar year.

6—Selection procedure etc

- 25 (1) The Governor may, by notice in the Gazette, specify the number of Members from each House to be required to submit to a drug testing procedure during each testing period in a particular calendar year.
- (2) The Clerk of each House must select the specified number of Members to be required to submit to a drug testing procedure during each testing period.
- 30 (3) The selection of Members for the purposes of subsection (2) must be made by secret ballot conducted in accordance with the regulations.

7—Member may be required to undertake drug testing procedure

- (1) Subject to this Act, the Clerk of a House may, by notice in writing, direct a Member of that House selected in accordance with section 6 to attend at a specified time and place for the purpose of submitting to a drug testing procedure.
- 35 (2) A notice under subsection (1) must specify what kind of drug testing procedure is to be conducted.
- (3) A Member required under this section to submit to a drug testing procedure must not refuse or fail to comply with all reasonable directions of the Clerk of the relevant House or an authorised person in relation to the requirement and, in particular, must not refuse or fail to allow a prescribed sample to be taken in accordance with the directions of the Clerk or authorised person.
- 40

- (4) If a Member who is required under this section to submit to a drug testing procedure refuses or fails to comply with all reasonable directions of the Clerk of the relevant House or an authorised person in relation to the requirement—
- 5 (a) the Presiding Officer of the relevant House must cause, in accordance with the standing orders of the House, the naming of the Member and the reporting of the offence to the House; and
- (b) the Presiding Officer of the other House must cause the fact to be recorded in Hansard.
- (5) No Member is entitled to refuse or fail to comply with a requirement or direction
- 10 under this section on the ground that the Member would, or might, by complying with that requirement or direction, provide evidence that could be used against himself or herself.

8—Presiding Officer to be informed of non-complying samples

- (1) If a prescribed sample given by a Member in the course of a drug testing procedure
- 15 conducted under section 7 is found on analysis to be a non-complying sample, the analyst must notify, in the prescribed form, the Presiding Officer of the relevant House of that fact.
- (2) The Presiding Officer must, as soon as reasonably practicable after he or she has been notified under subsection (1), provide a report to the Commissioner of Police setting
- 20 out the prescribed information.
- (3) A Presiding Officer is entitled to rely on the information contained in a notice under subsection (1) for any purpose under this Act.

9—Further provisions related to non-complying samples

- (1) If a prescribed sample given by a Member in the course of a drug testing procedure
- 25 conducted under section 7 is found on analysis to be a non-complying sample—
- (a) the Presiding Officer of the relevant House must cause, in accordance with the standing orders of the House, the naming of the Member and the reporting of the offence to the House; and
- (b) the Presiding Officer of the other House must cause the fact to be recorded in
- 30 Hansard.
- (2) If a prescribed sample given by a Member in the course of a drug testing procedure conducted under section 7 is found on analysis to be a non-complying sample, the Clerk of the relevant House may—
- (a) determine the costs and expenses of carrying out the analysis; and
- 35 (b) recover the amount so determined from the Member as a debt in a court of competent jurisdiction.

Part 3—Miscellaneous

10—Immunity of persons engaged in the administration of this Act

- (1) No personal liability attaches to a person engaged in the administration of this Act for
- 40 an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of official powers or functions.

- (2) An action that would, but for subsection (1), lie against a person lies instead against the Crown.

11—Standing Orders

5 Despite any other Act or law, the Legislative Council and House of Assembly must prepare and adopt such Standing Rules and Orders as may be necessary to give effect to this Act.

12—Service

A notice or other document required or authorised by this Act to be given to or served on a Member may—

- 10 (a) be served on the Member or an agent of the Member personally; or
(b) be left for the Member at his or her place of residence or business with someone apparently over the age of 16 years; or
(c) be posted to the Member at his or her last known address; or
(d) be given or served in any other manner prescribed by the regulations.

13—Regulations

- 15 (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- 20 (a) regulate the manner of taking and dealing with prescribed samples and their analysis; and
(b) provide for certificate evidence for use in any proceedings as to the taking and analysis of any prescribed sample and the authority of a person to carry out an analysis; and
(c) require a Member to produce the prescribed form of identification at the time
25 a prescribed sample is taken, and provide that a failure to do so is taken to be a failure to comply with a direction under this section.
- (3) Regulations under this Act may—
- (a) be of general or limited application; and
(b) make different provision according to the matters or circumstances to which
30 they are expressed to apply; and
(c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or any other person or body prescribed by the regulations.