

# House of Assembly

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South Australia

## Road Traffic (Drug Driving) Amendment Bill 2005

A BILL FOR

An Act to amend the *Road Traffic Act 1961*; and to make related amendments to other Acts.

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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 *Road Traffic (Drug Driving) Amendment Act 2005*.

**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 *Road Traffic Act 1961*

### 4—Substitution of heading to Part 3 Division 5

Heading to Part 3 Division 5—delete the heading and substitute:

#### **Division 5—Drink driving and drug driving**

### 5—Amendment of section 47A—Interpretation

- (1) Section 47A(1)—after the definition of *category 3 offence* insert:

*driver testing station* means a driver testing station established under section 47DA;

*drug screening test* means a test by means of an apparatus of a kind approved by the Governor for the conduct of drug screening tests;

- (2) Section 47A(1)—after the definition of *gross vehicle mass* insert:

*oral fluid* includes saliva;

*oral fluid analysis* means an analysis of oral fluid by means of an apparatus of a kind approved by the Governor for the conduct of oral fluid analyses;

- (3) Section 47A(1), definition of *prescribed circumstances*—delete "or breath analysis under section 47E" and substitute:

, breath analysis or drug screening test under section 47E or 47EAA

- (4) Section 47A(1), definition of *prescribed circumstances*—after "2 hours" insert:

or, in relation to a drug screening test, 3 hours

- (5) Section 47A(1)—after the definition of *prescribed concentration of alcohol* insert:

*prescribed drug* means a substance declared by the regulations to be a prescribed drug;

- (6) Section 47A(2a)—after "47E" insert:

or 47EAA

- (7) Section 47A(2a)(a)—delete "or breath analysis" first occurring and substitute:

, breath analysis or drug screening test

- (8) Section 47A(3)—delete "47E(7)" and substitute:

47BA(5), 47BA(7), 47E(7), 47EAA(17)

### 6—Insertion of section 47BA

After section 47B insert:

#### **47BA—Driving with prescribed drug in oral fluid or blood**

- (1) A person must not—

- (a) drive a motor vehicle; or
- (b) attempt to put a motor vehicle in motion,

while a prescribed drug is present in his or her oral fluid or blood.

Maximum penalty:

- (a) for a first offence—a fine of not less than \$500 and not more than \$900;
  - (b) for a second offence—a fine of not less than \$700 and not more than \$1 200;
  - (c) for a third or subsequent offence—a fine of not less than \$1 100 and not more than \$1 800.
- (2) Subject to subsection (3), it is a defence to a charge of an offence against subsection (1) if the defendant proves that he or she did not knowingly consume the prescribed drug present in his or her oral fluid or blood.
- (3) Subsection (2) does not apply if the defendant consumed the prescribed drug believing that he or she was consuming a substance unlawfully but was mistaken as to, unaware of or indifferent to the identity of the prescribed drug.
- (4) If a court convicts a person of an offence against subsection (1) (other than a first offence), the following provisions apply:
  - (a) the court must order that the person be disqualified from holding or obtaining a driver's licence—
    - (i) in the case of a second offence—for such period, being not less than 6 months, as the court thinks fit;
    - (ii) in the case of a third offence—for such period, being not less than 12 months, as the court thinks fit;
    - (iii) in the case of a subsequent offence—for such period, being not less than 2 years, as the court thinks fit;
  - (b) if the person is the holder of a driver's licence—the disqualification operates to cancel the licence as from the commencement of the period of disqualification;
  - (c) the court may, if it thinks fit to do so, order that conditions imposed by section 81A or 81AB of the *Motor Vehicles Act 1959* on any driver's licence issued to the person after the period of disqualification be effective for a period greater than the period prescribed by that section.
- (5) In determining whether an offence is a first, second, third or subsequent offence for the purposes of this section (other than subsection (6)), any previous offence against subsection (1) or section 47(1), 47E(3), 47EAA(9) or 47I(14) for which the defendant has been convicted will be taken into account, but only if the previous offence was committed within the prescribed period immediately preceding the date on which the offence under consideration was committed.

- (6) If a person aged 16 years or more is alleged to have committed an offence against this section that is a first offence, the person cannot be prosecuted for that offence unless he or she has been given an expiation notice under the *Expiation of Offences Act 1996* in respect of the offence and allowed the opportunity to expiate the offence in accordance with that Act.
- (7) In determining whether an offence is a first offence for the purposes of subsection (6), any previous offence against subsection (1) or section 47(1), 47E(3), 47EAA(9) or 47I(14) for which the person has been convicted or that the person has expiated will be taken into account, but only if the previous offence was committed or alleged to have been committed within the prescribed period immediately preceding the date on which the offence under consideration was allegedly committed.

**7—Amendment of section 47C—Relation of conviction under section 47B or 47BA to contracts of insurance etc**

- (1) Section 47C—after "47B(1)" wherever occurring insert:  
or 47BA(1)
- (2) Section 47C(1)—after "intoxicating liquor" insert:  
or a prescribed drug

**8—Amendment of section 47D—Payment by convicted person of costs incidental to apprehension etc**

- (1) Section 47D(1)—delete "or 47E(3)" and substitute:  
, 47BA(1), 47E(3) or 47EAA(9)
- (2) Section 47D(1)(e)—delete "pursuant to section 47F(2) and (2a)"

**9—Amendment of section 47DA—Driver testing stations**

- (1) Section 47DA—delete "breath" wherever occurring and substitute in each case:  
driver
- (2) Section 47DA(1)—delete "alcotests" and substitute:  
screening tests
- (3) Section 47DA(2)—delete "alcotests" and substitute:  
screening tests
- (4) Section 47DA(3)—delete "alcotests" and substitute:  
screening tests
- (5) Section 47DA(4)—after the definition of *Metropolitan Adelaide* insert:  
*screening test* means an alcotest or drug screening test.

**10—Amendment of section 47E—Police may require alcotest or breath analysis**

- (1) Section 47E(1)—delete "breath testing station" and substitute:

driver testing station
- (2) Section 47E(4)(ab)(ii)—delete "section 47F" and substitute:

subsection (4a)
- (3) Section 47E—after subsection (4) insert:
  - (4a) If a person refuses or fails to comply with the requirement or direction under this section by reason of some physical or medical condition of the person and forthwith makes a request of a member of the police force that a sample of his or her blood be taken by a medical practitioner, a member of the police force must do all things reasonably necessary to facilitate the taking of a sample of the person's blood—
    - (a) by a medical practitioner nominated by the person; or
    - (b) if—
      - (i) it becomes apparent to the member of the police force that there is no reasonable likelihood that a medical practitioner nominated by the person will be available to take the sample within 1 hour of the time of the request at some place not more than 10 kilometres distant from the place of the request; or
      - (ii) the person does not nominate a particular medical practitioner,by any medical practitioner who is available to take the sample.
- (4) Section 47E(5a)(a)—delete "section 47F" and substitute:

subsection (4a)
- (5) Section 47E(5a)(b)—delete "section 47F(2)" and substitute:

subsection (4a)
- (6) Section 47E(5a)(b)(i)—delete "section" and substitute:

subsection
- (7) Section 47E(5a)(c)—delete "section 47F" and substitute:

subsection (4a)
- (8) Section 47E—after subsection (7) insert:
  - (7a) If a person—
    - (a) refuses or fails to comply with a direction under this section;  
or

- (b) submits to an alcotest and the alcotest indicates that the prescribed concentration of alcohol may be present in the blood of the person,

there will be reasonable ground to suspect that the prescribed concentration of alcohol is present in his or her blood for the purposes of the exercise of any power conferred on a member of the police force (including a power of arrest) to prevent the person committing an offence by driving a vehicle in contravention of this Division.

- (7b) Subsection (7a) does not limit the circumstances in which such a power may otherwise be exercised by a member of the police force under this or any other Act.

### **11—Insertion of section 47EAA**

After section 47E insert:

#### **47EAA—Police may require drug screening test, oral fluid analysis and blood test**

- (1) Subject to this Act, if a person has submitted to an alcotest or breath analysis as a result of a requirement under section 47E, a member of the police force may require the person to submit to a drug screening test.
- (2) If—
  - (a) a person has submitted to a drug screening test as a result of a requirement under subsection (1) and the drug screening test indicates the presence of a prescribed drug in the person's oral fluid; or
  - (b) a person has submitted to an alcotest or breath analysis as a result of a requirement under section 47E that was made in prescribed circumstances,

a member of the police force may require the person to submit to an oral fluid analysis or a blood test.

- (3) A member of the police force may give reasonable directions for the purpose of making a requirement under this section that a person submit to a drug screening test, oral fluid analysis or blood test.
- (4) A person must forthwith comply with a direction under subsection (3).
- (5) A drug screening test, oral fluid analysis or blood test required under this section must be commenced not later than 1 hour after the time allowed under section 47E(2b) for the commencement of the alcotest or breath analysis.

- (6) The performance of a drug screening test, oral fluid analysis or blood test that has been required under this section commences when a direction is first given by a member of the police force that the person concerned provide a sample of oral fluid or blood (as the case may be) to be used for the drug screening test, oral fluid analysis or blood test.
- (7) A drug screening test or an oral fluid analysis may only be conducted by a member of the police force authorised by the Commissioner of Police to conduct such tests or analyses.
- (8) The regulations may prescribe the manner in which a drug screening test, oral fluid analysis or blood test is to be conducted.
- (9) A person required under this section to submit to a drug screening test, oral fluid analysis or blood test must not refuse or fail to comply with all reasonable directions of a member of the police force in relation to the requirement and, in particular, must not refuse or fail to allow a sample of oral fluid or blood to be taken in accordance with the directions of a member of the police force.

Maximum penalty:

- (a) for a first offence—a fine of not less than \$500 and not more than \$900;
  - (b) for a subsequent offence—a fine of not less than \$1 100 and not more than \$1 800.
- (10) It is a defence to a prosecution under subsection (9) that—
- (a) the requirement or direction to which the prosecution relates was not lawfully made; or
  - (b) the person was not allowed the opportunity to comply with the requirement or direction after having been given the prescribed oral advice in relation to—
    - (i) the consequences of refusing or failing to comply with the requirement or direction; and
    - (ii) in the case of—
      - (A) a drug screening test or an oral fluid analysis—the person's right to request the taking of a blood sample under subsection (11); or
      - (B) a blood test—the person's right to request an oral fluid analysis under subsection (12); or
  - (c) there was, in the circumstances of the case, good cause for the refusal or failure of the defendant to comply with the requirement or direction.



- (11) If a person of whom a requirement is made or to whom a direction is given under this section relating to a drug screening test or oral fluid analysis refuses or fails to comply with the requirement or direction by reason of some physical or medical condition of the person and forthwith makes a request of a member of the police force that a sample of his or her blood be taken by a medical practitioner, a member of the police force must do all things reasonably necessary to facilitate the taking of a sample of the person's blood—
- (a) by a medical practitioner nominated by the person; or
  - (b) if—
    - (i) it becomes apparent to the member of the police force that there is no reasonable likelihood that a medical practitioner nominated by the person will be available to take the sample within 1 hour of the time of the request at some place not more than 10 kilometres distant from the place of the request; or
    - (ii) the person does not nominate a particular medical practitioner,by any medical practitioner who is available to take the sample.
- (12) If a person of whom a requirement is made or to whom a direction is given under this section relating to a blood test refuses or fails to comply with the requirement or direction by reason of some physical or medical condition of the person and forthwith makes a request of a member of the police force that an oral fluid analysis be conducted, a member of the police force must do all things reasonably necessary to facilitate the conduct of an oral fluid analysis.
- (13) No person is entitled to refuse or fail to comply with a requirement or direction under this section on the ground that—
- (a) the person would, or might, by complying with that requirement or direction, furnish evidence that could be used against himself or herself; or
  - (b) the person consumed a prescribed drug after the person last drove a motor vehicle or attempted to put a motor vehicle in motion and before the requirement was made or the direction given.
- (14) A person may not raise a defence that the person had good cause for a refusal or failure to comply with a requirement or direction under this section relating to a drug screening test or oral fluid analysis by reason of some physical or medical condition of the person unless—
- (a) a sample of the person's blood was taken in accordance with subsection (11); or
  - (b) the person made a request as referred to in subsection (11), but—

- (i) a member of the police force failed to facilitate the taking of a sample of the person's blood as required by that subsection; or
    - (ii) a medical practitioner was not reasonably available for the purpose of taking such a sample; or
  - (c) the taking of a sample of the person's blood in accordance with subsection (11) was not possible or reasonably advisable or practicable in the circumstances by reason of some physical or medical condition of the person.
- (15) A person may not raise a defence that the person had good cause for a refusal or failure to comply with a requirement or direction under this section relating to a blood test by reason of some physical or medical condition of the person unless—
- (a) an oral fluid analysis was conducted in accordance with subsection (12); or
  - (b) the person made a request as referred to in subsection (12), but a member of the police force failed to facilitate the conduct of an oral fluid analysis as required by that subsection; or
  - (c) the taking of a sample of the person's oral fluid in accordance with subsection (12) was not possible or reasonably advisable or practicable in the circumstances by reason of some physical or medical condition of the person.
- (16) Where a court convicts a person of an offence against subsection (9), the following provisions apply:
- (a) the court must order that the person be disqualified from holding or obtaining a driver's licence—
    - (i) in the case of a first offence—for such period, being not less than 6 months, as the court thinks fit; or
    - (ii) in the case of a subsequent offence—for such period, being not less than 2 years, as the court thinks fit;
  - (b) the disqualification prescribed by paragraph (a) cannot be reduced or mitigated in any way or be substituted by any other penalty or sentence unless, in the case of a first offence, the court is satisfied, by evidence given on oath, that the offence is trifling, in which case the court may order a period of disqualification that is less than the prescribed minimum period but not less than one month;
  - (c) if the person is the holder of a driver's licence—the disqualification operates to cancel the licence as from the commencement of the period of disqualification;

- (d) the court may, if it thinks fit to do so, order that conditions imposed by section 81A or 81AB of the *Motor Vehicles Act 1959* on any driver's licence issued to the person after the period of disqualification be effective for a period greater than the period prescribed by that section.
- (17) In determining whether an offence is a first or subsequent offence for the purposes of this section, any previous offence against subsection (9) or section 47(1), 47BA(1), 47E(3) or 47I(14) for which the defendant has been convicted will be taken into account, but only if the previous offence was committed within the prescribed period immediately preceding the date on which the offence under consideration was committed.
- (18) If a person—
  - (a) refuses or fails to comply with a requirement or direction under this section; or
  - (b) submits to a drug screening test or oral fluid analysis and the drug screening test or preliminary result of the oral fluid analysis indicates the presence of a prescribed drug in the person's oral fluid,there will be reasonable ground to suspect that a prescribed drug is present in the person's oral fluid for the purposes of the exercise of any power conferred on a member of the police force (including a power of arrest) to prevent the person committing an offence by driving a vehicle in contravention of this Division.
- (19) Subsection (18) does not limit the circumstances in which such a power may otherwise be exercised by a member of the police force under this or any other Act.

## **12—Amendment of section 47EA—Exercise of random testing powers**

- (1) Section 47EA—after "submit to an alcotest" insert:
  - or drug screening test
- (2) Section 47EA(c)—after "requirement" insert:
  - relating to an alcotest
- (3) Section 47EA—after paragraph (c) insert:
  - (ca) a member of the police force must not make such a requirement relating to a drug screening test unless he or she has in his or her possession, or a member of the police force in the immediate vicinity of the place at which the requirement is made has in his or her possession, an apparatus of a kind approved by the Governor for the conduct of drug screening tests;

### 13—Substitutions of sections 47F, 47FA and 47FB

Section 47F, 47FA and 47FB—delete the sections and substitute:

#### **47F—Schedule 1 further regulates oral fluid and blood sample processes**

Schedule 1 makes further provision regulating oral fluid and blood sample processes for the purposes of this Division.

### 14—Amendment, redesignation and relocation of section 47G—Evidence etc

- (1) Section 47G(1a)(a)—after "section 47I" insert:  
and Schedule 1
- (2) Section 47G(3a)—after "alcotests" insert:  
, a drug screening test or an oral fluid analysis
- (3) Section 47G(3c)—delete "breath" and substitute:  
driver
- (4) Section 47G(4)—delete "(6)" and substitute:  
(17)
- (5) Section 47G(5)—delete "(6)" and substitute:  
(17)
- (6) Section 47G(6)—delete subsection (6)
- (7) Section 47G(9)—delete subsection (9) and substitute:
  - (9) A certificate—
    - (a) purporting to be signed by the Commissioner of Police and to certify that a person named in the certificate is authorised by the Commissioner of Police to conduct oral fluid analyses; or
    - (b) purporting to be signed by a member of the police force authorised under section 47EAA and to certify that the apparatus used to conduct an oral fluid analysis was in proper order and the oral fluid analysis was properly conducted,is, in the absence of proof to the contrary, proof of the matter so certified.
- (10) A certificate purporting to be signed by a member of the police force and to certify that a person named in the certificate submitted to a drug screening test on a specified day and at a specified time and that the drug screening test indicated that a prescribed drug may then have been present in the oral fluid of the person is, in the absence of proof to the contrary, proof of the matters so certified.

- (11) Subject to subsection (17), an apparently genuine document purporting to be a certificate under Schedule 1 and purporting to be signed by a member of the police force, medical practitioner or analyst, or copy of such a certificate, is admissible in proceedings before a court and is, in the absence of proof to the contrary, proof of the matters stated in the certificate.
- (12) If a certificate of an analyst relating to a sample of blood taken under section 47E or 47I is received as evidence in proceedings before a court and states that the prescribed concentration of alcohol has been found to be present in the sample of blood to which the certificate relates, it will be presumed, in the absence of proof to the contrary, that the concentration of alcohol stated in the certificate was present in the sample when the sample was taken.
- (13) If it is proved by the prosecution in proceedings for an offence that a concentration of alcohol was present in the defendant's blood at the time at which a sample of blood was taken under section 47E or 47I, it will be conclusively presumed that that concentration of alcohol was present in the defendant's blood throughout the period of 2 hours immediately preceding the taking of the sample.
- (14) If a certificate of an analyst relating to a sample of oral fluid or blood taken under section 47EAA, or a sample of blood taken under section 47E or 47I, is received as evidence in proceedings before a court and states that a prescribed drug has been found to be present in the sample of oral fluid or blood to which the certificate relates, it will be presumed, in the absence of proof to the contrary, that the prescribed drug stated in the certificate was present in the sample when the sample was taken.
- (15) If it is proved by the prosecution in proceedings for an offence that a prescribed drug was present in the defendant's blood or oral fluid at the time at which a sample of oral fluid or blood was taken under section 47EAA, or a sample of blood was taken under section 47E or 47I, it will be conclusively presumed that that prescribed drug was present in the defendant's oral fluid or blood (as the case may require) throughout the period of 3 hours immediately preceding the taking of the sample.
- (16) If certificates of a member of the police force and analyst, or a medical practitioner and analyst, under Schedule 1 are received as evidence in proceedings before a court and contain the same identification number for the samples of oral fluid or blood to which they relate, the certificates will be presumed, in the absence of proof to the contrary, to relate to the same sample of oral fluid or blood.
- (17) A certificate referred to in subsection (4), (5) or (11) cannot be received as evidence in proceedings for an offence—
  - (a) unless a copy of the certificate proposed to be put in evidence at the trial of a person for the offence has, not less than 7 days before the commencement of the trial, been served on that person; or

- (b) if the person on whom a copy of the certificate has been served under paragraph (a) has, not less than 2 days before the commencement of the trial, served written notice on the complainant or informant requiring the attendance at the trial of the person by whom the certificate was signed; or
  - (c) if the court, in its discretion, requires the person by whom the certificate was signed to attend at the trial.
- (18) The provisions of this section apply in relation to proceedings for an offence against this Act or the *Motor Vehicles Act 1959* or a driving-related offence, subject to the following exceptions:
  - (a) subsections (1a), (1ab) and (13) apply only in relation to proceedings for an offence against section 47(1) or 47B(1), or an offence against the *Motor Vehicles Act 1959*;
  - (b) subsection (3)(b)(ii) does not apply in relation to an offence against section 47E(3);
  - (c) subsection (15) applies only in relation to proceedings for an offence against section 47(1) or 47BA(1), or an offence against the *Motor Vehicles Act 1959*.
- (19) In this section—

*proceedings for a driving-related offence* means proceedings for an offence where the conduct with which the defendant is charged involves driving a vehicle or attempting to put a vehicle in motion.
- (8) Section 47G—re designate the section (as amended by this section) as section 47K and relocate the section so that it follows section 47J

## **15—Insertion of section 47GB**

After section 47GA insert:

### **47GB—Oral fluid analysis or blood test where consumption of prescribed drug occurs after driving**

- (1) This section applies to proceedings for an offence against section 47(1) or 47BA(1) in which the results of an oral fluid analysis or blood test under section 47EAA are relied on to establish the commission of the offence.
- (2) If in proceedings to which this section applies the defendant satisfies the court—
  - (a) that the defendant consumed the prescribed drug during the relevant period; and
  - (b) that the prescribed drug was not consumed by the defendant after a member of the police force first exercised powers under section 47E preliminary to the performance of the alcotest or breath analysis referred to in section 47EAA; and

- (c) where the requirement to submit to the alcotest or breath analysis referred to in section 47EAA was made after the defendant's involvement as a driver in an accident—that the defendant discharged the duties under this Act required to be discharged at the scene of an accident by a driver of a vehicle involved in the accident,

the court may, despite the other provisions of this Act, find the defendant not guilty of the offence charged.

- (3) In subsection (2)—

*relevant period* means the period between—

- (a) the conduct of the defendant giving rise to the making of the requirement that the defendant submit to the alcotest or breath analysis referred to in section 47EAA; and
- (b) the performance of the oral fluid analysis or blood test (as the case may be) under section 47EAA.

#### **16—Amendment of section 47H—Approval of apparatus for the purposes of breath analysis, alcotests, drug screening tests and oral fluid analysis**

Section 47(H)(1)—after paragraph (b) insert:

or

- (c) approve apparatus of a specified kind for the purpose of conducting drug screening tests or oral fluid analyses or both.

#### **17—Amendment of section 47I—Compulsory blood tests**

- (1) Section 47I(1)—after "subject to this section" insert:  
and Schedule 1
- (2) Sections 47I(2) and (3)—delete subsections (2) and (3)
- (3) Sections 47I(7) to (13c) (inclusive)—delete subsections (7) to (13c) (inclusive)
- (4) Sections 47I(15) to (18) (inclusive)—delete subsections (15) to (18) (inclusive)

#### **18—Insertion of Schedule 1**

After section 177 insert:

### **Schedule 1—Oral fluid and blood sample processes**

#### **Part 1—Preliminary**

##### **1—Interpretation**

In this Schedule—

*forensic material* means any human material from which the person from whom the material was taken could be identified;

*Metropolitan Adelaide* has the same meaning as in the *Development Act 1993*;

*registered nurse* means a person who is registered as a nurse under the *Nurses Act 1999*.

## **Part 2—Processes relating to blood samples under section 47E, 47EAA or 47I**

### **2—Blood sample processes generally**

The following provisions apply where a sample of blood is taken under section 47E, 47EAA or 47I:

- (a) a medical practitioner by whom a sample of blood is taken must—
  - (i) place the sample of blood, in approximately equal proportions, in 2 separate containers marked with an identification number distinguishing the sample from other samples of blood and seal the containers; and
  - (ii) give to the person from whom the sample was taken, or (in the case of a sample taken under section 47I) leave with the person's personal effects at the hospital, a notice in writing—
    - (A) advising that the sample has been taken under the relevant section; and
    - (B) advising that a container containing part of the sample and marked with the identification number specified in the notice will be available for collection by or on behalf of the person at a specified place; and
    - (C) containing any other information prescribed by the regulations; and
  - (iii) complete and sign a certificate containing the information required under paragraph (d); and
  - (iv) make the containers and the certificate available to a member of the police force;
- (b) each container must contain a sufficient quantity of blood to enable an analysis to be made of the concentration of alcohol present in the blood or of the presence of a prescribed drug in the blood;
- (c) it is the duty of the medical practitioner by whom the sample is taken to take such measures as are reasonably practicable in the circumstances to ensure that the blood is not adulterated and does not deteriorate so as to prevent a proper analysis of the concentration of alcohol present in the blood, or the presence of a prescribed drug in the blood;



- (d) the certificate referred to in paragraph (a) must state—
  - (i) the identification number of the sample marked on the containers referred to in that paragraph; and
  - (ii) the name and address of the person from whom the sample was taken; and
  - (iii) the name of the medical practitioner by whom the sample was taken; and
  - (iv) the date, time and place at which the sample was taken; and
  - (v) that the medical practitioner gave the notice referred to in that paragraph to the person from whom the sample was taken, or, as the case may be, left the notice with the person's personal effects;
- (e) one of the containers containing the sample must—
  - (i) as soon as reasonably practicable be taken by a member of the police force to the place specified in the notice given to the person or left with the person's personal effects under paragraph (a); and
  - (ii) be kept available at that place for collection by or on behalf of the person for the period prescribed by the regulations;
- (f) after analysis of the sample in a container made available to a member of the police force in accordance with paragraph (a), the analyst who performed or supervised the analysis must sign a certificate containing the following information:
  - (i) the identification number of the sample marked on the container;
  - (ii) the name and professional qualifications of the analyst;
  - (iii) the date on which the sample was received in the laboratory in which the analysis was performed;
  - (iv) the concentration of alcohol or other drug found to be present in the blood;
  - (v) any factors relating to the sample or the analysis that might, in the opinion of the analyst, adversely affect the accuracy or validity of the analysis;
  - (vi) any other information relating to the sample or analysis or both that the analyst thinks fit to include;

- (g) on completion of an analysis of a sample, the certificate of the medical practitioner by whom the sample was taken and the certificate of the analyst who performed or supervised the analysis must be sent to the Minister or retained on behalf of the Minister and, in either event, copies of the certificates must be sent—
  - (i) to the Commissioner of Police; and
  - (ii) to the medical practitioner by whom the sample was taken; and
  - (iii) to the person from whom the sample was taken or, if the person is dead, a relative or personal representative of the deceased;
- (h) if the whereabouts of the person from whom the sample is taken, or (that person being dead) the identity or whereabouts of a relative or personal representative of the deceased, is unknown, there is no obligation to comply with paragraph (g)(iii) but copies of the certificates must, on application made within 3 years after completion of the analysis, be furnished to any person to whom they should, but for this paragraph, have been sent.

### **3—Blood tests by registered nurses**

Where a person has made a request under section 47E(4a), 47EAA(11) or 47K(2a), or is required to submit to a blood test under section 47EAA(2), at a place outside Metropolitan Adelaide—

- (a) a sample of the person's blood may be taken by a registered nurse instead of a medical practitioner for the purposes of section 47E(4a), 47EAA(2), 47EAA(11) or the procedures prescribed by regulation for the purposes of section 47K(1a); and
- (b) the provisions of this Act and the regulations under this Act apply in relation to the taking of the sample of the person's blood and the subsequent dealing with the sample as if a reference in those provisions to a medical practitioner included a reference to a registered nurse.

### **4—Member of police force to be present when blood sample taken**

The taking of a sample of blood under section 47E(4a), 47EAA(2) or 47EAA(11) must be in the presence of a member of the police force.

### **5—Cost of blood tests under certain sections**

The taking of a sample of blood under section 47E(4a), 47EAA(2), 47EAA(11) or 47I must be at the expense of the Crown.

## **6—Provisions relating to medical practitioners etc**

- (1) No proceedings lie against a medical practitioner or registered nurse in respect of anything done in good faith and in compliance, or purported compliance, with the provisions of this Act.
- (2) A medical practitioner must not take a sample of a person's blood under this Act if, in his or her opinion, it would be injurious to the medical condition of the person to do so.
- (3) A medical practitioner is not obliged to take a sample of a person's blood under this Act if the person objects to the taking of the sample of blood and persists in that objection after the medical practitioner has informed the person that, unless the objection is made on genuine medical grounds, it may constitute an offence against this Act.
- (4) A medical practitioner who fails, without reasonable excuse, to comply with a provision of, or to perform any duty arising under, section 47I is guilty of an offence.
- (5) No proceedings can be commenced against a medical practitioner for an offence against subclause (4) unless those proceedings have been authorised by the Attorney-General.
- (6) An apparently genuine document purporting to be signed by the Attorney-General and to authorise proceedings against a medical practitioner for an offence under subclause (4) must, in the absence of proof to the contrary, be accepted by any court as proof that those proceedings have been authorised by the Attorney-General.

## **Part 3—Processes relating to oral fluid samples under section 47EAA**

### **7—Oral fluid sample processes**

The following provisions apply where a sample of oral fluid is taken under section 47EAA(2):

- (a) the member of the police force who conducts the oral fluid analysis must—
  - (i) place the sample of oral fluid (and any reagent or other substance required by the regulations to be added to the sample) in approximately equal proportions, in 2 separate containers marked with an identification number distinguishing the sample from other samples of oral fluid and seal the containers; and
  - (ii) give to the person from whom the sample was taken a notice in writing—
    - (A) advising that the sample has been taken under section 47EAA(2); and

- (B) advising that a container containing part of the sample and marked with the identification number specified in the notice will be available for collection by or on behalf of the person at a specified place; and
      - (C) containing any other information prescribed by the regulations; and
    - (iii) complete and sign a certificate containing the information required under paragraph (d);
  - (b) each container must contain a sufficient quantity of oral fluid to enable an analysis to be made of the presence of a prescribed drug in the oral fluid;
  - (c) it is the duty of the member of the police force who conducts the oral fluid analysis to take such measures as are reasonably practicable in the circumstances to ensure that the sample is not adulterated (other than as required under paragraph (a)) and does not deteriorate so as to prevent a proper analysis of the presence of a prescribed drug in the oral fluid;
  - (d) the certificate referred to in paragraph (a) must state—
    - (i) the identification number of the sample marked on the containers referred to in that paragraph; and
    - (ii) the name and address of the person from whom the sample was taken; and
    - (iii) the identification number of the member of the police force by whom the sample was taken; and
    - (iv) the date, time and place at which the sample was taken; and
    - (v) that the member of the police force gave the notice referred to in that paragraph to the person from whom the sample was taken;
  - (e) one of the containers containing the sample must—
    - (i) as soon as reasonably practicable be taken by a member of the police force to the place specified in the notice given to the person under paragraph (a); and
    - (ii) be kept available at that place for collection by or on behalf of the person for the period prescribed by the regulations;
  - (f) after analysis of the sample in a container referred to in paragraph (a), the analyst who performed or supervised the analysis must sign a certificate containing the following information:

- (i) the identification number of the sample marked on the container;
  - (ii) the name and professional qualifications of the analyst;
  - (iii) the date on which the sample was received in the laboratory in which the analysis was performed;
  - (iv) the information required by the regulations in relation to any prescribed drug or drugs found to be present in the sample;
  - (v) any factors relating to the sample or the analysis that might, in the opinion of the analyst, adversely affect the accuracy or validity of the analysis;
  - (vi) any other information relating to the sample or analysis or both that the analyst thinks fit to include;
- (g) on completion of an analysis of a sample, the certificate of the analyst who performed or supervised the analysis must be sent to the Minister or retained on behalf of the Minister and, in either event, copies of the certificates must be sent—
- (i) to the Commissioner of Police; and
  - (ii) to the person from whom the sample was taken or, if the person is dead, a relative or personal representative of the deceased;
- (h) if the whereabouts of the person from whom the sample is taken, or (that person being dead) the identity or whereabouts of a relative or personal representative of the deceased is unknown, there is no obligation to comply with paragraph (g)(ii) but copies of the certificates must, on application made within 3 years after completion of the analysis, be furnished to any person to whom they should, but for this paragraph, have been sent.

## **Part 4—Other provisions relating to oral fluid or blood samples under Part 3 Division 5**

### **8—Oral fluid or blood sample or results of analysis etc not to be used for other purposes**

- (1) A sample of oral fluid or blood taken under section 47E, 47EAA or 47I (and any other forensic material taken incidentally during a drug screening test, oral fluid analysis or blood test) must not be used for a purpose other than that contemplated by this Act.

- (2) The results of a drug screening test, oral fluid analysis or blood test under Part 3 Division 5, an admission or statement made by a person relating to such a drug screening test, oral fluid analysis or blood test, or any evidence taken in proceedings relating to such a drug screening test, oral fluid analysis or blood test (or transcript of such evidence)—
- (a) will not be admissible in evidence against the person in any proceedings, other than proceedings for an offence against this Act or the *Motor Vehicles Act 1959* or a driving-related offence; and
  - (b) may not be relied on as grounds for the exercise of any search power or the obtaining of any search warrant.
- (3) In this clause—
- proceedings for a driving-related offence* means proceedings for an offence where the conduct with which the defendant is charged involves driving a vehicle.

### **9—Destruction of oral fluid or blood sample taken under Part 3 Division 5**

The Commissioner of Police must ensure that a sample of oral fluid or blood taken under Part 3 Division 5 (and any other forensic material taken incidentally during a drug screening test, oral fluid analysis or blood test) is destroyed—

- (a) if proceedings for an offence against that Division based on evidence of the results of analysis of the sample are not commenced within the period allowed; or
- (b) if such proceedings are commenced within the period allowed—when the proceedings (including any proceedings on appeal) are finally determined or discontinued.

## **Part 3—Review of operation of Act**

### **19—Review of operation of Act**

- (1) The Minister must cause a review to be undertaken and a report prepared on the first year's operation of the *Road Traffic Act 1961* as amended by this Act in relation to drug testing.
- (2) The review and report must be completed not later than 15 months after the date of commencement of this section.
- (3) The Minister must cause a copy of the report under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving it.

## Schedule 1—Related amendments

### Part 1—Preliminary

#### 1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### Part 2—Amendment of *Criminal Law (Forensic Procedures) Act 1998*

#### 2—Amendment of section 5—Non-application of Act to certain procedures

- (1) Section 5(a)—after "concentration" insert:  
or presence
- (2) Section 5—after paragraph (a) insert:
  - (ab) the taking of a sample of oral fluid from a person under section 47EAA of the *Road Traffic Act 1961*; or

### Part 3—Amendment of *Motor Vehicles Act 1959*

#### 3—Amendment of section 72A—Qualified supervising drivers

- (1) Section 72A(2)—after "blood" insert:  
, or a prescribed drug in his or her oral fluid or blood,
- (2) Section 72A(3)—delete "47G and 47GA" and substitute:  
47EAA, 47GA, 47GB and 47K and Schedule 1
- (3) Section 72A(4)—before the definition of *prescribed concentration of alcohol* insert:  
*oral fluid* has the same meaning as in the *Road Traffic Act 1961*;
- (4) Section 72A(4)—after the definition of *prescribed concentration of alcohol* insert:  
*prescribed drug* has the same meaning as in the *Road Traffic Act 1961*.

#### 4—Amendment of section 75A—Learner's permit

- (1) Section 75A(3)(a)—delete "there is present in his or her blood the prescribed concentration of alcohol" and substitute:  
the prescribed concentration of alcohol is present in his or her blood, or a prescribed drug is present in his or her oral fluid or blood
- (2) Section 75A(3a)—before the definition of *prescribed concentration of alcohol* insert:  
*oral fluid* has the same meaning as in the *Road Traffic Act 1961*;
- (3) Section 75A(3a)—after the definition of *prescribed concentration of alcohol* insert:  
*prescribed drug* has the same meaning as in the *Road Traffic Act 1961*.

- (4) Section 75A(5a)—delete "47G and 47GA" and substitute:  
47EAA, 47GA, 47GB and 47K and Schedule 1

### **5—Amendment of section 81A—Provisional licences**

- (1) Section 81A(a1)—after the definition of *hazard perception test* insert:  
*oral fluid* has the same meaning as in the *Road Traffic Act 1961*;
- (2) Section 81A(a1)—after the definition of *prescribed concentration of alcohol* insert:  
*prescribed drug* has the same meaning as in the *Road Traffic Act 1961*;
- (3) Section 81A(1)(ca)—delete "there is present in his or her blood the prescribed concentration of alcohol" and substitute:  
the prescribed concentration of alcohol is present in his or her blood, or a prescribed drug is present in his or her oral fluid or blood
- (4) Section 81A(3a)(a)—delete "there is present in his or her blood the prescribed concentration of alcohol" and substitute:  
the prescribed concentration of alcohol is present in his or her blood, or a prescribed drug is present in his or her oral fluid or blood
- (5) Section 81A(6)—delete "47G and 47GA" and substitute:  
47EAA, 47GA, 47GB and 47K and Schedule 1

### **6—Amendment of section 81AB—Probationary licences**

- (1) Section 81AB(1)(b)—delete "there is present in his or her blood the prescribed concentration of alcohol" and substitute:  
the prescribed concentration of alcohol is present in his or her blood, or a prescribed drug is present in his or her oral fluid or blood
- (2) Section 81AB(6)—delete "47G and 47GA" and substitute:  
47EAA, 47GA, 47GB and 47K and Schedule 1
- (3) Section 81AB(7)—before the definition of *prescribed concentration of alcohol* insert:  
*oral fluid* has the same meaning as in the *Road Traffic Act 1961*;
- (4) Section 81AB(7)—after the definition of *prescribed concentration of alcohol* insert:  
*prescribed drug* has the same meaning as in the *Road Traffic Act 1961*.

### **7—Insertion of section 81D**

After section 81C insert:

#### **81D—Disqualification for certain drug driving offences**

- (1) This section applies to an alleged offence against section 47BA(1) of the *Road Traffic Act 1961* other than a first offence.



- (2) If a person expiates an offence to which this section applies, the Registrar must give the person written notice—
  - (a) that, commencing on a day specified in the notice, the person is disqualified from holding or obtaining a licence or learner's permit for—
    - (i) if the offence is a second offence—6 months; or
    - (ii) if the offence is a third offence—12 months; or
    - (iii) if the offence is a subsequent offence—2 years; and
  - (b) that, if the person holds any licence or learner's permit at the commencement of the period of disqualification, the licence or permit is cancelled.
- (3) In determining whether an offence to which this section applies is a first, second, third or subsequent offence for the purposes of this section, any previous offence against section 47(1), 47BA(1), 47E(3), 47EAA(9) or 47I(14) of the *Road Traffic Act 1961* for which the person has been convicted or that has been expiated will be taken into account, but only if the previous offence was committed or, in the case of an offence that has been expiated, was alleged to have been committed, by the person within the prescribed period immediately preceding the date on which the offence to which this section applies is alleged to have been committed.
- (4) For the purposes of subsection (3), the *prescribed period* is 5 years.