

**Legislative Council—No 197A**

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 6 July 2017

South Australia

**Statutes Amendment (Drink and Drug Driving)  
Bill 2017**

A BILL FOR

An Act to amend the *Harbors and Navigation Act 1993*, the *Motor Vehicles Act 1959*, the *Rail Safety National Law (South Australia) Act 2012* and the *Road Traffic Act 1961*.

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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 *Statutes Amendment (Drink and Drug Driving) Act 2017*.

#### 5 2—Commencement

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

#### 3—Amendment provisions

- (1) Subject to subsection (2), in this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.
- 10 (2) A provision in Part 4 amends the *Rail Safety National Law (South Australia) Act 2012* (other than a provision of the *Rail Safety National Law* set out in the Schedule to that Act).

### Part 2—Amendment of *Harbors and Navigation Act 1993*

#### 4—Amendment of section 4—Interpretation

- 15 Section 4(1), definition of *oral fluid analysis*—delete the definition and substitute:
- oral fluid analysis* means the analysis of a person's oral fluid to determine whether a prescribed drug is present in the oral fluid;

#### 5—Amendment of section 72—Authorised person may require drug screening test, oral fluid analysis and blood test

- 20 (1) Section 72(8)—delete subsection (8) and substitute:
- (8) A drug screening test may only be conducted by—
    - (a) a police officer; or
    - (b) a person authorised by the Commissioner of Police to conduct such tests.
- 25 (2) Section 72(18)(b)—delete paragraph (b) and substitute:
- (b) submits to a drug screening test and the drug screening test indicates the presence of a prescribed drug in the person's oral fluid,

## 6—Amendment of section 73—Evidence

(1) Section 73(7)(c)—delete paragraph (c) and substitute:

(c) purporting to be signed by an authorised person and to certify that—

- (i) a breath analysing instrument used by the person was in proper order and was properly operated; and
- (ii) the provisions of this Act with respect to breath analysing instruments and the manner in which an analysis of breath by means of a breath analysing instrument is to be conducted were complied with,

(2) Section 73(8)—delete subsection (8) and substitute:

(8) A certificate purporting to be signed by an authorised person and to certify that—

- (a) a sample of oral fluid for the purposes of an oral fluid analysis was taken on a specified day and at a specified time from a person named in the certificate; and
- (b) the provisions of this Act with respect to the taking of samples of oral fluid for such purposes were complied with,

is, in the absence of proof to the contrary, proof of the matters so certified.

(3) Section 73(21)—delete subsection (21) and substitute:

(21) A certificate purporting to be signed by an analyst and to certify that an oral fluid analysis was properly conducted is admissible in proceedings before a court and is, in the absence of proof to the contrary, proof of the matter so certified.

(21a) A certificate—

- (a) purporting to be signed by the Commissioner of Police and to certify that a person appointed under Part 2 and named in the certificate is authorised by the Commissioner of Police to conduct drug screening tests; or
- (b) purporting to be signed by a police officer or a person authorised by the Commissioner of Police to conduct drug screening tests and to certify that the apparatus used to conduct a drug screening test was in proper order and the drug screening test was properly conducted,

is admissible in proceedings before a court and is, in the absence of proof to the contrary, proof of the matters so certified.

## 7—Amendment of Schedule 1A—Blood and oral fluid sample processes

- (1) Schedule 1A, heading to Part 2—delete the heading and substitute:

### **Part 2—Processes relating to blood samples under Part 10 Division 4**

- 5 (2) Schedule 1A, clause 7(a)—delete "conducts the" and substitute:

takes a sample of oral fluid for the purposes of an

- (3) Schedule 1A, clause 7(c)—delete "conducts" and substitute:

takes the sample of oral fluid for the purposes of

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

### 10 **8—Amendment of section 5—Interpretation**

- (1) Section 5(1), definition of *category 2 offence*—after "section 47B(1)" insert:

or (1a)

- (2) Section 5(1), definition of *category 3 offence*—after "section 47B(1)" insert:

or (1a)

- 15 (3) Section 5(1)—after the definition of *prescribed conditions* insert:

*prescribed drink driving offence* means any drink driving offence other than a category 1 offence;

### **9—Amendment of section 74—Duty to hold licence or learner's permit**

- (1) Section 74—after subsection (2a) insert:

- 20 (2ab) Subject to this Act, if—

(a) a person drives a motor vehicle on a road; and

(b) the person has been disqualified from holding or obtaining a licence or learner's permit in this State, or in another State or Territory of the Commonwealth, as a consequence of a drink driving offence or an alleged drink driving offence (whether committed, or allegedly committed, in this State or in another State or Territory of the Commonwealth); and

25

(c) —

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(i) the drink driving offence or alleged drink driving offence was an offence against section 47(1a), 47B(1a), 47E(3a) or 47(I(7) of the *Road Traffic Act 1961*; or

(ii) if the offence was a prescribed drink driving offence—the person has—

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(A) been convicted of at least 1 other prescribed drink driving offence; or

- (B) been convicted of or expiated at least  
2 other drink driving offences,

committed or allegedly committed within the period  
of 5 years before the date of commission or alleged  
commission of the offence; or

- (iii) in any other case—the person has been convicted of  
or expiated at least 2 other drink driving offences  
committed or allegedly committed within the period  
of 5 years before the date of commission or alleged  
commission of the offence; and

- (d) the person has not, since the end of the period of the  
disqualification referred to in paragraph (b), been  
authorised, under this Act or the law of another State or  
Territory of the Commonwealth, to drive a motor vehicle,

the person is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for 1 year.

(2ac) Subject to this Act, if—

- (a) a person drives a motor vehicle on a road; and

- (b) the person has been disqualified from holding or obtaining a  
licence or learner's permit in this State, or in another State or  
Territory of the Commonwealth, as a consequence of a drug  
driving offence or an alleged drug driving offence (whether  
committed, or allegedly committed, in this State or in  
another State or Territory of the Commonwealth); and

- (c) —

- (i) the drug driving offence or alleged drug driving  
offence was an offence against section 47(1a),  
47BA(1a), 47EAA(9a) or 47I(7) of the *Road Traffic  
Act 1961*; or

- (ii) the person has been convicted of or expiated at least  
1 other drug driving offence committed or allegedly  
committed within the period of 5 years before the  
date of commission or alleged commission of the  
offence; and

- (d) the person has not, since the end of the period of the  
disqualification referred to in paragraph (b), been  
authorised, under this Act or the law of another State or  
Territory of the Commonwealth, to drive a motor vehicle,

the person is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for 1 year.

(2) Section 74—after subsection (6) insert:

(7) In this section—

- 5 (a) a reference to a drink driving offence includes a reference to an offence against a law of another State or Territory of the Commonwealth that corresponds to an offence against this Act that is within the ambit of the definition of *drink driving offence* in section 5(1);
- 10 (b) a reference to a drug driving offence includes a reference to an offence against a law of another State or Territory of the Commonwealth that corresponds to an offence against this Act that is within the ambit of the definition of *drug driving offence* in section 5(1);
- 15 (c) a reference to a prescribed drink driving offence includes a reference to an offence against a law of another State or Territory of the Commonwealth that corresponds to an offence against this Act that is within the ambit of the definition of *prescribed drink driving offence* in section 5(1).

20 **10—Amendment of section 79B—Alcohol and drug dependency assessments and issue of licences**

(1) Section 79B(1) and (2)—delete subsections (1) and (2) and substitute:

(1) If—

- 25 (a) an applicant for the issue of a licence has been disqualified from holding or obtaining a licence or learner's permit in this State, or in another State or Territory of the Commonwealth, as a consequence of a drink driving offence or an alleged drink driving offence (whether committed, or allegedly committed, in this State or in another State or Territory of the Commonwealth); and
- 30 (b) the applicant has not held a licence or learner's permit, or an interstate licence or interstate learner's permit, since the end of the period of disqualification; and
- (c) —
- 35 (i) the drink driving offence or alleged drink driving offence was an offence against section 47(1a), 47B(1a), 47E(3a) or 47I(7) of the *Road Traffic Act 1961*; or
- (ii) if the offence was a prescribed drink driving offence—the applicant has—
- 40 (A) been convicted of at least 1 other prescribed drink driving offence; or
- (B) been convicted of or expiated at least 2 other drink driving offences,

committed or allegedly committed within the period of 5 years before the date of commission or alleged commission of the offence; or

- 5 (iii) in any other case—the applicant has been convicted of or expiated at least 2 other drink driving offences committed or allegedly committed within the period of 5 years before the date of commission or alleged commission of the offence,

10 the Registrar must, before determining the application for the licence, direct the applicant to attend an assessment clinic for the purpose of submitting to an examination to determine whether or not the applicant is dependent on alcohol unless the applicant satisfies the Registrar, on the basis of the report of an approved assessment provider or such other evidence as the Registrar may require, that the  
15 applicant has successfully completed a prescribed alcohol dependency treatment program not more than 60 days before the date of application for the licence.

(2) If—

20 (a) an applicant for the issue of a licence has been disqualified from holding or obtaining a licence or learner's permit in this State, or in another State or Territory of the Commonwealth, as a consequence of a drug driving offence or an alleged drug driving offence (whether committed, or allegedly committed, in this State or in another State or Territory of the Commonwealth); and

(b) the applicant has not held a licence or learner's permit, or an interstate licence or interstate learner's permit, since the end of the period of disqualification; and

(c) —

30 (i) the drug driving offence or alleged drug driving offence was an offence against section 47(1a), 47BA(1a), 47EAA(9a) or 47I(7) of the *Road Traffic Act 1961*; or

35 (ii) the applicant has been convicted of or expiated at least 1 other drug driving offence committed or allegedly committed within the period of 5 years before the date of commission or alleged commission of the offence,



the Registrar must, before determining the application for the licence, direct the applicant to attend an assessment clinic for the purpose of submitting to an examination to determine whether or not the applicant is dependent on drugs unless the applicant satisfies the Registrar, on the basis of the report of an approved assessment provider or such other evidence as the Registrar may require, that the applicant has successfully completed a prescribed drug dependency treatment program not more than 60 days before the date of application for the licence.

(2) Section 79B(3)—delete "The superintendent of an assessment clinic" and substitute:

An approved assessment provider

(3) Section 79B(4) and (5)—delete subsections (4) and (5) and substitute:

(4) Subject to subsection (6), if the Registrar is satisfied, on the basis of the report of an approved assessment provider, that the applicant is dependent on alcohol, the Registrar must refuse to issue a licence to the applicant until the applicant satisfies the Registrar, on the basis of the report of an approved assessment provider or such other evidence as the Registrar may require, that—

(a) that the applicant has undertaken a sufficient amount of appropriate treatment for dependency on alcohol; and

(b) the applicant is no longer dependent on alcohol.

(5) If the Registrar is satisfied, on the basis of the report of an approved assessment provider, that the applicant is dependent on drugs, the Registrar must refuse to issue a licence to the applicant until the applicant satisfies the Registrar, on the basis of the report of an approved assessment provider or such other evidence as the Registrar may require, that—

(a) the applicant has undertaken a sufficient amount of appropriate treatment for dependency on drugs; and

(b) the applicant is no longer dependent on drugs.

(4) Section 79B(6) and (7)—delete "the superintendent of an assessment clinic" wherever occurring and substitute in each case:

an approved assessment provider

(5) Section 79B(8)—delete subsection (8) and substitute:

(8) In this section—

(a) a reference to an approved assessment provider is a reference to—

(i) a person who—

(A) is registered under the *Health Practitioner Regulation National Law* to practice medicine as a specialist in addiction medicine; and

(B) is a Fellow of the Australasian Chapter of Addiction Medicine of the Royal Australasian College of Physicians; or

(ii) a person who—

(A) is registered under the *Health Practitioner Regulation National Law* to practice medicine as a specialist in psychiatry; and

(B) is a Fellow of the Royal Australian and New Zealand College of Psychiatrists; and

(C) holds a Certificate in Addiction Psychiatry; or

(iii) a person or body approved as an assessment provider for the purposes of this section by the Minister to whom the administration of the *Health Care Act 2008* is committed.

(b) a reference to a drink driving offence includes a reference to an offence against a law of another State or Territory of the Commonwealth that corresponds to an offence against this Act that is within the ambit of the definition of ***drink driving offence*** in section 5(1);

(c) a reference to a drug driving offence includes a reference to an offence against a law of another State or Territory of the Commonwealth that corresponds to an offence against this Act that is within the ambit of the definition of ***drug driving offence*** in section 5(1);

(d) a reference to a prescribed drink driving offence includes a reference to an offence against a law of another State or Territory of the Commonwealth that corresponds to an offence against this Act that is within the ambit of the definition of ***prescribed drink driving offence*** in section 5(1).

(9) For the purposes of this section, whether a person is to be regarded as having undertaken a ***sufficient amount of appropriate treatment*** is to be determined in accordance with the regulations.

### 11—Amendment of section 81D—Disqualification for certain drug driving offences

(1) Section 81D(1)—delete subsection (1) and substitute:

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

(2) Section 81D(2)(a)(i), (ii) and (iii)—delete subparagraphs (i) to (iii) inclusive and substitute:

(i) if the offence is a first offence—3 months; or

(ii) if the offence is a second offence—12 months; or

- (iii) if the offence is a third offence—2 years; or
- (iv) if the offence is a subsequent offence—3 years; and

## **Part 4—Amendment of *Rail Safety National Law (South Australia) Act 2012***

### **5 12—Amendment of section 9—Interpretation**

Section 9(1), definition of *oral fluid analysis*—delete the definition and substitute:

*oral fluid analysis* means the analysis of a person's oral fluid to determine whether a drug is present in the oral fluid;

### **13—Substitution of section 11**

10 Section 11—delete the section and substitute:

#### **11—Approval of apparatus and kits for breath analysis etc**

(1) The Governor may, by regulation, for the purposes of this Part and Part 3 Division 9 of the Rail Safety National Law—

- 15 (a) approve apparatus of a prescribed kind as breath analysing instruments; or
- (b) approve apparatus of a prescribed kind for the purpose of conducting alcoltests; or
- (c) approve apparatus of a prescribed kind for the purpose of conducting drug screening tests; or
- 20 (d) declare a kit of a prescribed kind to be an approved blood test kit.

(2) An approved blood test kit, or apparatus approved as a breath analysing instrument, or for the purpose of conducting alcoltests or drug screening tests, under the *Road Traffic Act 1961* will be taken to have been approved under this section for the purposes of this Part and Part 3 Division 9 of the Rail Safety National Law.

### **14—Amendment of section 13—Conduct of drug screening tests, oral fluid analyses and blood tests**

Section 13(2)—delete subsection (2) and substitute:

- 30 (2) A drug screening test may only be conducted by—
  - (a) a police officer; or
  - (b) an authorised person authorised by the Regulator to conduct such tests.

### **15—Amendment of section 18—Processes relating to oral fluid samples**

- 35 (1) Section 18(a)—delete "conducts the" and substitute:  
takes a sample of oral fluid for the purposes of an

(2) Section 18(c)—delete "conducts" and substitute:

takes the sample of oral fluid for the purposes of

### **16—Amendment of section 20—Evidence**

(1) Section 20(6)(c)—delete paragraph (c) and substitute:

5 (c) purporting to be signed by an authorised person and to certify that—

(i) a breath analysing instrument used by the person was in proper order and was properly operated; and

10 (ii) the provisions of this Part, Part 3 Division 9 of the Rail Safety National Law and the regulations with respect to breath analysing instruments and the manner in which an analysis of breath by means of a breath analysing instrument is to be conducted were complied with,

(2) Section 20(7)—delete subsection (7) and substitute:

15 (7) A certificate purporting to be signed by an authorised person and to certify that—

(a) a sample of oral fluid for the purposes of an oral fluid analysis was taken on a specified day and at a specified time from a person named in the certificate; and

20 (b) the provisions of this Act with respect to the taking of samples of oral fluid for such purposes were complied with,

is, in the absence of proof to the contrary, proof of the matters so certified.

(3) Section 20(20)—delete subsection (20) and substitute:

25 (20) A certificate purporting to be signed by an analyst and to certify that an oral fluid analysis was properly conducted is admissible in proceedings before a court and is, in the absence of proof to the contrary, proof of the matter so certified.

(20a) A certificate—

30 (a) purporting to be signed by the Regulator or Commissioner of Police and to certify that a person named in the certificate is authorised by the Regulator or Commissioner of Police (as the case may be) to conduct drug screening tests; or

35 (b) purporting to be signed by a police officer or a person authorised by the Regulator or Commissioner of Police to conduct drug screening tests and to certify that the apparatus used to conduct a drug screening test was in proper order and the drug screening test was properly conducted,

is admissible in proceedings before a court and is, in the absence of proof to the contrary, proof of the matters so certified.

## Part 5—Amendment of Road Traffic Act 1961

### 17—Amendment of section 5—Interpretation

- (1) Section 5(1), definition of *drink driving offence*—delete the definition and substitute:

*drink driving offence* means—

- 5 (a) an offence against section 47(1) or (1a) involving the driving of a motor vehicle, or attempting to put a motor vehicle in motion, while so much under the influence of intoxicating liquor as to be incapable of exercising effective control of the vehicle; or
- 10 (b) an offence against section 47B(1), 47B(1a), 47E(3), 47E(3a), 47I(7) or 47I(14);

- (2) Section 5(1), definition of *drug driving offence*—delete the definition and substitute:

*drug driving offence* means—

- 15 (a) an offence against section 47(1) or (1a) involving the driving of a motor vehicle, or attempting to put a motor vehicle in motion, while so much under the influence of a drug as to be incapable of exercising effective control of the vehicle; or
- (b) an offence against section 47BA(1), 47BA(1a), 47EAA(9), 47EAA(9a), 47I(7) or 47I(14);

### 18—Amendment of section 47—Driving under the influence

- 20 (1) Section 47—after subsection (1) insert:

- 25 (1a) If a person engages in conduct involving a motor vehicle that constitutes an offence against subsection (1) while a child under the age of 16 years is present in or on that motor vehicle, the person commits an offence against this subsection and is liable to the same penalty as is prescribed for an offence against subsection (1).
- 30 (1b) If a person is charged with an offence against subsection (1a) but the court is not satisfied that an offence against that subsection has been established beyond reasonable doubt, the person may be convicted, on that charge, of an offence against subsection (1) if the court is satisfied that an offence against subsection (1) has been so established.

- (2) Section 47(3)—delete "subsection (1)" and substitute:

this section

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

- 35 (1) Section 47A(1), definition of *approved blood test kit*—delete "by regulation"
- (2) Section 47A(1), definition of *category 2 offence*—after "section 47B(1)" insert:  
or (1a)

(3) Section 47A(1), definition of *category 3 offence*—after "section 47B(1)" insert:  
or (1a)

(4) Section 47A(1), definition of *oral fluid analysis*—delete the definition and substitute:  
*oral fluid analysis* means the analysis of a person's oral fluid to determine  
whether a prescribed drug is present in the oral fluid;

## 20—Insertion of section 47AB

After section 47A insert:

### **47AB—Drug driving offences—defence for users of approved medical cannabis products**

- (1) In proceedings for a drug driving offence involving THC, it is a defence if the defendant proves that, at the time of the alleged offence—
- (a) the defendant had a medical condition or a disability requiring the defendant to use an approved medical cannabis product; and
  - (b) the defendant was in possession of a certificate given by a legally qualified medical practitioner certifying that, in the medical practitioner's opinion, the defendant is medically fit to drive a vehicle while using an approved medical cannabis product.

(2) In this section—

*approved medical cannabis product* has the meaning assigned to it by the regulations;

*THC* means delta-9-tetrahydrocannabinol.

## 21—Amendment of section 47B—Driving while having prescribed concentration of alcohol in blood

(1) Section 47B—after subsection (1) insert:

- (1a) If a person engages in conduct involving a motor vehicle that constitutes an offence against subsection (1) (other than a category 1 offence) while a child under the age of 16 years is present in or on that motor vehicle, the person commits an offence against this subsection and is liable to the same penalty as is prescribed for an offence against subsection (1).
- (1b) If a person is charged with an offence against subsection (1a) but the court is not satisfied that an offence against that subsection has been established beyond reasonable doubt, the person may be convicted, on that charge, of an offence against subsection (1) if the court is satisfied that an offence against subsection (1) has been so established.

(2) Section 47B(3)—delete "subsection (1)" and substitute:  
this section

**22—Amendment of section 47BA—Driving with prescribed drug in oral fluid or blood**

(1) Section 47BA—after subsection (1) insert:

5 (1a) If a person engages in conduct involving a motor vehicle that constitutes an offence against subsection (1) while a child under the age of 16 years is present in or on that motor vehicle, the person commits an offence against this subsection and is liable to the same penalty as is prescribed for an offence against subsection (1).

10 (1b) If a person is charged with an offence against subsection (1a) but the court is not satisfied that an offence against that subsection has been established beyond reasonable doubt, the person may be convicted, on that charge, of an offence against subsection (1) if the court is satisfied that an offence against subsection (1) has been so established.

15 (2) Section 47BA(2)—delete "subsection (1)" and substitute:

this section

(3) Section 47BA(4)—delete subsection (4) and substitute:

(4) If a court convicts a person of an offence against this section, the following provisions apply:

20 (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;

25 (ii) in the case of a second offence—for such period, being not less than 12 months, as the court thinks fit;

(iii) in the case of a third offence—for such period, being not less than 2 years, as the court thinks fit;

30 (iv) in the case of a subsequent offence—for such period, being not less than 3 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 it may order a period of disqualification that is less than the prescribed minimum period but not less than 1 month;

40 (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.

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

Section 47C—delete "section 47B(1) or 47BA(1)" wherever occurring and substitute in each case:

section 47B(1), 47B(1a), 47BA(1) or 47BA(1a)

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

Section 47D(1)—delete "section 47(1), 47B(1), 47BA(1), 47E(3) or 47EAA(9)" and substitute:

section 47(1), 47(1a), 47B(1), 47B(1a), 47BA(1), 47BA(1a), 47E(3), 47E(3a), 47EAA(9) or 47EAA(9a)

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

(1) Section 47E—after subsection (3) insert:

(3a) If—

- (a) a person has engaged in conduct of a kind described in subsection (1)(a), (b) or (c) involving a motor vehicle; and
- (b) such conduct occurred while a child under the age of 16 years was present in or on that vehicle; and
- (c) the person refuses or fails to comply with a direction of a police officer (given in relation to such conduct) in contravention of subsection (3),

the person commits an offence against this subsection and is liable to the same penalty as is prescribed for an offence against subsection (3).

(3b) If a person is charged with an offence against subsection (3a) but the court is not satisfied that an offence against that subsection has been established beyond reasonable doubt, the person may be convicted, on that charge, of an offence against subsection (3) if the court is satisfied that an offence against subsection (3) has been so established.

(2) Section 47E(4)—after "subsection (3)" insert:

or (3a)

(3) Section 47E(6)—after "subsection (3)" insert:

or (3a)



**26—Amendment of section 47EAA—Police may require drug screening test, oral fluid analysis and blood test**

(1) Section 47EAA(7)—delete subsection (7) and substitute:

(7) A drug screening test may only be conducted by a police officer.

(2) Section 47EAA—after subsection (9) insert:

(9a) If—

- (a) a person has engaged in conduct of a kind described in section 47E(1)(a), (b) or (c) involving a motor vehicle; and
- (b) such conduct occurred while a child under the age of 16 years was present in or on that vehicle; and
- (c) the person refuses or fails to comply with a direction of a police officer (given in relation to such conduct) in contravention of subsection (9),

the person commits an offence against this subsection and is liable to the same penalty as is prescribed for an offence against subsection (9).

(9b) If a person is charged with an offence against subsection (9a) but the court is not satisfied that an offence against that subsection has been established beyond reasonable doubt, the person may be convicted, on that charge, of an offence against subsection (9) if the court is satisfied that an offence against subsection (9) has been so established.

(3) Section 47EAA(10)—after "subsection (9)" insert:

or (9a)

(4) Section 47EAA(16)—after "subsection (9)" insert:

or (9a)

(5) Section 47EAA(16)(a)(i)—delete "6" and substitute:

12

(6) Section 47EAA(16)(a)(ii)—delete "2" and substitute:

3

(7) Section 47EAA(18)(b)—delete paragraph (b) and substitute:

(b) submits to a drug screening test and the drug screening test indicates the presence of a prescribed drug in the person's oral fluid,

**27—Amendment of section 47GA—Breath analysis where drinking occurs after driving**

Section 47GA(1)—delete "section 47(1) or 47B(1)" and substitute:

section 47(1), 47(1a), 47B(1) or 47B(1a)

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

Section 47GB(1)—delete "section 47(1) or 47BA(1)" and substitute:

section 47(1), 47(1a), 47BA(1) or 47BA(1a)

5 **29—Substitution of section 47H**

Section 47H—delete the section and substitute:

**47H—Approval of apparatus and kits for breath analysis etc**

The Governor may, by regulation, for the purposes of this Act—

- 10 (a) approve apparatus of a prescribed kind as breath analysing instruments; or
- (b) approve apparatus of a prescribed kind for the purpose of conducting alcoltests; or
- (c) approve apparatus of a prescribed kind for the purpose of conducting drug screening tests; or
- 15 (d) declare a kit of a prescribed kind to be an approved blood test kit.

**30—Amendment of section 47I—Compulsory blood tests**

Section 47I—after subsection (6) insert:

(7) If—

- 20 (a) a motor vehicle is involved in an accident; and
- (b) a child under the age of 16 years was present in or on the vehicle at the time of the accident; and
- (c) the person who was driving the vehicle at the time of the accident refuses or fails to comply with a request that the person submit to the taking of a sample of blood under this section; and
- 25 (d) the person—
- (i) fails to assign any reason based on genuine medical grounds for that refusal or failure; or
- 30 (ii) assigns a reason for that refusal or failure that is false or misleading; or
- (iii) makes any other false or misleading statement in response to the request,

the person is guilty of an offence.

Maximum penalty:

- 35 (a) for a first offence—a fine of not less than \$1 100 and not more than \$1 600;

(b) for a subsequent offence—a fine of not less than \$1 900 and not more than \$2 900.

(8) If a person is charged with an offence against subsection (7) but the court is not satisfied that an offence against that subsection has been established beyond reasonable doubt, the person may be convicted, on that charge, of an offence against subsection (14) if the court is satisfied that an offence against subsection (14) has been so established.

(9) If a court convicts a person of an offence against subsection (7), the provisions of subsection (14a) apply.

### **31—Amendment of section 47IAA—Power of police to impose immediate licence disqualification or suspension**

(1) Section 47IAA(1)(c)—after "section 47E(3)" insert:

or (3a)

(2) Section 47IAA(1)(ca)—after "section 47EAA(9)" insert:

or (9a)

(3) Section 47IAA(1)—after paragraph (ca) insert:

(cb) an offence against section 47I(7);

(4) Section 47IAA(12)(b)(iv)(A)—after "section 47EAA(9)" insert:

or (9a)

### **32—Amendment of section 47K—Evidence**

(1) Section 47K(3)(b)—delete paragraph (b) and substitute:

(b) purporting to be signed by a person authorised under subsection (1) and to certify that—

(i) a breath analysing instrument used by the person was in proper order and was properly operated; and

(ii) the provisions of this Act with respect to breath analysing instruments and the manner in which an analysis of breath by means of a breath analysing instrument is to be conducted were complied with,

(2) Section 47K(3a)—delete subsection (3a) and substitute:

(3a) A certificate purporting to be signed by a police officer and to certify that—

(a) a sample of oral fluid for the purposes of an oral fluid analysis was taken on a specified day and at a specified time from a person named in the certificate; and

(b) the provisions of this Act with respect to the taking of samples of oral fluid for such purposes were complied with,

is, in the absence of proof to the contrary, proof of the matters so certified.

(3) Section 47K(9)—delete subsection (9) and substitute:

(9) A certificate purporting to be signed by an analyst and to certify that an oral fluid analysis was properly conducted is admissible in proceedings before a court and is, in the absence of proof to the contrary, proof of the matter so certified.

(9a) A certificate purporting to be signed by a police officer and to certify that the apparatus used to conduct a drug screening test was in proper order and the drug screening test was properly conducted is admissible in proceedings before a court and is, in the absence of proof to the contrary, proof of the matters so certified.

(4) Section 47K(18)—delete subsection (18) and substitute:

(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), 47(1a), 47B(1) or 47B(1a), 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) or (3a);

(c) subsection (15) applies only in relation to proceedings for an offence against section 47(1), 47(1a), 47BA(1) or 47BA(1a), or an offence against the *Motor Vehicles Act 1959*.

### **33—Amendment of section 175—Evidence**

Section 175—after subsection (1) insert:

(2) In proceedings for an offence against section 47(1a), 47B(1a), 47BA(1a), 47E(3a), 47EAA(9a) or 47I(7), an allegation in the complaint that a child under the age of 16 years was, on a specified date and at a specified time, present in or on a specified motor vehicle will be accepted as proof of that matter in the absence of proof to the contrary.

### **34—Amendment of Schedule 1—Oral fluid and blood sample processes**

(1) Schedule 1, heading to Part 2—delete "**section 47E, 47EAA or 47I**" and substitute:

#### **Part 3 Division 5**

(2) Schedule 1, clause 2—delete "section 47E, 47EAA or 47I" and substitute:

#### **Part 3 Division 5**

(3) Schedule 1, clause 7(a)—delete "conducts the" and substitute:

takes a sample of oral fluid for the purposes of an

(4) Schedule 1, clause 7(c)—delete "conducts" and substitute:

takes the sample of oral fluid for the purposes of