

Legislative Council—No 77

As introduced and read a first time, 22 February 2023

South Australia

**Statutes Amendment (Medicinal Cannabis
Defence) Bill 2023**

A BILL FOR

An Act to amend the *Harbors and Navigation Act 1993*, the *Motor Vehicles Act 1959* and the *Road Traffic Act 1961*.

Contents

Part 1—Preliminary

1 Short title

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

2 Amendment of section 70—Alcohol and other drugs

Part 3—Amendment of *Motor Vehicles Act 1959*

3 Amendment of section 72A—Qualified supervising drivers

4 Amendment of section 75A—Learner's permit

5 Amendment of section 81A—Provisional licences

6 Amendment of section 81AB—Probationary licences

7 Amendment of section 81AC—Special provisions applying to certain motor bike licences

Part 4—Amendment of *Road Traffic Act 1961*

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

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *Statutes Amendment (Medicinal Cannabis Defence) Act 2023*.

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

2—Amendment of section 70—Alcohol and other drugs

Section 70—after subsection (3b) insert:

10 (3c) In any proceedings for an offence against subsection (3) where it is alleged that delta-9-tetrahydrocannabinol was present in the defendant's oral fluid or blood, it is a defence if the defendant proves that the delta-9-tetrahydrocannabinol was present as a result of the defendant's use of a cannabis product—

- 15 (a) that is a prescription drug within the meaning of the *Controlled Substances Act 1984*; and
- (b) for which the defendant had a prescription or other authority to obtain, possess and use under the *Controlled Substances Act 1984* or a corresponding Act of another State or Territory; and
- 20 (c) that was used in accordance with that prescription or authority.

Part 3—Amendment of *Motor Vehicles Act 1959*

3—Amendment of section 72A—Qualified supervising drivers

Section 72A—after subsection (2) insert:

5 (2a) In any proceedings for an offence against subsection (2) where it is alleged that delta-9-tetrahydrocannabinol was present in the defendant's oral fluid or blood, it is a defence if the defendant proves that the delta-9-tetrahydrocannabinol was present as a result of the defendant's use of a cannabis product—

10 (a) that is a prescription drug within the meaning of the *Controlled Substances Act 1984*; and

(b) for which the defendant had a prescription or other authority to obtain, possess and use under the *Controlled Substances Act 1984* or a corresponding Act of another State or Territory; and

15 (c) that was used in accordance with that prescription or authority.

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

Section 75A—after subsection (14) insert:

20 (14a) In any proceedings for an offence against subsection (14) where it is alleged that the defendant contravened the condition of the defendant's learner's permit imposed by subsection (10)(a) on the basis that delta-9-tetrahydrocannabinol was present in the defendant's oral fluid or blood, it is a defence if the defendant proves that the delta-9-tetrahydrocannabinol was present as a result of the defendant's use of a cannabis product—

25 (a) that is a prescription drug within the meaning of the *Controlled Substances Act 1984*; and

(b) for which the defendant had a prescription or other authority to obtain, possess and use under the *Controlled Substances Act 1984* or a corresponding Act of another State or Territory; and

30 (c) that was used in accordance with that prescription or authority.

5—Amendment of section 81A—Provisional licences

Section 81A—after subsection (10) insert:

5 (10a) In any proceedings for an offence against subsection (9) where it is alleged that the defendant contravened the condition of the defendant's provisional licence imposed by subsection (4)(a) on the basis that delta-9-tetrahydrocannabinol was present in the defendant's oral fluid or blood, it is a defence if the defendant proves that the delta-9-tetrahydrocannabinol was present as a result of the defendant's use of a cannabis product—

- 10 (a) that is a prescription drug within the meaning of the *Controlled Substances Act 1984*; and
- (b) for which the defendant had a prescription or other authority to obtain, possess and use under the *Controlled Substances Act 1984* or a corresponding Act of another State or
- 15 Territory; and
- (c) that was used in accordance with that prescription or authority.

6—Amendment of section 81AB—Probationary licences

Section 81AB—after subsection (6) insert:

20 (6a) In any proceedings for an offence against subsection (5) where it is alleged that the defendant contravened the condition of the defendant's probationary licence imposed by subsection (1)(b) on the basis that delta-9-tetrahydrocannabinol was present in the defendant's oral fluid or blood, it is a defence if the defendant proves that the

25 delta-9-tetrahydrocannabinol was present as a result of the defendant's use of a cannabis product—

- (a) that is a prescription drug within the meaning of the *Controlled Substances Act 1984*; and
- (b) for which the defendant had a prescription or other authority to obtain, possess and use under the *Controlled Substances Act 1984* or a corresponding Act of another State or
- 30 Territory; and
- (c) that was used in accordance with that prescription or authority.

7—Amendment of section 81AC—Special provisions applying to certain motor bike licences

Section 81AC—after subsection (5) insert:

5 (5a) In any proceedings for an offence against subsection (3) where it is alleged that the defendant contravened the condition of the defendant's prescribed motor bike licence imposed by subsection (2) on the basis that delta-9-tetrahydrocannabinol was present in the defendant's oral fluid or blood, it is a defence if the defendant proves that the delta-9-tetrahydrocannabinol was present as a result of the
10 defendant's use of a cannabis product—

- 15 (a) that is a prescription drug within the meaning of the *Controlled Substances Act 1984*; and
- (b) for which the defendant had a prescription or other authority to obtain, possess and use under the *Controlled Substances Act 1984* or a corresponding Act of another State or Territory; and
- (c) that was used in accordance with that prescription or authority.

Part 4—Amendment of *Road Traffic Act 1961*

20 **8—Amendment of section 47BA—Driving with prescribed drug in oral fluid or blood**

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

25 (1c) In any proceedings for an offence against subsection (1) or (1a) where it is alleged that delta-9-tetrahydrocannabinol was present in the defendant's oral fluid or blood, it is a defence if the defendant proves that the delta-9-tetrahydrocannabinol was present as a result of the defendant's use of a cannabis product—

- 30 (a) that is a prescription drug within the meaning of the *Controlled Substances Act 1984*; and
- (b) for which the defendant had a prescription or other authority to obtain, possess and use under the *Controlled Substances Act 1984* or a corresponding Act of another State or Territory; and
- 35 (c) that was used in accordance with that prescription or authority.