

South Australia

# Statutes Amendment (Transport Portfolio— Alcohol and Drugs) Act 2009

An Act to amend the *Harbors and Navigation Act 1993*, the *Motor Vehicles Act 1959*, the *Rail Safety Act 2007* 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 (Transport Portfolio—Alcohol and Drugs) Act 2009*.

**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 *Harbors and Navigation Act 1993***

**4—Amendment of section 4—Interpretation**

- (1) Section 4(1)—after the definition of *alcotest* insert:

*analyst* means a person who is an analyst for the purposes of the *Road Traffic Act 1961*;

*approved blood test kit* means a kit of a kind declared under the *Road Traffic Act 1961* to be an approved blood test kit;

- (2) Section 4(1), definition of *authorised person*—delete "member of the police force" and substitute:

police officer

- (3) Section 4(1)—after the definition of *breath analysing instrument* insert:

*breath analysis* means an analysis of breath by means of a breath analysing instrument;

*category 1 offence* means an offence against section 70(2) involving a concentration of alcohol of less than .08 grams in 100 millilitres of blood;

*category 2 offence* means an offence against section 70(2) involving a concentration of alcohol of not less than .08 grams but less than .15 grams in 100 millilitres of blood;

*category 3 offence* means an offence against section 70(2) involving a concentration of alcohol of not less than .15 grams in 100 millilitres of blood;

- (4) Section 4(1)—after the definition of *department* insert:

**drug screening test** means a test by means of an apparatus of a kind approved under the *Road Traffic Act 1961* for the purpose of conducting drug screening tests;

- (5) Section 4(1)—after the definition of *harbor* insert:

**hospital** means an institution declared under the *Road Traffic Act 1961* to be a hospital for the purposes of section 47I of that Act;

- (6) Section 4(1)—after the definition of *master* insert:

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

- (7) Section 4(1)—after the definition of *operator* insert:

**oral fluid** includes saliva;

**oral fluid analysis** means an analysis of oral fluid by means of an apparatus of a kind approved under the *Road Traffic Act 1961* for the conduct of oral fluid analyses;

- (8) Section 4(1)—after the definition of *port operator* insert:

**prescribed alcohol or drug offence** means an offence against Part 10 Division 4;

**prescribed circumstances**—a requirement to submit to an alcotest or breath analysis under section 71, or a direction to stop a vessel for the purpose of making such a requirement, is made or given in prescribed circumstances if the authorised person who makes the requirement or gives the direction believes on reasonable grounds that the person of whom the requirement is, or is to be, made has, within the preceding 8 hours—

- (a) committed an offence of a prescribed class; or
- (b) behaved in a manner that indicates that his or her ability to do the following is impaired:
  - (i) operate a vessel; or
  - (ii) as a member of the crew of a vessel, engage in duties affecting the safe navigation, operation or use of the vessel; or
- (c) been involved in an accident as—
  - (i) the operator of a vessel; or
  - (ii) a member of the crew of a vessel who was, or ought to have been, engaged in duties affecting the safe navigation, operation or use of the vessel;

**prescribed concentration of alcohol** means a concentration of .05 grams or more in 100 millilitres of blood;

**prescribed drug** means a substance declared under the *Road Traffic Act 1961* to be a prescribed drug;

**5—Amendment of section 13—Production of identity card**

Section 13—delete "member of the police force" and substitute:  
police officer

**6—Amendment of section 70—Alcohol and other drugs**

(1) Section 70(1)(a)—delete "or operation" and substitute:

, operation or use

(2) Section 70(3)—delete subsection (3) and substitute:

(3) If—

(a) a person operates a vessel or is a member of the crew of a vessel who is, or ought to be, engaged in duties affecting the safe navigation, operation or use of the vessel; and

(b) a prescribed drug is present in the oral fluid or blood of that person,

that person is guilty of an offence.

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 subsequent offence—a fine of not less than \$1 100 and not more than \$1 800.

(3a) Subject to subsection (3b), it is a defence to a charge of an offence against subsection (3) if the defendant proves that he or she did not knowingly consume the prescribed drug present in his or her oral fluid or blood.

(3b) Subsection (3a) 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.

(3) Section 70(4)—delete "offence against this Division" and substitute:

prescribed alcohol or drug offence

**7—Substitution of sections 71 to 72B**

Sections 71 to 72B (inclusive)—delete the sections and substitute:

**71—Authorised person may require alcotest or breath analysis**

(1) An authorised person may require—

(a) a person who is operating a vessel or who has operated a vessel; or

- (b) a person who is or was a member of the crew of a vessel that is being operated or has been operated, and who is or was, or ought to be or to have been engaged in duties affecting the safe navigation, operation or use of the vessel,
- to submit to an alcotest or a breath analysis, or both.
- (2) An authorised person may direct a person who is apparently in charge of a vessel to stop the vessel and may give other reasonable directions for the purpose of making a requirement under this section that a person submit to an alcotest or a breath analysis.
- (3) A person must forthwith comply with a direction under subsection (2).
- Maximum penalty: \$2 500.
- (4) An alcotest or a breath analysis to which a person has been required to submit under this section may not be commenced more than 8 hours after—
- (a) the person ceased to operate a vessel; or
- (b) the person was a member of the crew of a vessel who was, or ought to have been, engaged in duties affecting the safe navigation, operation or use of the vessel.
- (5) The performance of an alcotest or a breath analysis that has been required under this section commences when a direction is first given by an authorised person that the person concerned exhale into the alcotest apparatus or breath analysing instrument to be used for the alcotest or breath analysis.
- (6) A breath analysis may only be conducted by a person authorised by the Commissioner of Police to operate a breath analysing instrument.
- (7) The regulations may prescribe the manner in which an alcotest or breath analysis is to be conducted and may, for example, require that more than 1 sample of breath is to be provided for testing or analysis and, in such a case, specify which reading of the apparatus or instrument will be taken to be the result of the alcotest or breath analysis for the purposes of this Division and any other Act.
- (8) A person required under this section to submit to an alcotest or a breath analysis must not refuse or fail to comply with all reasonable directions of an authorised person in relation to the requirement and, in particular, must not refuse or fail to exhale into the apparatus by which the alcotest or breath analysis is conducted in accordance with the directions of the authorised person.

Penalty:

- (a) for a first offence—a fine of not less than \$700 and not more than \$1 200;
- (b) for a subsequent offence—a fine of not less than \$1 500 and not more than \$2 500.

- (9) It is a defence to a prosecution under subsection (8) 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) the person's right to request the taking of a blood sample under subsection (10); or
  - (c) there was, in the circumstances of the case, good reason for the defendant to refuse or fail to comply with the requirement or direction.
- (10) If a person 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 an authorised person that a sample of his or her blood be taken by a medical practitioner, an authorised person 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 authorised person 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.
- (11) A person is not 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 alcohol after the person last operated a vessel or attempted to put a vessel in motion and before the requirement was made or the direction was given.

- (12) 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 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 (10); or
  - (b) the person made a request as referred to in that subsection, but—
    - (i) an authorised person 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 a person's blood in accordance with subsection (10) was not possible or reasonably advisable or practicable in the circumstances by reason of some physical or medical condition of the person.
- (13) In determining whether an offence is a first or subsequent offence for the purposes of this section, any previous prescribed alcohol or drug offence for which the defendant has been convicted will be taken into account, but only if the previous offence was committed within the period of 5 years immediately preceding the date on which the offence under consideration was committed.
- (14) 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 the person's blood for the purposes of the exercise of any power conferred on a police officer (including a power of arrest) to prevent the person committing an offence by operating a vessel in contravention of this Division.
- (15) Subsection (14) does not limit the circumstances in which such a power may otherwise be exercised by a police officer under this or any other Act.

**72—Authorised person may require drug screening test, oral fluid analysis and blood test**

- (1) If a person has submitted to an alcotest or a breath analysis as a result of a requirement under section 71, an authorised person 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 71(1) that was made in prescribed circumstances,
- an authorised person may require the person to submit to an oral fluid analysis or a blood test.
- (3) If a person submits to an oral fluid analysis in compliance with a requirement made under subsection (2) but the person is unable to produce sufficient oral fluid for a sample to be taken, an authorised person may require that the person submit to a blood test.
- (4) An authorised person 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.
- (5) A person must forthwith comply with a direction under subsection (4).
- Maximum penalty: \$2 500.
- (6) A drug screening test, oral fluid analysis or blood test to which a person has been required to submit under this section may not be commenced more than 8 hours after—
- (a) the person ceased to operate a vessel; or
  - (b) the person was a member of the crew of a vessel who was, or ought to have been, engaged in duties affecting the safe navigation, operation or use of the vessel.
- (7) 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 an authorised person 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.
- (8) A drug screening test or an oral fluid analysis may only be conducted by a police officer authorised by the Commissioner of Police to conduct such tests or analyses.
- (9) The regulations may prescribe the manner in which a drug screening test, oral fluid analysis or blood test is to be conducted.

- (10) 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 an authorised person 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 an authorised person.

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.
- (11) It is a defence to a prosecution under subsection (10) 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 (12); or
- (B) a blood test—the person's right to request an oral fluid analysis under subsection (13); 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.
- (12) 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 an authorised person that a sample of his or her blood be taken by a medical practitioner, an authorised person 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 authorised person 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.
- (13) 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 an authorised person that an oral fluid analysis be conducted, an authorised person must do all things reasonably necessary to facilitate the conduct of an oral fluid analysis unless—
  - (a) a requirement or direction under this section relating to a drug screening test or oral fluid analysis has been made of, or been given to, the person; and
  - (b) —
    - (i) the person refused or failed to comply with that requirement or direction on the ground of some physical or medical condition of the person and made a request under subsection (12) for a sample of his or her blood to be taken in accordance with that subsection; or
    - (ii) the person was unable to produce sufficient oral fluid for a sample to be taken.
- (14) A person is not 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 operated a vessel or was on duty as a member of the crew of a vessel and before the requirement was made or the direction was given.
- (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 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 (12); or

- (b) the person made a request as referred to in subsection (12), but—
    - (i) an authorised person 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 (12) was not possible or reasonably advisable or practicable in the circumstances by reason of some physical or medical condition of the person.
- (16) 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 (13); or
  - (b) the person made a request as referred to in subsection (13), but an authorised person 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 (13) was not possible or reasonably advisable or practicable in the circumstances by reason of some physical or medical condition of the person.
- (17) In determining whether an offence is a first or subsequent offence for the purposes of this section, any previous prescribed alcohol or drug offence for which the defendant has been convicted will be taken into account, but only if the previous offence was committed within the period of 5 years 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 police officer (including a power of arrest) to prevent the person committing an offence by operating a vessel in contravention of this Division.

- (19) Subsection (18) does not limit the circumstances in which such a power may otherwise be exercised by a police officer under this or any other Act.

**72A—Schedule 1A further regulates blood and oral fluid sample processes**

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

**8—Substitution of section 73**

Section 73—delete the section and substitute:

**73—Evidence**

- (1) Without affecting the admissibility of evidence that might be given otherwise than in pursuance of this section, evidence may be given, in any proceedings for an offence, of the concentration of alcohol indicated as being present in the blood of the defendant by a breath analysing instrument operated by a person authorised to operate the instrument by the Commissioner of Police and, if the requirements of this Act in relation to breath analysing instruments and breath analysis, including subsections (5) and (6), have been complied with, it must be presumed, in the absence of proof to the contrary, that the concentration of alcohol so indicated was present in the blood of the defendant at the time of the analysis.
- (2) No evidence can be adduced in rebuttal of the presumption created by subsection (1) except—
- (a) evidence of the concentration of alcohol in the blood of the defendant as indicated by analysis of a sample of blood taken and dealt with in accordance with Schedule 1A or in accordance with the regulations; and
  - (b) evidence as to whether the results of analysis of the sample of blood demonstrate that the breath analysing instrument gave an exaggerated reading of the concentration of alcohol present in the blood of the defendant.
- (3) If, in any proceedings for an offence, it is proved—
- (a) that the defendant—
    - (i) operated a vessel; or
    - (ii) was a member of a crew of a vessel that was being operated and was or ought to have been engaged in duties affecting the safe navigation, operation or use of the vessel; and
  - (b) that a concentration of alcohol was present in the defendant's blood at the time of a breath analysis performed within the period of 2 hours immediately following the conduct referred to in paragraph (a),

it must be conclusively presumed that that concentration of alcohol was present in the defendant's blood at the time of the conduct referred to in paragraph (a).

- (4) No evidence can be adduced as to a breath or blood alcohol reading obtained from a coin-operated breath testing or breath analysing machine installed in a hotel or other licensed premises.
- (5) As soon as practicable after a person has submitted to an analysis of breath by means of a breath analysing instrument, the person operating the instrument must deliver to the person whose breath has been analysed a statement in writing specifying—
  - (a) the reading produced by the breath analysing instrument; and
  - (b) the date and time of the analysis.
- (6) If a person has submitted to an analysis of breath by means of a breath analysing instrument and the concentration of alcohol indicated as being present in the blood of that person by the instrument is the prescribed concentration of alcohol, the person operating the breath analysing instrument must immediately—
  - (a) give the person the prescribed oral advice and deliver to the person the prescribed written notice as to the operation of this Act in relation to the results of the breath analysis and as to the procedures prescribed for the taking and analysis of a sample of the person's blood; and
  - (b) at the request of the person made in accordance with the regulations, deliver an approved blood test kit to the person.
- (7) In proceedings for an offence a certificate—
  - (a) purporting to be signed by the Minister and to certify that a person named in the certificate is an authorised person; or
  - (b) 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 operate breath analysing instruments; or
  - (c) purporting to be signed by a person authorised under subsection (1) and to certify that—
    - (i) the apparatus used by the person was a breath analysing instrument within the meaning of this Act; and
    - (ii) the breath analysing instrument was in proper order and was properly operated; and
    - (iii) 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,

will be accepted, in the absence of proof to the contrary, as proof of the matters so certified.

- (8) A certificate purporting to be signed by an authorised person and to certify that an apparatus referred to in the certificate is or was of a kind approved under the *Road Traffic Act 1961* for the purpose of performing alcotests, drug screening tests or oral fluid analyses is, in the absence of proof to the contrary, proof of the matter so certified.
- (9) A certificate purporting to be signed by an authorised person and to certify that a person named in the certificate submitted to an alcotest on a specified day and at a specified time and that the alcotest indicated that the prescribed concentration of alcohol may then have been present in the blood of that person is, in the absence of proof to the contrary, proof of the matter so certified.
- (10) Subject to subsection (22), a certificate purporting to be signed by an analyst, certifying as to the concentration of alcohol, or any drug, found in a specimen of blood identified in the certificate expressed in grams in 100 millilitres of blood is, in the absence of proof to the contrary, proof of the matters so certified.
- (11) Subject to subsection (22), in legal proceedings a certificate purporting to be signed by a person authorised under subsection (1) and to certify that—
  - (a) a person named in the certificate submitted to an analysis of breath by means of a breath analysing instrument on a day and at a time specified in the certificate; and
  - (b) the breath analysing instrument produced a reading specified in the certificate; and
  - (c) a statement in writing required by subsection (5) was delivered in accordance with that subsection,

will be accepted, in the absence of proof to the contrary, as proof of the matters so certified.

- (12) A certificate purporting to be signed by a person authorised under subsection (1) and to certify—
  - (a) that on a date and at a time stated in the certificate, a person named in the certificate submitted to a breath analysis; and
  - (b) that the prescribed oral advice and the prescribed written notice were given and delivered to the person in accordance with subsection (6)(a); and
  - (c) that—
    - (i) the person did not make a request for an approved blood test kit in accordance with the regulations; or

- (ii) at the request of the person, a kit that, from an examination of its markings, appeared to the person signing the certificate to be an approved blood test kit was delivered to the person in accordance with subsection (6)(b),

is, in the absence of proof to the contrary, proof that the requirements of subsection (6) were complied with in relation to the person.

- (13) A prosecution for an offence will not fail because of a deficiency of a kit delivered to the defendant in purported compliance with subsection (6)(b) and the presumption under subsection (1) will apply despite such a deficiency unless it is proved—
  - (a) that the defendant delivered the kit unopened to a medical practitioner for use in taking a sample of the defendant's blood; and
  - (b) by evidence of the medical practitioner, that the medical practitioner was, because of a deficiency of the kit, unable to comply with the prescribed procedures governing the manner in which a sample of a person's blood must be taken and dealt with for the purposes of subsection (2).
- (14) Subject to subsection (22), an apparently genuine document purporting to be a certificate under Schedule 1A, or a copy of such a certificate, and purporting to be signed by an authorised person, medical practitioner or analyst under Schedule 1A 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.
- (15) If a certificate of an analyst relating to a sample of blood taken under Schedule 1A is received in 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.
- (16) If it is proved by the prosecution in the 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 Schedule 1A, it will be conclusively presumed that concentration of alcohol was present in the defendant's blood throughout the period of 2 hours immediately preceding the taking of the sample.
- (17) If certificates of an authorised person and analyst, or a medical practitioner and analyst under Schedule 1A 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.

- (18) If a certificate of an analyst relating to a sample of oral fluid or blood taken under Schedule 1A is received as evidence in proceedings before a court and states that a 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 drug stated in the certificate was present in the sample when the sample was taken.
- (19) If it is proved by the prosecution in proceedings for an offence that a drug was present in the defendant's oral fluid or blood at the time at which a sample of oral fluid or blood was taken under Schedule 1A, it will be conclusively presumed that the 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.
- (20) A certificate purporting to be signed by an authorised person 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 admissible in proceedings before a court and is, in the absence of proof to the contrary, proof of the matters so certified.
- (21) 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 drug screening tests; or
  - (b) purporting to be signed by a police officer authorised to conduct oral fluid analyses or drug screening tests under Schedule 1A and to certify that the apparatus used to conduct an oral fluid analysis or a drug screening test was in proper order and the oral fluid analysis or 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.
- (22) A certificate referred to in subsection (10), (11) or (14) 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 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.

## 9—Insertion of section 73B

After section 73A insert:

### **73B—Oral fluid analysis or blood test where consumption of prescribed drug occurs after operation of vessel**

- (1) This section applies to proceedings for an offence against section 70(1) or (3) in which the results of an oral fluid analysis or a blood test under section 72 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 after an authorised person first exercised powers under section 71 preliminary to the performance of the alcotest or breath analysis referred to in section 72,
- 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 72; and
- (b) the performance of the oral fluid analysis or blood test (as the case may be) under section 72.

## 10—Amendment of section 74—Compulsory blood tests of injured persons including water skiers

- (1) Section 74(1)—delete "14" and substitute:  
10
- (2) Section 74(1)—delete "is admitted into" and substitute:  
attends at, or is admitted into,
- (3) Section 74(2) and (3)—delete subsections (2) and (3)
- (4) Section 74(4)—delete "14" and substitute:  
10
- (5) Section 74(7) to (17) (inclusive)—delete subsections (7) to (17)
- (6) Section 74(19)—delete "offence against this Division" and substitute:  
prescribed alcohol or drug offence

## 11—Insertion of Schedule 1A

After Schedule 1 insert:

### **Schedule 1A—Blood and oral fluid sample processes**

#### **Part 1—Preliminary**

##### **1—Interpretation**

In this Schedule—

*approved courier* means a person approved by the Commissioner of Police under the *Road Traffic Act 1961* as a courier for the purposes of Schedule 1 of that Act;

*registered nurse* means a person who is registered as a nurse under the law of this State.

#### **Part 2—Processes relating to blood samples under section 71, 72 or 74**

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

The following provisions apply where a sample of blood is taken under section 71, 72 or 74:

- (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 74) 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 police officer;
- (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 police officer or an approved courier 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 police officer 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**

If a person has made a request under section 71(10) or 72(12), or is required to submit to a blood test under section 72(2) or (3), 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 71(10) or 72(12) or this Schedule; 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—Police officer to be present when blood sample taken**

The taking of a sample of blood under section 71(10) or 72(2), (3) or (12) must be in the presence of a police officer.

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

The taking of a sample of blood under section 71(10), 72(12) or 74 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 74 is guilty of an offence.  
Maximum penalty: \$2 500.
- (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 72**

### **7—Oral fluid sample processes**

The following provisions apply where a sample of oral fluid is taken under section 72(2):

- (a) the police officer 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 72(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 police officer 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 police officer by whom the sample was taken; and
  - (iv) the date, time and place at which the sample was taken; and
  - (v) that the police officer 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 police officer or an approved courier 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 blood or oral fluid samples under Part 10 Division 4**

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

- (1) A sample of blood or oral fluid taken under Part 10 Division 4 (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 10 Division 4, 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 an offence involving the operation or crewing of a vessel; and
  - (b) may not be relied on as grounds for the exercise of any search power or the obtaining of any search warrant.

### **9—Destruction of blood or oral fluid sample taken under Part 10 Division 4**

The Commissioner of Police must ensure that a sample of blood or oral fluid taken under Part 10 Division 4 (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 of a kind referred to in clause 8(2)(a) 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—Amendment of *Motor Vehicles Act 1959***

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

- (1) Section 5(1), definition of *alcohol interlock scheme conditions*—delete the definition and substitute:

*alcohol interlock* means a device or system of a kind approved by the Minister by notice in the Gazette as an alcohol interlock for the purposes of this Act;

*alcohol interlock scheme conditions* means—

- (a) the mandatory alcohol interlock scheme conditions; or
- (b) the voluntary alcohol interlock scheme conditions;

*approved alcohol interlock provider* means a person, or a person of a class, approved by the Minister by notice in the Gazette as a provider of alcohol interlocks for the purposes of this Act;

- (2) Section 5(1)—after the definition of *caravan* insert:

*category 1 offence* means an offence against section 47B(1) of the *Road Traffic Act 1961* involving a concentration of alcohol of less than .08 grams in 100 millilitres of blood;

**category 2 offence** means an offence against section 47B(1) of the *Road Traffic Act 1961* involving a concentration of alcohol of less than .15 grams, but not less than .08 grams, in 100 millilitres of blood;

**category 3 offence** means an offence against section 47B(1) of the *Road Traffic Act 1961* involving a concentration of alcohol of .15 grams or more in 100 millilitres of blood;

- (3) Section 5(1), definition of **declared area**—delete the definition and substitute:

**declared area** means—

- (a) the area of a municipal council; or
- (b) a part of the State declared by regulation to be within the area for the purposes of this definition;

- (4) Section 5(1)—after the definition of **District Court** insert:

**drink driving offence** has the same meaning as in the *Road Traffic Act 1961*;

**drug driving offence** has the same meaning as in the *Road Traffic Act 1961*;

- (5) Section 5(1)—after the definition of **licence** insert:

**mandatory alcohol interlock scheme conditions** means the conditions referred to in section 81F;

- (6) Section 5(1)—after the definition of **motor vehicle** insert:

**nominated vehicle** for a person means a motor vehicle nominated by the person to the Registrar in accordance with section 81F;

- (7) Section 5(1)—after the definition of **operator** insert:

**oral fluid** has the same meaning as in the *Road Traffic Act 1961*;

- (8) Section 5(1), definition of **prescribed conditions**—delete the definition and substitute:

**prescribed conditions** means learner's permit conditions, probationary licence conditions or provisional licence conditions;

**prescribed drug** has the same meaning as in the *Road Traffic Act 1961*;

- (9) Section 5(1)—after the definition of **semi-trailer** insert:

**serious drink driving offence**—see section 81E;

- (10) Section 5(1), definition of **unconditional licence**, (a)—after "not subject to" insert:  
alcohol interlock scheme conditions or

- (11) Section 5(1)—after the definition of **vehicle** insert:

**voluntary alcohol interlock scheme conditions**—see Schedule 6 clause 1;

- (12) Section 5—after subsection (3a) insert:

(3b) The Minister may, by notice in the Gazette, approve or revoke the approval of—

- (a) a device or system as an alcohol interlock for the purposes of this Act; or

- (b) a person, or a person of a class, as a provider of alcohol interlocks for the purposes of this Act.

### **13—Amendment of section 72A—Qualified supervising drivers**

Section 72A(4), definitions of *oral fluid* and *prescribed drug*—delete the definitions

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

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

(2a) Subject to this Act, if a person—

- (a) drives a motor vehicle on a road; and
- (b) the person has, as a consequence of being convicted of a serious drink driving offence, been disqualified from holding or obtaining a licence; and
- (c) the person has not, since the end of the period of that disqualification, 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.

- (2b) An offence against this section is not expiable if the maximum penalty for the offence is \$5 000 or imprisonment for 1 year.

- (2) Section 74(5)—delete "an offence against subsection (2) that is a subsequent offence," and substitute:

an offence against this section for which the maximum penalty is \$5 000 or imprisonment for 1 year,

### **15—Amendment of section 75A—Learner's permit**

Section 75A(3a), definitions of *oral fluid* and *prescribed drug*—delete the definitions

### **16—Insertion of section 79B**

After section 79A insert:

#### **79B—Alcohol and drug dependency assessments and issue of licences**

- (1) If an applicant for the issue of a licence has, during the period of 5 years immediately preceding the date of application, expiated or been convicted of—
  - (a) 3 or more category 1 offences; or
  - (b) 2 category 1 offences and 1 category 2 offence; or
  - (c) 2 or more serious drink driving offences,

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 the applicant is dependent on alcohol.

- (2) If an applicant for the issue of a licence has, during the period of 5 years immediately preceding the date of application, expiated or been convicted of 2 or more drug driving offences, 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 the applicant is dependent on drugs.
- (3) The superintendent of an assessment clinic must, as soon as practicable after the assessment of a person has been completed under this section, furnish a report on the examination to the Registrar, and send a copy of the report to the person.
- (4) Subject to subsection (6), if the Registrar is satisfied, on the basis of the report of the superintendent of an assessment clinic, 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 a report of the superintendent of an assessment clinic or such other evidence as the Registrar may require, that the applicant is no longer dependent on alcohol.
- (5) If the Registrar is satisfied, on the basis of the report of the superintendent of an assessment clinic, 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 a report of the superintendent of an assessment clinic or such other evidence as the Registrar may require, that the applicant is no longer dependent on drugs.
- (6) If the Registrar is satisfied, on the basis of the report of the superintendent of an assessment clinic, that the applicant is dependent on alcohol, but the applicant is willing to accept a licence subject to the mandatory alcohol interlock scheme conditions, the Registrar may, subject to this Act, issue such a licence to the applicant.
- (7) The mandatory alcohol interlock scheme conditions of a licence issued under this section are effective until the holder of the licence satisfies the Registrar, on the basis of a report of the superintendent of an assessment clinic or such other evidence as the Registrar may require, that the holder of the licence is no longer dependent on alcohol.
- (8) In this section—

***assessment clinic*** means a place approved as an assessment clinic for the purposes of this section by the Minister to whom the administration of the *Health Care Act 2008* is committed.

- (9) Nothing in this section derogates from the Registrar's powers under section 80 or 81.

**17—Amendment of section 80—Ability or fitness to be granted or hold licence or permit**

Section 80(5), penalty provision—delete "\$250" and substitute:

\$1 250

**18—Amendment of section 81—Restricted licences and learner's permits**

- (1) Section 81(4)—after "licence" insert "or permit"  
(2) Section 81(4), penalty provision—delete "\$250" and substitute:

\$1 250

**19—Amendment of section 81A—Provisional licences**

- (1) Section 81A(a1), definitions of *oral fluid* and *prescribed drug*—delete the definitions  
(2) Section 81A(3d)—delete "under this Act or the *Road Traffic Act 1961*"

**20—Amendment of section 81AB—Probationary licences**

- (1) Section 81AB(3)—after "subsection (3a)" insert:  
or (3b)
- (2) Section 81AB(3a)(b)—delete "under this Act or the *Road Traffic Act 1961*"
- (3) Section 81AB(3a)(c)—delete paragraph (c) and substitute:  
(c) the conditions imposed by subsection (1) are effective for—  
(i) the period for which the licence is required to be subject to the alcohol interlock scheme conditions; or  
(ii) 12 months,  
whichever is the longer period.
- (4) Section 81AB—after subsection (3a) insert:  
(3b) If a licence is not issued subject to the alcohol interlock scheme conditions but the application for the licence was made following a period of disqualification ordered by a court for a serious drink driving offence committed on or after the commencement of section 81E, the conditions imposed by subsection (1) are effective for—  
(a) a period equal to the period of disqualification for the offence ordered by the court; or  
(b) a period of 3 years,  
whichever is the lesser.
- (5) Section 81AB(7), definitions of *oral fluid* and *prescribed drug*—delete the definitions

**21—Amendment of section 81B—Consequences of holder of learner's permit, provisional licence or probationary licence contravening conditions etc**

- (1) Section 81B(1)—delete subsection (1)
- (2) Section 81B(2a)—delete subsection (2a)

**22—Amendment of section 81C—Disqualification for certain drink driving offences**

- (1) Section 81C(2)(c)—delete paragraph (c)
- (2) Section 81C(3) to (6) inclusive—delete subsections (3) to (6)
- (3) Section 81C(7)—delete subsection (7) and substitute:
  - (7) 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 drink driving offence or drug driving offence 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, 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.

**23—Amendment of section 81D—Disqualification for certain drug driving offences**

Section 81D(3)—delete subsection (3) and substitute:

- (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 drink driving offence or drug driving offence 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, 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.

**24—Insertion of sections 81E to 81H**

After section 81D insert:

**81E—Circumstances in which licence will be subject to mandatory alcohol interlock scheme conditions**

- (1) In this section—

*disqualification* means disqualification from holding or obtaining a licence or learner's permit;

*serious drink driving offence* means any drink driving offence other than—

- (a) a category 1 offence; or
  - (b) a category 2 offence that is a first offence.
- (2) In determining whether a category 2 offence is a first offence for the purposes of this section, any previous drink driving offence (other than a category 1 offence) for which the defendant has been convicted will be taken into account, but only if the previous offence was committed within the period of 5 years immediately preceding the date on which the offence under consideration was committed.
- (3) Subject to subsection (4), if a person who applies for a licence—
- (a) has been disqualified from holding or obtaining a licence by order of a court on conviction for a serious drink driving offence committed on or after the commencement of this section; and
  - (b) the person has not held a licence since the end of the period of disqualification,

a licence issued to the person will be subject to the mandatory alcohol interlock scheme conditions (in addition to any conditions otherwise required) until—

- (c) the conditions have been effective for the following period (the *prescribed minimum period*):
  - (i) in the case of a person who has been given a notice of immediate licence disqualification or suspension under section 47IAA of the *Road Traffic Act 1961* in respect of the offence—
    - (A) a period equal to the aggregate of the period of licence disqualification or suspension that has applied as a result of the notice and the period of disqualification for the offence ordered by the court; or
    - (B) a period of 3 years,whichever is the lesser;
  - (ii) in any other case—
    - (A) a period equal to the period of disqualification for the offence ordered by the court; or
    - (B) a period of 3 years,whichever is the lesser; and
- (d) the person qualifies for the issue of a licence that is not subject to the mandatory alcohol interlock scheme conditions in accordance with subsection (5).

- (4) If the applicant satisfies the Registrar, on such evidence as the Registrar may require, that prescribed circumstances exist in the particular case, a licence issued to the applicant will not be subject to the mandatory alcohol interlock scheme conditions.
- (5) The holder of a licence subject to the mandatory alcohol interlock scheme conditions qualifies for the issue of a licence not subject to such conditions if—
  - (a) the conditions have been effective for the prescribed minimum period; and
  - (b) the Registrar is satisfied that, during the immediately preceding period of 3 months, the alcohol interlock fitted to the nominated vehicle for the person has not recorded any incidents of a kind specified in a notice by the Minister in the Gazette.
- (6) For the purposes of this section, in determining whether the mandatory alcohol interlock conditions of a person's licence have been effective for the prescribed minimum period, the following periods are not to be taken into account:
  - (a) any period during which an alcohol interlock was not fitted to the nominated vehicle for the person;
  - (b) any period during which there was no nominated vehicle for the person.

#### **81F—Mandatory alcohol interlock scheme conditions**

- (1) The mandatory alcohol interlock scheme conditions to which a licence is subject are as follows:
  - (a) a condition that the holder of the licence must not drive a motor vehicle on a road other than a motor vehicle that the person has nominated to the Registrar in accordance with this section;
  - (b) a condition that the holder of the licence must not drive the nominated vehicle on a road unless it is fitted with a properly functioning alcohol interlock that has been installed by an approved alcohol interlock provider;
  - (c) a condition that the nominated vehicle must only be operated in accordance with instructions published by the Minister by notice in the Gazette;
  - (d) a condition that the holder of the licence must not interfere with the alcohol interlock, or cause or permit the alcohol interlock to be interfered with;

- (e) a condition that the holder of the licence must, when driving the nominated vehicle on a road, carry in the vehicle a certificate, in a form approved by the Minister, issued by an approved alcohol interlock provider certifying that the alcohol interlock fitted to the vehicle was properly functioning when the vehicle was last examined by the provider;
  - (f) a condition that the holder of the licence must, if required to do so by a police officer or an authorised officer when the nominated vehicle is in the person's charge on a road, produce the certificate for inspection by the officer;
  - (g) a condition that the holder of the licence must produce the nominated vehicle for examination by an approved alcohol interlock provider at times and places from time to time fixed by the Registrar by written notice served on the person personally or by post;
  - (h) a condition that the holder of the licence must comply with any requirements prescribed by the regulations.
- (2) A motor vehicle must be nominated by the person in the person's application for the licence, or by written notice to the Registrar, by specifying the vehicle's registration number and any other details required by the Registrar.
- (3) Nomination of a motor vehicle by the person is of no effect if the vehicle is a nominated vehicle for any other person.
- (4) A motor vehicle ceases to be a nominated vehicle for the person if the nomination is withdrawn by the person or, if the person is not the registered owner of the vehicle, by the registered owner, by written notice to the Registrar.
- (5) In this section—
- authorised officer*** does not include—
- (a) an authorised person as defined in the *Local Government Act 1999*; or
  - (b) any other person who is not an employee in the public service.

### **81G—Cessation of licence subject to mandatory alcohol interlock scheme conditions**

If a person voluntarily surrenders a licence subject to the mandatory alcohol interlock scheme conditions or ceases to hold such a licence for any other reason before the person qualifies for the issue of a licence not subject to such conditions in accordance with section 81E, a licence subsequently issued to the person will be subject to the conditions until—

- (a) the aggregate of the periods for which the conditions have applied in relation to the person equals the prescribed minimum period specified in section 81E; and
- (b) the person qualifies for the issue of a licence not subject to the conditions in accordance with that section.

### **81H—Contravention of mandatory alcohol interlock scheme conditions**

- (1) The holder of a licence subject to the mandatory alcohol interlock scheme conditions must not contravene any of the conditions.  
Maximum penalty: \$2 500.
- (2) A person must not assist the holder of a licence subject to the mandatory alcohol interlock scheme conditions to operate a motor vehicle, or interfere with an alcohol interlock, in contravention of any of the conditions.  
Maximum penalty: \$2 500.
- (3) In proceedings for an offence against this section, an apparently genuine document purporting to be a certificate signed by the Registrar certifying that—
  - (a) a specified motor vehicle was or was not, or no vehicle was, at a specified time, a nominated vehicle for a specified person; or
  - (b) a written notice was served on a specified person fixing specified times and places at which a specified motor vehicle must be produced for examination by an approved alcohol interlock provider,will be accepted as proof of the matters stated in the certificate in the absence of proof to the contrary.
- (4) In proceedings for an offence against this section, an apparently genuine document purporting to be a certificate signed by the Registrar certifying that an alcohol interlock fitted to a specified motor vehicle recorded electronically that the vehicle was operated at a specified time in contravention of an instruction published by the Minister by notice in the Gazette will be accepted as proof that the vehicle was operated at that time in contravention of that instruction in the absence of proof to the contrary.

- (5) Subsection (4) does not apply unless it is proved that the alcohol interlock fitted to the motor vehicle was tested by an approved alcohol interlock provider (or an employee of an approved alcohol interlock provider) not more than the prescribed number of days before and not more than the prescribed number of days after the time of the vehicle's operation specified in the certificate and found on each occasion to be properly functioning.
- (6) In proceedings for an offence against this section, an apparently genuine document purporting to be a certificate signed by an approved alcohol interlock provider (or an employee of an approved alcohol interlock provider) certifying that—
- (a) an alcohol interlock was, on a specified date, installed in a specified motor vehicle; or
  - (b) an alcohol interlock fitted to a specified motor vehicle was tested by that person on a specified day and found to be properly functioning; or
  - (c) an alcohol interlock was, on a specified date, removed from a specified motor vehicle,

will be accepted as proof of the matters stated in the certificate in the absence of proof to the contrary.

- (7) In proceedings for an offence against this section, if it is proved that—
- (a) a specified motor vehicle was operated at a specified time in contravention of an instruction published by the Minister by notice in the Gazette; and
  - (b) the vehicle was a nominated vehicle for a specified person at that time,

it will be presumed, in the absence of proof to the contrary, that the vehicle was so operated by that person at that time.

- (8) In proceedings for an offence against this section, an apparently genuine document purporting to be a certificate signed by the Registrar certifying that a specified motor vehicle was not produced for examination by an approved alcohol interlock provider at a specified time and place will be accepted as proof of the matters stated in the certificate in the absence of proof to the contrary.

## **25—Amendment of section 93—Notice to be given to Registrar**

Section 93(1)—after paragraph (d) insert:

- (da) makes an order under section 47J(9) of the *Road Traffic Act 1961* revoking a disqualification; or

## 26—Insertion of Schedule 6

After Schedule 5 insert:

### **Schedule 6—Transitional voluntary alcohol interlock scheme**

#### **1—Interpretation**

In this Schedule—

*disqualification* means disqualification from holding or obtaining a licence;

*relevant drink driving offence* means—

- (a) an offence against section 47(1) of the *Road Traffic Act 1961* involving driving 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
- (b) an offence against section 47B(1), 47E(3) or 47I(14) of the *Road Traffic Act 1961*;

*required period*—see clause 4;

*voluntary alcohol interlock scheme conditions* means the conditions referred to in clause 5.

#### **2—Voluntary alcohol interlock scheme conditions to continue to apply to certain licences issued before commencement of Schedule**

If a licence in force under this Act on the commencement of this Schedule is subject to the voluntary alcohol interlock scheme conditions, those conditions continue to be effective after that commencement for the balance of the required period unexpired on the commencement of this Schedule.

#### **3—Voluntary alcohol interlock scheme conditions to apply to certain licences issued on or after commencement of Schedule**

- (1) If—
  - (a) —

- (i) before the commencement of this Schedule, a person who expiates a relevant drink driving offence to which section 81C applies is given a notice of disqualification under that section stating that, despite the disqualification imposed for that offence, the person will, on application made to the Registrar at any time after the half-way point in the period of disqualification, be entitled to be issued with a licence subject to the alcohol interlock scheme conditions; or
  - (ii) before the commencement of this Schedule, a person who is convicted of a relevant drink driving offence is disqualified by order of a court and the court also makes an order against the person under section 50 of the *Road Traffic Act 1961* to the effect that, despite the disqualification imposed for that offence, the person will, on application made to the Registrar at any time after the half-way point in the period of disqualification, be entitled to be issued with a licence that is subject to the alcohol interlock scheme conditions; or
  - (iii) before the commencement of this Schedule, a person allegedly commits a relevant drink driving offence to which section 81C applies and, after the commencement of this Schedule, the person expiates the alleged offence and in consequence of that expiation is disqualified under that section for a period of at least 6 months; or
  - (iv) before the commencement of this Schedule, a person commits a relevant drink driving offence and in consequence of the commission of that offence, the person is, after the commencement of this Schedule and while the holder of a licence, convicted of the offence and disqualified for a period of at least 6 months; and
- (b) after the half-way point in the period of disqualification and within the period of 5 years after the commencement of this Schedule, the person applies for a licence subject to the alcohol interlock scheme conditions; and
  - (c) the person meets the requirements of this Act for the issue of the licence; and
  - (d) no disqualification (other than the disqualification for the offence referred to in paragraph (a)) is in force at the date of the application or will commence at a later date,

the person is entitled to be issued a licence subject to the voluntary alcohol interlock scheme conditions for the required period (in addition to any other conditions otherwise required).

- (2) A disqualification referred to in subclause (1)(a) ends if the person is issued with a licence subject to the voluntary alcohol interlock scheme conditions.

#### **4—Period for which licence is required to be subject to voluntary alcohol interlock scheme conditions**

The required period for which a licence is subject to the voluntary alcohol interlock scheme conditions is a number of days equal to twice the number of days remaining in the period of the person's disqualification for the relevant drink driving offence immediately before the issuing of the licence.

#### **5—Voluntary alcohol interlock scheme conditions**

- (1) The voluntary alcohol interlock scheme conditions to which a licence is subject are as follows:
- (a) a condition that the person must not drive a motor vehicle on a road other than a motor vehicle that the person has nominated to the Registrar in accordance with this clause;
  - (b) a condition that the person must not drive the nominated vehicle on a road unless it is fitted with a properly functioning alcohol interlock that has been installed by an approved alcohol interlock provider;
  - (c) a condition that the nominated vehicle must only be operated in accordance with instructions published by the Minister by notice in the Gazette;
  - (d) a condition that the person must not interfere with the alcohol interlock, or cause or permit the alcohol interlock to be interfered with;
  - (e) a condition that the person must, when driving the nominated vehicle on a road, carry in the vehicle a certificate, in a form approved by the Minister, issued by an approved alcohol interlock provider certifying that the alcohol interlock fitted to the vehicle was properly functioning when the vehicle was last examined by the provider;
  - (f) a condition that the person must, if required to do so by a police officer or an authorised officer when the vehicle is in the person's charge on a road, produce the certificate for inspection by the officer;
  - (g) a condition that the person must produce the nominated vehicle for examination by an approved alcohol interlock provider at times and places from time to time fixed by the Registrar by written notice served on the person personally or by post;
  - (h) a condition that the person must comply with any requirements as to counselling prescribed by the regulations;

- (i) a condition that the person must comply with any other requirements prescribed by the regulations.
- (2) A vehicle must be nominated by the person in the person's application for the licence, or by written notice to the Registrar, by specifying the vehicle's registration number and any other details required by the Registrar.
- (3) Nomination of a vehicle by the person is of no effect if the vehicle is a nominated vehicle for any other person.
- (4) A vehicle ceases to be a nominated vehicle for the person if the nomination is withdrawn by the person or, if the person is not the registered owner of the vehicle, by the registered owner, by written notice to the Registrar.
- (5) In this clause—  
*authorised officer* does not include—
  - (a) an authorised person as defined in the *Local Government Act 1999*; or
  - (b) any other person who is not an employee in the public service.

#### **6—Cessation of licence subject to voluntary alcohol interlock scheme conditions**

If a person—

- (a) voluntarily surrenders a licence subject to the voluntary alcohol interlock scheme conditions; or
- (b) ceases to hold such a licence for another reason (other than cancellation of the licence in consequence of the person being convicted of a serious drink driving offence),

before the conditions have applied in relation to the person for the required period, the person is, from the day on which the person surrenders or ceases to hold the licence, disqualified from holding or obtaining a licence or learner's permit for a period equal to the number of days remaining in the period of the person's disqualification for the relevant drink driving offence immediately before the issuing of the licence.

#### **7—Contravention of voluntary alcohol interlock scheme conditions**

- (1) The holder of a licence subject to the voluntary alcohol interlock scheme conditions must not contravene any of the conditions.  
Maximum penalty: \$1 250.

- (2) A person must not assist the holder of a licence subject to the voluntary alcohol interlock scheme conditions to operate a motor vehicle, or interfere with an alcohol interlock, in contravention of any of the conditions.
- Maximum penalty: \$1 250.
- (3) A court convicting a person of an offence against subclause (2) may order that the person be disqualified from holding or obtaining a licence or learner's permit for a period not exceeding 6 months.
- (4) A disqualification under subclause (3) operates to cancel the person's licence as from the commencement of the period of disqualification.
- (5) In proceedings for an offence against this clause, an apparently genuine document purporting to be a certificate signed by the Registrar certifying that—
- (a) a specified motor vehicle was or was not, or no vehicle was, at a specified time, a nominated vehicle for a specified person; or
  - (b) a written notice was served on a specified person fixing specified times and places at which a specified motor vehicle must be produced for examination by an approved alcohol interlock provider,
- will be accepted as proof of the matters stated in the certificate in the absence of proof to the contrary.
- (6) In proceedings for an offence against this clause, an apparently genuine document purporting to be a certificate signed by the Registrar certifying that an alcohol interlock fitted to a specified motor vehicle recorded electronically that the vehicle was operated at a specified time in contravention of an instruction published by the Minister by notice in the Gazette will be accepted as proof that the vehicle was operated at that time in contravention of that instruction in the absence of proof to the contrary.
- (7) Subclause (6) does not apply unless it is proved that the alcohol interlock fitted to the vehicle was tested by an approved alcohol interlock provider (or an employee of an approved alcohol interlock provider) not more than the prescribed number of days before and not more than the prescribed number of days after the time of the vehicle's operation specified in the certificate and found on each occasion to be properly functioning.
- (8) In proceedings for an offence against this clause, an apparently genuine document purporting to be a certificate signed by an approved alcohol interlock provider (or an employee of an approved alcohol interlock provider) certifying that an alcohol interlock fitted to a specified motor vehicle was tested by that person on a specified day and found to be properly functioning will be accepted as proof of the matters stated in the certificate in the absence of proof to the contrary.

- (9) In proceedings for an offence against this clause, if it is proved that—
- (a) a specified motor vehicle was operated at a specified time in contravention of an instruction published by the Minister by notice in the Gazette; and
  - (b) the vehicle was a nominated vehicle for a specified person at that time,

it will be presumed, in the absence of proof to the contrary, that the vehicle was so operated by that person at that time.

- (10) In proceedings for an offence against this clause, an apparently genuine document purporting to be a certificate signed by the Registrar certifying that—
- (a) a specified motor vehicle was not produced for examination by an approved alcohol interlock provider at a specified time and place; or
  - (b) a specified person did not attend for counselling at a specified time and place,

will be accepted as proof of the matters stated in the certificate in the absence of proof to the contrary.

## **8—Financial assistance for use of alcohol interlocks**

- (1) The scheme established under section 53AA(1) of the *Road Traffic Act 1961* continues in existence after the repeal of that section to enable persons entitled to the issue of a licence subject to the voluntary alcohol interlock scheme conditions to obtain loans or other assistance (subject to a means test and conditions determined by the Minister) for the purpose of gaining the use of alcohol interlocks.
- (2) The Minister may issue a certificate signed by the Minister certifying that a default has occurred in payment of an amount payable by a person in accordance with conditions applying to a loan or other assistance provided to the person under the scheme and that an amount stated in the certificate is owing by that person.
- (3) In any legal proceedings, an apparently genuine document purporting to be a certificate under subclause (2) will be accepted as proof of the matters stated in the certificate in the absence of proof to the contrary.

## **9—Fees**

- (1) The holder of a licence subject to the voluntary alcohol interlock scheme conditions is liable to pay the fees prescribed by regulation.
- (2) Subclause (1) applies in relation to a licence whether issued before or after the commencement of this Schedule.

## Part 4—Amendment of *Rail Safety Act 2007*

### 27—Amendment of Schedule 2—Provisions relating to alcohol and other drug testing

- (1) Schedule 2, clause 1—after the definition of *approved blood kit* insert:

*approved courier* means a person approved by the Minister as a courier for the purposes of this Schedule;

- (2) Schedule 2—after clause 1 insert:

#### 1A—Approval of couriers

The Minister may, by notice in the Gazette—

- (a) approve a person as a courier for the purposes of this Schedule; or
  - (b) revoke an approval under paragraph (a).
- (3) Schedule 2, clause 5(10)—after "analysis" last occurring insert:
- unless—
- (a) a requirement or direction under this clause relating to a drug screening test or oral fluid analysis has been made of, or been given to, the person; and
  - (b) —
    - (i) the person refused or failed to comply with that requirement or direction on the ground of some physical or medical condition of the person and made a request under subclause (9) for a sample of his or her blood to be taken in accordance with that subclause; or
    - (ii) the person was unable to produce sufficient oral fluid for a sample to be taken.
- (4) Schedule 2, clause 10(e)(i)—after "authorised person" insert:
- or approved courier
- (5) Schedule 2, clause 11(e)(i)—after "authorised person" insert:
- or approved courier

## **Part 5—Amendment of *Road Traffic Act 1961***

### **28—Amendment of section 5—Interpretation**

- (1) Section 5(1)—after the definition of *cycle* insert:

*drink driving offence* means—

- (a) an offence against section 47(1) 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
  - (b) an offence against section 47B(1), 47E(3) or 47I(14);
- (2) Section 5(1)—after the definition of *driver's licence* insert:

*drug driving offence* means—

- (a) an offence against section 47(1) 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), 47EAA(9) or 47I(14);

### **29—Amendment of section 47—Driving under influence**

- (1) Section 47(3)(da)—delete paragraph (da)
- (2) Section 47(4)—delete subsection (4) and substitute:
  - (4) In determining whether an offence is a first or subsequent offence for the purposes of this section, any previous drink driving offence or drug driving offence 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.

### **30—Amendment of section 47A—Interpretation**

Section 47A(1), definition of *prescribed circumstances*—delete "2 hours or, in relation to a drug screening test, 3 hours" and substitute:

8 hours

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

- (1) Section 47B(3)—delete "(other than a category 1 offence that is a first offence)"
- (2) Section 47B(3)(a)(i)—before subsubparagraph (A) insert:
  - (AA) being a category 1 offence—for such period, being not less than 3 months, as the court thinks fit;
- (3) Section 47B(3)(a)(ii)(A)—delete "3" and substitute:

6

- (4) Section 47B(3)(a)(iii)(A)—delete "6" and substitute:

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- (5) Section 47B(3)(da)—delete paragraph (da)

- (6) Section 47B(4)—delete subsection (4) and substitute:

(4) In determining whether an offence is a first, second, third or subsequent offence for the purposes of this section (other than subsection (5)), any previous drink driving offence or drug driving offence 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.

- (7) Section 47B(6)—delete subsection (6) and substitute:

(6) In determining whether a category 1 offence is a first offence for the purposes of subsection (5), any previous drink driving offence or drug driving offence for which the defendant has been convicted or that the defendant 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.

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

- (1) Section 47BA(4)—delete "(other than a first offence)"

- (2) Section 47BA(4)(a)—before subparagraph (i) insert:

(ai) in the case of a first offence—for such period, being not less than 3 months, as the court thinks fit;

- (3) Section 47BA(5)—delete subsection (5) and substitute:

(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 drink driving offence or drug driving offence 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.

- (4) Section 47BA(7)—delete subsection (7) and substitute:

(7) In determining whether an offence is a first offence for the purposes of subsection (6), any previous drink driving offence or drug driving offence 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.

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

- (1) Section 47E(6)(da)—delete paragraph (da)
- (2) Section 47E(7)—delete subsection (7) and substitute:
  - (7) In determining whether an offence is a first or subsequent offence for the purposes of this section, any previous drink driving offence or drug driving offence 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.

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

- (1) Section 47EAA—after subsection (2) insert:
  - (2a) If a person submits to an oral fluid analysis in compliance with a requirement made under subsection (2) but the person is unable to produce sufficient oral fluid for a sample to be taken, a police officer may require that the person submit to a blood test.
- (2) Section 47EAA(12)—after "analysis" last occurring insert:

unless—

  - (a) a requirement or direction under this section relating to a drug screening test or oral fluid analysis has been made of, or been given to, the person; and
  - (b) —
    - (i) the person refused or failed to comply with that requirement or direction on the ground of some physical or medical condition of the person and made a request under subsection (11) for a sample of his or her blood to be taken in accordance with that subsection; or
    - (ii) the person was unable to produce sufficient oral fluid for a sample to be taken.
- (3) Section 47EAA(17)—delete subsection (17) and substitute:
  - (17) In determining whether an offence is a first or subsequent offence for the purposes of this section, any previous drink driving offence or drug driving offence 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.

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

- (1) Section 47I(1)—delete "14" and substitute:

- (2) Section 47I(4)—delete "14" and substitute:

10

- (3) Section 47I(14a)(da)—delete paragraph (da)

- (4) Section 47I(14b)—delete subsection (14b) and substitute:

(14b) In determining whether an offence is a first or subsequent offence for the purposes of this section, any previous drink driving offence or drug driving offence 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.

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

- (1) Section 47IAA(1)—after paragraph (c) insert:

(ca) an offence against section 47EAA(9);

- (2) Section 47IAA(12)(b)(iv)—after "offence" second occurring insert:

or an offence against section 47EAA(9)

### **37—Amendment of section 47J—Recurrent offenders**

- (1) Section 47J(1)(a)—delete paragraph (a) and substitute:

(a) is convicted of a prescribed offence that was committed in Metropolitan Adelaide before the prescribed day; and

- (2) Section 47J(1)—delete "suffers from alcoholism or addiction to other drugs, or both" and substitute:

is dependent on alcohol or drugs, or both

- (3) Section 47J(4)(a)—delete "suffers from alcoholism or addiction to other drugs" and substitute:

is dependent on alcohol or drugs

- (4) Section 47J(9)—delete "no longer suffers from alcoholism or addiction to other drugs" and substitute:

is no longer dependent on alcohol or drugs

- (5) Section 47J(12), definitions of *assessment clinic* and *prescribed area*—delete the definitions and substitute:

*assessment clinic* means a place approved as an assessment clinic for the purposes of this section by the Minister to whom the administration of the *Health Care Act 2008* is committed;

*prescribed day* means a day prescribed by the regulations for the purposes of this section;

### 38—Amendment of section 47K—Evidence

- (1) Section 47K(1)—after "analysis" second occurring insert:  
and throughout the preceding period of 2 hours
- (2) Section 47K(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 drug screening tests; or
    - (b) purporting to be signed by a person authorised to conduct oral fluid analyses or drug screening tests under section 47EAA and to certify that the apparatus used to conduct an oral fluid analysis or a drug screening test was in proper order and the oral fluid analysis or 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.

### 39—Repeal of Part 3 Division 5A

Part 3 Division 5A—delete the Division

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

- (1) Schedule 1, clause 1—before the definition of *forensic material* insert:  
*approved courier* means a person approved by the Commissioner of Police as a courier for the purposes of this Schedule;
- (2) Schedule 1—after clause 1 insert:

#### 1A—Approval of couriers

The Commissioner of Police may, by notice in the Gazette—

- (a) approve a person as a courier for the purposes of this Schedule; or
  - (b) revoke an approval under paragraph (a).
- (3) Schedule 1, clause 2(e)(i)—after "police officer" insert:  
or an approved courier
- (4) Schedule 1, clause 7(e)(i)—after "police officer" insert:  
or an approved courier
- (5) Schedule 1, clause 9(a)—delete "against that Division" and substitute:  
of a kind referred to in clause 8(2)(a)