

TASMANIA

**ROAD SAFETY (ALCOHOL AND DRUGS)
AMENDMENT BILL 2005**

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**ROAD SAFETY (ALCOHOL AND DRUGS)
AMENDMENT BILL 2005**

*(Brought in by the Minister for Police and Public Safety, the
Honourable David Edward Llewellyn)*

A BILL FOR

An Act to amend the *Road Safety (Alcohol and Drugs) Act 1970*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Road Safety (Alcohol and Drugs) Amendment Act 2005*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Principal Act

In this Act, the *Road Safety (Alcohol and Drugs) Act 1970** is referred to as the Principal Act.

*No. 77 of 1970

4. Section 2 amended (Interpretation)

Section 2 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “breath test” in subsection (1):

“oral fluid test” means a test, for the purpose of indicating whether a prescribed illicit drug is present in a person’s blood, carried out on that person’s oral fluid by means of a device of a type approved for the purposes of such a test by the Minister by notice in the *Gazette*;

- (b) by inserting the following definition after the definition of “prescribed concentration” in subsection (1):

“prescribed illicit drug” means a drug prescribed in the regulations as an illicit drug;

- (c) by omitting from subsection (3A)(e) “made.” and substituting “made; and”;

- (d) by inserting the following paragraph after paragraph (e) in subsection (3A):

(f) in relation to a person who, following an oral fluid test, becomes liable to submit to the taking of a sample of blood for analysis under section 7C – the time of the act of driving which gave rise to the oral fluid test.

5. Section 6A inserted

After section 6 of the Principal Act, the following section is inserted in Division 1:

6A. Driving with prescribed illicit drug in blood

- (1) Subject to subsection (2), a person who drives a motor vehicle while a prescribed illicit drug is present in his or her blood is guilty of an offence.

Penalty: Fine not exceeding 2 penalty units.

- (2) A person does not commit an offence against subsection (1) if the prescribed illicit drug was obtained and administered in accordance with the *Poisons Act 1971*.
- (3) A court that convicts a person of an offence against subsection (1) must, in addition to imposing a fine, disqualify the person from driving for a period not exceeding 3 months.
- (4) When a court imposes a disqualification from driving under this section, it must suspend or cancel any Australian driver licence held by the person against whom the disqualification is imposed, as required by section 17 of the *Vehicle and Traffic Act 1999*.

6. Sections 7B and 7C inserted

After section 7A of the Principal Act, the following sections are inserted in Division 2:

7B. Power of police officer to require driver of motor vehicle to undergo oral fluid test

- (1) A police officer may require any person who is driving a motor vehicle on a public street to undergo, at or near the place where the requirement is made, an oral fluid test.
- (2) For the purpose of making a requirement under subsection (1), the police officer may direct the person, by signal or otherwise, to stop the vehicle.
- (3) Where a police officer requires a person to undergo an oral fluid test under subsection (1), that person must comply with the requirement in the presence of that officer or another police officer and in accordance with such directions as may be given by that officer or that other officer.
- (4) A requirement or direction under this section may be made by a police officer whether or not the officer has grounds for suspecting that a person may have a prescribed illicit drug in his or her blood.

7C. Liability to provide blood sample following oral fluid test

- (1) Where, after requiring a person to undergo an oral fluid test in accordance with section 7B or 8A, a police officer

reasonably believes that a prescribed illicit drug may be present in that person's blood, whether as a result of such a test or not, the officer may require that person to submit to the taking, by a medical practitioner or qualified nurse, of a sample of blood for analysis.

- (2) A police officer may only require a person to submit to the taking of a sample of blood for analysis if the officer reasonably believes that the analysis can be carried out within 3 hours of the relevant time.
- (3) Where a police officer requires a person to submit to the taking of a sample of blood for analysis under subsection (1), that person must comply with the requirement in the presence of that officer or another police officer and in accordance with such directions as may be given by that officer or that other officer.

7. Section 8A inserted

After section 8 of the Principal Act, the following section is inserted in Division 2:

8A. Liability for oral fluid test as result of conduct

- (1) Where at any time a police officer finds a person in circumstances which give the police officer cause to suspect that a prescribed illicit drug may be present in that person's blood and the police officer

reasonably believes that, immediately preceding that time, that person drove a motor vehicle on a public street while that drug was so present, the police officer may require the person to undergo an oral fluid test.

- (2) Where a police officer reasonably believes that, while a motor vehicle was in motion, a crime under section 167A of the *Criminal Code*, or an offence under the *Traffic Act 1925* or the *Vehicle and Traffic Act 1999*, was committed, the police officer may require the person (if any) who was driving the vehicle when it was in motion to undergo an oral fluid test.
- (3) Where a police officer reasonably believes that, while a motor vehicle was in motion, the vehicle became involved in an accident, the police officer may require the person (if any) who was driving the vehicle at the time of the accident to undergo an oral fluid test.
- (4) Without affecting the generality of subsection (1), a police officer may, for the purpose of forming the suspicion referred to in that subsection, deduce from the manner in which the person concerned was behaving at the time when the police officer found him or her that that person may have had a prescribed illicit drug in his or her blood at that time.
- (5) Where a motor vehicle continues in motion after the commission of an

offence referred to in subsection (2) or after the occurrence of an accident referred to in subsection (3), the police officer concerned may, if necessary, direct the person who is driving the vehicle, by signal or otherwise, to stop the vehicle.

- (6) Where a police officer requires a person to undergo an oral fluid test under subsection (1), (2) or (3), that person must comply with the requirement in the presence of that officer or another police officer and in accordance with such directions as may be given by that officer or that other officer.

8. Section 10 amended (Enforcement of obligation to provide blood sample or submit to breath analysis or medical examination)

Section 10 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “submit to the taking of a sample of blood for analysis or” after “Part to”;
- (b) by inserting in subsection (1) “or herself to the taking of that sample or” after “himself”;
- (c) by inserting in subsection (3) “the taking of the sample of blood or” after “believe that”;
- (d) by omitting subsection (4) and substituting the following subsection:

- (4) Where a person who is liable to submit to the taking of a sample of blood for analysis or submit to a breath analysis or a medical examination is at a place where, or in a vehicle in which, that sample can forthwith be taken or that analysis or medical examination can forthwith be carried out, a police officer may direct him or her there to submit to the taking of the sample or to the analysis or examination.

9. Section 10A amended (Blood samples to be provided in certain cases)

Section 10A(1) of the Principal Act is amended as follows:

- (a) by omitting “was sustained and that alcohol or a drug may have been present in that person’s blood at the time of the accident” and substituting “to any person was sustained”;
- (b) by omitting “that person” and substituting “the driver”.

10. Section 13 amended (Duties of medical practitioners and nurses in relation to taking of blood samples, &c.)

Section 13(2)(a) of the Principal Act is amended by inserting “or a prescribed illicit drug” after “alcohol”.

11. Section 13B amended (Analysis of blood and urine samples by approved analyst)

Section 13B(3) of the Principal Act is amended by omitting “section 9” and substituting “section 7C, 9 or 10A”.

12. Section 14 amended (Offences under Division 2)

Section 14 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “, 7C” after “(1)”;
- (b) by inserting in subsection (1)(b) “7B,” after “(1),”;
- (c) by inserting in subsection (4) “, or required under section 7C,” after “(6)”;
- (d) by omitting subsection (6) and substituting the following subsection:
 - (6) Any person who, having been required under section 7A(1), section 7B(1), section 7C(1), section 8(6) or section 8A(1), (2) or (3) to undergo a breath test or an oral fluid test, does anything before he or she undergoes that test with intent to alter the concentration of alcohol or a prescribed illicit drug in his or her blood is guilty of an offence.

- (e) by inserting in subsection (7) “or to the taking of a sample of blood for analysis” after “submit to a breath analysis”;
- (f) by inserting in subsection (7) “or a prescribed illicit drug” after “alcohol”.

13. Section 17A amended (Penalties for other offences)

Section 17A(1) of the Principal Act is amended by inserting “section 6A or” after “in”.

14. Section 19 amended (Special hardship orders)

Section 19(1A) of the Principal Act is amended by omitting paragraphs (e) and (ea) and substituting the following paragraphs:

- (e) except in the case of an offence against section 6A, the offender was the holder of a learner licence or a provisional licence; or
- (ea) except in the case of an offence against section 6A, at the time of the offence the offender was not authorised under an Australian driver licence to drive the vehicle in respect of which the offence was committed or cannot satisfy the court that he or she would, but for an unintentional failure to comply with an administrative requirement, have been so authorised to drive that vehicle at that time; or

15. Section 20 amended (Concurrent offences not treated separately)

Section 20 of the Principal Act is amended by omitting “or section 6” and substituting “, section 6 or section 6A”.

16. Section 22 amended (Application of Division 1)

Section 22(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “analysis.” and substituting “analysis;”;
- (b) by inserting the following paragraph after paragraph (c):
 - (d) the presence of a prescribed illicit drug in a person’s blood at the time of the commission of the crime or offence.

17. Section 23A inserted

After section 23 of the Principal Act, the following section is inserted in Division 1:

23A. Statutory presumptions with respect to prescribed illicit drugs

Where in any proceedings for an offence under section 6A it is shown that a prescribed illicit drug was present in the blood of a person at any time within 4 hours after the relevant time, the drug is taken to have been present in the

person's blood at the relevant time unless the contrary is proved.

18. Section 30 amended (Evidence as to analyses, &c., inadmissible in certain proceedings)

Section 30 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “, section 6A” after “section 6”;
- (b) by inserting in subsection (1) “or a prescribed illicit drug” after “liquor”;
- (c) by inserting the following subsection after subsection (2):
 - (2A) The fact that a prescribed illicit drug has been detected in a person's blood in accordance with this Act is not admissible as evidence in any legal proceedings against the person under the *Forensic Procedures Act 2000* or in respect of an offence against Division 3 of Part 3 of the *Misuse of Drugs Act 2001*, but is admissible in respect of an offence against Part 2, or Division 4 of Part 3, of the *Misuse of Drugs Act 2001* and may be taken into account in consideration of an application for a search warrant under the *Search Warrants Act 1997*.