

TASMANIA

ROAD SAFETY (ALCOHOL AND DRUGS) AMENDMENT BILL 2017

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**ROAD SAFETY (ALCOHOL AND DRUGS)
AMENDMENT BILL 2017**

*(Brought in by the Minister for Police and Emergency
Management, the Honourable Marinus Theodoor Hidding)*

A BILL FOR

An Act to amend the *Road Safety (Alcohol and Drugs) Act 1970*, the *Marine and Safety Authority Act 1997*, the *Police Offences Act 1935*, the *Rail Safety National Law (Tasmania) Act 2012* and the *Vehicle and Traffic Act 1999*

Be it enacted by Her 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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Road Safety (Alcohol and Drugs) Amendment Act 2017*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day after the day on which all of the provisions of this Act commence.

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**PART 2 – ROAD SAFETY (ALCOHOL AND DRUGS)
ACT 1970 AMENDED**

4. Principal Act

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

5. Section 2 amended (Interpretation)

Section 2 of the Principal Act is amended as follows:

- (a) by omitting the definition of *approved analyst* from subsection (1) and substituting the following definition:

approved analyst means a person
appointed as an approved analyst
under section 3;

- (b) by omitting “section 3(6)” from the definition of *approved operator* in subsection (1) and substituting “section 3(5)”;
- (c) by omitting “the Governor” from the definition of *breath analysing instrument* in subsection (1) and substituting “the Minister”;

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- (d) by omitting “the Governor” from the definition of *breath test* in subsection (1) and substituting “the Minister”;
 - (e) by inserting the following definition after the definition of *breath test* in subsection (1):

crash has the same meaning as in the
Road Rules;

- (f) by omitting the definition of *excessive drink-driving notice* from subsection (1);
- (g) by inserting the following definition after the definition of *GVM* in subsection (1):

oral fluid analysis means –

- (a) a procedure carried out, by means of a device of a type approved for the purposes of such an analysis by the Minister by notice in the *Gazette*; or
- (b) such other procedure as is prescribed –

for the purpose of ascertaining, by analysis of a person’s oral fluid, whether a prescribed illicit drug is present in that fluid;

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- (h) by omitting “blood” from the definition of *oral fluid test* in subsection (1) and substituting “oral fluid”;
- (i) by omitting the definition of *supervising analyst* from subsection (1) and substituting the following definitions:

qualified person includes –

- (a) a medical practitioner and a qualified nurse; and
- (b) a person who holds a qualification, or has the experience, prescribed for the purposes of this definition; and
- (c) any other person, or class of persons, as is prescribed;

relevant time – see section 2A;

road safety disqualification notice
means a notice given in respect of an offence committed in the circumstances set out in section 18B(1);

supervision, of an action, includes the direct or indirect supervision of that action and does not require the person who is supervising the action to be at the location while the action is being performed;

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- (j) by omitting from subsection (2A)(c) “tonnes.” and substituting “tonnes; or”;
 - (k) by inserting the following paragraph after paragraph (c) in subsection (2A):
 - (d) a vehicle that is being used to transport dangerous goods within the meaning of the *Dangerous Goods (Road and Rail Transport) Act 2010*.
 - (l) by omitting subsections (3), (3A), (4), (5) and (6) and substituting the following subsections:
 - (3) A reference in this Act to the liability of a person to submit to a breath analysis, oral fluid analysis, medical examination or the taking of a sample of blood is a reference to such a liability arising, or a requirement made, in respect of the person under section 7A, 7B, 8, 8A or 9.
 - (4) For the purposes of this Act, a reference to the driving of a vehicle or a motor vehicle includes any of the following acts or omissions:
 - (a) having charge of the vehicle or motor vehicle;
 - (b) being in control of the vehicle or motor vehicle;

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- (c) having control of the steering, braking or other system on the vehicle, or motor vehicle, including while it is being towed;
 - (d) attempting to drive the vehicle or motor vehicle;
 - (e) an act or omission –
 - (i) done, or made, with the intention to drive; and
 - (ii) that forms part of a series of events that, if it were not interrupted, would constitute the actual act of driving.
- (5) For the purposes of subsection (4), a person may be taken to be driving a vehicle or motor vehicle even if –
 - (a) the vehicle or motor vehicle is stationary at the time the relevant act or omission under subsection (4) occurred; or
 - (b) the person leaves, or is removed from, the vehicle

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or motor vehicle after the relevant act or omission under subsection (4) occurred.

- (6) For the purposes of subsection (4), if the holder of a learner licence is driving a vehicle, or motor vehicle, within the meaning of that subsection, each of the following persons is taken to be driving the vehicle or motor vehicle at the time:
- (a) the holder of the learner driver licence;
 - (b) the holder of an Australian driver licence who is or was –
 - (i) seated in or on the vehicle or motor vehicle; and
 - (ii) instructing the holder of the learner driver licence to drive the vehicle or motor vehicle;
 - (c) if the holder of the learner driver licence is undertaking a test or assessment for the purposes of the *Vehicle*

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*and Traffic Act 1999, the
person who is or was –*

- (i) seated in or on the vehicle or motor vehicle; and
 - (ii) testing or assessing the holder of the learner driver licence for the purposes of that Act.
- (7) It is a defence to an offence under this Act if the holder of an Australian driver licence referred to in subsection (6)(b) proves that, while in the vehicle or motor vehicle with the learner driver –
 - (a) he or she did not consent to being in the vehicle or motor vehicle while the holder of the learner driver licence was driving the vehicle or motor vehicle; or
 - (b) he or she did not know, and could not have reasonably been expected to have known, that the person driving the vehicle or motor vehicle did not

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hold a full licence, or
provisional licence, for
the vehicle or motor
vehicle.

6. Section 3 substituted

Section 3 of the Principal Act is repealed and the
following sections are substituted:

2A. Meaning of relevant time

- (1) For the purposes of this Act, a reference to a relevant time in relation to a person who becomes liable to submit to a test, analysis or medical examination is a reference to the time of the last act of driving by the person before the person became so liable.
- (2) For the purposes of subsection (1), if the last act of driving cannot be ascertained with reasonable accuracy, the time of the last act of driving by a person is taken to be –
 - (a) if the person becomes liable to submit to the test or analysis under section 8(1) or 8A(1), the time when the person is first found by a police officer after becoming so liable; or
 - (b) if the person becomes liable to submit to the test, analysis or

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medical examination as a result
of a crash –

(i) the time at which the
person is found by a
police officer after the
crash –

(A) at, or near, the
place of the crash;
or

(B) at, or being
conveyed to, a
place for the
purpose of
receiving medical
treatment; or

(ii) if the person is found by a
police officer after the
crash in any other place,
the time of the crash.

**2B. Person liable to submit to analysis,
examination, &c., to comply with police
requirements**

(1) For the purposes of this Act, if a person
becomes liable, or elects, to submit to a
breath analysis, oral fluid analysis,
medical examination or provide a blood
sample under this Act, he or she must
comply with any reasonable requirement
made of him or her by a police officer
until –

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- (a) the analysis or medical examination is performed in accordance with this Act; or
 - (b) a sample of blood is taken in accordance with this Act.
 - (2) For the purposes of subsection (1), a requirement under that subsection may include, but is not limited to, either or both of the following requirements:
 - (a) the person is to remain in a specific location until directed otherwise;
 - (b) the person is to remain under supervision as directed.
 - (3) A person who fails to comply with a requirement under subsection (1) is guilty of an offence.

3. Approved analysts and approved operators

- (1) The Minister may, with the approval of the Head of a State Service Agency, appoint a State Service officer or State Service employee employed in that Agency to be an approved analyst for the purposes of this Act, and such officer or employee may hold office as an approved analyst in conjunction with State Service employment.
- (2) The Minister may appoint a person to be an approved analyst for the purposes of

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this Act and such person may hold office as an approved analyst in conjunction with any other employment.

- (3) The Minister is not to appoint a person as an approved analyst under subsection (1) or (2) unless the Minister is satisfied that the person to be appointed holds the prescribed qualifications, and prescribed experience, for an approved analyst.
- (4) An approved analyst has such functions and powers as may be prescribed.
- (5) For the purposes of this Act, an approved operator is a person of a prescribed class who is authorised by the Commissioner of Police, as prescribed, to administer a test or analysis under this Act.

3A. Delegation

- (1) A police officer may delegate any of his or her functions or powers under this Act, other than his or her functions as an approved operator, to any other police officer.
- (2) An approved analyst may delegate any of his or her functions or powers under this Act to –
 - (a) any other approved analyst; or
 - (b) a person who is qualified to perform the function or exercise the power and is doing so under

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the supervision of an approved analyst.

- (3) A police officer, or approved analyst, may delegate a function or power under this section in relation to a matter regardless of whether he or she has performed a previous function, or exercised a previous power, in respect of the same matter.

7. Section 4 amended (Driving while under the influence of alcohol, drugs, &c., prohibited)

Section 4 of the Principal Act is amended as follows:

- (a) by omitting “vehicle” first occurring and substituting “vehicle, whether or not the vehicle is on a public street,”;
- (b) by omitting “things” and substituting “substances”.

8. Section 5 amended (Powers of arrest, &c.)

Section 5 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “section 4” and substituting “section 4, 14(1B) or 19A(1)”;
- (b) by inserting the following subsection after subsection (1AA):

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(1AB) A police officer may use reasonable force when arresting a person in accordance with this section.

9. Section 5A inserted

After section 5 of the Principal Act, the following section is inserted in Division 1:

5A. Powers in relation to vehicles

- (1) If a police officer has reasonable grounds to suspect that a person is driving, is attempting to drive, has driven or has attempted to drive a vehicle in contravention of this Act, the police officer may require the person to immediately hand over all keys to any vehicle that are in the possession of the person at the time –
- (a) to the police officer or another police officer; or
 - (b) to another person, if the police officer is satisfied that the other person –
 - (i) is authorised to drive the vehicle on a public street; and
 - (ii) at the time of receiving the keys, is able to

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lawfully drive the vehicle
on a public street.

- (2) A police officer may make a requirement under subsection (1) in respect of a person if satisfied that the requirement is in the interests of public safety and may do so whether or not the person has been, or is to be, charged with an offence under this Act or any other Act.
- (3) If a person hands over keys to a vehicle to a police officer under subsection (1)(a), the police officer may take any steps that he or she considers appropriate and practicable, in order to ensure that the vehicle is not causing an obstruction and is secure, including –
 - (a) moving the vehicle to a more suitable or secure place; and
 - (b) authorising another person to move the vehicle, including towing the vehicle, to a more suitable or secure place.
- (4) A police officer may retain keys to a vehicle handed over to the police officer under subsection (1)(a) for as long as is reasonable in the circumstances.
- (5) A person who fails to comply with a requirement made of the person under subsection (1) is guilty of an offence.

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10. Section 6 amended (Driving with excessive concentration of breath or blood alcohol)

Section 6 of the Principal Act is amended as follows:

(a) by inserting the following paragraph after paragraph (ab) in subsection (3):

(ac) who is driving under the authority of an Australian driver licence that requires the holder of the licence to have no alcohol present in his or her body while driving a motor vehicle; or

(b) by inserting the following paragraph after paragraph (c) in subsection (3):

(ca) who, after the commencement of the *Road Safety (Alcohol and Drugs) Amendment Act 2017*, has been convicted of –

(i) the offence of reckless driving or negligent driving; or

(ii) an offence under section 32 of the *Traffic Act 1925* –

if, as a result of the conduct giving rise to the offence, the person was also convicted of an offence under section 4 of this Act or this section; or

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- (c) by inserting in subsection (3A) “within the preceding 6-month period” after “requirement”.

11. Section 6A amended (Driving with prescribed illicit drug in blood)

Section 6A(1) of the Principal Act is amended by inserting “or oral fluid” after “blood”.

12. Section 7AA inserted

Before section 7A of the Principal Act, the following section is inserted in Division 2:

7AA. Application of Part

If –

- (a) a police officer reasonably believes that a person is liable to submit to a test, analysis or medical examination under this Act; and
- (b) the person flees from the police officer, or another person, while the police officer or other person is attempting to administer the test or analysis, or to arrange for the medical examination to be performed; and
- (c) the police officer, or another police officer, immediately pursues the person and the pursuit

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continues without interruption;
and

- (d) during the pursuit the person enters a private residence or another place that is not a public place –

the pursuing police officer may, without warrant and using no more force than is reasonably necessary for the purpose, enter the private residence or other place notwithstanding that it is not a public place.

13. Section 7A amended (Power of police officer to require driver of motor vehicle to undergo breath test)

Section 7A of the Principal Act is amended as follows:

- (a) by omitting from subsection (4) “not, that person becomes liable to submit to a breath analysis.” and substituting “not –”;
- (b) by inserting the following paragraphs after subsection (4):
 - (a) the police officer may require the person to undergo another breath test; and
 - (b) whether or not a further breath test is required under paragraph (a), the person

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becomes liable to submit to a
breath analysis.

(c) by omitting subsection (5).

**14. Section 7B amended (Power of police officer to
require driver of motor vehicle to undergo oral
fluid test)**

Section 7B of the Principal Act is amended as
follows:

(a) by omitting from subsection (4) “blood”
and substituting “oral fluid”;

(b) by omitting subsection (5) and
substituting the following subsection:

(5) Where, after requiring a person to
undergo an oral fluid test in
accordance with this section, a
police officer reasonably believes
that an illicit drug has been
consumed by, or administered to,
the person, whether as a result of
such a test or not –

(a) the police officer may
require the person to
undergo another oral fluid
test; and

(b) whether or not a further
oral fluid test is required
under paragraph (a), the
person becomes liable to

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submit to an oral fluid
analysis.

**15. Section 7C amended (Liability to provide blood
sample following oral fluid test)**

Section 7C of the Principal Act is amended as
follows:

(a) by omitting subsection (1) and
substituting the following subsection:

(1) If a police officer requires a
person to undergo an oral fluid
test in accordance with
section 7B or 8A and –

(a) the police officer
reasonably believes that
an illicit drug has been
consumed by, or
administered to, the
person, whether as a
result of such a test or not;
or

(b) the person refuses to
undergo the oral fluid
test –

the police officer may require that
person to submit to the taking, by
a qualified person, of a sample of
blood for analysis.

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- (b) by omitting from subsection (2) “3 hours” and substituting “5 hours”.

16. Section 7D amended (Trace particle detection tests)

Section 7D(2) of the Principal Act is amended by inserting “or oral fluid” after “blood”.

17. Section 8 amended (Liability for breath test as a result of conduct)

Section 8 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “that, immediately preceding that time,” and substituting “that”;
- (b) by omitting from subsection (1) “on a public street”;
- (c) by inserting in subsection (2) “this Act,” after “or an offence under”;
- (d) by omitting from subsection (2A) “an accident” and substituting “a crash”;
- (e) by omitting from subsection (2A) “accident” second occurring and substituting “crash”;
- (f) by omitting from subsection (3) “an accident” and substituting “a crash”;

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- (g) by omitting from subsection (3) “accident” second occurring and substituting “crash”;
- (h) by omitting from subsection (5) “an accident” and substituting “a crash”.

18. Section 8A amended (Liability for oral fluid test or oral fluid analysis as result of conduct)

Section 8A of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “blood” and substituting “oral fluid”;
- (b) by omitting from subsection (1) “that, immediately preceding that time,” and substituting “that”;
- (c) by omitting from subsection (1) “on a public street”;
- (d) by inserting in subsection (1) “or oral fluid analysis” after “test”;
- (e) by inserting in subsection (2) “or oral fluid analysis” after “test”;
- (f) by omitting from subsection (3) “an accident” and substituting “a crash”;
- (g) by omitting from subsection (3) “accident” second occurring and substituting “crash”;

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- (h) by inserting in subsection (3) “or oral fluid analysis” after “test”;
 - (i) by omitting from subsection (4) “blood” and substituting “oral fluid”;
 - (j) by omitting from subsection (5) “an accident” and substituting “a crash”;
 - (k) by inserting the following subsection after subsection (5):
 - (5A) Where a person has become liable to undergo an oral fluid analysis by virtue of this section, a police officer may first require that person to undergo an oral fluid test at or near the place where the requirement was made.
 - (l) by omitting from subsection (6) “or (3),” and substituting “(3) or (5A)”;
 - (m) by inserting the following subsection after subsection (6):
 - (7) Where under subsection (5A) a police officer requires a person to undergo an oral fluid test, that person must comply with that 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.

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19. Section 9 amended (Liability for medical examination where condition may not be due to alcohol)

Section 9 of the Principal Act is amended as follows:

(a) by inserting the following subsection after subsection (3):

(3A) A police officer may request that, as part of a medical examination referred to in this section, the medical practitioner by whom it is being carried out enable a qualified person to take a sample of blood for analysis under this Act from the person being examined.

(b) by omitting from subsection (4) “or urine”;

(c) by omitting from subsection (4) “person,” and substituting “person, or a request has been made under subsection (3A) in respect of the person,”;

(d) by omitting from subsection (4) “blood or to furnish a sample of his urine, as the case may be.” and substituting “blood.”.

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20. 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 omitting from subsection (1) “breath analysis” and substituting “breath analysis, oral fluid analysis”;
- (b) by omitting from subsection (3) “blood” and substituting “blood for analysis, or the taking of a sample of oral fluid for oral fluid analysis,”;
- (c) by omitting from subsection (3) “3 hours” and substituting “5 hours”;
- (d) by omitting from subsection (4) “analysis” first occurring and substituting “analysis, or the taking of a sample of oral fluid for oral fluid analysis,”;
- (e) by omitting from subsection (4A) “3 hours” and substituting “5 hours”;
- (f) by inserting the following subsection after subsection (4A):
 - (4AB) Where a person who has been informed in accordance with subsection (4A) declines to submit to the taking of a sample of blood –

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- (a) the approved operator concerned is to inform the person of the consequences of declining to submit to the taking of the sample; and
- (b) if the person does not elect to submit to the taking of the sample as soon as practicable after being informed of the consequences of declining to submit –
 - (i) the person is taken to have declined to submit to the taking of the sample; and
 - (ii) the deemed decision to decline to submit to the taking of the sample is final.
- (g) by omitting from subsection (4B) “blood,” and substituting “blood under subsection (4A) or (4AB),”;
- (h) by omitting from subsection (4B) “a medical practitioner or qualified nurse” and substituting “a qualified person”;

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- (i) by inserting in subsection (7) “or oral fluid analysis” after “him to submit to a breath analysis”;
 - (j) by omitting from subsection (7) “3 hours” and substituting “5 hours”;
 - (k) by inserting in subsection (7) “or oral fluid analysis” after “section to submit to a breath analysis”;
 - (l) by omitting from subsection (8) “an accident” and substituting “a crash”;
 - (m) by omitting from subsection (8) “accident” second occurring and substituting “crash”.

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

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

- (a) by omitting from subsection (1) “an accident” and substituting “a crash”;
- (b) by omitting from subsection (1A) “an accident” and substituting “a crash”;
- (c) by omitting from subsection (1A) “accident” second occurring and substituting “crash”;
- (d) by inserting the following subsection after subsection (1A):

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(1B) Where a person is arrested by a police officer for an offence under section 4, the police officer may require the person to submit to the taking of a sample of blood for analysis.

(e) by omitting from subsection (2) “section 10(4B)” and substituting “section 10”.

22. Section 10B inserted

After section 10A of the Principal Act, the following section is inserted in Division 2:

10B. Subsequent testing and samples in certain cases

- (1) A police officer may require a person, who is liable under this Part to submit to a breath test, oral fluid test, breath analysis or oral fluid analysis, to submit to a further test or analysis if –
- (a) the previous breath test, oral fluid test, breath analysis or oral fluid analysis of the person was unable to be completed due to an error by, or a malfunction of, an instrument, or thing, used as part of the test or analysis; and
 - (b) it is still within the relevant time in respect of the act of the person, or the act of driving by the

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person, that resulted in that
liability of the person.

- (2) Nothing in subsection (1) alters the relevant time in respect of an act of the person or an act of driving by the person.
- (3) For the purposes of subsection (1), a police officer may direct the person to another location for the purpose of a subsequent test or analysis.

23. Section 11 amended (Rights and obligations on completion of breath analysis or oral fluid analysis)

Section 11 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):
 - (1A) As soon as practicable after a person has provided a sample of oral fluid for oral fluid analysis, the approved operator who took the sample is to read over to the person, and hand the person, a written statement in such prescribed form as is appropriate to the case.
- (b) by omitting from subsection (3) “subsection (1)” and substituting “subsection (1) or (1A)”;

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- (c) by omitting from subsection (3) “a medical practitioner or by a qualified nurse within 3 hours” and substituting “a qualified person within 5 hours”;
- (d) by inserting in subsection (4) “under section 30A” after “liable”;
- (e) by omitting from subsection (4) “or carrying out”.

24. Section 12 amended (Examination, &c., of persons incapable of consenting)

Section 12 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3) “or urine”;
- (b) by omitting from subsection (4) “3 hours” twice occurring and substituting “5 hours”.

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

Section 13 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “a medical practitioner or a qualified nurse” and substituting “a qualified person”;

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- (b) by omitting from subsection (1) “or urine”;
 - (c) by omitting from subsection (1A) “or urine”;
 - (d) by omitting from subsection (2)(a) “in his body” and substituting “or other drug in his blood”;
 - (e) by omitting subsection (3) and substituting the following subsection:
 - (3) If a qualified person takes a sample of a person’s blood for analysis for the purposes of this Act, it is the duty of the qualified person to ensure that the following provisions of this section are complied with in respect of the taking of the sample so far as they are applicable.
 - (f) by omitting from subsection (4A) “a medical practitioner or a qualified nurse” and substituting “a qualified person”;
 - (g) by omitting subsections (5) and (5A) and substituting the following subsection:
 - (5) The sample of blood is to be divided into 3 parts, each part being –
 - (a) enclosed in a container of a type approved by the

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Minister by notice in the
Gazette; and

- (b) labelled in such manner as
may be prescribed.
- (h) by omitting from subsection (5B) “or
urine shall” and substituting “is to”;
- (i) by omitting from subsection (5B) “taken,
unless he is in custody, and, if he is in
custody, shall forthwith be delivered to a
police officer” and substituting “taken or,
if he or she is in custody, to a police
officer who was present while it was
taken”;
- (j) by omitting from subsection (5C) “or
urine shall” and substituting “is to”;
- (k) by omitting from subsection (6) “or
urine”.

**26. Section 13A amended (Retention of blood sample
during detention in custody)**

Section 13A of the Principal Act is amended as
follows:

- (a) by omitting subsection (4);
- (b) by inserting the following subsection
after subsection (5):
 - (6) Where a request in respect of a
sample has not been made under
subsection (3) within 60 days

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after the person from whom the sample was taken was released from custody, the sample is to be destroyed.

27. Section 13B amended (Analysis of blood samples by approved analyst)

Section 13B of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “or urine”;
- (b) by omitting subsection (2) and substituting the following subsections:
 - (2) Where a part of the sample of the blood taken from a person has been analysed under subsection (1), an approved analyst must ensure a copy of the report of the analysis, within 21 days after the completion of the report –
 - (a) if the analysis was made on request by, or on behalf of, that person and an Australian legal practitioner as referred to in subsection (1), is given to the person specified by the Australian legal practitioner in the request; and

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(b) if such a request was not made, is provided to a police officer.

(2A) If a police officer is provided with a copy of a report under subsection (2)(b), the police officer is to ensure that a copy of the report is given to the person from whom the sample of the blood was taken.

(c) by omitting subsection (4).

28. Section 13C inserted

After section 13B of the Principal Act, the following section is inserted in Division 2:

13C. Analysis of oral fluid samples by approved analyst

(1) If a sample of a person's oral fluid is taken for analysis for the purposes of this Act –

(a) the sample is to be taken in accordance with the prescribed requirements and delivered to an approved analyst; and

(b) an approved analyst may analyse the sample.

(2) If a sample of oral fluid taken from a person has been analysed under subsection (1)(b), an approved analyst

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must ensure that a copy of the report of the analysis is provided to a police officer within 21 days after the completion of the report.

- (3) A police officer provided with a copy of a report under subsection (2) is to ensure that a copy of the report is given to the person who provided the sample of oral fluid.
- (4) The report referred to in subsection (2) made in respect of a sample of oral fluid is to state whether or not an illicit drug was present in the part of the sample analysed.

29. Section 14 amended (Offences under Division 2)

Section 14 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “section 7A(1), 7C or 8(6)” and substituting “section 7A(1), 7C, 8(6) or 8A”;
- (b) by omitting subsections (1B) and (1C) and substituting the following subsection:
 - (1B) Any person who is liable to submit to a breath test, oral fluid test, breath analysis, oral fluid analysis or medical examination, or to provide a blood sample,

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under this Act and who, having
been taken into custody –

(a) escapes or attempts to
escape from that custody;
or

(b) obstructs or hinders his or
her conveyance to a place
where the test, analysis or
examination is to take
place –

is guilty of an offence.

(c) by omitting from subsection (2AA)(b) “3
hours” and substituting “5 hours”;

(d) by omitting from subsection (2AA)(b) “3
hour” and substituting “5-hour”;

(e) by omitting from subsection (2A)(b) “3
hours” and substituting “5 hours”;

(f) by omitting from subsection (3)(a) “his
blood or to provide a sample of his
urine;” and substituting “blood;”;

(g) by inserting the following paragraph after
paragraph (a) in subsection (3):

(ab) having been directed under
section 10(4) to submit to an oral
fluid analysis, fails or refuses,
without reasonable excuse, to
submit to that analysis; or

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- (h) by omitting from subsection (5) “or urine”;
 - (i) by omitting from subsection (6) “breath or blood” and substituting “breath, oral fluid or blood”;
 - (j) by omitting from subsection (7) “analysis” first occurring and substituting “analysis, oral fluid analysis”;
 - (k) by omitting from subsection (7) “analysis” third occurring and substituting “analysis, oral fluid analysis”;
 - (l) by omitting from subsection (7) “blood or urine,” and substituting “blood,”;
 - (m) by omitting from subsection (7) “breath or blood” and substituting “breath, oral fluid or blood”;
 - (n) by inserting the following subsection after subsection (7):
 - (8) A person is guilty of an offence, if the person –
 - (a) becomes liable to submit to a breath test, oral fluid test, breath analysis, oral fluid analysis or to the taking of a sample of blood for analysis under this Act; or

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(b) is the driver of a vehicle
that has been involved in
a crash –

and the person consumes an
intoxicating liquor or drug, or
administers a drug to himself or
herself or has a drug administered
to himself or herself, before all
relevant tests, analyses and
examinations have been
performed under this Act in
respect of the person's liability
under this Act, or the crash.

(9) Subsection (8) does not apply in
respect of a drug that was
obtained and administered in
accordance with the *Poisons Act*
1971 or was otherwise lawfully
obtained and administered.

30. Section 15 amended (Identification of offenders)

Section 15 of the Principal Act is amended as
follows:

- (a) by omitting from subsection (1) “name”
and substituting “name, date of birth”;
- (b) by omitting from subsection (3)(a)
“name” and substituting “name, date of
birth”;

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- (c) by omitting from subsection (3)(b) “name” and substituting “name, date of birth”.

31. Section 17 amended (Penalties for drink-driving offences, &c.)

Section 17 of the Principal Act is amended by inserting after subsection (3A) the following subsection:

- (3B) Section 17(3) of the *Vehicle and Traffic Act 1999* does not apply to a suspension or cancellation of an Australian driver licence in accordance with subsection (3A).

32. Sections 18 and 18A substituted

Sections 18 and 18A of the Principal Act are repealed and the following section is substituted:

18A. Traffic infringement notice may be issued in certain circumstances

- (1) In this section –

infringement offence means an offence against this Act, or the regulations under this Act, that is prescribed by the regulations to be an infringement offence.

- (2) A police officer may issue and serve an infringement notice on a person if he or

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she reasonably believes that the person has committed an infringement offence.

(3) An infringement notice under this section –

(a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and

(b) is a traffic infringement notice, within the meaning of the *Traffic Act 1925*, for the purposes of this or any other Act.

(4) The regulations may prescribe –

(a) the penalties payable under infringement notices; and

(b) circumstances in which an infringement notice may not be issued in respect of an infringement offence; and

(c) circumstances where a person may be disqualified from driving, and his or her Australian driver licence may be suspended or cancelled, if the person is taken to have been convicted of an infringement offence in accordance with section 20 of the *Monetary Penalties Enforcement Act 2005*.

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33. Section 18B amended (Immediate disqualification in certain circumstances)

Section 18B of the Principal Act is amended as follows:

- (a) by inserting the following paragraph before paragraph (a) in subsection (1):
 - (aa) committed an offence under section 4; or
- (b) by omitting from subsection (1)(c) “has”;
- (c) by omitting from subsection (1)(c) “breath analysis” and substituting “breath analysis, oral fluid analysis”;
- (d) by omitting from subsection (1) “an excessive drink-driving notice” and substituting “a road safety disqualification notice”;
- (e) by omitting subsections (3) and (4) and substituting the following subsections:
 - (3) If a road safety disqualification notice is given to a person –
 - (a) if he or she holds a restricted driver licence, that restricted driver licence is suspended; or
 - (b) in any other case, he or she is disqualified from driving.

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- (4) A road safety disqualification notice must specify –
 - (a) if the accused holds a restricted driver licence, the fact that his or her licence is suspended due to the road safety disqualification notice; or
 - (b) in any other case, the fact that the accused is disqualified from driving and the period of that disqualification in accordance with subsection (5).
- (f) by omitting from subsection (5) “an excessive drink-driving notice” and substituting “a road safety disqualification notice”;
- (g) by inserting the following subsection after subsection (6):
 - (7) If a person is given a road safety disqualification notice and he or she holds a restricted driver licence –
 - (a) the licence is suspended under subsection (3)(a) as soon as the person is given the road safety disqualification notice; and

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- (b) the provisions of the *Vehicle and Traffic Act 1999*, other than section 17(3) of that Act, apply in respect of the suspension.

34. Section 18C amended (Commencement of period of disqualification)

Section 18C(a) of the Principal Act is amended by omitting “excessive drink-driving notice” and substituting “road safety disqualification notice”.

35. Section 18D amended (Cancellation of road safety disqualification notice)

Section 18D of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “an excessive drink-driving notice” and substituting “a road safety disqualification notice”;
- (b) by omitting from subsection (3) “an excessive drink-driving notice” and substituting “a road safety disqualification notice”.

36. Section 19 amended (Special hardship orders)

Section 19 of the Principal Act is amended as follows:

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- (a) by inserting in subsection (1A)(ea) “within the preceding 6-month period” after “requirement”;
- (b) by omitting from subsection (2) “this Act or section 41 or section 41B of the *Traffic Act 1925* (as that Act had effect before the commencement of this Act)” and substituting “this Act, section 41 of the *Traffic Act 1925* or section 53 of the *Vehicle and Traffic Act 1999*”.

37. Section 19A amended (Driving while disqualified under this Act)

Section 19A of the Principal Act is amended by omitting subsections (2), (3) and (4) and substituting the following subsection:

- (2) A person who drives a motor vehicle while his or her licence is suspended under section 18B(3)(a) is guilty of an offence.

Penalty: In the case of –

- (a) a first offence – a fine not exceeding 40 penalty units or imprisonment for a term not exceeding 6 months (or both) and a further period of disqualification (not exceeding 3 years) fixed by the court; and

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- (b) a second or subsequent offence – a fine not exceeding 80 penalty units or imprisonment for a term not exceeding 12 months (or both) and a further period of disqualification (not exceeding 5 years) fixed by the court.

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

Section 20 of the Principal Act is amended by omitting “under section 41 or section 41B of the *Traffic Act 1925* (as that Act had effect before the commencement of this Act),” and substituting “under section 41 of the *Traffic Act 1925* or section 53 of the *Vehicle and Traffic Act 1999*,”.

39. Section 21 amended (Avoidance of certain provisions in contracts of insurance)

Section 21(b) of the Principal Act is amended by omitting “breath, blood, or urine—” and substituting “breath or blood —”.

40. Section 21A inserted

After section 21 of the Principal Act, the following section is inserted in Division 3:

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21A. Prohibited analysis of blood or oral fluid

- (1) A sample of blood or oral fluid taken according to the provisions of this Act –
 - (a) may only be used in relation to offences committed against this Act; and
 - (b) may not be used for the purposes of identification by DNA analysis.
- (2) A person is guilty of an offence if he or she intentionally or recklessly –
 - (a) supplies a sample of blood taken in accordance with this Act, or causes or permits a sample to be supplied, to a person for prohibited analysis; or
 - (b) carries out, or causes or permits to be carried out, a prohibited analysis of a sample of blood taken in accordance with this Act; or
 - (c) includes, or causes or permits the inclusion of, information derived from a prohibited analysis on a DNA database.
- (3) For the purposes of this section –

DNA database includes –

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- (a) a DNA database system within the meaning of the *Forensic Procedures Act 2000*; and
- (b) a database containing DNA data that is kept under a law of this, or any other, jurisdiction; and
- (c) such other database, or class of databases, as is prescribed;

prohibited analysis, in relation to a sample of blood, means analysis of the sample for a purpose other than a purpose for which the sample is permitted to be used under this Act.

41. Section 22 amended (Application of Division 1)

Section 22 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(c) “analysis” and substituting “analysis or oral fluid analysis”;
- (b) by inserting in subsection (1)(d) “oral fluid or” after “person’s”;
- (c) by inserting the following subsection after subsection (2):

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- (3) Nothing in this Division prevents one or more certificates under this Division from being issued as a single document.

42. Section 23 amended (Statutory presumptions with respect to breath analyses and blood tests, &c.)

Section 23 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “taken, unless it is shown on the balance of probabilities that the concentration of alcohol in his blood at the time was not greater than the prescribed concentration.” and substituting “taken, unless the contrary is proved.”;
- (b) by omitting from subsection (4) “4 hours” and substituting “6 hours”;
- (c) by omitting from subsection (5) “4 hours” and substituting “6 hours”;
- (d) by omitting from subsection (6) “4 hours” and substituting “6 hours”;
- (e) by inserting the following subsection after subsection (7):
 - (7A) Where in any proceedings for an offence under this Act, a person has submitted to a breath analysis but has declined or refused a request under this Act to submit

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to a sample of blood being taken in respect of the same offence, the person may not rebut a statutory presumption, within this section, in respect of the breath analysis.

43. Section 23A amended (Statutory presumptions with respect to prescribed illicit drugs)

Section 23A of the Principal Act is amended by omitting “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.” and substituting “person’s oral fluid or blood at any time within 6 hours after the relevant time, it is presumed, unless the contrary is proved, that he or she had the illicit drug in his or her oral fluid or blood at the relevant time.”.

44. Section 24 amended (Restrictions on admission of evidence of breath analysis)

Section 24(1)(b)(i) of the Principal Act is amended as follows:

- (a) by omitting “a medical practitioner or a qualified nurse” and substituting “a qualified person”;
- (b) by omitting “3 hours” and substituting “5 hours”.

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45. Section 25 amended (Evidence as to carrying out of breath analysis)

Section 25 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “is *prima facie*” and substituting “is admissible in those proceedings and is *prima facie*”;
- (b) by omitting from subsection (2) “is *prima facie*” and substituting “is admissible in those proceedings and is *prima facie*”.

46. Section 25A amended (Evidence of matters related to refusal to submit to breath analysis)

Section 25A of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “is *prima facie*” and substituting “is admissible in those proceedings and is *prima facie*”;
- (b) by omitting from subsection (2) “is *prima facie*” and substituting “is admissible in those proceedings and is *prima facie*”.

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47. Section 26 amended (Certificates and records of approved analyst and approved operators)

Section 26 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “the supervising analyst” and substituting “an approved analyst”;
- (b) by omitting “is *prima facie*” and substituting “is admissible in those proceedings and is *prima facie*”.

48. Section 27 amended (Certificate in relation to taking of blood samples)

Section 27 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “or urine”;
- (b) by omitting from subsection (1)(b) “a medical practitioner or a qualified nurse” and substituting “a qualified person”;
- (c) by omitting from subsection (1) “is *prima facie*” and substituting “is admissible in those proceedings and is *prima facie*”;
- (d) by omitting from subsection (2)(a) “or urine”;
- (e) by omitting from subsection (2) “is *prima facie*” and substituting “is

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admissible in those proceedings and is *prima facie*”;

- (f) by omitting from subsection (3)(a) “analyst;” and substituting “analyst, or a person authorised by an approved analyst to receive the sample;”;
- (g) by omitting from subsection (3) “is *prima facie*” and substituting “is admissible in those proceedings and is *prima facie*”.

49. Section 28 amended (Certificates of analysis of blood samples)

Section 28 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “or urine”;
- (b) by omitting “is *prima facie*” and substituting “is admissible in those proceedings and is *prima facie*”.

50. Section 28A inserted

After section 28 of the Principal Act, the following section is inserted in Division 1:

28A. Certificates of analysis of oral fluid samples

In any proceedings to which this Division applies, a certificate containing –

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- (a) particulars of the result of an analysis of a sample of oral fluid carried out by, or under the supervision of, the person by whom the certificate is purported to be signed; and
- (b) particulars with respect to the container in which the sample was received, and any label or markings thereon –

and stating that at the time when the analysis was carried out he or she was an approved analyst, is admissible in those proceedings and is *prima facie* evidence of the particulars set forth in the certificate.

51. Section 29 amended (Limitation on tendering of certificates, &c., in evidence)

Section 29 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):
 - (1AA) If a report has been provided under section 13B(2)(a), 13B(2A) or 13C(3) to a person, the provision of that report under that section is taken to be service for the purposes of subsection (1).

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(b) by inserting the following subsection after subsection (1A):

(1B) A certificate of service referred to in subsection (1A) may relate to more than one certificate or document referred to in subsection (1).

(c) by inserting the following subsection after subsection (3):

(4) For the purposes of this section, *service* has the same meaning as in the *Acts Interpretation Act 1931*.

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

Section 30 of the Principal Act is amended as follows:

(a) by omitting from subsection (2) “or urine”;

(b) by inserting in subsection (2A) “oral fluid or” after “person’s”.

53. Section 30A inserted

Before section 31 of the Principal Act, the following section is inserted in Part IV:

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30A. Costs of tests, analyses or examinations

Except as otherwise provided under this Act, a court may, in the case of a conviction for an offence under this Act –

- (a) assess the reasonable costs of –
 - (i) testing, analysing or examining a sample of breath, oral fluids or blood used as part of proceedings for the offence; and
 - (ii) if applicable, the attendance as part of those proceedings of the person who performed the test, analysis or examination if he or she is required to attend to give evidence; and
- (b) award either or both of those costs against the defendant.

54. Section 31 amended (Regulations)

Section 31 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “the supervising analyst” and substituting “an approved analyst”;

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- (b) by omitting from subsection (1)(c) “the supervising analyst” and substituting “an approved analyst”;
- (c) by omitting from subsection (1)(g) “medical practitioners and qualified nurses” and substituting “qualified persons”;
- (d) by omitting paragraph (i) from subsection (1);
- (e) by omitting from subsection (4) “or supervising analyst” and substituting “or an approved analyst”.

55. Sections 32, 33 and 34 inserted

After section 31 of the Principal Act, the following sections are inserted in Part IV:

32. Protection from liability

- (1) A police officer acting in good faith is not liable for any of the following that may result from the moving, or impounding, of a vehicle in accordance with this Act:
 - (a) damage to the vehicle;
 - (b) depreciation in the value of the vehicle;
 - (c) loss of use of the vehicle;
 - (d) loss of the vehicle.

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- (2) A police officer, or the Crown, is not liable for any damage, loss or depreciation in respect of a vehicle while it is being driven, towed or transported to, or impounded at, a holding yard as a result of this Act.

33. Destruction of samples

- (1) A sample of blood, or oral fluid, that has been taken for the purposes of this Act is to be destroyed 24 months after the sample was taken unless otherwise prescribed.
- (2) For the avoidance of doubt, this section applies to all samples whether taken before or after the commencement of the *Road Safety (Alcohol and Drugs) Amendment Act 2017*.

34. Savings and transitionals

- (1) In this section –

amending Act means the *Road Safety (Alcohol and Drugs) Amendment Act 2017*.

- (2) For the purposes of this and any other Act, if, before the day on which section 5 of the amending Act commences, apparatus of a type was approved by the Governor as a breath analysing instrument by notice in the *Gazette* and that approval had not been revoked, apparatus of that type is taken, on and

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after that day, to be apparatus of a type approved by the Minister as a breath analysing instrument by notice in the *Gazette*.

- (3) For the purposes of this and any other Act, if, before the day on which section 6 of the amending Act commences, a person is an approved analyst, or a supervising analyst, under this Act, that person is taken, on and after that day, to be an approved analyst appointed by the Minister under this Act on the same terms and conditions.
- (4) For the purposes of this and any other Act, if, before the day on which section 33 of the amending Act commences, an excessive drink-driving notice has been issued, and is in force, under section 18B of this Act, that notice is taken, on and after that day, to be a road safety disqualification notice issued, and in force, under that section on the same terms and conditions.

**PART 3 – MARINE SAFETY (MISUSE OF ALCOHOL)
ACT 2006 AMENDED**

56. Principal Act

In this Part, the *Marine Safety (Misuse of Alcohol) Act 2006** is referred to as the Principal Act.

57. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by omitting the definition of *supervising analyst*.

58. Section 8 amended (Approved analysts and approved operators)

Section 8 of the Principal Act is amended as follows:

- (a) by omitting subsection (1);
- (b) by omitting from subsection (2) “the supervising analyst” and substituting “an approved analyst”;
- (c) by omitting from subsection (4) “police officer” and substituting “person”.

*No. 25 of 2006

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Part 3 – Marine Safety (Misuse of Alcohol) Act 2006 Amended

59. Section 61 amended (Regulations)

Section 61(4) of the Principal Act is amended by omitting “supervising analyst” and substituting “an approved analyst”.

60. Schedule 1 amended (Evidentiary Certificates and Records)

Schedule 1 to the Principal Act is amended by omitting “the supervising analyst” from clause 1(a) of Part 1 and substituting “an approved analyst”.

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Part 4 – Police Offences Act 1935 Amended

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PART 4 – POLICE OFFENCES ACT 1935 AMENDED

61. Principal Act

In this Part, the *Police Offences Act 1935** is referred to as the Principal Act.

62. Section 37K amended (Interpretation of Division)

Section 37K(1) of the Principal Act is amended by inserting after paragraph (f) in the definition of *prescribed offence* the following paragraph:

- (fa) against section 18B of the *Road Safety (Alcohol and Drugs) Act 1970*; or

*No. 44 of 1935

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Part 5 – Rail Safety National Law (Tasmania) Act 2012 Amended

**PART 5 – RAIL SAFETY NATIONAL LAW
(TASMANIA) ACT 2012 AMENDED**

63. Principal Act

In this Part, the *Rail Safety National Law (Tasmania) Act 2012** is referred to as the Principal Act.

64. Section 10 amended (Testing for drugs and alcohol)

Section 10(3) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (d)(iii) “a vehicle or” after “driven,”;
- (b) by omitting from paragraph (d)(iii) “on a public street”;
- (c) by inserting in paragraph (e) “section 7AA and” after “from”.

*No. 38 of 2012

**PART 6 – VEHICLE AND TRAFFIC ACT 1999
AMENDED**

65. Principal Act

In this Part, the *Vehicle and Traffic Act 1999** is referred to as the Principal Act.

66. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting the definitions of *excessive drink-driving notice* and *excessive drink-driving offence*;
- (b) by inserting the following definition after the definition of *rigid*:

road safety disqualification notice has the same meaning as in the *Road Safety (Alcohol and Drugs) Act 1970*;

67. Section 18 amended (Restricted driver licences)

Section 18(2)(c) of the Principal Act is amended by omitting “an excessive drink-driving notice” and substituting “a road safety disqualification notice”.

*No. 70 of 1999

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Part 6 – Vehicle and Traffic Act 1999 Amended

68. Part 3, Division 3B: Heading amended

Division 3B of Part 3 of the Principal Act is amended by omitting “*Excessive drink-driving offences*” from the heading to that Division and substituting “*Road safety disqualification notice*”.

69. Section 19C amended (Automatic suspension of licence for road safety disqualification notice)

Section 19C of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “an excessive drink-driving notice” and substituting “a road safety disqualification notice”;
- (b) by omitting from subsection (2) “excessive drink-driving offence” and substituting “offence that resulted in the person being given the road safety disqualification notice”;
- (c) by omitting from subsection (3)(a) “excessive drink-driving notice” and substituting “road safety disqualification notice”.