



STATUTES AMENDMENT (DRINK DRIVING) ACT 1995

No. 95 of 1995

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ELIZABETHAE II REGINAE

A.D. 1995

No. 95 of 1995

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

[Assented to 7 December 1995]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Drink Driving) Act 1995*.

Commencement

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

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2
AMENDMENT OF HARBORS AND NAVIGATION ACT 1993**

Amendment of s. 71—Requirement to submit to alcotest or breath analysis

4. Section 71 of the principal Act is amended by striking out subsection (5) and substituting the following subsections:

(5) No person is 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 was on duty as a member of the crew of a vessel and before the requirement was made or the direction given.

(6) 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 section 72; or
- (b) the person made a request as referred to in section 72(2), but—
- (i) an authorised person failed to facilitate the taking of a sample of the person's blood as required by that section; 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 section 72 was not possible or reasonably advisable or practicable in the circumstances by reason of some physical or medical condition of the person.

Amendment of s. 72—Police to facilitate blood test at request of incapacitated person, etc.

5. Section 72 of the principal Act is amended—

- (a) by striking out subsection (1);
- (b) by striking out from subsection (2) "If a request is made by a person under subsection (1), the" and substituting "Where a person of whom a requirement is made or to whom a direction is given under section 71 refuses or fails to comply with the requirement or direction by reason of some physical or medical condition of the person and immediately requests an authorised officer that a sample of his or her blood be taken by a medical practitioner, an";
- (c) by striking out paragraph (b) of subsection (3) and substituting the following paragraph:
- (b) must be at the expense of the Crown.;
- (d) by striking out subsections (4) and (5) and substituting the following subsection:

(4) The provisions of subsections (7) to (17) (inclusive) of section 74 apply in relation to a sample of blood taken under this section in the same way as to a sample of blood taken under section 74.

Insertion of ss. 72A and 72B

6. The following sections are inserted after section 72 of the principal Act:

Authorised person to provide transport assistance for blood tests in certain circumstances outside Metropolitan Adelaide

72A. (1) Where—

- (a) a person submits to a breath analysis conducted under this Division at a place outside Metropolitan Adelaide; and

- (b) the person requests a blood test kit as referred to in section 73(4); and
- (c) it appears to an authorised person that the person has failed or will fail, despite reasonable endeavours, to make safe and appropriate transport arrangements within the period of two hours after the conduct of the breath analysis to attend at a place at which a sample of the person's blood may be taken and dealt with in accordance with the procedures prescribed by regulation for the purposes of section 73(2); and
- (d) the person requests of an authorised person that an authorised person transport the person, or arrange for the transport of the person, to such a place,

an authorised person must transport, or arrange for the transport of, the person to such a place.

(2) In subsection (1)—

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

Blood tests by nurses where breath analysis taken outside Metropolitan Adelaide

72B. (1) Where a person submits to a breath analysis conducted under this Division 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 72 or the procedures prescribed by regulation for the purposes of section 73(2); and
- (b) the provisions of this Division and the regulations under this Division 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.

(2) In subsection (1)—

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

"registered nurse" means a person registered on the nurses register under the *Nurses Act 1984*.

Amendment of s. 73—Evidence

7. Section 73 of the principal Act is amended—

- (a) by inserting in subsection (1) "in proceedings for an offence against this Division or against any other Act, subject to subsection (2)," after "it will be presumed";
- (b) by striking out from subsection (1) "and throughout the preceding period of two hours";
- (c) by striking out subsection (2) and substituting the following subsections:

(2) In proceedings for an offence against this Division, 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 section 74 or in accordance with the procedures prescribed by regulation; 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.

(2a) In proceedings for an offence against this Division, if it is proved that a concentration of alcohol was present in the defendant's blood at the time of a breath analysis, it will be conclusively presumed that that concentration of alcohol was present in the defendant's blood throughout the period of two hours immediately preceding the analysis.;

(d) by striking out paragraphs (a) and (b) of subsection (4) and substituting the following paragraphs:

- (a) give the person the prescribed oral advice and deliver to the person the prescribed written notice as to the operation of this Division 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 to the person an approved blood test kit;;

(e) by inserting in subsection (5) "or against any other Act" after "against this Division";

(f) by striking out paragraph (b) of subsection (5) and substituting the following paragraphs:

- (b) a certificate apparently signed by an authorised person certifying that a person named in the certificate submitted to breath analysis on a day and at a time stated in the certificate and that a specified concentration of alcohol was indicated by the breath analysing instrument as being present in the person's blood;
- (ba) a certificate apparently signed by an authorised person certifying that a breath analysis carried out in relation to a person named in the certificate on a day and at a time stated in the certificate was carried out in conformity with the requirements of this Act;
- (bb) a certificate apparently signed by an authorised person certifying that—
 - (i) on a day and at a time stated in the certificate, a sample of the breath of a person named in the certificate was furnished for analysis in a breath analysing instrument; and
 - (ii) a written statement required by subsection (3) was given to the person in accordance with that subsection;;

(g) by inserting after subsection (5) the following subsection:

(5a) In proceedings for an offence against this Division or against any other Act, a certificate apparently signed by an authorised person certifying—

- (a) that, on a day and at a time stated in the certificate, a sample of the breath of a person named in the certificate was furnished for analysis in a breath analysing instrument; and
- (b) that the prescribed oral advice and the prescribed written notice were given and delivered to the person in accordance with subsection (4)(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 (4)(b),

is, in the absence of proof to the contrary, proof that the requirements of subsection (4) were complied with in relation to the person.;

(h) by striking out from subsection (6) "against this Division";

(i) by inserting after subsection (6) the following subsections:

(7) A prosecution for an offence against this Division or against any other Act will not fail because of a deficiency of a kit delivered to the defendant in purported compliance with subsection (4)(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).

(8) In this section—

"approved blood test kit" has the same meaning as is given to the term by section 47A of the *Road Traffic Act 1961*.

Insertion of s. 73A

8. The following section is inserted after section 73 of the principal Act:

Breath analysis where drinking occurs after operation of vessel

73A. (1) This section applies to proceedings for an offence against this Division in which the results of a breath analysis under this Division 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 alcohol during the period ("the relevant period") after the defendant last operated a vessel or was on duty as a member of the crew of a vessel and before the performance of the breath analysis; and
 - (b) in a case where the defendant was required to submit to the breath analysis after involvement of the vessel in an accident—
 - (i) that the requirements of section 76 were complied with in relation to the accident; and
 - (ii) that alcohol was not consumed by the defendant during the relevant period while at the scene of the accident; and
 - (c) that, after taking into account the quantity of alcohol consumed by the defendant during the relevant period and its likely effect on the concentration of alcohol indicated as being present in the defendant's blood by the breath analysis, the defendant should not be found guilty of the offence charged or, in the case of an offence against section 70(2), should be found guilty of an offence of a less serious category,

the court may, despite the other provisions of this Division, find the defendant not guilty of the offence charged or guilty of an offence of a less serious category.

Amendment of s. 74—Compulsory blood tests of injured persons including water skiers

9. Section 74 of the principal Act is amended—

(a) by striking out subsection (7) and substituting the following subsection:

(7) A medical practitioner by whom a sample of blood is taken under this section must—

- (a) place the sample of blood, in approximately equal proportions, in two separate containers marked with an identification number distinguishing the sample of blood from other samples of blood taken under this section and seal the containers; and
- (b) give to the person from whom the sample was taken, or leave with that person's personal effects at the hospital, a notice in writing advising that—
 - (i) the sample of blood has been taken under this section; and
 - (ii) a container containing part of the sample of blood 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) complete and sign a certificate containing the information required under subsection (10); and
- (d) make the containers and the certificate available to a member of the police force.;

(b) by striking out subsection (10) and substituting the following subsections:

(10) The certificate referred to in subsection (7) must state—

- (a) the identification number of the sample of blood marked on the containers referred to in that subsection; and
- (b) the name and address of the person from whom the sample of blood was taken; and
- (c) the name of the medical practitioner by whom the sample of blood was taken; and
- (d) the date, time and hospital at which the sample of blood was taken; and
- (e) that the medical practitioner gave the notice referred to in that subsection to the person from whom the sample of blood was taken, or, as the case may be, left the notice with the person's personal effects.

(10a) One of the containers containing the sample of the person's blood must—

- (a) as soon as reasonably practicable be collected by a member of the police force and delivered to the place specified in the notice given to the person or left with the person's personal effects under subsection (7); and
- (b) be kept available at that place for collection by or on behalf of the person for the prescribed period.;

(c) by striking out from subsection (17) "against this Division";

(d) by inserting in subsection (17) "or informant" after "complainant".

Amendment of s. 76—Duty to render assistance and provide particulars

10. Section 76 of the principal Act is amended—

(a) by inserting in subsection (1) "involving a vessel" after "If an accident";

(b) by striking out from subsection (3) "subsection (1)" and substituting "this section".

PART 3
AMENDMENT OF MOTOR VEHICLES ACT 1959

Amendment of s. 75a—Learner's permit

11. Section 75a of the principal Act is amended—

- (a) by striking out from subsection (3a) "this section" and substituting "subsection (3)(a)";
- (b) by striking out from subsection (5a) "and 47G" and substituting ", 47G and 47GA";
- (c) by inserting in subsection (5a)(a) "(apart from section 47E(1))" after "those sections";
- (d) by inserting after subsection (6) the following subsections:

(7) A person must not act as a qualified passenger for a learner driver while there is present in his or her blood the prescribed concentration of alcohol.

Penalty: Division 8 fine.

(8) For the purposes of subsection (7)—

- (a) a person acts as a qualified passenger for a learner driver if—
 - (i) when the holder of a learner's permit drives a motor vehicle, or attempts to put a motor vehicle in motion, on a road, the person occupies a seat in the vehicle next to the holder of the permit, or, if the vehicle is a motor cycle, is a passenger on the cycle or in a sidecar attached to the cycle; and
 - (ii) the person is the holder of a driver's licence (not being a probationary licence) authorising the person to drive the vehicle; and
- (b) "prescribed concentration of alcohol" means a concentration of .05 grams or more of alcohol in 100 millilitres of blood.

(9) Sections 47B(2), 47C, 47D, 47E, 47G and 47GA of the *Road Traffic Act 1961* apply in relation to an offence against subsection (7) as if—

- (a) a reference in any of those sections (apart from section 47E(1)) to an offence against that Act were a reference to an offence against subsection (7); and
- (b) the person alleged to have committed an offence against subsection (7) were, when acting as a qualified passenger for a learner driver, driving the motor vehicle in question; and
- (c) a reference in any of those sections to the prescribed concentration of alcohol as defined in section 47A of that Act were a reference to the prescribed concentration of alcohol as defined for the purposes of subsection (7).

Amendment of s. 81a—Probationary licences

12. Section 81a of the principal Act is amended—

- (a) by striking out from subsection (6) "and 47G" and substituting ", 47G and 47GA";
- (b) by inserting in subsection (6)(a) "(apart from section 47E(1))" after "those sections".

PART 4**AMENDMENT OF ROAD TRAFFIC ACT 1961****Amendment of s. 47A—Interpretation**

13. Section 47A of the principal Act is amended by inserting after the definition of "analyst" the following definition:

"approved blood test kit" means a kit of a kind declared by the Governor by regulation to be an approved blood test kit;

Amendment of s. 47E—Police may require alcotest or breath analysis

14. Section 47E of the principal Act is amended by striking out subsection (5) and substituting the following subsection:

(5) No person is 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 drove a motor vehicle or attempted to put a motor vehicle in motion and before the requirement was made or the direction given.

Amendment of s. 47G—Evidence, etc.

15. Section 47G of the principal Act is amended—

- (a) by striking out from subsection (1) "against this Act";
- (b) by striking out from subsection (1) "and throughout the period of two hours immediately preceding the analysis";
- (c) by striking out subsection (1a) and substituting the following subsections:

(1a) 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 section 47I or in accordance with the procedures prescribed by regulation; 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.

(1ab) If it is proved in proceedings that a concentration of alcohol was present in the defendant's blood at the time of a breath analysis, it must be conclusively presumed that that concentration of alcohol was present in the defendant's blood throughout the period of two hours immediately preceding the analysis.;

- (d) by striking out from subsection (1b) "In any proceedings for an offence against this Act, no" and substituting "No";
- (e) by striking out from subsection (2a)(b) "to the person a blood test kit in a form approved by the Minister for facilitation of the taking and analysis of a sample of the person's blood" and substituting "an approved blood test kit to the person";
- (f) by striking out from subsection (3) "In proceedings for an offence under section 47(1) or 47B(1), a" and substituting "A";
- (g) by striking out from subsection (4) ", in proceedings for an offence under section 47(1) or 47B(1),";
- (h) by striking out from subsection (5) ", in proceedings for an offence under section 47(1) or 47B(1),";
- (i) by striking out from subsection (5) paragraph (d) and the word "and" preceding that paragraph;
- (j) by striking out from subsection (6) "under section 47(1) or 47B(1)";
- (k) by inserting in subsection (6)(b) "or informant" after "complainant";
- (l) by inserting after subsection (6) the following subsections:

(7) 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 specified in the certificate, a sample of the breath of a person named in the certificate was furnished for analysis in a breath analysing instrument; and
- (b) that the prescribed oral advice and the prescribed written notice were given and delivered to the person in accordance with subsection (2a)(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 (2a)(b),

is, in the absence of proof to the contrary, proof that the requirements of subsection (2a) were complied with in relation to the person.

(8) A prosecution for an offence will not fail because of a deficiency of a kit delivered to the defendant in purported compliance with subsection (2a)(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 (1a).

(9) The provisions of this section apply in relation to proceedings for an offence against this Act or any other Act subject to the following exceptions:

- (a) subsections (1a) and (1ab) apply only in relation to proceedings for an offence against section 47(1) or 47B(1);
- (b) subsection (3)(b)(ii) does not apply in relation to an offence against section 47E(3).

Insertion of s. 47GA

16. The following section is inserted after section 47G of the principal Act:

Breath analysis where drinking occurs after driving

47GA. (1) This section applies to proceedings for an offence against section 47(1) or 47B(1) in which the results of a breath analysis under this Act 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 alcohol during the period ("the relevant period") after the defendant last drove a motor vehicle or attempted to put a motor vehicle in motion and before the performance of the breath analysis; and
- (b) in a case where the defendant was required to submit to the breath analysis under section 47E(1)(d)—
 - (i) that the defendant complied with the requirements of section 43(3)(a), (b) and (c) in relation to the accident; and
 - (ii) that alcohol was not consumed by the defendant during the relevant period while at the scene of the accident; and
- (c) in a case where the defendant was required to submit to the breath analysis under section 47E(2a)—that the alcohol was not consumed by the defendant during the relevant period in the vicinity of the breath testing station; and

- (d) that, after taking into account the quantity of alcohol consumed by the defendant during the relevant period and its likely effect on the concentration of alcohol indicated as being present in the defendant's blood by the breath analysis, the defendant should not be found guilty of the offence charged or, in the case of an offence against section 47B, should be found guilty of an offence of a less serious category,

the court may, despite the other provisions of this Act, find the defendant not guilty of the offence charged or guilty of an offence of a less serious category.

Amendment of s. 47I—Compulsory blood tests

17. Section 47I of the principal Act is amended—

- (a) by striking out subsection (7) and substituting the following subsection:

(7) A medical practitioner by whom a sample of blood is taken under this section must—

- (a) place the sample of blood, in approximately equal proportions, in two separate containers marked with an identification number distinguishing the sample of blood from other samples of blood taken under this section and seal the containers; and
- (b) give to the person from whom the sample was taken, or leave with that person's personal effects at the hospital, a notice in writing advising that—
- (i) the sample of blood has been taken under this section; and
- (ii) a container containing part of the sample of blood 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) complete and sign a certificate containing the information required under subsection (10); and
- (d) make the containers and the certificate available to a member of the police force.;

- (b) by striking out subsection (10) and substituting the following subsections:

(10) The certificate referred to in subsection (7) must state—

- (a) the identification number of the sample of blood marked on the containers referred to in that subsection; and
- (b) the name and address of the person from whom the sample of blood was taken; and
- (c) the name of the medical practitioner by whom the sample of blood was taken; and
- (d) the date, time and hospital at which the sample of blood was taken; and

- (e) that the medical practitioner gave the notice referred to in that subsection to the person from whom the sample of blood was taken, or, as the case may be, left the notice with the person's personal effects.
- (10a) One of the containers containing the sample of the person's blood must—
- (a) as soon as reasonably practicable be collected by a member of the police force and delivered to the place specified in the notice given to the person or left with the person's personal effects under subsection (7); and
- (b) be kept available at that place for collection by or on behalf of the person for the prescribed period.;
- (c) by striking out from subsection (11) "subsection 7(a)" and substituting "subsection (7)";
- (d) by striking out from subsection (13c) "under section 47(1) or 47B(1)";
- (e) by inserting in subsection (13c)(b) "or informant" after "complainant".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor