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THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL
TERRITORY

Road Transport (Alcohol and Drugs) (Random
Drug Testing) Amendment Bill 2009

Explanatory Statement
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Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Bill 2005

Explanatory Statement

Statement of Intention

The intention of this Bill is to amend the *Road Transport (Alcohol and Drugs) Act 1977* to allow for random roadside drug testing (RDT) to be conducted alongside or independent to random roadside breath testing (RBT). It also sets out the relevant testing requirements, procedures, offences and penalties applicable to the introduction of random drug testing in the ACT.

Clause Notes

Clause 1 – Name of Act

This is a technical clause which names the short title of the Act. The name of the Act would be the Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Act 2005.

Clause 2 – Commencement

This clause enables the Act to commence on a day nominated by the Minister in a commencement notice. The provisions for a commencement are set out in section 75 (1) of the Legislation Act.

If the Minister does not commence the Act six months after the Act is notified on the Legislation Register, then the Act automatically commences the following day. The provisions for automatic commencement are set out in section 79 of the Legislation Act.

Clause 3 – Legislation Amended

This clause advises the Act to be amended, in this case the Road Transport (Alcohol and Drugs) Act 1977.

Clause 4 – Offences against Act

This section links the Act to the Criminal Code, and states that the Criminal Code, ch. 2 applies to a number of offences against this Act (See Code, pt 2.1). This section also links the Act to the Legislation Act, s 133, that deals with the meaning of offence penalties that are expressed in penalty units.

Clause 5 – Section 5

Amends section 5 to allow for approval of screening devices for drug testing. It also amends Section 5A to allow for the approval of instruments for drug testing.

Clause 6 – Approval of operators and analysts - new section 6 (1A)

The new section 6(1A) provides police with the authority to carry out oral fluid analysis after an approved course of instruction.

Clause 7 – Sections 11 and 12

This clause allows for sections 11 and 12 to be substituted.

Section 11 allows for detention to be undertaken for both alcohol and drugs offences where alcohol and/or drugs are present at the levels outlined in this section.

Section 12 outlines procedures for those taken into custody under section 11, and stipulates the methods and conditions of analysis to be used for testing.

Clause 8 – New section 12A

This new section determines when drug testing may be carried out, whether as the result of a motor vehicle accident or if the police officer has reasonable cause to believe the person is under the influence of drugs via their behaviour or appearance. An assessment of drug impairment may only be carried out in accordance with prescribed procedures under the Act.

Clauses 9 to 20

These clauses allows for amendments to Sections 13, 14(1), 14(3), 14(3)(a), 15(1)(a) and (b), 15A(1), 15(2)(a), 15A(3) and (4), 16(1)(a)(i), 18(3)(a), 18(3)(c) are minor adjustments to amend the current Act to include references to the collection of oral fluid and blood samples for drug testing as well as alcohol testing.

Clause 21 – New section 20

This new section sets out the offences and penalties for driving under the influence of drugs or drug impairment.

Clause 22 - New sections 22A and 22B

Section 22A sets out the offences and penalties for refusing to provide an oral fluid sample or refusing to undergo a drug assessment for the purposes of drug testing.

Section 22B sets out the offences and penalties for refusing to undergo drug assessment.

Clauses 23 and 24 – Section 27 heading and section 27(a)

These clauses amend sections 27 heading and 27(a) to notify the sections of the Act under which provisions a person can be convicted of an offence in relation to the Act.

Clause 25 – Certificate of evidence

This inserts a new section 41 (1) (aa) into the Act setting out the requirements for certificates and statements of evidence as a result of drug testing having been carried out.

Clauses 26 and 27 – New sections 41 (1) (ba) and 41 (1) (c)

These clause insert new and substitute sections into the Act to ensure that the required certification is produced as evidence of oral fluid analysis being carried out within the stipulated guidelines by authorised officers under the Act.

Clause 28 – New section 41 (1) (e) (iii)

This clause sets out minor amendments to section 41(1)(e)(iii) to amend the current Act to include references to the collection of oral fluid and blood samples for drug testing as well as alcohol testing.

Clauses 29 and 30 – New Sections 42AA and 42C

These new sections 42AA and 42C allow for the courts to dismiss the charges pertaining to analysis of oral fluid and refusing to give a sample of oral fluid for drug testing purposes if they are not satisfied that the provisions of the Act were complied with.

Clauses 31 to 40 – Dictionary definitions

These clauses substitute or insert new definitions into the Dictionary of the Act to provide for the addition of random drug testing in addition to random alcohol testing under the Act.