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**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

**ROAD TRANSPORT (ALCOHOL AND DRUGS) LEGISLATION
AMENDMENT BILL 2010**

EXPLANATORY STATEMENT

Circulated by authority of
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OVERVIEW

The amendments in the bill are intended to improve ACT road safety outcomes in relation to drink driving. The principal changes made by the bill to drink driving aspects of the road transport legislation are as follows:

- applying a zero alcohol concentration to special drivers instead of the existing less than 0.02 g of alcohol per 100mL blood;
- applying the zero alcohol concentration to a wider range of people, including driving instructors, people who are supervising learner drivers and , heavy vehicle driver assessors;
- amending the definition of ‘repeat offender’ in the *Road Transport (Alcohol and Drugs) Act 1977* so that only people who have not previously been found guilty of a drink driving offence are regarded as first offenders under the Act and to ensure that the concessional treatment given to first offenders (such as lower fines, shorter period of licence disqualification and access to restricted licences) is not available to people who are found guilty again of a drink driving offence;
- requiring an alcohol awareness course to be completed by a person before a restricted or probationary licence may be issued to the person by the road transport authority;
- introducing a requirement that a police officer suspend a person’s licence as soon as the person is caught exceeding the prescribed concentration of alcohol applying to that person by 0.05g or more;
- preventing high-range first offenders for a disqualifying offence under the *Road Transport (Alcohol and Drugs) Act 1977* from obtaining a restricted licence.

The bill also makes a range of minor or technical amendments to the *Road Transport (Alcohol and Drugs) Act 1977* to:

- simplify and streamline the processes for prescribing breath testing equipment, the authorising of police officers to carry out breath tests, appointing analysts and approving laboratories;
- comply with the requirements of the national measurements legislation by making it clear that a concentration of alcohol expressed as X grams of alcohol per 100mL of blood is equivalent to a concentration of alcohol expressed as X grams of alcohol per 210L of breath;
- modernise the processes for collecting, storing and analysing blood samples;
- update or remove outdated provisions, including sentencing provisions that are no longer required because of the *Crimes (Sentencing) Act 2005*.

The Bill also makes technical amendments to the *Road Transport (Alcohol and Drugs) Act 1977* and other legislation relating to drug testing of motorists. These amendments build on the amendments made to the principal Act by the *Road Transport (Alcohol and Drugs) (Random Drug Testing) Act 2010* and:

- allow the police to ask a person to undergo 1 or more screening tests, to take account of the fact that screening tests may break or fail to work properly for

a range of reasons that are not the fault of either the police or the person being tested;

- require people to remain while tests are finalised, to take account of the fact that drug screening tests, unlike alcohol screening tests, may take up to 10 minutes to produce a result;
- provide for all oral fluid analysis samples to be sent to the laboratory for confirmation - prosecutions are commenced on the basis of laboratory analysis of oral fluid or blood, not on the basis of screening tests or police analysis results;
- ensure that the drug driving offences are expressed in terms that are consistent with the *Criminal Code 2002*;
- ensure that the offence of failing to provide a sample of oral fluid includes a defence that the person was medically incapable of providing the sample;
- ensure that evidentiary certificate provisions extend to laboratory analysis of oral fluid, opinions by doctors or nurses about the capacity of a person to undergo oral fluid testing without detriment to their health, and NSW evidentiary certificates for drug related tests;
- ensure that provisions dealing with evidence for insurance purposes extend to evidence relating to drug testing;
- ensure that provisions dealing with calling witnesses to give evidence relating to evidentiary certificates include witnesses relating to drug tests;
- include a power to order that persons whose ability to drive safely is affected by drugs be directed not to drive for up to 12 hours (with a power of internal review);
- clarify that alcohol and drug testing operations can be carried out at the same time.

HUMAN RIGHTS IMPLICATIONS

The provisions in the Bill authorising a police officer to request a person to provide sample of breath, oral fluid or blood for alcohol or drug testing and to take a person into custody for alcohol or drug testing may engage a number of human rights and the privilege against self-incrimination. The relevant human rights may include the right to privacy, the right to refuse consent to medical procedures and the right to liberty and security of the person. It should be noted that many of the provisions in the Bill are taken from the existing legislation, and have been replicated either without change or with only minor drafting modifications to accommodate the inclusion of the roadside drug testing scheme as a separate set of provisions.

Section 28 of the *Human Rights Act 2004* requires a consideration as to whether the provisions of the Bill impose 'reasonable limits' on these rights and the extent to which these reasonable limits may be considered 'demonstrably justified' in a free and democratic society. As the long title of the Bill indicates, a primary purpose of the Bill is to deter people from driving while affected by alcohol or drugs. This is because impaired drivers are a recognised road safety risk. The Bill is aimed at promoting safer driving behaviours as part of the Safe System framework, which has the fundamental objectives of:

- making the road transport system more forgiving of human error and
- minimising the level of unsafe road user behaviour.

In considering the reasonableness of the limits on human rights resulting from the Bill's provisions, it may be relevant to consider the road safety impacts of drink and drug driving in Australia. Drink driving is estimated to be a factor in around 25 to 30% of driver or rider fatalities nationally each year and there is evidence to show that drug driving alone is a causative factor in an estimated 20% to 25% of Australian driver fatalities.¹ The collision risk for drivers affected by alcohol or drugs is higher than for other drivers.² The detection rate for drug driving offences in Victoria, New South Wales and South Australia, which were the first three Australian jurisdictions to introduce random drug testing, is around 2 to 2.4% nationally and is consistently equal to or higher than the detection rate for drink driving offences (currently sitting at around 1% to 1.5% nationally). National driver surveys conducted for AAMI, which include ACT drivers, confirm that over 10% of drivers have driven after consuming recreational drugs.

In considering whether the drink driving amendments in the Bill represent reasonable limitations on human rights that are justified in a free and democratic society, it may be relevant to have regard to legislative developments in other Australian jurisdictions and overseas. Many of these jurisdictions have also reviewed their approaches to drink driving sanctions in recent years, particularly in relation to measures aimed at higher range and repeat offenders. Queensland recently released a discussion paper on possible reforms to its legislation that includes valuable evidence and references, including information relating to measures similar to those that have been included in this Bill. The Queensland paper can be accessed through the following link: http://www.tmr.qld.gov.au/~media/f6a8002d-cda6-4c70-9f84-b8a886cc51cc/pdf_drink_driving_discussion_paper.pdf

In considering whether the drug driving amendments in the Bill are justified in a 'free and democratic' society, it may be relevant to observe that all other Australian States and the Northern Territory have introduced random drug testing for motorists, with Victoria being the first to do so. While the details of the legislative schemes vary from state to state, they all provide for oral fluid screening and analysis. The drug driving legislation in each state or territory also deals with blood tests for drugs or medicines that cannot be detected in oral fluid and for persons who cannot produce sufficient oral fluid for an oral fluid analysis. The ACT is the only Australian jurisdiction that does not yet have an operational random drug testing program. While the national road toll has declined gradually over the 5 1/2 year period to June 2010³, coinciding with the beginning of random drug testing in

¹ Paper presented to Australasian Road Safety Research, Policing and Education Conference, August 2010, Canberra: Peter Thompson and Mark Fairney: Driver drug testing - a South Australian perspective.

² Paper presented to Australasian Road Safety Research, Policing and Education Conference, August 2010, Canberra: Edward Odgen, C Morris, T Frederiksen, M Boorman, R King, CKK Stough: The relationship between accident culpability and presence of drugs in blood samples from people injured in motor vehicle collisions.

³ Road Deaths Australia June 2010 ISSN 1449-1168, Department of Infrastructure, Transport, Regional Development and Local Government. Random drug testing commenced on 1 December 2004 in Victoria, with the first roadside operations carried out on 13 December 2004. By 2009, all other Australian States except the

Australia, the ACT road toll has remained generally steady, although the current year been the worst since 2005. The measures in this Bill are regarded as both necessary and appropriate to give proper effect to the Legislative Assembly's intentions when it passed the *Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Act 2010* earlier this year.

STRICT LIABILITY OFFENCES

Alcohol and drug use are known to be the main causes of road fatalities in Australia, along with other 'human factors' such as speeding, driver distraction and fatigue. All ACT driver licence holders are made aware, through the learner driver licence programs, road signage and driver awareness campaigns run by road safety authorities and the police, that drink driving and driver impairment generally are offences carrying serious penalties including licence disqualification, fines and (for serious or repeat offenders), the possibility of imprisonment.

The Bill remakes several existing offences and creates several new offences to which strict liability will apply. The reasons for applying strict liability are explained in the clause notes for each provision. In the case of re-made offences, these offences have generally already been interpreted as attracting strict liability and the intention is to maintain the current situation.

It should be noted that laws to address driver impairment have long been recognised by the courts as laws where the ordinary presumptions about *mens rea* give way to presumptions in favour of interpretations of strict liability, even where the offence concerned involves driving under the influence causing serious bodily injury or death⁴. These laws are intended to promote road safety and come squarely within the scope of the statement by Dixon J in *Proudman v Dayman*. In that case, the court noted that ordinarily a new criminal offence would be interpreted as requiring a mental element, then stated:

“But other considerations arise where in matters of police, of health, of safety, or the like the legislature adopts penal measures in order to cast on the individual the responsibility of so conducting his affairs that the general welfare will not be prejudiced. In such cases there is less ground, either in reason or in actual probability, for presuming an intention that the general rule [regarding *mens rea*] should apply...⁵.”

A more recent ACT decision, specifically involving section 22 of the *Road Transport (Alcohol and Drugs) Act 1977*, took a similar approach: “In those circumstances, s 22 does not seem to me to require an importation of a fault element. That being the case, the appellant's submission that there was no evidence upon which that

ACT had some form of random drug testing, although the Northern Territory's program is currently aimed primarily at heavy vehicle drivers.

⁴ *Leocal v Ashcroft, Attorney-General and others* (03-583) 543 U.S. 1 (2004), page 5, citing *State v Hubbard* etc.

⁵ [1941] HCA 28, per Dixon J.

particular element of the offence could be said to have been made out cannot be sustained”: *Hausman v Shute* [2006] ACTSC 54.

In these circumstances, and in light of culpability studies showing that alcohol and drugs play a role in between 30 to 40% of road deaths each year, either alone or in combination, it is believed that the application of strict liability to the offences in the Bill is a justifiable and proportionate limitation on the human rights in section 21 and 22 of the *Human Rights Act 2000*, for the purposes of section 28 of that Act.

DEFENCE PROVISIONS - LEGAL BURDEN OF PROOF

Several of the offences in the Bill contain specific defences that are in addition to the defences that are generally available to defendants in criminal proceedings. The clause notes for the relevant provisions explain the defences and the evidentiary issues that may arise for those defences.

Section 60 of the *Criminal Code 2002* applies to several of these defences, and requires the defendant to establish the matters constituting the defence on the balance of probabilities. The matters that a defendant must establish are generally matters that the defendant is best placed to know. An example is the defence in new section 19B of the *Road Transport (Alcohol and Drugs) Act 1977*, which deals with special drivers who ‘innocently’ consume alcohol in the form of food, medicine or as part of religious observance. Another example is where a person is unable to comply with a direction to provide an oral fluid sample because the person is medically unable to provide sufficient oral fluid - a specific defence is inserted into the offence in section 22A of the *Road Transport (Alcohol and Drugs) Act 1977* to recognise that some people have medical conditions that limit saliva production. It is for the defendant to provide the evidence to support this defence.

NOTES ON CLAUSES

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause provides that the Bill, when enacted, will be known as the *Road Transport (Alcohol and Drugs) Legislation Amendment Act 2010*.

Clause 2 Commencement

This clause explains when provisions in the amending Act will commence. The Bill provides for the provisions in section 2 (1) to commence on a date fixed by the Minister by notice. The remainder of the provisions commence when the *Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Act 2010* commences.

It must be noted that at the date of commencement, but not beforehand, the principal Act will incorporate the amendments made by the *Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Act 2010*. That Act has been passed but the amendments have not yet commenced and have not been officially incorporated into the text of the *Road Transport (Alcohol and Drugs) 1977*. Several of the amendments in the Bill may be difficult to understand unless it is appreciated that the amendments made by the Bill will commence immediately upon the commencement of the *Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Act 2010* amendments.

The provisions to commence by notice include the provisions in Parts 3 and 4 relating to alcohol awareness courses. Establishing these courses in conjunction with health and corrections agencies will take some time, which is why an implementation period of up to 12 months is contemplated by clause 2 (3) of the Bill. To accommodate a potential delay in commencement while implementation arrangements are made, the default commencement period of 6 months under the Legislation Act is displaced in relation to the provisions listed in clause 2 (1): see clause 2 (4) of the Bill.

Clause 3 Legislation amended

This clause lists the enactments that will be amended by the Bill.

PART 2 ROAD TRANSPORT (ALCOHOL AND DRUGS) ACT 1977

This part of the Bill contains amendments to the *Road Transport (Alcohol and Drugs) Act 1977* as in force on the date these amendments commence. That Act will be referred to as the principal Act in this Explanatory Statement. Where relevant, the Bill after it is enacted will be referred to as the amending Act.

Clause 4 Offences against Act - application of Criminal Code etc

This clause amends note 1 in section 4 of the principal Act, to update the list of sections to which the Criminal Code applies. This amendment is consequential on the remaking of section 19 and the insertion of new offence provisions in this Bill - the new offences are the offences of 'failing to stay for drug screening test' (new section 22B) and 'police may direct person not to drive' (new section 47B).

Clause 5 New part 1A heading

This clause inserts a new heading before section 4A, to create a new Part 1A with the title 'Important Concepts'.

Clause 6 Meaning of special driver Section 4B (1) (f)

This clause replaces existing section 4B (1) (f) with an amended section 4B (1) (f) to (j). Special drivers have a lower prescribed concentration of alcohol applied in relation to them. Currently, that concentration is 0.02g of alcohol per 100mL of blood or 210L of breath; under the amendments in the Bill, that concentration will, in effect, be reduced to zero. The amendment revises and expands the meaning of 'special driver' to include the following:

- the driver of a vehicle required to carry a sign, marking or placard under the *Dangerous Goods (Road Transport) Act 2009*;
- a person who is a heavy vehicle learner driver;
- a driving instructor who is with a driver for the purposes of driver instructor or assessment;
- a heavy vehicle driver assessor who is with a driver for the purposes of driver assessment;
- anyone else (for example, a parent or friend) who is supervising a learner driver.

The inclusion of provisions dealing with driver instructors, including heavy vehicle assessors, is new. The inclusion within the meaning of 'special driver' of people teaching or assessing learner drivers and people assessing a heavy vehicle driver's skill, and hence having a lower alcohol limit apply to them, is to ensure that people teaching or assessing these drivers model behaviour consistent with the message drinking and driving do not mix. It also assists them to exercise the skill and concentration required to teach another person to drive or to assess a person's driving skills. Heavy vehicle learners have also been explicitly included in the definition of 'special drivers' to remove any doubt that these drivers are covered.

The driver of a Commonwealth vehicle is omitted from the definition of 'special driver' because it is a category of driver for which the Territory has no special responsibility to regulate unlike, for example, drivers of public passenger vehicles and heavy vehicles.

The opportunity has also been taken to update the terminology used to refer to public passenger vehicles and heavy vehicles.

Clause 7 Section 4B (3) to (5)

This clause omits section 4B (3) to (5) and substitutes a new subsection (3), which updates terms used in amended section 4B relating to driver instruction and assessment by reference to the *Road Transport (Driver Licensing) Regulation 2000*.

The omission of former subsections (3) to (5) is consequent on the omission of the reference to a driver of a Commonwealth vehicle from existing section 4B (1) (f) (i). The amendment also omits the existing definition of ‘heavy motor vehicle’ in former section 4B (5). This because the substance of this definition is subsumed into new paragraphs 4B (1) (f) (ii) and (iii). A new definition of ‘public passenger vehicle’ is inserted in new section 4B (3) to reflect current terminology.

Clause 8 Sections 4C to 6

This clause substitutes new sections 4C to 6 in the principal Act.

New section 4C defines the concept **prescribed concentration** of alcohol. It provides that the prescribed concentration for a special driver is more than 0g of alcohol in 100mL of blood or 210L of breath. The concentration of alcohol for any other driver is 0.05g or more of alcohol in 100mL of blood or 210L of breath. It must be noted that the concept of **exceeding** a specified amount is built into the concept of ‘prescribed concentration’ itself, which is relevant when one is considering the elements of the offence in section 19 (as amended by this Bill). The effect of the definition is that a special driver will be at the prescribed concentration, and therefore at risk of committing a drink driving offence, if he or she has any alcohol in his or her blood or breath.

New section 4D explains how **alcohol concentration** may be expressed. The principal Act currently refers to the measurement of blood alcohol concentration in terms of grams of alcohol per 100mL of blood. Consequent on changes to the *National Measurement Regulations 1999* (Cwlth), many newer breath testing machines record and report breath analysis in terms of grams of alcohol per 210L of breath in addition to grams of alcohol per 100mL of blood. The results are equivalent however they are expressed. New section 4D allows an analysis of a concentration in a person’s blood or breath to be expressed in terms of grams of alcohol per 100mL of blood or grams of alcohol per 210L of breath. Subsection 4D (2) makes it clear that these are equivalent measurements.

New section 4E is a provision setting out the meaning of **level** of alcohol concentration, and includes a table setting out the alcohol concentrations that correspond to particular levels. The concept of **levels** is relevant to the penalties that may be imposed for an offence: different maximum penalties apply to offenders

according to their alcohol concentration level (see for example the table in section 26 of the principal Act). This provision remakes former section 4C of the principal Act, with the inclusion of a reference to a concentration of alcohol in 210L of breath. Also, the alcohol concentration range for level 1 offences has been changed from '0.02g or more to but less than 0.05g' to 'less than 0.05g to reflect the new prescribed concentration of alcohol for special drivers.

New section 4F defines the concept of **first offender** and **repeat offender**. This section replaces existing section 4D of the principal Act, on which it is based. Higher penalties apply to a person who is a repeat offender. Also, a repeat offender is not eligible to apply for, or be issued with, a restricted licence: see the *Road Transport (General) Act 1999*, existing section 67 (3) (a) and new section 67 which will be inserted by clause 134.

One particular effect of the new definition of 'repeat offender' is to ensure that a person is only ever to be entitled to one restricted licence for a disqualifying offence under the *Road Transport (Alcohol and Drugs) Act 1977*. As the definition of 'repeat offender' currently stands, a person who has been convicted or found guilty of a disqualifying offence and who is subsequently convicted or found guilty of what is termed a 'relevant offence' (see below) after a 5-year period is a first offender for both offences and is able to apply for a restricted licence in relation to the disqualifications for both offences. A restricted licence is a concession to recognise that disqualification may cause undue hardship but it is to be authorised in exceptional circumstances only: see the *Road Transport (Driver Licensing) Regulation 2000*, section 47 (1) and the criteria in subsection (2).

New section 4F (1) provides that a person who is convicted or found guilty of a disqualifying offence will be a first offender for that offence if the person is not a repeat offender for the offence. The term **disqualifying offence** is defined in the dictionary to the principal Act and includes an offence against sections 19, 20, 22, 22A, 23 or 24 or another provision prescribed by regulation. Currently, no other offences have been prescribed. The penalty for these offences includes disqualification from being able to apply for or hold a driver licence.

New section 4F (2) explains the concept of a repeat offender in relation to a disqualifying offence. Under proposed section 4F (2) (a), a repeat offender for a disqualifying offence is a person who has already been convicted or found guilty of a 'relevant offence' that was committed before the disqualifying offence was committed, whether or not the person had been convicted or found guilty of the relevant offence when the person committed the disqualifying offence.

New section 4F (2) (b) deals with the situation where a person is convicted or found guilty of a disqualifying offence and is concurrently convicted of one or more relevant offences. If one or more of those relevant offences were committed before the disqualifying offence was committed, the person will be a repeat offender in relation to the disqualifying offence.

The inclusion of the words ‘whether or not the person had been convicted or found guilty of the relevant offence’ in section 4F (2) (a) and ‘concurrently with being convicted or found guilty’ in section 4F (2) (b) are intended expressly to exclude a common law principle of statutory construction for repeat offender provisions. The essence of the principle is that a law which imposes a higher penalty on repeat offenders should be interpreted as applying only to offences committed after being convicted the first time.

The principle is sometimes known as Lord Coke’s canon of statutory construction and is said to date from the seventeenth century. The principle has been considered and applied judicially in Australia, including in the ACT Magistrates Court decision in *Warry v Hill* CC 2002/9296-9297.

Lord Coke’s principle of construction is apparently based on the deterrent effect of a conviction and is as follows:

‘The theory is that the appropriate lesson will have been learnt on the first or subsequent occasion upon which the offender is dealt with by the court, and he or she, having suffered the punishment, will then be deterred from offending in like manner again. The objective of deterrence, based upon escalating periods of actual imprisonment, would be open to grave doubt, if, when before a court for the first time, an offender would be liable to incarceration for a period in excess of that applicable for a first finding of guilt, simply because he or she then stood charged with more than one property offence which happened to be joined on separate informations. The justification for increasing the term of imprisonment on the second finding of guilt would be missing as the offender would not have been previously subjected to punishment aimed at deterrence. There would be no opportunity for the multiple offender, not previously charged, to become aware of the certainty of the severity of punishment for the proscribed criminal behaviour.’
(See *Schluter v Trenerry* [1997] NTSC 102.)

In the seventeenth century, when there were no means of mass communication or ready access to the law by means such as the Legislation Register to inform the community of its legal rights and obligations, it may well have been the case that there was little opportunity for people to become aware of the severity of punishment if a person reoffended. The deterrent effect of repeat offender provisions may have depended very largely on their impact on the particular offenders to whom they applied (specific deterrence) rather than their effect on the community at large (general deterrence). The situation is very different these days, as community access to information about legislation and sentencing generally has improved markedly even in the thirteen years since *Schluter* was decided. Awareness that drink driving is an offence is an essential part of the knowledge test for all learner drivers and the penalties for drink driving offences are well publicised.

New section 4F (3) is a transitional provision. It applies to a person who is convicted or found guilty of a disqualifying offence that was committed before section 8 of the amending Act commences. The person will be a repeat offender only if the person:

- was convicted or found guilty of a relevant offence in the 5 year period before being convicted or found guilty of the disqualifying offence; or
- is convicted or found guilty of one or more relevant offences concurrently with being convicted or found guilty of the disqualifying offence, and one or more of the relevant offences were committed before the disqualifying offence.

The effect of section 4F (3) (a) is to preserve the current 5 year time frame for taking previous convictions into account during the transition from the current scheme to the new scheme. In section 4F (3) (b), the ‘repeat offender’ principle of statutory construction is expressly excluded by the inclusion of the words ‘concurrently with being convicted or found guilty’.

New section 4F (5) defines the term ‘relevant offence’. Under existing section 4D a person is a repeat offender for a disqualifying offence if the person commits what is termed a ‘relevant offence’. As that section stands, a relevant offence is a disqualifying offence, an offence in another Australian jurisdiction that corresponds to a disqualifying offence, an offence of culpable driving whether or not it involved alcohol, certain offences against the *Road Transport (Safety and Traffic Management) Act 1999* about reckless, dangerous and menacing driving and certain offences against the *Road Transport (Driver Licensing) Act 1999* about driving or fraudulently applying for a driver licence while disqualified or after licence suspension, cancellation or refusal and contravention of conditions of a restricted licence.

The definition of ‘relevant offence’ is amended so that it covers a disqualifying offence, a corresponding disqualifying offence or a culpable driving offence involving impairment by alcohol or a drug. The omitted offences are not impairment based offences and are not considered appropriate in the context of disqualifying offences which do relate to driving while impaired by alcohol or a drug.

Section 4F may be regarded as limiting the right in section 24 of the *Human Rights Act 2004*, in that it allows the Court to have regard to a previous offence when considering the penalty to be applied in relation to a subsequent offence. However, given the specific deterrence value of repeat offender provisions, it is believed that the inclusion of section 4F is justified and proportionate given the need to discourage repeat drink driving and is among the least restrictive measures reasonably available to achieve the purpose.

New section 5 deals with the authorisation of operators. This section replaces sections 6 (1) and (1A) of the principal Act, which provide for the chief police officer to authorise a police officer to carry out breath analyses or oral fluid analyses, respectively, if the police officer has completed a course of instruction approved by the Minister to the satisfaction of the chief police officer. Under section 6 (4), an authorisation is a notifiable instrument.

New section 5 (1) provides that the chief police officer may authorise a police officer to carry out a breath analysis or an oral fluid analysis, or both, for the Act. New section 5 (2) makes it clear that the authorisation may be given only if the chief police officer considers the police officer is suitably qualified to carry out the relevant type of analysis. It is considered that the chief police officer is better placed than the Minister to assess whether the training available to police is appropriate and relevant for operational requirements, therefore the requirement for the Minister to approve courses has been omitted.

New section 5A requires the chief police officer to keep a register of officers who are authorised under section 5. At present, section 6 (4) the principal Act provides for authorisations of breath analysis instrument operators to be notified on the Legislation Register; this system has become unwieldy, with over 80 separate authorisation instruments currently notified on the Legislation Register, and it can sometimes be time difficult to find out when a particular police officer was authorised. Accordingly, the requirement for an authorisation to be a notifiable instrument is omitted. The new provision will ensure that information about the police officers who are authorised to carry out breath analyses is up to date and publicly accessible. The register must be available for public inspection, free of charge, during normal business hours on any business day. For the privacy of police officers, the register need only contain an authorised officer's service number.

New section 5B provides that the road transport authority may appoint analysts for the purposes of the Act, and new section 6 provides for the road transport authority to approve laboratories for the purposes of the Act. Currently the appointment of analysts and approval of laboratories is a function exercised by the Minister. Under the amended provisions, these approvals will be a function of the road transport authority, which will bring these approval processes into line with other approvals or authorisations under the road transport legislation (see for example the *Road Transport (General) Act 1999*, section 19; the *Road Transport (Driver Licensing) Regulation 2000*, section 15A; or the *Road Transport (Vehicle Registration) Regulation 2000*, Division 6.3.2.

Clause 9 New division 2.1

This clause inserts new division 2.1 into the principal Act before existing section 8 (noting that there is currently no section 7 in the principal Act).

New division 2.1 is headed '**Important Concepts - alcohol and drug tests**'.

New section 7 sets out the meaning of alcohol screening device. This provision is based on former section 5(1) of the principal Act, however it provides for alcohol screening devices to be prescribed by regulation rather than approved by the Minister. Modern alcohol screening devices used by Australian police forces are extremely reliable and effective devices that provide an almost instantaneous reading to indicate the presence (and in most cases, the concentration) of alcohol in

a person's breath. The regulations included in the schedule to the Bill list the screening devices that are prescribed for the purposes of the principal Act.

New section 7A sets out the meaning of breath analysis instrument. This provision is based on former section 5A of the principal Act.

New section 7B sets out the meaning of drug screening device. The regulations will prescribe the devices for use in drug testing motorists in the ACT. In brief, a drug screening device is a disposable drug testing kit that is activated by a person's oral fluid when that fluid is collected in the relevant part of the device, in accordance with the directions of the police officer supervising the screening test. A drug screening device tests drivers for the presence of prescribed drugs.

New section 7C defines the concept of *oral fluid analysis instrument*. The regulations will prescribe the instruments for use in drug testing motorists in the ACT. In brief, an oral fluid analysis instrument is a portable machine that undertakes an almost immediate analysis of a sample of oral fluid to ascertain whether prescribed drug is present in the sample.

New section 7D provides that the regulations may make provision for the testing and maintenance of alcohol screening devices, breath analysis instruments and oral fluid analysis instruments, including the persons who may carry out the testing and maintenance. A similar regulation-making provision exists in relation to the testing, maintenance and sealing of traffic offence detention devices: see section 24 of the *Road Transport (Safety and Traffic Management) Act 2000*.

The Bill then inserts another division heading, which will create new Division 2.2 after new section 7D. The new division heading is 'Alcohol - screening tests'.

Clause 10 Section 8 heading

This clause replaces the heading for section 8. The new heading specifically refers to alcohol screening tests. The former heading referred to screening tests. The change reflects the separation of alcohol testing provisions from drug testing provisions by this amending Bill.

Clause 11 Section 8

This clause replaces the term 'a screening test' with 'an alcohol screening test' in section 8. The change reflects the separation of alcohol testing provisions from drug testing provisions by this amending Bill.

Clause 12 Section 9 heading

This clause replaces the heading for section 9. The new heading specifically refers to alcohol screening tests. The former heading referred to screening tests. The change

reflects the separation of alcohol testing provisions from drug testing provisions by this amending Bill.

Clause 13 Section 9

This clause replaces the term ‘a screening test’ with ‘an alcohol screening test’ in section 9. The change reflects the separation of alcohol testing provisions from drug testing provisions by this amending Bill.

Clause 14 Section 10 heading

This clause replaces the heading for section 10. The new heading specifically refers to alcohol screening tests. The former heading referred to screening tests. The change reflects the separation of alcohol testing provisions from drug testing provisions by this amending Bill.

Clause 15 Section 10

This clause replaces the term ‘a screening test’ with ‘an alcohol screening test’ in section 10. The change reflects the separation of alcohol testing provisions from drug testing provisions by this amending Bill.

Clause 16 Section 11, 12 and 12 AA

This clause inserts new division 2.3 which deals with confirmatory tests for alcohol. New section 11 is based on existing section 11 with modifications to omit references to drug testing and to accommodate the prescribed alcohol concentration for special drivers. New section 11 provides that where an alcohol screening test indicates that a person has the prescribed concentration of alcohol in the person’s breath, or the person refuses a screening test, the person may be detained for breath analysis. The power to detain a person for carrying out breath analysis is not new and has existed since the principal Act was first made as the *Motor Traffic (Alcohol and Drugs) Ordinance 1977*. It should be noted that the period of time for which a person can be detained under the principal Act is very limited - existing section 14 contains restrictions that serve to limit the total time for which a person can be kept in custody for testing under the principal Act, to a maximum of 2 hours - in practice this is usually less. These limits ensure that the power to detain a person for testing is not used to hold people for purposes unrelated to alcohol or drug testing.

The principal Act could not operate effectively without a legal basis for requiring people to remain with police while tests are carried out - that legal basis is provided by authorising their detention for testing. To the extent that this short period in police custody can be seen as interfering or restricting human rights, it is believed that this interference is a reasonable limitation that can be demonstrably justified as necessary for ensuring the effective operation of the alcohol and drug testing scheme established by the Act, which is an integral part of the Territory’s road safety strategy.

New section 11 (3) has been included to reflect the new zero alcohol concentration for special drivers, and provides that if a police officer has reasonable cause to suspect that the person is a special driver, the prescribed concentration for the person for the purpose of the screening test is the prescribed concentration for a special driver. While the Government notes the Committee has commented previously on the use of 'reasonable grounds to believe' as an alternative to 'reasonable cause to suspect', the Government has chosen to use the test of 'reasonable cause to suspect' to maintain consistency with existing provisions of the principal Act, such as sections 8, 9 and 10, which also use the concept 'reasonable cause to suspect'. In practice, the difference in wording is not likely to result in different outcomes for special drivers, as the police will generally be able to verify the driver's licence status from the rego.act database or other databases reasonably quickly even if the person is not carrying his or her licence at the time.

New section 11 (4) is based on existing section 11 (3) of the principal Act, and requires a person to be taken for a breath analysis as soon as practicable to a police station or other convenient place. The Bill includes an example to illustrate when a person may be taken as soon as practicable to a convenient place.

New section 12 is substantially based on existing section 12 of the principal Act, modified to omit references to drug testing, which will be located to a division of their own, and to update the drafting style. It provides for a person who is taken into custody for breath analysis under section 11 to give a sample of breath for analysis by an authorised operator using a breath analysis instrument. The regulations may prescribe certain matters for section 12.

Clause 17 Section 13 heading

This clause substitutes a new heading for section 13, as a consequence of its location in a division dealing with breath analysis. There will be an equivalent provision dealing with privacy for oral fluid analysis, in new division 2.5.

Clause 18 Section 13 (1)

This amendment is consequential on the amendment to establish a register of authorised operators under new section 5. It replaces the term 'approved operator' with 'authorised operator'.

Clause 19 Section 13

This amendment omits the words 'or oral fluid and is consequential on the separation of the provisions dealing with alcohol testing from the provisions dealing with drug testing.

Clause 20 New division 2.4

This clause inserts new division 2.4 and new division 2.5, consisting of new sections 13A to 13G. Several of these sections are based on existing sections in the principal Act, while others are new provisions that are included to facilitate the operation of the new drug testing scheme inserted by the *Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Act 2010*. Where a section is substantially based on an existing provision, this is explained in the relevant notes. To the extent that these amendments have an impact on human rights, it is suggested that these limitations are justified on the basis that the amendments are necessary for the effective operation of the random drug testing provisions passed by the Assembly in June 2010, as evidenced by the fact that similar provisions exist in other jurisdictions that have implemented effective random drug testing schemes in recent years.

New section 13A is based on section 8 of the principal Act, but the provision has been modified to deal only with drug screening tests. It has also been modified in two other ways to reflect technical aspects of drug screening tests. Firstly, due to the way the drug screening tests are physically constructed, they can quite easily break or malfunction after a person has applied oral fluid to the testing surface. Therefore, the first modification is to permit the police to request the person to undergo '1 or more' drug screening tests, so that a valid test can be completed. A similar provision is found in section 18B (1) of the *NSW Road Transport (Safety and Traffic Management) Act 1999*.

The second modification is the inclusion of subsection (2), which requires a person to remain at the place the test is being carried out until the test is completed. Tests can take several minutes to complete - the test involves a chemical reaction between substances in the buffering solution and the oral fluid sample provided by the person, which takes time to occur. A similar provision exists in the Victorian legislation: see section 55D (7) of the *Road Safety Act 1986* (Vic).

New section 13B is a modified version of section 9 of the principal Act, which contains modifications similar to those described for new section 13A. New section 13C is a modified version of section 10 of the principal Act, which contains modifications similar to those described for new sections 13A and 13B. New division 2.5 is headed 'Prescribed Drugs - confirmatory tests'. This division deals with oral fluid samples collected by authorised police officers for on-site and laboratory analysis. It should be noted that if a person is medically unable to produce sufficient oral fluid for analysis, a blood sample may be taken under division 2.7.

New section 13D is based on revised section 11, and provides for a person to be taken into custody for oral fluid analysis. Similar arguments relating to the human rights impact of this section also arise here as arise in relation to replacement section 11 of the principal Act (see pages 11 and 12 of this Explanatory Statement).

New section 13E is based on section 12 of the Act, and requires a person to give a sufficient sample of the person's oral fluid for analysis. The procedure to be followed departs from section 12 in the current Act in several respects. The most significant change is that, like section 18D (4) (e) of the *NSW Road Transport (Safety and Traffic Management) Act 1999*, it provides for laboratory analysis of all oral fluid samples collected from persons who fail a drug screening test. This section sets out a process under which a sample is taken, divided, part is analysed by an authorised operator on site and part is sealed and sent off to a laboratory for confirmatory analysis.

Allowing for the laboratory analysis of all samples will ensure that false positive and false negative results from screening tests and on-site analyses can be detected, which is important for evaluating the performance of the equipment used in the drug testing scheme. This will ensure that prosecutions are based on the results of laboratory results. The Australian Standard 4670-2006 relating to oral fluid testing for drugs does not provide for results from on-site oral fluid analysis instruments to be used in legal proceedings without confirmation by a laboratory accredited by the National Association of Testing Authorities (NATA).

Second, new section 13E differs from section 12 of the principal Act in that the regulation-making power in subsection (3) has been redrafted in simplified language, similar to the way that new section 12 in clause 16 of the Bill has been drafted. Thirdly, section 13E (5) includes additional requirements relating to tamper-evident seals and unique identifying numbers. These requirements are included to assist in preserving the evidentiary integrity of the sample.

New section 13F is very substantially based on section 13 of the principal Act and deals with precautions for privacy during oral fluid analysis. In practice, it is expected that the majority of oral fluid analyses will occur inside mobile police vehicles, which will afford a reasonable degree of privacy to the person undergoing oral fluid analysis.

New section 13G deals with confirmatory analysis of part of the oral fluid sample that has been collected, sealed, labelled and stored under section 13E. It provides that the chief police officer is to arrange for the sample to be sent to the laboratory for analysis. An analyst must arrange for the analysis of the sample to determine whether a prescribed drug is present in the sample. The provision includes an obligation to use reasonable care to retain a portion of the sample to accommodate future requests by the tested person for independent analysis of that retained portion, at the tested person's expense. The retained portion is to be kept for a year or if the Director of Public Prosecutions has requested that the sample be retained for a longer time (for example because a prosecution is still pending before the courts), that longer period.

After new section 13G, the Bill then inserts a new division heading '**Division 2.6 Restrictions on alcohol and drug tests**', before existing section 14 of the principal Act.

Clause 21 Section 14 heading

This clause replaces the section heading for section 14. This amendment updates the drafting style for the heading in line with modern drafting practice.

Clause 22 Section 14 (1)

This clause is consequential on the restructuring of part 2 of the principal Act. It redrafts existing section 14(1), which deals with restrictions on screening tests and breath or oral fluid analyses and other tests under part 2. Redrafted section 14 (1) includes a generic reference to ‘screening tests’, which is a concept that will be defined in new section 14 (5) to include alcohol screening tests and drug screening tests. It also includes references to analyses under new sections 12 and 13E. Importantly, new section 14 (1) does not materially change the purpose of section 14 - specifically, they do not alter the restrictions or time limits on testing. The purpose of this clause is to ensure those restrictions continue to apply under the amended legislation.

Clause 23 Section 14 (3)

Like clause 22, this clause is consequential on the restructuring of part 2 of the principal Act and also includes references to ‘screening tests’ and analysis under section 12 or section 13E. The amendments do not materially alter the purpose or effect of section 14.

Clause 24 Section 14 (5)

This clause inserts new section 14 (5), which defines the term ‘screening test’ for section 14. This term is used to refer collectively to alcohol screening tests and drug screening tests in section 14.

Clause 25 New division 2.7 heading

This clause inserts a heading for new division 2.7, ‘**Analysis of blood - alcohol and drugs**’ before section 15.

Clause 26 Section 15 (1) (b)

This clause redrafts existing section 15 (1) (b) of the principal Act to clarify the situations where it is not practicable to carry out a breath or oral fluid analysis, to remove potential ambiguity in the existing provision arising from the use of the generic term ‘the analysis instrument’.

It also inserts new paragraph 15 (1) (c) to allow a blood test to also be carried out where an uninjured person is unable to provide sufficient oral fluid for analysis under section 13E. This amendment will bring people who are medically unable to produce

enough oral fluid onto the same footing as people who are certified as being medically unfit to undergo breath or oral fluid analysis: see section 14 (3) (b) of the principal Act.

While the amendment will undoubtedly have an impact on the human rights of the small number of people who are unable to produce enough oral fluid and who will be required to undergo the more invasive procedure of a blood test instead, it is believed that this impact on human rights is a “reasonable limitation” within the meaning of section 28 of the *Human Rights Act 2004*. In summary, the measure is believed to be justified if it is consistent with existing policy and practice, it will apply only where other less invasive methods (oral fluid testing) have been tried unsuccessfully and its purpose is to ensure that people who have failed or refused a drug screening test can be required to undergo more substantive testing to confirm the presence (or absence, as the case may be) of a prescribed drug.

Clause 27 Section 15 (3)

This clause is a technical drafting amendment to explain references to the terms ‘taking of a blood sample’ and ‘analysis of a blood sample’.

Clause 28 Section 15 (7), (8) and (9)

This clause replaces existing subsections (7) to (9) with new sections (7) and (8). The new provisions require the sample taker to-

- put the sample of blood into a single container;
- label it with essential details such as the sample taker’s name, the tested person’s name, the date and time the sample was taken;
- seal the container with a tamper-evident seal marked with a unique identifying number; and
- place the container into a one-way box.

The police will then arrange for the sample to be collected from the one-way box by an analyst.

The unique identifying number mentioned in new section 15 (7) will be recorded on the documentation relating to the sample that is given to the tested person under section 15A and in any evidentiary certificates relating to the sample.

Clause 29 Section 15AA (2) to (4)

This clause amends section 15AA, which deals with taking samples from people in hospital. It replaces existing sections 15AA (2) to (4) with new sections 15AA (2) and (3), which mirror the amendments made in relation to new section 15 (7) and (8) by clause 28.

Clause 30 Sections 15A and 15B

This clause inserts replacement sections 15A and 15B, which deal with analysis of blood samples.

New section 15A explains what must happen to a sample of blood collected under sections 15 or 15AA once an analyst has collected the sealed container from the one-way box. Section 15A (2) provides that the analyst must arrange for an approved laboratory to analyse the sample to work out the blood alcohol concentration as soon as practicable. Section 15A (3) applies where a police officer has reasonable cause to suspect that a driver has a drug other than a prescribed drug or alcohol in the person's body, or that the person's behaviour is affected by the presence of a drug other than a prescribed drug or alcohol. In such cases, the police officer may ask the analyst to work out whether one or more such drugs are present in the sample and if so, in what quantity, concentration or other measurement they are present. Section 15A (4) requires the analyst to comply with the request so far as practicable.

Sections 15A (5) to (8) deal with setting aside part of the sample for possible future analysis. The analyst is required to take reasonable care to ensure that part of the sample is preserved in the event of a request by the tested person to send the sample for independent analysis at the tested person's expense. The cost of the further testing, will be at the tested person's expense. In general, the tested person will have one year to make such a request, unless the Director of Public Prosecutions has requested the laboratory to retain the sample for a longer period. If the tested person does request that part of the sample be made available, it must be sent to the nominated laboratory as soon as practicable.

The requirement for an analyst to take 'reasonable care' to ensure that part of the sample is preserved, rather than, for example, of ensuring that a part of the sample is kept for later analysis, reflects a variety of situations which might affect such a requirement. The quantity remaining is dependant on the quantity of blood taken and whether or how many tests for drugs other than prescribed drugs or alcohol are carried out.

New section 15B deals with blood analysis statements. It requires the chief police officer to ensure that a tested person is given a statement, as soon as practicable after a blood analysis is carried out under section 15A. The blood analysis statement must contain the following details:

- when and where the sample was taken;
- the unique identifying number on the tamper-evident seal;
- the results of the analysis;
- where the remainder of the sample is being held;
- that the person will be notified if the Director of Public Prosecutions requests that the sample be held past the one year period;
- the person's right to request that part of the sample be sent for independent analysis at the person's expense.

Clause 31 Section 16 heading

This clause inserts a new heading to section 16. This amendment is consequential on the amendments to section 16 (1) made by clause 32, and better reflects the purpose for which body samples may be taken.

Clause 32 Section 16 (1)

This clause amends section 16, which deals with taking body samples from certain drivers in situations where a police officer believes that the person may have a drug other than alcohol in his or her body, or where it is suspected that the person's behaviour does not arise from, or does not arise wholly from, the presence of alcohol. Section 16 currently applies to drivers suspected of committing a culpable driving offence, drivers suspected of driving under the influence of intoxicating liquor or a drug and drivers involved in accidents. The amendment removes the reference to drivers involved in accidents as it is unnecessarily duplicative. The principal Act specifically deals with taking samples of breath, oral fluid or blood from drivers or other people involved in accidents in section 9, section 13B, section 15AA and section 18A.

Clause 33 Section 16 (2)

This clause replaces the phrase 'drug other than alcohol' with the phrase 'drug (other than a prescribed drug) or alcohol'. This amendment is consequential on the passage of the *Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Act 2010*. It has the effect that samples taken under section 16 may be tested for those drugs that affect driving that are not detectable by oral fluid tests (for example, heroin, morphine or the benzodiazepine family) and avoids duplication between section 15, section 15AA and section 16.

Clause 34 Section 16 (7) to (9)

The amendments in this clause replace subsections (7) to (9) with new subsection (7) to (8), which mirror new section 15 (7) and (8), inserted by clause 28 of the Bill.

Clause 35 Section 16A

This clause omits existing section 16A and substitutes new sections 16A, section 16B and section 16C.

New section 16A explains what must happen to a body sample collected from a person under section 16. New section 16A is substantially in line with new section 15A. New section 16B deals with body sample statements.

New section 16C has the effect of allowing the Director of Public Prosecutions to request the laboratory to keep the preserved part of a sample collected from a

person under the Act, pending finalisation of any legal proceedings against the tested person. The DPP is required to notify the person about the request as soon as practicable. This will allow the person to take the opportunity, if he or she wishes, to have the sample independently tested before any criminal proceedings are finalised.

New section 16D explains when the preserved part of a sample may be destroyed. If the preserved part of the sample has not been sent to a nominated laboratory at the request of the tested person at the end of one year, and the Director of Public Prosecutions has not requested under new section 16C that it be kept, then the preserved part of the sample must be destroyed.

Clause 36 Exemptions from requirements to take blood samples or carry out examinations
Section 17 (2) (b)

This clause makes a consequential amendment to section 17 (2) (b) to update a reference to the heading to section 16, which is amended by clause 31 of the Bill.

Clause 37 Protection of police officers and medical staff
Section 18 (3) (a)

This clause changes a reference to ‘approved operator’ to ‘authorised operator’. This amendment is consequential on new section 5, which provides for the chief police officer to establish a register of authorised operators to conduct breath and oral fluid analysis for part 2 of the principal Act.

Clause 38 Section 18 (3) (a)

This clause makes consequential amendments to section 18 of the principal Act to replace a reference to former section 12 (7), which required a written statement to be given to the tested person about a breath analysis or oral fluid analysis, with a reference to new sections 12 (5) and new sections 13E (6). Those sections replicate that requirement for a breath analysis and oral fluid analysis, respectively. The amendments do not alter the substantive effect of section 18 itself.

Clause 39 Section 18B

This clause replaces section 18B, including its heading, to make it clear that the section deals with all types of samples collected under the Act. The revised section 18B also includes a reference to body samples, which are dealt with under sections 16 and 16A of the principal Act. The revised section also includes new paragraph 18B (c) to ensure that samples collected under the principal Act may be used in proceedings for an offence of culpable driving. This use of these samples was inadvertently omitted when section 18B was inserted into the principal Act. Section 10 of the current Act (remade as new sections 10 and 13C to be inserted by the Bill) provides that where a police officer has reasonable cause to suspect a person has

committed an offence of culpable driving, the police officer may require the person to undergo a screening test, thus it is apparent that the legislature intended that the persons suspected of involvement in culpable driving offences should be subjected to drug and alcohol testing under the principal Act. This amendment ensures that samples taken from these suspects can be used for their intended purpose.

Clause 40 Section 19

This clause remakes section 19 of the Act. This section creates the central offence in the Act of a person being a driver with the prescribed concentration of alcohol. The section is remade to update its terminology, particularly to reflect the amendments to the concept of 'prescribed concentration', which has the element of being over a particular concentration built into the relevant definition in new section 4E (e.g. 'more than 0.0g in 100 mL of blood or 210 mL of breath' or '0.05g or more in 100 mL of blood or 210 mL of breath').

As the previous offence was enacted before the *Criminal Code 2002*, the common law applied to its interpretation. With its remaking by this Bill, the *Criminal Code 2002* will now apply to this offence. The provision has been recast slightly so that strict liability is expressly stated to apply to this offence.

Drink driving offences, as with many road safety provisions, are usually interpreted by the courts in non-criminal code jurisdictions as being offences to which either absolute or strict liability applies: see for example the discussion in *Welsh v Donnelly* [1983] 2 V.R. 173 at 177, which includes a discussion of the principle in *Proudman v Dayman* [1941] HCA 28; and specifically in relation to drink driving related offences: *Skase v Holmes* (unreported, Supreme Court of Victoria, 11 October 1995) and *Hausman v Shute* [2006] ACTSC 54, where offences of this nature were held to be either absolute or strict liability offences. A similar approach has been taken to the interpretation of driving under the influence laws in the United States: see for example *Leocal v Ashcroft, Attorney-General and others* (03-583) 543 U.S. 1 (2004), where it was held that driving under the influence was an offence for which there is either no *mens rea* or, possibly negligence as a mental element in that particular case.

In re-enacting section 19, the intention is that the remade provision will continue to operate in much the same way as the provision that it replaces, subject to the new concept of 'prescribed concentration' mentioned above.

Clause 41 New section 19B

This clause inserts a new section 19B into the principal Act to create a defence for special drivers for 'innocently' consumed alcohol. A similar provision for novice drivers exists under section 11A of the NSW *Road Transport (Safety and Traffic Management) Act 1999*. The defence in new section 19B applies if a special driver is charged with an offence against remade section 19 and driver's alcohol concentration is not more than 0.02 g in the relevant amount of breath or blood. It

is a defence if the special driver proves that the concentration of alcohol in the person's blood or breath was caused by—

- (a) the consumption of an alcoholic beverage that formed part of a religious observance; or
- (b) the consumption or use of a substance that was not, entirely or partly, consumed or used for its alcohol content.

The new section includes as an example of a substance for paragraph (b) food or medicine that includes alcohol. The defendant has the burden of proof because the defence arises from matters peculiarly in the defendant's knowledge. The note explains that under section 59, the defendant bears a legal burden in relation to this matter. This means that the defendant is required to adduce evidence to establish this matter on the balance of probabilities, under section 60 of the *Criminal Code 2002*. The defendant is better placed than the prosecution to know and obtain evidence about items that he or she had consumed prior to driving and the purpose for which the substance was consumed.

**Clause 42 Driving with prescribed drug in oral fluid or blood
New sections 20 (1A) and (1B)**

This clause inserts two new subsections into section 20, which is the primary drug driving offence provision.

New section 20 (1A) explains that strict liability applies to this offence. This amendment brings the offence in section 20 into line with the offence in section 19 and ensures it will operate as it was intended to do so. Although section 20 was inserted in June 2010, it was closely modelled on section 19 of the current Act - a pre-Criminal Code provision - and inadvertently failed to provide for the application of strict liability to this offence.

New section 20 (1B) is an evidentiary provision, similar in purpose to section 19 (4). It provides that a person is taken to have a prescribed drug in his or her oral fluid (new paragraph 20 (1B) (a)) or blood (new paragraph 20 (1B) (b)) if an analysis conducted under section 13 G (for oral fluid) or section 15A (for blood) confirms the presence of the prescribed drug. This amendment ensures that the evidence that the Court has available when hearing a charge under section 20 are the results of an analysis from a NATA accredited laboratory.

**Clause 43 Defence if person did not intend to drive motor vehicle
Section 21 (b)**

This clause makes a consequential amendment to section 21 (b), to reflect the changed way in which the offence of section 19 is expressed to accommodate the new concept of 'prescribed concentration' in new section 4C, inserted by clause 8.

Clause 44 Section 21 (as amended)

This clause provides for section 21 to be relocated as section 19A after it is amended, so that it comes after section 19 (the offence provision to which it relates) in the principal Act.

Clause 45 Section 22A

This clause makes two amendments to the offence provision in section 22A, which deals with refusing or failing to provide an oral fluid sample. The first amendment is new section 22A (3) which explains that this is a strict liability offence. It should be noted that the equivalent offence under section 22 of the principal Act of failing to provide a breath sample, which is a pre-Criminal Code provision, has been held to be an absolute or strict liability offence: *Hausman v Shute* [2006] ACTSC 54. The second amendment is to include in new section 22A (4) a specific defence that the person is medically unable to provide oral fluid sample. Section 18D (3) of NSW *Road Transport (Safety and Traffic Management) Act 1999* is a similar defence provision.

Clause 46 New section 22B

This clause inserts new section 22B, which makes it an offence to fail to stay for a drug screening test when directed by a police officer. This offence is linked to the requirement in new sections 13A (2), 13B (2) and 13C (2) to remain in the place where the screening test is being carried out. This offence is a strict liability offence, like other similar offences in recent ACT legislation with a road safety focus that involve failing to follow a direction given by a police officer or authorised person. For examples of other recent strict liability offences that involve a failure to follow a direction, see for example sections 42, 46 and 48 of the *Dangerous Goods (Road Transport Act 2009)* and section 128 of the *Road Transport (Mass, Dimensions and Loading) Act 2009*.

**Clause 47 Fines and imprisonment - section 19 offences
Section 26**

This is a consequential amendment, related to the amendments in clause 8 to new section 4D, to insert the words 'or breath' in section 26.

Clause 48 Table 26, column 2 heading

This is a consequential amendment, related to the amendments in clause 8 to new section 4E, to insert the words 'column 2 alcohol concentration level' in the table in section 26.

Clause 49 Sections 29 and 30

This clause omits these sections of the principal Act. Section 29 provides that the court may, instead of ordering a convicted person to pay fine or sentencing the person to imprisonment, make a rehabilitation program order. This option is available to the court under the *Crimes (Sentencing) Act 2005*. Section 30 gives the court a power to reduce the amount of a financial penalty to be paid by a convicted person if the person complies with a good behaviour order. However, the section's operation is contingent on section 29 as it stood before it was amended by the *Sentencing Legislation Amendment Act 2006*. The section no longer deals with financial penalties and the remission of financial penalties is a function of the Executive under the *Crimes (Sentence Administration) Act 2005*. As such, these provisions are no longer required.

**Clause 50 Automatic driver licence disqualification -first offenders, s 19
Section 32**

This is a consequential amendment, related to the amendments in clause 8 to new section 4D, to insert the words 'or breath' in section 32.

Clause 51 Table 32, column 2 heading

This is a consequential amendment, related to the amendments in clause 8 to new section 4E, to insert the words 'column 2 alcohol concentration level' in the table in section 32.

**Clause 52 Automatic driver licence disqualification - repeat offenders, s 19
Section 33**

This is a consequential amendment, related to the amendments in clause 8 to new section 4D, to insert the words 'or breath' in section 33.

Clause 53 Table 33, column 2 heading

This is a consequential amendment, related to the amendments in clause 8 to new section 4E, to insert the words 'column 2 alcohol concentration level' in the table in section 33.

Clause 54 New section 35

This clause inserts new section 35 into the principal Act. This section provides that the period for which the person is disqualified from holding or obtaining a driver licence under the Act, including any minimum disqualification period, must be reduced by the period that the person's driver licence was suspended under new section 61A of the *Road Transport (General) Act 1999*. That section (which is inserted by clause 131 of this Bill) provides for the immediate suspension of a person's driver licence for certain drink driving offences. The purpose of new section 35 is to ensure

that person is not, in effect, punished twice by being excluded from driving for a double period of time for a drink driving offence.

It should be noted that the disqualification period is not reduced if, on hearing the charge for the immediate suspension offence, a court is satisfied that the person did not in fact comply with the immediate suspension notice (for example, if the court is presented with evidence that the person nevertheless continued to drive while the notice was in force).

Clause 55 Additional powers of court

This clause omits section 38. That section provides that the powers of a court in relation to penalties are in addition to any other powers of the court. The section is unnecessary because section 9 (1) of the *Crimes (Sentencing) Act 2005* now provides that the penalty a court may impose for an offence is the penalty provided under that Act or any other territory law.

Clause 56 Section 41 heading

This clause inserts a new heading to establish division 7.1 in part 7 of the principal Act before existing section 41, and amends the heading to section 41 itself. Division 7.1 will deal with evidence about alcohol-related tests. There will also be a division to deal with evidence about drug-related tests, and a division to deal with other provisions about evidence.

Clause 57 Section 41 (1) (a) (i)

This amendment is consequential on the amendment to establish a register of authorised operators under new section 5. It replaces the term ‘approved operator’ with ‘authorised operator’.

Clause 58 Section 41 (1) (a) (ii)

This amendment is consequential on the definition of ‘breath analysis instrument’ in new section 7A, inserted by clause 9.

Clause 59 Section 41 (1) (a) (iv) and (ix)

This amendment is consequential on the definition of ‘breath analysis instrument’ in new section 7A, inserted by clause 9.

Clause 60 Section 41 (1) (aa)

This clause omits paragraphs that are no longer required in section 41, as the provisions for evidentiary certificates relating to drug-related tests will be relocated to new division 7.2 of the principal Act.

Clause 61 Section 41 (1) (b) (i)

This amendment is consequential on the amendment to establish a register of authorised operators under new section 5. It replaces the term ‘approved operator’ with ‘authorised operator’.

Clause 62 Section 41 (1) (b) (ii)

This amendment is consequential on the definition of ‘breath analysis instrument’ in new section 7A, inserted by clause 9.

Clause 63 Section 41 (1) (b) (iv)

This amendment is consequential on the definition of ‘breath analysis instrument’ in new section 7A, inserted by clause 9.

Clause 64 Section 41 (1) (b) (vi)

This is a technical drafting amendment to omit what appears to be a superfluous word.

Clause 65 Section 41 (ba)

This clause omits paragraphs that are no longer required in section 41, as the provisions for evidentiary certificates relating to drug-related tests will be relocated to new division 7.2 of the principal Act.

Clause 66 Section 41 (1) (c) and (d)

This clause makes consequential amendments to the evidentiary certificate provisions in section 41 (1) (c) that deal with written statements that are printouts from a breath analysis instrument, to update references to these instruments.

New section 41 (1) (d) provides for evidentiary certificates by a doctor or nurse who takes a blood sample or body sample from a person under the Act. The amendments ensure that the evidentiary certificates cover the revised processes under amended part 2 of the principal Act for taking blood, placing it into a container, labelling the container as required, sealing the container with a tamper-evident seal marked with a unique identifying number and placing the container in a one-way box.

Clause 67 Section 41 (1) (e)

This clause makes consequential amendments to section 41 (1) (e), to remove references to drug-related tests, as they will be dealt with in new division 7.2.

Clause 68 Section 41 (1) (f)

This clause omits this provision, as its content has essentially been subsumed into new section 41 (1) (d).

Clause 69 Section 41 (1) (h)

This clause makes consequential amendments to the evidentiary certificate provisions in section 41 (1) (h), which provides for evidentiary certificates by analysts. The amendments ensure that the evidentiary certificates detail certain matters. These matters include that the person signing the certificate was an analyst, that the person analysed the sample at an approved laboratory, that the sample was labelled and sealed as required with a tamper-evident seal marked with a unique identifying number, that the seal did not appear to have been interfered with, the analysis that was undertaken, the results that were obtained and that the analysis was accurate.

Clause 70 New division 7.2

This clause inserts new division 7.2 before section 41A. The provisions in this division largely mirror the provisions in division 7.1, with necessary modifications to accommodate the procedural differences between alcohol and drug testing under part 2 of the principal Act.

New section 41AA deals with evidentiary certificates for drug related tests. This provision is based on paragraph 41 (1) (aa) and (ba) of the principal Act, as amended by this Bill. It provides for evidentiary certificates by an authorised police officer in relation to a sample given under new section 13E of the principal Act, and also in relation to proposed samples in circumstances where a person was required to give the sample under that section but did not do so.

New section 41AA (3) provides that a written statement that is a print-out from an oral fluid analysis instrument is evidence of that matters that it states.

New section 41AA (4) makes provision for certificates by doctors and nurses about their opinion as to whether it is detrimental for a person to comply with a requirement to undergo a screening test or a breath or oral fluid analysis; this provision is relevant for the purposes of the restrictions on screening and analyses in section 14 (3) of the principal Act, and are also relevant in relation to a defence to a charge under sections 22 or 22A of the principal Act, which deal with refusing to provide a breath sample or oral fluid sample, respectively.

New section 41AB provides for evidentiary certificates relating to analysis of oral fluid samples by analysts. The *Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Act 2010* inadvertently omitted a provision for evidentiary certificates by analysts although it did provide for laboratory analysis of oral fluid samples. This provision details the matters that may be included in an evidentiary

certificate by an analyst for the analysis of an oral fluid sample. These matters include that the person signing the certificate was an analyst, that the person analysed the sample at an approved laboratory, that the sample was labelled and sealed as required with a tamper-evident seal marked with a unique identifying number, that the seal did not appear to have been interfered with, the analysis that was undertaken, the results that were obtained and that the analysis was accurate.

New section 41AC provides for evidentiary certificates by a doctor or nurse where a blood sample is not taken from a person in hospital or in police custody, either because the proposed sample taker was of the opinion that taking the sample would be detrimental to the health of the person to be tested, or because he or she believed a sample had already been taken. Although not expressly stated in section 41AC as a reason for not taking a sample, if the accident referred to in section 41AC (d) (ii) happened more than 6 hours before the police officer's request, then there is no obligation on the sample taker to collect a sample of the person's blood for testing.

New section 41AD provides for evidentiary certificates in relation to blood samples or body samples that are analysed for drugs. The matters to be included in a certificate are that the person signing the certificate was an analyst, that the person analysed the sample at an approved laboratory, that the sample was labelled and sealed as required with a tamper-evident seal marked with a unique identifying number, that the seal did not appear to have been interfered with, the analysis that was undertaken, the results that were obtained and that the analysis was accurate.

New section 41AE makes provision for recognising NSW evidentiary certificates for drug-related tests. Section 41 (1) (g) of the principal Act makes provision for NSW evidentiary certificates in relation to alcohol-related tests. These provisions are useful as they enable the ACT and NSW police forces to conduct road safety operations with a regional focus.

Clause 71 Section 41A

This clause replaces existing section 41A, and inserts before new section 41A a new division heading for division 7.3 '**Other provisions about evidence**'.

Like its predecessor, on which it is based, new section 41A deals with evidence for insurance purposes - or rather, it explains when evidence about an alcohol or drug test conducted under part 2 is not admissible in a proceeding in relation to an insurance contract. A similar provision, dealing with the exclusion of evidence of alcohol and drugs tests in insurance proceedings, is found in section 37 of the *NSW Road Transport (Safety and Traffic Management) Act 1999*. The *Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Act 2010* inadvertently omitted to include provisions addressing oral fluid tests for prescribed drugs in the provisions for evidence in insurance proceedings. The opportunity has been taken to update the drafting of this provision and to remove obsolete references to repealed provisions of the *Crimes Act 1900*.

Clause 72 Effect of non-compliance - analysis of breath or blood

This clause is a technical amendment to section 42 to create a tagged-term definition for ‘a *testing provision*’ .

Clause 73 Section 42 (2)

This clause consequentially redrafts section 42 (2) to reflect the revised concept of ‘prescribed concentration’ in new section 4E and to simplify the drafting of the provision. It does not alter the intention or policy behind the existing provision. Section 42 explains that where there has been a technical failure to comply with a requirement of the legislation relating to a test, a charge cannot proceed unless the court is satisfied that if there had been compliance with the requirements, the results would have been the prescribed concentration for the person. It allows the court to overlook minor procedural irregularities in the testing process, but only where the court is satisfied that the results would have shown that the person had the prescribed concentration.

**Clause 74 Section 42 Effect of non-compliance - analysis of oral fluid
Section 42AA**

This clause is a technical amendment to section 42AA to create a tagged-term definition for ‘a *testing provision*’ .

Clause 75 Section 42AA (2)

This clause consequentially redrafts section 42AA (2) to simplify the drafting of the provision to align with new section 42 (2), as amended by clause 73. It does not alter the intention or policy behind the existing provision.

**Clause 76 Effect of non-compliance - analysis of body sample
Section 42A (1)**

This clause is a technical amendment to section 42A to create a tagged-term definition for ‘a *testing provision*’ .

Clause 77 Section 42A (2)

This is a drafting amendment that replaces a longer phrase with the tagged-term ‘the testing provision’ to improve the drafting of the provision.

**Clause 78 Effect of non-compliance - refusal to give sample of breath
Section 42B (1)**

This clause is a technical amendment to section 42B to create a tagged-term definition for ‘a *testing provision*’ .

Clause 79 Section 42B (2)

As with the amendment in clause 73, this clause consequentially redrafts section 42B (2) to reflect the revised concept of ‘prescribed concentration’ in new section 4E and to simplify the drafting of the provision. It does not alter the intention or policy behind the existing provision.

**Clause 80 Effect of non-compliance - refusal to give sample of oral fluid
Section 42C (1)**

This clause is a technical amendment to section 42C to create a tagged-term definition for ‘a *testing provision*’.

Clause 81 Section 42C (2)

As with the amendment in clause 73, this clause consequentially redrafts section 42C (2) to simplify the drafting of the provision. It does not alter the intention or policy behind the existing provision.

Clause 82 Section 43 heading

This clause amends the heading to section 43 to say ‘Oral evidence about part 7 certificate.’ This amendment is consequential on the inclusion of new provisions dealing with evidentiary certificates in part 7 of the principal Act.

Clause 83 Section 43 (2)

This clause replaces section 43 (2). New section 43 (2) (a) deals with witnesses in relation to certificates about alcohol tests, while new section 43 (2) (b) deals with witnesses in relation to drug-related tests. A longer period of time is provided for calling witnesses in relation to drug-related tests than for alcohol-related tests because there is a much smaller pool of qualified witnesses in Australia who are able to give evidence in relation to these certificates and it can be difficult to schedule their time.

Clause 84 Section 43 (3)

This clause makes a consequential amendment to replace a reference to section 41 with a reference to new divisions 7.1 and 7.2.

Clause 85 Rehabilitation programs

This clause omits part 8, which will be replaced with a new scheme for alcohol education programs under the *Road Transport (Driver Licensing) Regulation 2000*: see parts 3 and 4 of this Bill.

**Clause 86 Power of arrest
 Section 45**

This clause makes a consequential amendment to section 45 to replace the term ‘approved screening device’ with ‘screening device’.

Clause 87 New section 45 (2)

This clause is a consequential amendment to explain to that for section 45 (1), ‘screening device’ includes an alcohol screening device or a drug screening device.

Clause 88 Penalty for escaping from custody

This clause repeals section 46, which creates an offence of escaping from the custody of a police officer if the person has been taken into custody under certain provisions of the Act. Instead, section 160 of the *Crimes Act 1900* has an offence of escape from lawful arrest and other forms of custody that has a higher and more relevant penalty.

Clause 89 Section 47A

This clause makes a technical amendment to insert the word ‘drug’ before ‘screening’, to make it clear that the limitation in this section only applies in relation to drug screening tests. This amendment is consistent with the intention of this section, which was introduced during the Assembly debate on the *Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Act 2010*.

Clause 90 New sections 47B and 47C

This clause inserts new section 47B and section 47C into the principal Act.

New section 47B provides that if police officer has reasonable cause to suspect that a person’s ability to drive safely may be affected by a prescribed drug (for example, because the person has failed a drug screening test or because of the person’s driving or behaviour), the police officer may give the person a written direction not to drive for a period of up to 12 hours. A breach of a written direction is a strict liability offence.

The purpose of the provision is to give drug-affected drivers sufficient time to recover from the effects of prescribed drugs before they drive again. It has been developed as an alternative to arrest, licence suspension or vehicle confiscation powers. The power provides for a short-term direction not to drive while the person is impaired by a drug, in a way that does not affect the person’s freedom, property rights or driver licence status. This power is not considered necessary in relation to drink driving offences in light of the new provisions for immediate licence suspension notices for higher range offences. Lower range offenders often cease to be within

the prescribed concentration fairly soon after the 2 hour period. By contrast, some drugs continue to impair driving skills for several hours after peak plasma concentration has been reached⁶, or may even have a greater impairing effect as they are being withdrawn rather than when they are at peak concentration.

The chief police officer can review the direction at the request of the person, and may revoke the direction if the chief police officer is satisfied that the person is no longer impaired. In practice, it is expected that the chief police officer would delegate this review power to relevant senior staff in traffic operations, so that the internal review function operates as a quick, cheap and accessible means of reviewing decisions. It is a way in which the provision seeks to respect human rights while promoting road safety. Given the short maximum duration of a direction (12 hours) external review is not considered practicable.

Section 47B uses the formula ‘believes on reasonable grounds’ test instead of ‘reasonable cause to suspect test’, as other provisions in the Act already use the formula ‘reasonable cause to suspect’ as a basis for requiring persons to undergo a drug screening test or an alcohol screening test. This has been done on the basis that it may cause unnecessary complications if the power to direct a person not to drive was based on a different test from the power to require people to undergo screening tests et cetera.

Failing to comply with a direction is a strict liability offence, with a maximum penalty of 10 penalty units. As mentioned in the clause notes for the offence in new section 22B of the principal Act, offences that involve a failure to follow a direction by a police officer are often strict liability offences under ACT legislation, especially where the failure involves a public safety risk (in this case, the risk is to the safety of the driver and other road users resulting from suspected drug impairment). In this case, it is believed the imposition of strict liability is a proportionate limitation on the rights in section 21 and 22 of the *Human Rights Act 2004*, especially in light of the availability of the internal review mechanism and the relatively low penalty.

⁶ ‘**Duration of Effects:** Effects from smoking cannabis products are felt within minutes and reach their peak in 10-30 minutes. Typical marijuana smokers experience a high that lasts approximately 2 hours. Most behavioural and physiological effects return to baseline levels within 3-5 hours after drug use, although some investigators have demonstrated residual effects in specific behaviours up to 24 hours, such as complex divided attention tasks. Psychomotor impairment can persist after the perceived high has dissipated. In long term users, even after periods of abstinence, selective attention (ability to filter out irrelevant information) has been shown to be adversely affected with increasing duration of use, and speed of information processing has been shown to be impaired with increasing frequency of use. Dronabinol has an onset of 30-60 minutes, peak effects occur at 2-4 hours, and it can stimulate the appetite for up to 24 hours.’ Extract from Drugs and Human Performance Fact Sheet, National Highway Traffic Safety Administration, United States Government
<http://www.nhtsa.gov/people/injury/research/job185drugs/cannabis.htm>

New section 47C makes it clear that random breath testing operations and random drug testing operations can be carried out simultaneously. Police in other jurisdictions often run joint operations targeting drink and drug driving. Sometimes these operations are run in conjunction with heavy vehicle inspections, driver licensing or roadworthiness checks.

Clause 91 New part 21

This clause inserts new part 21 (Transitional) into the principal Act. Part 21 contains transitional provisions that will expire after a fixed period.

New section 105 explains the concept of ‘commencement day’ for part 21, which is when section 8 of the amending Bill commences.

New sections 106 to 108 preserve existing authorisations of breath analysis instrument operators, appointments of analysts and approvals of laboratories for a transitional period of 6 months to ensure that there is no hiatus in these matters and that there is sufficient time for implementation arrangements to be put in place.

New section 109 (1) enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the Bill. However, the scope of the regulation must be confined to the same sphere of operation as the amended Act, be strictly ancillary to the operation of the Act and not widen the Act’s purpose. New section 109 (2) enables the making of a regulation that modifies the Act. A regulation under this section may only modify part 21 of the Act, and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

New section 109 (3) gives a regulation under section 109 (2) full effect according to its terms. A provision of part 21 of the principal Act modified by regulation will operate in the same way (in relation to another provision of the Act or any other territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation. The section is not expressed, and does not intend, to authorise the making of a regulation limiting *future* enactments of the Legislative Assembly. Also, any modification by regulation of part 21 of the Act has no ongoing effect after the expiry of part 21.

New section 110 (1) provides that the part expires 2 years after the day it commences.

New section 110 (2) provides that part 21 is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies. This declaration ensures that the transitional effect of the part continues despite its expiry.

Dictionary: clauses 92 to 109 amend the dictionary as a consequence of the amendments to the principal Act made by this Bill. The amendments are straightforward and are summarised below:

Clause 92 **Dictionary, new definitions of *alcohol screening device* and *alcohol screening test***

This clause inserts definitions of these terms into the dictionary.

Clause 93 **Dictionary, new definition of *analyst***

This clause inserts a definition of this new term into the dictionary.

Clause 94 **Dictionary, definitions of *approved alcohol screening device*, *approved analysis instrument*, *approved analyst*, *approved breath analysis instrument*, and *approved drug screening device***

This clause omits these definitions from the dictionary as these terms are no longer used in the principal Act.

Clause 95 **Dictionary, definition of *approved laboratory***

This clause substitutes a revised definition of this term.

Clause 96 **Dictionary, definitions of *approved operator* and *approved oral fluid instrument***

This clause omits these definitions from the dictionary as these terms are no longer used in the principal Act.

Clause 97 **Dictionary, definition of *authorised operator***

This clause inserts a definition of this new term into the dictionary.

Clause 98 **Dictionary, definition of *breath analysis***

This clause substitutes a revised definition of this term.

Clause 99 **Dictionary, new definition of *breath analysis instrument***

This clause inserts a definition of this new term into the dictionary.

Clause 100 **Dictionary, definition of *disqualifying offence***

This clause makes a consequential amendment to this definition to reflect the new short title of the offence in section 19.

Clause 101 Dictionary, new definitions of *drug screening device* and *drug screening test*

This clause inserts definitions of these terms into the dictionary.

Clause 102 Dictionary, definition of *first offender*

This clause substitutes a revised definition of this term.

Clause 103 Dictionary, definition of *level*

This clause substitutes a revised definition of this term.

Clause 104 Dictionary, definition of *oral fluid analysis*

This clause makes a technical amendment to the definition of this term.

Clause 105 Dictionary, new definition of *oral fluid analysis*

This clause substitutes a revised definition of this term.

Clause 106 Dictionary, definition of *prescribed concentration*

This clause substitutes a revised definition of this term.

Clause 107 Dictionary, definition of *prescribed drug*

This clause substitutes a revised definition of this term.

Clause 108 Dictionary, definition of *repeat offender*

This clause amends the definition of this term.

Clause 109 Dictionary, definition of *screening test*

This clause omits the definition of this term.

Clause 110 Legislative instruments repealed

This clause formally repeals all legislative instruments made under section 6 of the principal Act, which deals with approval of operators, analysts and laboratories. The effect of those instruments is preserved during the transitional period under new part 21, inserted by clause 91 of the Bill.

Part 3 Road Transport (Driver Licensing) Act 1999

Clause 111 Driver licensing system

This clause amends section 28 of the *Road Transport (Driver Licensing) Act 1999* which provides the regulation-making power for the driver licensing system. New section 28 (2) (s) is inserted to provide for regulations to require a person convicted or found guilty of a disqualifying offence to complete a course, approved by the road transport authority, about the effects of alcohol, including its effects on driving and health.

Part 4 Road Transport (Driver Licensing) Regulation 2000

Clause 112 Driver licence condition code Table 10, item 8

This clause inserts a new item in the table for special drivers to reflect the zero alcohol concentration for special drivers. Where applicable, this code will appear as a code on driver licences for special drivers.

Clause 113 Section 20 (6), note

This is a consequential amendment to omit a note that is no longer required.

Clause 114 Section 21 (1), new definition of *driving supervisor*

This amendment, which is related to the amendments to impose a zero alcohol concentration for special drivers under the *Road Transport (Alcohol and Drugs) Act 1977*, updates the definition of *driving supervisor* in the regulation.

Clause 115 Section 21 (4)

This amendment is consequential on the amendment in clause 114 and inserts a reference to the term ‘driving supervisor’ in section 21 (4).

Clause 116 Section 21 (5)

Like clause 115, this clause the amendment in this clause is consequential on the amendment in clause 114 and inserts a reference to the term ‘driving supervisor’ in section 21 (5).

Clause 117 Section 21 (6), note

This clause omits a note that is no longer required.

Clause 118 Section 36A (3), note 3

This clause omits a note that is no longer required.

Clause 119 Section 37A (3), note 3

This clause omits a note that is no longer required.

**Clause 120 Eligibility to apply to Magistrates Court for order authorising issue of restricted licence
Section 45 (2), notes 1 and 2**

This clause updates the notes to section 45 (2) of the regulation about people who are not eligible to apply for, or be issued with, a restricted licence. This amendment is consequent on the amendments to the *Road Transport (General) Act 1999* made by clauses 133 and 134 of the Bill.

Clause 121 Section 49 (3), note

This clause omits a note that is no longer required.

Clause 122 Section 49, new note

This clause inserts a new note relating to the requirement to undertake an alcohol awareness course. This amendment is consequential on the amendments made by clause 126 of the Bill.

**Clause 123 When probationary licence must be issued
Section 52 (3), new note**

This clause inserts a new note relating to the requirement to undertake an alcohol awareness course. As with clause 122, this amendment is consequential on the amendments made by clause 126 of the Bill.

Clause 124

This clause omits a note that is no longer required.

Clause 125

This clause omits a note that is no longer required

Clause 126 New division 3.13

This clause inserts new Division 3.13 (which consists of new sections 73A to 73I) into the regulation. The effect of the provisions is that a person who is convicted or found guilty of a disqualifying offence under the *Road Transport (Alcohol and Drugs)*

Act 1977 must complete a course approved by the road transport authority before the person can be issued a restricted licence or a probationary licence. The following are disqualifying offences under the Alcohol and Drugs Act:

- having the prescribed blood alcohol concentration (section 19);
- refusing/failing to provide a breath sample (section 22);
- refusing/fail to provide a blood sample (section 23) ;
- driving under the influence of intoxicating liquor or a drug (section 24)
- any other provisions that may be prescribed by the regulations.

New sections 73C to 73F explain what happens if a person to whom the new division applies does not undertake or complete an alcohol awareness course. The provisions give effect to the policy objective that all people who are found to have committed a drink driving offence must complete such a course to obtain or retain a driver licence.

New section 73A makes it clear that the requirement to attend an alcohol awareness course applies only to people who commit a disqualifying offence on or after the day new section 28 (2) (s) of the *Road Transport (Driver Licensing) Act 1999* commences. That section provides the authority for making regulations to require drink drivers to attend an approved course.

New section 73B defines terms for the new division.

New section 73C (1) applies to a person who is found guilty (but not convicted) of a disqualifying offence and who is not disqualified from holding or obtaining a driver licence, and who has not completed an alcohol awareness course in the 12-month period prior to the date of the finding of guilt.

New section 73C (2) provides that the person must complete an alcohol awareness course within 6 months after being found guilty of the disqualifying offence.

New section 73C (3) provides that if the person fails to complete the course and provide the road transport authority with written evidence that the course has been completed, within the 6 month period, the authority must suspend the person's driver licence.

New section 73C (4) provides that the road transport authority must end the suspension if the person subsequently provides written evidence that they have completed an alcohol awareness course.

New section 73D deals with the situation where a person is convicted, or found guilty, of a disqualifying offence, who is disqualified from holding or obtaining a driver licence, is not eligible for a restricted licence and has not completed an alcohol awareness course in the 12-month period prior to the date of the conviction or finding of guilt. At the end of a period of disqualification, a person is able to be issued a probationary driver licence (see section 52 of the regulation). New section 73D (2) and (3) require the person to complete an alcohol awareness course before

the end of the period of disqualification and before the person is issued with a probationary licence. However, new section 73D (4) provides that the road transport authority must issue a probationary licence if the person subsequently provides written evidence that they have completed an alcohol awareness course after the end of the disqualification period.

Section 73E deals with the situation where a person is convicted or found guilty of a disqualifying offence, is disqualified from holding or obtaining a driver licence, the Magistrates Court makes an order authorising the issue of a restricted licence to the person and the person has not completed an alcohol awareness course in the 12-month period prior to the date of the conviction or finding of guilt. The section provides that the road transport authority cannot issue a restricted licence to the person until the person has completed and provided written evidence of the completion of an alcohol awareness course.

Section 73F deals with the situation of a person to whom section 73E applies but who is not issued a restricted licence and who does not do an alcohol awareness course. The person may be issued with a probationary licence only if the person completes an alcohol awareness course.

In practice, when people are committing a drink driving offence are caught by police they will be provided with information about the requirement that all people convicted, or found guilty, of drink driving must complete an alcohol awareness course. They will be encouraged to consider completing an appropriate course before their court case is heard as this will enable them to apply for a restricted or probationary licence in a timely way. Ultimately, it will be up to the offender when they complete the course, but they will not, unless exempted, be eligible to apply for a driver licence until the course is completed.

New sections 73G and 73H enable the road transport authority to exempt a person from the requirement to complete an alcohol awareness course on application by the person. The road transport authority can only grant such an exemption where it is satisfied that there are exceptional circumstances to justify the exemption.

New section 73I provides for the road transport authority to approve an alcohol awareness course about the effects of alcohol, including its effects on driving and health. It is anticipated that more than one type of course may be approved, in order to cater for the needs of different types of drink driving offenders. For example, it may be appropriate to have a different course content and structure for first offenders and repeat offenders and for low range and high range offenders. Corrections and health expertise will be utilised in determining course content and provision.

Clause 128 New section 87 (1) (p)

This clause amends section 87 (1) of the regulation, which deals with the circumstances in which the road transport authority can cancel, suspend or vary a

driver licence. It includes as a new ground for taking this action that a person has failed to complete an alcohol awareness course as required under new section 73C.

Clause 128 Dictionary, new definitions

This clause consequentially amends the dictionary to the regulation to insert new definitions of '*alcohol awareness course*' and '*alcohol-related disqualifying offence*'.

PART 5 ROAD TRANSPORT (GENERAL) ACT

Clause 129 New section 5A

This clause inserts new section 5A, which is a standard provision that explains the application of the Criminal Code, which applies to offences made (or remade) after the commencement of the Criminal Code. The notes to this standard provision include references to penalty units under the Legislation Act. Until the amendments made by this Bill, all the offences in the *Road Transport (General) Act 1999* pre-dated the Criminal Code.

Clause 130 Sections 58 and 58A

This clause substitutes new sections 58 and 58A for existing sections 58 and 58A of the Act. These sections are related in part to the amendments for special drivers and are about the production of driver licences and other information relevant to identifying a driver or the person who is instructing or supervising a learner driver.

Replacement section 58 has an updated section heading to make it clear that it applies to drivers of vehicles and riders of animals and to add a new requirement that a driver or rider can be required by a police officer or authorised person to state the driver's or rider's date of birth. The date of birth is important to assist in correctly identifying a driver or rider, especially where police or road transport authority records indicate there is more than one person with the same name and the recorded addresses do not match the address stated by the person. As the Criminal Code applies to replacement section 58, it is necessary to specify whether there are specific fault elements that apply to the physical elements of the provision. Section 58 (3) provides that an offence against section 58 is a strict liability offence.

The application of strict liability to this offence is consistent with the interpretation of the existing offence, especially as the existing offence provided for a defence, which included a 'reasonable excuse' component, with a legal onus of proof on the defendant consistent with the approach for proving the defence outlined in *He Kaw Teh v The Queen* [1985] HCA 43. That defence is replicated in the replacement section.

The application of strict liability to replacement section 58 is consistent with the recently enacted offences in section 209 and 228 of the *Dangerous Goods (Road*

Transport) Act 2009 relating to a dangerous goods driver licence, and sections 323 and 324 of the *Road Transport (Mass, Dimension and Loading) Act 2009* in relation to the power to request information, including name and address, from persons involved with heavy vehicles.

Replacement section 58A extends the coverage of the existing provision to people instructing, supervising or assessing learners and to people assessing the skills of heavy vehicle drivers and adds a new requirement that a person to whom the section applies may be required to state the person's date of birth, for the reasons explained in relation to replacement section 58. Like section 58, replacement section 58A is a strict liability offence with a defence provision based on the original provision that includes a 'reasonable excuse' component. New section 58A (6) includes new definitions of terms relating to driver assessors, instructors and supervisors.

Clause 131 Division 4.2 heading

This clause amends the *Road Transport (General) Act 1999* to update the heading to division 4.2 and to insert new sections 61A to 61F. The purpose of the new provisions is to allow a police officer to issue an immediate licence suspension notice to a person for drink driving offences in certain circumstances.

New section 61A inserts definitions used in division 4.2. Key concepts defined in this section include:

- ***automatic disqualification provision*** - this concept is important for understanding who is not eligible to apply for a restricted licence while subject to a period of automatic driver licence disqualification).
- ***immediate suspension notice*** and ***suspension notice*** - this is a notice given to a driver by a police officer in relation to an immediate suspension offence.
- ***immediate suspension offence*** and ***suspension offence*** - in essence, this is an offence under section 19 of the *Road Transport (Alcohol and Drug) Act 1977* where the person is over the applicable limit by 0.05g of alcohol or more, or any of the offences in sections 22 to 24 of the Act, or an offence prescribed for the definition of disqualifying offence in the *Road Transport (Alcohol and Drug) Act 1977* or an offence against section 31 (3) of the *Road Transport (Driver Licensing) Act 1999* (which is about automatic disqualification for repeat offenders for driving while not holding (and never having held) an Australian driver licence) or section 32 (3) of that Act (which is about automatic disqualification for an offence of driving or fraudulently applying for a driver licence while disqualified, or after licence suspension, cancellation or refusal).

New section 61B provides for the immediate suspension of a driver's licence where a police officer believes on reasonable grounds that a person has committed an immediate suspension offence. Subsection 61B (1) requires a police officer who believes on reasonable grounds that a person has committed an immediate

suspension offence to give the person an immediate suspension notice for the offence.

The notice must contain the details set out in subsection 61B (2), including among other matters information about the effect of the suspension notice on the person's driver licence, the person's right to drive a vehicle in the ACT, and right of the person to apply to the Magistrates Court for a stay of the suspension notice.

Subsection 61B (3) provides that a suspension notice has effect when it is served on the person. In most cases, a person will be given a suspension notice shortly after the person has undergone a breath analysis to confirm that a person has exceeded the alcohol concentration for the person by 0.05g or more.

Subsection 61B (4) sets out the consequences of being served with a suspension notice. These consequences are that a person's driver licence is suspended; the person must surrender the licence to a police officer at the time, or if that is not possible, do so as soon as practicable; the person must not drive in the ACT; and the person cannot apply for or be granted a restricted licence during the suspension period.

Section 61B (5) explains that a suspension notice ceases to have effect when any of the following things happen:

- the notice is stayed by order of the Magistrate's court;
- the proceeding for the relevant suspension offence is withdrawn or discontinued;
- the offence is dealt with by a court;
- 90 days have passed since the suspension notice was issued, and the suspension notice has not otherwise ceased to have effect under subsection (5). The effect is to limit an immediate suspension notice to no more than 3 months' duration.

It should be noted that the power to issue a suspension notice is not discretionary: the language in section 61B (1) directs a police officer to issue the notice once the officer has formed a reasonable belief as to the existence of certain facts.

The power to issue a suspension notice is an administrative sanction, in that it does not depend upon on judicial determination of guilt. That determination is reserved for the hearing of the substantive charge, and the determination of the sentence to be applied if the accused is found guilty. Similar administrative powers of immediate licence suspension for intermediate to high-range drink driving offenders are found in road safety legislation in Victoria, New South Wales and South Australia⁷, while Queensland is reviewing its immediate licence suspension provisions with a view to applying them to offenders with a blood alcohol concentration of 0.1g or more.⁸

⁷ Section 51 of the *Road Safety Act 1986* (Vic); section 205 of the *Road Transport (General) Act 2005* (NSW) and section 471AA of the *Road Traffic Act 1961* (SA).

⁸ *Drink Driving in Queensland: a discussion paper*, Department of Transport and Main Roads, Queensland, 2010, pages 45-46.

There are many other provisions in the road transport legislation that also provide for a suspension or cancellation of a driver licence or other right, permit, authority or entitlement other than by order of a court, as an administrative sanction for non-compliance with a condition of the road transport legislation. Examples of these provisions include:

- demerit point suspensions under section 18 of the *Road Transport (Driver Licensing) Act 1999*;
- driver licence or vehicle registration suspension for non-payment of infringement notice penalties under section 44 of the *Road Transport (General) Act 1999*;
- suspension of a driver licence on medical grounds under section 87 (1) (d) or (e) of the *Road Transport (Driver Licensing) Regulation 2000*.

Immediate licence suspension addresses a road safety risk by removing a driver from the road immediately (rather than having the person continue to drive until the matter is dealt with by the court) and delivers an immediate consequence of drink-driving to the offender. It will also reduce any incentive for the offender to delay having the matter dealt with by the court and would, in fact, provide an incentive to have the matter dealt with at least within the minimum disqualification period for the particular offence. It should be noted that the any period of suspension under an immediate licence suspension is 'discounted' from the term of disqualification imposed after conviction - the effect is to bring forward the disqualification period that must be served under section 26 of the *Road Transport (Alcohol and Drugs) Act 1977* if the person is convicted so that it is served in advance.

The importance of an immediate sanction was highlighted in the discussion paper on the *Road Transport (Alcohol and Drugs) Act 1977* released in mid-2008 and which stated as follows:

'The effectiveness of immediate licence suspension is also supported by a recent study of drivers in 46 US states, which has shown that immediate suspension of licence has a strong deterrent effect on repeat offenders. In particular, drivers with BAC [blood alcohol concentration] levels just above the prescribed limit who had had their licences suspended were 5% less likely than those who had not to be involved in a fatal accident. Conversely, drivers who did not have their licence suspended were much more likely to be convicted of a further drink driving offence.

The study concluded that:

"the effectiveness of a deterrence policy appears to be more strongly affected by... the speed by which punishment is applied after the offending behaviour."⁹

New section 61C provides that it is an offence to fail to surrender the person's driver licence when required to do so.

⁹ Wagenaar, A, and Maldonado-Molina, M, 'Effects of Drivers' License Suspension Policies on Alcohol-related Crash Involvement: Long-Term Follow up in 46 States', (2007), *Alcohol: Clinical and Experimental Research*, Vol 31, No. 8, pp 1399 – 1406.

New section 61D provides that the police must return surrendered driver licences to the road transport authority as soon as practicable. This is a standard provision which enables the road transport authority to keep the driver licence register up to date.

New section 61E deals with applications to the Magistrates Court for an order to stay the operation of a suspension notice. The stay order mechanism has been included rather than mechanism for internal review by a senior police officer because, given the statistically greater road safety risk posed by higher range and repeat drink drivers, it is considered more appropriate that a decision to return a driver licence to a person with a previous poor road safety record is taken by a judicial officer following a transparent judicial process than by a police officer following an internal administrative review.

Section 61E is a 'machinery' provision that details the processes for making and filing applications, the notification of parties, the role of the registrar and the filing of documents by the police and the applicant.

New section 61F deals with deciding applications for stay orders. Subsection 61F (1) provides that the Court may hear and decide an application for a stay order, and can either confirm the suspension notice, stay the operation of the suspension notice or make any other order it considers appropriate. Subsection 61F (2) places limits on the Court's power to stay a suspension order. It provides that the Court must not stay a suspension order unless it is satisfied that there are exceptional circumstances exist to justify the stay order. Subsection 61F (3) sets out the matters the Court must take into account when deciding if exceptional circumstances exist. These matters include the risk to other road users, the applicant's need for a licence and any other matter the court considers relevant.

Section 61F (4) makes it clear that a person cannot use a stay-order hearing to determine his or her guilt or innocence for the immediate suspension offence, or the imposition or level of a penalty for the offence. The purpose of this limitation is to ensure that stay order hearings are not used to undermine or bypass normal criminal justice processes.

Clause 132 Section 64

This clause remakes existing section 64 consequent on the list of provisions in existing section 64 (2) being moved to the new definition of 'automatic disqualifying provision' in new section 61A.

Clause 133 Effect of disqualification Section 66 (6) and (7)

This clause amends section 66 of the Act, which deals with the effects of a person being disqualified from holding or obtaining a driver licence. Under existing

section 66 (6) the person is not eligible to apply for, or be issued with, another driver licence, other than a restricted licence, during the period of disqualification. Existing, section 66 (7) provides that a person is not eligible to apply for, or be issued with, a restricted licence if section 67 applies to the person or if the person is disqualified from holding or obtaining an Australian driver licence in another jurisdiction. Existing section 67 sets out the limitations on the issue of a restricted licence for an automatic disqualification provision mentioned in existing section 64 (2). However, that section does not apply to a disqualification under section 32 of the *Road Transport (Alcohol and Drugs) Act 1977* (which relates to first offenders under who exceed the prescribed alcohol concentration). As a result of this exception in relation to section 32 of the *Road Transport (Alcohol and Drugs) Act 1977*, a first offender for an offence against section 19 of that Act may obtain a restricted licence.

Section 66 (6) and (7) and section 67 are restructured by the amendments in clause 133. New section 66 (6) and new section 66A are substituted for existing section 66 (6) and (7). The new provisions are brought more closely into line with current drafting practice. The note at the end of existing section 67 about other provisions of the road transport legislation that limit the issue of restricted licences is remade as note 2 to new section 66 (6).

The first element of existing section 66 (7) is that a person is not eligible to apply for, or be issued with, a restricted licence if existing section 67 applies. This element is built into the beginning of new section 66 (6): ‘Subject to any other provision of this division’. This change is made as a result of the amendment in clause 4 to separate section 67 into a series of provisions.

The second element of existing section 66 (7) is that a person who is disqualified from holding or obtaining an Australian driver licence in another jurisdiction is not eligible to apply for, or be issued with, a restricted licence. This element is remade as new section 66A.

Clause 134 Section 67

This clause substitutes new sections 67 to 67C for existing section 67.

New section 67 provides that a repeat offender under an automatic disqualification provision (see new section 61A inserted by clause 131) is not eligible to apply for, or be issued with, a restricted licence. This reflects existing section 67 (3) (b).

Existing section 67 does not apply to first offenders under the *Road Transport (Alcohol and Drugs) Act 1977* who exceed the prescribed alcohol concentration under that Act. This is because of the exclusion of section 32 of the *Road Transport (Alcohol and Drugs) Act 1977* from the definition of ‘special disqualification provision’ in existing section 67 (1). Under existing section 67 (3) (a) any other first offender under an automatic disqualification provision is not eligible to apply for, or be issued with, a restricted licence for the minimum disqualification period applying for the offence.

New section 67A deals with first offenders under an automatic disqualification provision.

As noted above, a first offender who exceeds the prescribed concentration of alcohol applicable to the person under the *Road Transport (Alcohol and Drugs) Act 1977* may be issued with a restricted licence because section 32 of the *Road Transport (Alcohol and Drugs) Act 1977* is excluded from the meaning of ‘special disqualification provision’ in existing section 67 (1) of the *Road Transport (General) Act 1999*.

New sections 67A (2) and (3) apply to such a person, but only where the person has exceeded the prescribed concentration for that person by 0.05g or more. An example would be a special driver with an alcohol concentration of 0.05g or more, or any other driver with an alcohol concentration of 1.0g or more.

New section 67A (4) and (5) provide that a first offender is not eligible to apply for, or be issued with, a restricted licence until the end of the minimum period of disqualification applying to the person under the automatic disqualification provision, other than section 32 of the A&D Act, in relation to the offence (whether or not the period is expressed to be such a minimum period). This reflects existing section 67 (3) (b).

New section 67B provides that a person who is disqualified from holding or obtaining a driver licence until a court orders otherwise is not eligible to apply for, or be issued with, a restricted licence. This reflects existing section 67 (4).

New section 67C provides that a person who is the holder of a restricted licence and who is disqualified from holding or obtaining a driver licence because of being convicted of found guilty of a offence against the law of any jurisdiction is not eligible for a restricted licence for the remainder of the period for which the person was originally disqualified. This reflects existing section 67 (5).

Clause 135 Dictionary, new definitions

This clause inserts new definitions of the following terms into the dictionary:

- *automatic disqualification provision;*
- *immediate suspension notice;*
- *immediate suspension offence;*
- *special driver;*
- *suspension notice;*
- *suspension offence.*

PART 6 ROAD TRANSPORT (GENERAL) REGULATION 2000

Clause 136 Schedule 1, part 1.1

This clause omits this part of the item, which is no longer requires as it refers to section 44 of the *Road Transport (Alcohol and Drugs) Act 1977*. That section is omitted by clause 85 of the Bill.

Clause 137 Schedule 1, part 1.4

This clause consequentially amends the schedule to the regulation to provide for review by the ACT Civil and Administrative Tribunal of a refusal by the road transport authority under new section 73G (1) (b) of the *Road Transport (Driver Licensing) Regulation 2000* to give an exemption from the requirement to complete an alcohol awareness course.

PART 7 ROAD TRANSPORT (OFFENCES) REGULATION 2005

Clause 138 Schedule 1, part 1, new item 6A

This clause updates the table of offences in Schedule 1. This particular part of the table sets out the 'driving with a prescribed drug in oral fluid or blood' offences.

Clause 139 Schedule 1, part 1, new items 8A and 8B etc

This clause updates the table of offences in Schedule 1. This particular part of the table deals with the offences of refusing to provide a sample of oral fluid, failing to provide a sample of oral fluid in accordance with the reasonable directions of a police officer and failing to stay at the place a testing is being carried out.

Clause 140 Schedule 1, part 1, items 10 to 12

This clause updates the table of offences in Schedule 1. This particular part of the table deals with the offences in section 23 of the *Road Transport (Alcohol and Drugs) Act 1977*.

Clause 141 Schedule 1, part 1,3 item 15

This clause updates the table of offences in Schedule 1. This part of the table deals with the offence in new section 47B of the *Road Transport (Alcohol and Drugs) Act 1977*.

Clause 142 Schedule 1, part 1.6, items 11 and 12

This clause updates the table of offences in Schedule 1. This part of the table deals with the offences involving driver supervisors and is consequential on terminology changes involving driver supervisors.

Clause 143 Schedule 1, part 1.7, items 6 to 8

This clause updates the table of offences in Schedule 1. This part of the table deals with offences in sections 58 and 58A of the *Road Transport (General) Act 1999* that are remade by this Bill.

Clause 144 Schedule 1, part 1.7, new item 12A

This clause consequentially amends the table to include the offence in new section 61B of the *Road Transport (General) Act 1999*.

Clause 145 Schedule 1, part 1.7, item 13

This clause consequentially amends the table to reflect the amendments to section 66 that were made by clause 133 of the Bill.

Schedule 1 Consequential Amendments

Part 1.1 Crimes Act 1900

Item 1.1 amends section 220 to update the reference to section 19 of the *Road Transport (Alcohol and Drugs) Act 1977* and to insert a reference to section 20, which is the new drug driving offence. Section 220 of the *Crimes Act 1900* deals with the power to enter premises to arrest a person for a relevant offence, and the amendment ensures that the definition of relevant offence is up to date.

Item 1.2 updates section 252F (3) (b) of the *Crimes Act 1900*. That provision explains when a young person is not in the company of a police officer in connection with the investigation of an offence, and ensures that drug screening and oral fluid analysis are treated the same way that breath analysis is treated under that provision.

Part 1.2 Road Transport (Alcohol and Drugs) Regulation 2000

Item 1.3 amends the section 4 of the regulation to substitute a new provision prescribing alcohol screening devices. Devices that are prescribed include the Alcolizer LE and the lion alcometer - noting that the latter item is intentionally prescribed, in lower case, as that is the trade name for the product concerned. The regulation prescribes as a breath analysis instrument the Dräger Alcotest 7110 MKV.

The regulation is also amended to update the provisions dealing with breath analysis statements under section 12 (5) of the *Road Transport (Alcohol and Drug) Act 1977* and to make provision for oral fluid analysis statements under section 13E (6) of that Act.

Item 1.4 amends the heading to the schedule of the regulation, which deals with the content of breath analysis statements.

Item 1.5 makes a consequential amendment to replace a reference to ‘approved operator’ with ‘authorised operator’.

Part 1.3 Spent Convictions Act 2000

Item 1.6 amends section 14 (4) (c) in this Act to replace the description of the offences in Part 3 of the *Road Transport (Alcohol and Drugs) Act 1977* to reflect the revised offence of having a prescribed concentration of alcohol and the inclusion of offences relating to drug driving.

Part 1.4 Workers Compensation Act 1951

Item 1.7 replaces section 82 (4) (a) with a revised paragraph that includes references to a worker being under the influence of a ‘prescribed drug’, as that term is used in the *Road Transport (Alcohol and Drugs) Act 1977*.

Item 1.8 amends section 82 (5) to explain that ‘prescribed drug’ is defined in the dictionary to the *Road Transport (Alcohol and Drugs) Act 1977*.
