

Western Australia

## **Road Traffic Amendment (Drugs) Act 2007**

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As at 23 May 2007

No. 6 of 2007

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## Road Traffic Amendment (Drugs) Act 2007

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### CONTENTS

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#### **Part 1 — Preliminary**

- |    |              |   |
|----|--------------|---|
| 1. | Short title  | 2 |
| 2. | Commencement | 2 |

#### **Part 2 — *Road Traffic Act 1974* amended**

- |    |   |    |
|----|---|----|
| 3. | The Act amended in this Part  | 3  |
| 4. | Section 51 amended  | 3  |
| 5. | Section 63 amended  | 3  |
| 6. | Sections 64AB and 64AC inserted   | 4  |
|    | 64AB. Driving while impaired by drugs   | 4  |
|    | 64AC. Driving with prescribed illicit drug in oral<br>fluid or blood  | 7  |
| 7. | Section 65 amended  | 8  |
| 8. | Section 66 amended  | 9  |
| 9. | Sections 66A to 66F inserted  | 9  |
|    | 66A. Requirement to undergo driver<br>assessment  | 10 |
|    | 66B. Requirement to provide blood or urine<br>sample if driver assessment indicates drug<br>impairment            | 11 |
|    | 66C. Requirement to undergo a preliminary oral<br>fluid test  | 14 |
|    | 66D. Requirement to provide sample of oral<br>fluid for testing   | 16 |
|    | 66E. Requirement or right to provide sample of<br>blood for analysis instead of providing<br>sample of oral fluid | 17 |

Contents

---

	66F.	Medical practitioners and registered nurses authorised to take blood samples	19	
10.	Sections 67AA and 67AB inserted			19
	67AA.	Failure to comply with requirement as to driver assessment or provision of blood or urine sample for analysis under section 66A or 66B	20	
	67AB.	Failure to comply with requirement as to provision of oral fluid or blood sample for testing or analysis under section 66D or 66E	21	
11.	Section 67A amended			23
12.	Section 69 amended			23
13.	Section 69A amended			23
14.	Sections 69B inserted			23
	69B.	Oral fluid samples	23	
15.	Section 70 amended			24
16.	Sections 71A and 71B inserted			29
	71A.	Samples not to be used to obtain DNA	29	
	71B.	Power to prevent use of vehicle by suspected offender	29	
17.	Section 72 amended			32
18.	Section 72A inserted			34
	72A.	Review of amendments relating to drugs	34	
19.	Section 75 amended			35
20.	Section 76 amended			35
21.	Section 106 amended			36
		<b>Part 3 — <i>Young Offenders Act 1994</i></b>		
		<b>amended</b>		
22.	The Act amended in this Part			38
23.	Schedule 1 amended			38

Western Australia

## **Road Traffic Amendment (Drugs) Act 2007**

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**No. 6 of 2007**

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**An Act to amend the —**

- *Road Traffic Act 1974; and*
- *Young Offenders Act 1994.*

*[Assented to 23 May 2007]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This is the *Road Traffic Amendment (Drugs) Act 2007*.

**2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

Note: Under section 22 of the *Interpretation Act 1984*, this section and section 1 come into operation on the day on which this Act receives the Royal Assent.

## **Part 2 — Road Traffic Act 1974 amended**

### **3. The Act amended in this Part**

The amendments in this Part are to the *Road Traffic Act 1974*\*.

[\* *Reprint 9 as at 10 March 2006.*

*For subsequent amendments see Act No. 39 of 2000 and  
Road Traffic (Fees for Vehicle Licences) Regulations 2006  
published in Gazette 26 May 2006 p. 1885-8.]*

### **4. Section 51 amended**

Section 51(1)(a)(iii) is amended by inserting before “89” —  
“ 64AC, ”.

### **5. Section 63 amended**

- (1) Section 63(3) is amended by deleting “section 67 of this Act” and inserting instead —

“ section 64AB or 67AA or section 67 ”.

- (2) Section 63(4) is amended by deleting “, and if he desires to exercise this right, every facility in this regard shall be afforded him”.

- (3) After section 63(4) the following subsections are inserted —

“

(4a) The rights and requirements in subsection (4) do not apply unless the person is under arrest or otherwise in custody at the time of being charged.

(4b) The right in subsection (4)(a), and the requirements relating to it, do not apply if a sample of the person’s blood has been taken pursuant to section 66, 66B or 66E before the person is charged.

”.

**s. 6**

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- (4) Section 63(6) is amended by deleting “or 64AA” and inserting instead —

“ , 64AA, 64AB or 64AC ”.

**6. Sections 64AB and 64AC inserted**

After section 64A the following sections are inserted —

“

**64AB. Driving while impaired by drugs**

- (1) A person who drives or attempts to drive a motor vehicle while impaired by drugs commits an offence, and the offender may be arrested without warrant.
- (2) A person convicted of an offence against this section is liable —
- (a) for a first offence, to a fine of not less than 16 PU or more than 50 PU; and, in any event, the court convicting the person shall order that the person be disqualified from holding or obtaining a driver’s licence for a period of not less than 6 months; and
  - (b) for a second offence, to a fine of not less than 30 PU or more than 70 PU or to imprisonment for 9 months; and, in any event, the court convicting the person shall order that the person be disqualified from holding or obtaining a driver’s licence for a period of not less than 2 years; and
  - (c) for a third or subsequent offence, to a fine of not less than 40 PU or more than 100 PU or to imprisonment for 18 months; and, in any event, the court convicting the person shall order that the person be permanently disqualified from holding or obtaining a driver’s licence.



- (3) For the purposes of subsection (2), where a person is convicted of an offence against this section any offence previously committed by the person against section 63 or 67AA or section 67 as in force after the coming into operation of section 16 of the *Road Traffic Amendment Act (No. 2) 1982* shall be taken into account and be deemed to have been an offence against this section (but not to the exclusion of any other previous offence against this section) in determining whether that first mentioned offence is a first, second, third or subsequent offence.
- (4) Section 63(4) to (4b) extend to the charging of a person with an offence against this section.
- (5) The accused may be convicted of an offence against this section if the prosecutor proves that —
  - (a) the accused drove or attempted to drive a motor vehicle; and
  - (b) one or more drugs were present in the accused's body at the time of that driving or attempted driving; and
  - (c) the conduct, condition or appearance of the accused at or after the time of that driving or attempted driving, or during a driver assessment, was consistent with conduct, a condition or an appearance associated with a person who has consumed or used that drug or those drugs; and
  - (d) the conduct or condition associated with a person who has consumed or used that drug or those drugs would be inconsistent with the person being capable of having proper control of a motor vehicle.

- (6) A person charged with an offence against this section may, instead of being convicted of that offence, be convicted of an offence against section 63 or 64AC.
- (7) If in any proceeding for an offence against this section it is proved that a certain drug was present in the accused's body at any time within 4 hours after the time of the driving or attempted driving of a motor vehicle that gave rise to the alleged offence, the presence of that drug in the accused's body at the time of that driving or attempted driving is taken to be proved in the absence of proof to the contrary.
- (8) In any proceeding for an offence against this section it is a defence for the accused to prove in respect of the drug, or each drug, referred to in subsection (5) —
  - (a) that the drug was —
    - (i) taken pursuant to a prescription of a medical practitioner, nurse practitioner registered under the *Nurses Act 1992*, or registered dentist; or
    - (ii) administered by a medical practitioner, nurse practitioner registered under the *Nurses Act 1992*, or registered dentist, for therapeutic purposes; and
  - (b) that where the drug was received or obtained by the accused in a packaged form, the packaging of the drug did not include a label advising that the drug was likely to result in conduct or a condition that would be inconsistent with the person being capable of having proper control of a motor vehicle; and
  - (c) that the accused was not aware, and could not reasonably have been expected to be aware, that the drug was likely to result in conduct or a condition that would be inconsistent with the

person being capable of having proper control  
of a motor vehicle.

- (9) Subsection (8) has effect despite subsection (5).

**64AC. Driving with prescribed illicit drug in oral fluid or blood**

- (1) A person who drives or attempts to drive a motor vehicle while a prescribed illicit drug is present in the person's oral fluid or blood commits an offence.
- (2) A person convicted of an offence against this section is liable —
  - (a) for a first offence, to a fine of not more than 4 PU; and
  - (b) for a second or subsequent offence, to a fine of not less than 5 PU or more than 10 PU; and, in any event, the court convicting the person shall order that the person be disqualified from holding or obtaining a driver's licence for a period of not less than 3 months.
- (3) For the purposes of subsection (2), where a person is convicted of an offence against this section any offence previously committed by the person against section 67AB shall be taken into account and be deemed to have been an offence against this section (but not to the exclusion of any other previous offence against this section) in determining whether that first mentioned offence is a first, second or subsequent offence.
- (4) If in any proceeding for an offence against this section it is proved that a certain drug was present in the accused's body at any time within 4 hours after the time of the driving or attempted driving of a motor vehicle that gave rise to the alleged offence, the

presence of that drug in the accused's body at the time of that driving or attempted driving is taken to be proved in the absence of proof to the contrary.

- (5) If a person takes a prescribed illicit drug mistakenly believing it to be another drug, that mistake is not a defence in any proceeding for an offence against this section if that other drug is also a drug within the meaning of paragraph (a) or (b) of the definition of "drug" in section 65.

”.

**7. Section 65 amended**

Section 65 is amended by inserting in the appropriate alphabetical positions —

“

**“approved device”** means a device of a type approved by the Minister under section 72(2)(c) for the purpose of ascertaining the presence of prescribed illicit drugs in a person's oral fluid;

**“authorised drug tester”** means a person authorised by the Commissioner of Police to collect, and conduct drug testing of, samples of oral fluid for the purposes of section 66D;

**“conduct”** includes behaviour and demeanour;

**“driver assessment”** means an assessment of drug impairment required by a member of the Police Force under section 66A(1) or (2);

**“drug”** means —

- (a) a drug to which the *Misuse of Drugs Act 1981* applies; or
- (b) a substance that is included in the *Poisons Act 1964* Schedule 4; or

- (c) a substance (other than alcohol) that, when consumed or used by a person, deprives the person (temporarily or permanently) of any of the person's normal mental or physical faculties;

**“drug testing”**, in relation to oral fluid, means testing for the presence of prescribed illicit drugs;

**“preliminary oral fluid test”** means a test of a sample of a person's oral fluid by means of a device of a type approved by the Minister under section 72(2)(d) for the purpose of providing a preliminary indication of the presence of prescribed illicit drugs in the oral fluid, and a person **“undergoes”** a preliminary oral fluid test if the person provides a sample of the person's oral fluid for a preliminary oral fluid test;

**“prescribed illicit drug”** means a drug that is declared by the regulations to be a prescribed illicit drug;

”.

**8. Section 66 amended**

- (1) After section 66(1a) the following subsection is inserted —

“

- (1b) Where a person required under subsection (1) or (1a) to provide a sample of breath for a preliminary test is in a motor vehicle, a member of the Police Force may require the person to leave the vehicle for the purpose of providing the sample.

”.

- (2) Section 66(16) and (17) are repealed.

**9. Sections 66A to 66F inserted**

After section 66 the following sections are inserted —

“

**66A. Requirement to undergo driver assessment**

- (1) A member of the Police Force may require —
- (a) the driver or person in charge of a motor vehicle; or
  - (b) any person the member of the Police Force has reasonable grounds to believe was the driver or person in charge of a motor vehicle,

to undergo an assessment of drug impairment if a member of the Police Force has reasonable grounds to believe that the person is, or was while driving or attempting to drive the motor vehicle, impaired by something, other than alcohol alone, affecting the person's capacity to drive a motor vehicle.

- (2) Where a member of the Police Force —
- (a) has reasonable grounds to believe that the presence of a motor vehicle has occasioned, or its use has been an immediate or proximate cause of, personal injury or damage to property; and
  - (b) does not know, or has doubt as to, who was the driver or person in charge of the motor vehicle at the time of that presence or use,

but has reasonable grounds to believe —

- (c) that the person may have been the driver or person in charge of the motor vehicle at that time; and
- (d) that the person was at that time impaired by something, other than alcohol alone, affecting the person's capacity to drive a motor vehicle,

a member of the Police Force may require the person to undergo an assessment of drug impairment.

- (3) For the purposes of subsection (1) or (2) a member of the Police Force may require a person who is required to undergo a driver assessment to wait at the place at which the requirement was made.
- (4) Where a person required under subsection (1) or (2) to undergo a driver assessment is in a motor vehicle, a member of the Police Force may require the person to leave the vehicle for the purpose of undergoing the assessment.
- (5) A person who is required to undergo a driver assessment shall comply with that requirement by undergoing the assessment in accordance with the directions of a member of the Police Force.
- (6) A person shall not be required to undergo a driver assessment if it appears to a member of the Police Force that —
  - (a) the driver assessment could not be conducted within 4 hours after the time at which driving, attempted driving, use or management of a motor vehicle in circumstances giving rise to the requirement is believed to have taken place; or
  - (b) because of the person's physical condition the person is incapable of undergoing the driver assessment.
- (7) A driver assessment shall be conducted by a member of the Police Force in accordance with regulations prescribing the procedure for assessing drug impairment.

**66B. Requirement to provide blood or urine sample if driver assessment indicates drug impairment**

- (1) Where —

- (a) a person having undergone a driver assessment, it appears to a member of the Police Force that the assessment indicates that the person is drug impaired; or
- (b) a person refuses or fails to undergo a driver assessment having been required to do so; or
- (c) a member of the Police Force might require a person to undergo a driver assessment but is precluded from doing so by section 66A(6)(b),

a member of the Police Force may require the person —

- (d) to allow a medical practitioner or registered nurse nominated by the person to take a sample of the person's blood for analysis; or
- (e) to provide a medical practitioner or registered nurse nominated by the person with a sample of the person's urine for analysis,

or to do both of those things, and for the purposes of this subsection may require the person to accompany a member of the Police Force to a place, and may require the person to wait at that place.

- (2) Where a person is incapable of complying with a requirement under subsection (1)(d), a member of the Police Force may cause a medical practitioner or registered nurse to take a sample of the person's blood for analysis.
- (3) Where a person is apparently unconscious or seriously injured a member of the Police Force shall facilitate the provision of medical assistance for the person.
- (4) A person shall not be required —
  - (a) to allow a medical practitioner or registered nurse to take a sample of the person's blood; or



- (b) to provide a medical practitioner or registered nurse with a sample of the person's urine,

under subsection (1), and a medical practitioner or registered nurse shall not be caused to take a sample of a person's blood under subsection (2), if it appears to the member of the Police Force that the sample cannot be taken or provided, as the case may be, within 4 hours after the time at which driving, attempted driving, use or management of a vehicle in circumstances giving rise to the requirement is believed to have taken place.

- (5) Subsection (6) applies to a person if, under subsection (1) —

- (a) a member of the Police Force requires the person —

- (i) to allow a medical practitioner or registered nurse nominated by the person to take a sample of the person's blood for analysis; or
    - (ii) to provide a medical practitioner or registered nurse nominated by the person with a sample of the person's urine for analysis,

or to do both of those things, and the person fails to nominate a medical practitioner or registered nurse; or

- (b) the person nominates a medical practitioner or registered nurse to take a sample of the person's blood or to collect a sample of the person's urine, or for both of those purposes, but a member of the Police Force has reasonable grounds to believe that the medical practitioner or registered nurse so nominated —

- (i) is not available within a distance of 40 kilometres; or
  - (ii) is not available within the time prescribed by subsection (4); or
  - (iii) refuses to take the blood sample or collect the urine sample or to do either of those things; or
  - (iv) cannot readily be located.
- (6) If this subsection applies to a person, a member of the Police Force may require the person —
- (a) to allow a medical practitioner or registered nurse nominated by the member of the Police Force to take a sample of the person's blood for analysis; or
  - (b) to provide a medical practitioner or registered nurse nominated by the member of the Police Force with a sample of the person's urine for analysis,

or to do both of those things, and for the purposes of this subsection may require the person to accompany a member of the Police Force to a place, and may require the person to wait at that place.

**66C. Requirement to undergo a preliminary oral fluid test**

- (1) A member of the Police Force may require the driver or person in charge of a motor vehicle, or any person he has reasonable grounds to believe was the driver or person in charge of a motor vehicle, to undergo a preliminary oral fluid test.
- (2) A member of the Police Force may —
  - (a) call upon the driver of a motor vehicle to stop the vehicle;

- (b) direct the driver of a motor vehicle to wait at a place indicated by the member of the Police Force,

in order that a requirement may be made under subsection (1).

- (3) Where a member of the Police Force —
  - (a) has reasonable grounds to believe that the presence of a motor vehicle has occasioned, or its use has been an immediate or proximate cause of, personal injury or damage to property; and
  - (b) does not know, or has doubt as to, who was the driver or person in charge of the motor vehicle at the time of that presence or use,

the member of the Police Force may require any person who he has reasonable grounds to believe may have been the driver or person in charge of the motor vehicle at that time to undergo a preliminary oral fluid test.

- (4) For the purposes of subsection (1) or (3) a member of the Police Force may require a person who is required to undergo a preliminary oral fluid test to wait at the place at which the requirement was made.
- (5) Where a person required to undergo a preliminary oral fluid test is in a motor vehicle, a member of the Police Force may require the person to leave the vehicle for the purpose of undergoing the test.
- (6) A person who is required to undergo a preliminary oral fluid test shall comply with that requirement by undergoing the test in accordance with the directions of a member of the Police Force.

- (7) A preliminary oral fluid test shall be conducted by a member of the Police Force in accordance with regulations prescribing the procedure for those tests.

**66D. Requirement to provide sample of oral fluid for testing**

- (1) Where —
- (a) a person having undergone a preliminary oral fluid test, it appears to a member of the Police Force that the test indicates that the person's oral fluid contains a prescribed illicit drug; or
  - (b) a person refuses or fails to undergo a preliminary oral fluid test having been required to do so,

a member of the Police Force may require the person to provide a sample of the person's oral fluid for drug testing, and for the purposes of this subsection may require the person to accompany a member of the Police Force to a place, and may require the person to wait at that place.

- (2) A person who is required under subsection (1) to provide a sample of oral fluid for drug testing shall comply with that requirement by providing the sample in accordance with the directions of an authorised drug tester.
- (3) A person shall not be required under subsection (1) to provide a sample of oral fluid for drug testing if it appears to a member of the Police Force that —
- (a) the sample of oral fluid could not be provided within 4 hours after the time at which driving, attempted driving, use or management of a motor vehicle in circumstances giving rise to the requirement is believed to have taken place; or

- (b) because of the person's physical condition the person is incapable of providing the sample of oral fluid.
- (4) Where, under subsection (1), a person provides a sample of oral fluid for drug testing, an authorised drug tester shall —
  - (a) collect the sample in the manner prescribed by the regulations; and
  - (b) conduct drug testing of the sample by an approved device in accordance with the procedure prescribed by the regulations.

**66E. Requirement or right to provide sample of blood for analysis instead of providing sample of oral fluid**

- (1) Where a member of the Police Force might, under section 66D(1), require a person to provide a sample of oral fluid for drug testing but is precluded from doing so by section 66D(3)(b), a member of the Police Force may require the person to allow a medical practitioner or registered nurse nominated by the person to take a sample of the person's blood for analysis, and for the purposes of this subsection may require the person to accompany a member of the Police Force to a place, and may require the person to wait at that place.
- (2) Where a person is incapable of complying with a requirement under subsection (1), a member of the Police Force may cause a medical practitioner or registered nurse to take a sample of the person's blood for analysis.
- (3) Where a person is apparently unconscious or seriously injured a member of the Police Force shall facilitate the provision of medical assistance for the person.

- (4) A person shall not be required to allow a medical practitioner or registered nurse to take a sample of the person's blood under subsection (1), and a medical practitioner or registered nurse shall not be caused to take a sample of a person's blood under subsection (2), if it appears to the member of the Police Force that the sample cannot be taken or provided, as the case may be, within 4 hours after the time at which driving, attempted driving, use or management of a vehicle in circumstances giving rise to the requirement is believed to have taken place.
- (5) A person who has been required, under section 66D(1), to provide a sample of oral fluid for drug testing may require that, instead of so doing, the person be permitted to allow a medical practitioner or registered nurse nominated by the person to take a sample of the person's blood for analysis.
- (6) Where —
  - (a) under subsection (1), a member of the Police Force requires a person to allow a medical practitioner or registered nurse nominated by the person to take a sample of the person's blood for analysis, and the person fails to nominate a medical practitioner or registered nurse; or
  - (b) under subsection (1) or (5), a person nominates a medical practitioner or registered nurse to take a sample of the person's blood for analysis, but a member of the Police Force has reasonable grounds to believe that the medical practitioner or registered nurse so nominated —
    - (i) is not available within a distance of 40 kilometres; or

- (ii) is not available within the time prescribed by subsection (4); or
- (iii) refuses to take the blood sample; or
- (iv) cannot readily be located,

the member of the Police Force may require the person to allow a medical practitioner or registered nurse nominated by the member of the Police Force to take a sample of the person's blood for analysis, and for the purposes of this subsection may require the person to accompany a member of the Police Force to a place, and may require the person to wait at that place.

**66F. Medical practitioners and registered nurses authorised to take blood samples**

- (1) Where under section 66, 66B or 66E a member of the Police Force —
  - (a) requires a person to allow a medical practitioner or registered nurse nominated by the member of the Police Force to take a sample of the person's blood for analysis; or
  - (b) causes a medical practitioner or registered nurse to take a sample of a person's blood for analysis,

this section authorises the medical practitioner or registered nurse to take that sample.

- (2) No action lies against a person who is a medical practitioner or registered nurse by reason only of the person taking a sample of another person's blood for analysis under section 66, 66B or 66E.

”.

**10. Sections 67AA and 67AB inserted**

Before section 67A the following sections are inserted —

“

**67AA. Failure to comply with requirement as to driver assessment or provision of blood or urine sample for analysis under section 66A or 66B**

- (1) In this section —  
“**requirement**” means a requirement of a member of the Police Force made under section 66A or 66B.
- (2) A person who fails to comply with a requirement —
  - (a) to undergo a driver assessment; or
  - (b) to allow a medical practitioner or registered nurse to take a sample of the person’s blood for analysis; or
  - (c) to provide a medical practitioner or registered nurse with a sample of the person’s urine for analysis,commits an offence.
- (3) A person convicted of an offence against this section is liable —
  - (a) for a first offence, to a fine of not less than 16 PU or more than 50 PU; and, in any event, the court convicting the person shall order that the person be disqualified from holding or obtaining a driver’s licence for a period of not less than 6 months; and
  - (b) for a second offence, to a fine of not less than 30 PU or more than 70 PU or to imprisonment for 9 months; and, in any event, the court convicting the person shall order that the person be disqualified from holding or obtaining a driver’s licence for a period of not less than 2 years; and



- (c) for any subsequent offence, to a fine of not less than 40 PU or more than 100 PU or to imprisonment for 18 months; and, in any event, the court convicting the person shall order that the person be permanently disqualified from holding or obtaining a driver's licence.
- (4) For the purposes of subsection (3), where a person is convicted of an offence against this section any offence previously committed by the person against section 63 or 64AB or section 67 as in force after the coming into operation of section 16 of the *Road Traffic Amendment Act (No. 2) 1982* shall be taken into account and be deemed to have been an offence against this section (but not to the exclusion of any other previous offence against this section) in determining whether that first mentioned offence is a first, second, third or subsequent offence.
- (5) It is a defence to a prosecution for an offence against this section if the accused satisfies the court that there was some substantial reason for the accused's failure to comply other than a desire to avoid providing information that might be used as evidence.
- (6) Without limiting the generality of subsection (5) it is a defence to a prosecution for failing to comply with a requirement mentioned in subsection (2)(c) if the accused satisfies the court that the accused attempted to comply with the requirement.
- 67AB. Failure to comply with requirement as to provision of oral fluid or blood sample for testing or analysis under section 66D or 66E**

- (1) In this section —  
**“requirement”** means a requirement of a member of the Police Force made under section 66D or 66E.

**s. 10**

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- (2) A person who fails to comply with a requirement —
- (a) to provide a sample of oral fluid for drug testing; or
  - (b) to allow a medical practitioner or registered nurse to take a sample of the person's blood for analysis,
- commits an offence.
- (3) A person convicted of an offence against this section is liable —
- (a) for a first offence, to a fine of not more than 4 PU; and
  - (b) for a second or subsequent offence, to a fine of not less than 5 PU or more than 10 PU; and, in any event, the court convicting the person shall order that the person be disqualified from holding or obtaining a driver's licence for a period of not less than 3 months.
- (4) For the purposes of subsection (3), where a person is convicted of an offence against this section any offence previously committed by the person against section 64AC or 67AA or section 67 as in force after the coming into operation of section 16 of the *Road Traffic Amendment Act (No. 2) 1982* shall be taken into account and be deemed to have been an offence against this section (but not to the exclusion of any other previous offence against this section) in determining whether that first mentioned offence is a first, second or subsequent offence.
- (5) It is a defence to a prosecution for an offence against this section if the accused satisfies the court that there was some substantial reason for the accused's failure to comply other than a desire to avoid providing information that might be used as evidence.

”.

**11. Section 67A amended**

- (1) Section 67A(1) is amended by deleting “section 66, other than a requirement mentioned in section 66(1aa) or 67(2),” and inserting instead —

“

any of sections 66 to 66E, other than a requirement mentioned in section 66(1aa), 66C(2), 67(2), 67AA(2) or 67AB(2),

”.

- (2) Section 67A(4) is amended as follows:

- (a) by inserting after “64” —

“ , 64AB ”;

- (b) by deleting “or 67” and inserting instead —

“ , 67, 67AA or 67AB ”.

**12. Section 69 amended**

Section 69(1) is amended by inserting after “66” —

“ , 66B or 66E ”.

**13. Section 69A amended**

Section 69A is amended by inserting after “66” —

“ or 66B ”.

**14. Sections 69B inserted**

After section 69A the following section is inserted —

“

**69B. Oral fluid samples**

If the drug testing of a sample of a person’s oral fluid under section 66D(4)(b) indicates, in the opinion of the

**s. 15**

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authorised drug tester who conducted the drug testing, that the person's oral fluid contains a prescribed illicit drug, the sample shall be divided into 2 parts, each of which shall be deemed to be a sample of the person's oral fluid for the purposes of this Act, and one of which shall be given to or retained for the person by whom it was provided, or shall be given to some other person on behalf of the first-mentioned person, and the other of which shall be given to a member of the Police Force.

”.

**15. Section 70 amended**

(1) Section 70(3a) is amended as follows:

- (a) by inserting after “proceeding” —  
“ for an offence against section 64AC, or ”;
- (b) by inserting after “influence of” —  
“ or impaired by ”;
- (c) after paragraph (c) by deleting the full stop and inserting —  
“  
; and
- (d) the conduct, condition or appearance of the person at or after the time of the driving or attempted driving of a motor vehicle that gave rise to the alleged offence or during a driver assessment; and
- (e) conduct, a condition or an appearance associated with a person who has consumed or used a particular drug or particular drugs; and
- (f) the usual effect that conduct or a condition associated with a person who has consumed or used a particular drug or particular drugs has on

- a person's capacity to have proper control of a motor vehicle; and
- (g) the provision of a sample of oral fluid by the person under section 66D, if provided within 4 hours after the driving, attempted driving, use or management of a motor vehicle that gave rise to the alleged offence; and
- (h) the analysis for drugs by a drugs analyst of a sample of oral fluid provided under section 66D, and the result obtained from the analysis.

”.

(2) Section 70(3b) is amended as follows:

- (a) after paragraph (e) by deleting the comma and inserting —

“

; or

- (f) purporting to be signed by a drugs analyst certifying either or both of the following —
  - (i) that an identified sample of blood, urine or oral fluid taken from or provided by a named person was analysed for drugs;
  - (ii) the analysis result obtained from the analysis;

or

- (g) purporting to be signed by an approved expert describing conduct, a condition or an appearance associated with a person who has consumed or used a drug or drugs specified in the certificate; or
- (h) purporting to be signed by an approved expert setting out the usual effect that conduct or a condition associated with a person who has

consumed or used a particular drug or particular drugs has on a person's capacity to have proper control of a motor vehicle; or

- (i) purporting to be signed by a member of the Police Force describing the conduct, condition or appearance of a person at or after the time the person drove or attempted to drive a motor vehicle; or
- (j) purporting to be signed by a member of the Police Force certifying the following —
  - (i) that the member conducted a driver assessment on a person named in the certificate on a date and at a time stated in the certificate;
  - (ii) that the assessment was conducted in accordance with the regulations, and describing the conduct, condition or appearance of the person during the assessment; or
- (k) purporting to be signed by an authorised drug tester certifying that, under section 66D, an identified sample of oral fluid was collected by the authorised drug tester in accordance with the regulations from a named person on a date and at a time specified in the certificate using identified sampling equipment which was received in a described condition from an identified person,

”;

- (b) by deleting “or registered nurse.” and inserting instead —

“

, registered nurse, drug analyst, approved expert, member of the Police Force or authorised drug tester.

”.

(3) After section 70(3c) the following subsection is inserted —

“

- (3d) In any proceeding for an offence against section 67A(1) of failing to comply with a requirement made pursuant to section 66D(1) a certificate in the prescribed form purporting to be signed by the Commissioner of Police certifying that a person therein named is, or was at the material time, an authorised drug tester is prima facie evidence of the matters therein certified, without proof of the signature of the person purporting to have signed it or proof that the purported signatory was the Commissioner of Police.

”.

(4) After section 70(4) the following subsections are inserted —

“

- (5) Except at the instance, or with the consent, of the accused in any proceeding such as is mentioned in subsection (3a), a certificate mentioned in subsection (3b)(f), (g) or (h) shall not be adduced, and if adduced shall not be admitted, in that proceeding unless a copy of the certificate is proved to have been served on the accused at least 28 days before the day on which the certificate is adduced.
- (5a) If subsection (5) has been complied with in relation to a certificate, the accused shall not challenge or call into question any matter certified or set out in the certificate unless —
- (a) notice of the accused’s intention to do so is proved to have been served on the prosecutor at least 14 days before the day on which the certificate is adduced; or

**s. 15**

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- (b) the court, in the interests of justice, gives the accused leave to do so.
- (5b) A notice under subsection (5a)(a) must specify the matter that is to be challenged or called into question.
- (5c) Except at the instance, or with the consent, of that person, evidence that a person underwent a preliminary oral fluid test and of any indication provided by such a test shall not be adduced, and if adduced shall not be admitted, in any proceedings other than proceedings for an offence against section 67AB or 67A.
- (5d) Except as provided by subsection (3a) or (3b) or at the instance, or with the consent, of that person, evidence that a person provided a sample of the person’s oral fluid for drug testing shall not be adduced, and if adduced shall not be admitted, in any proceedings other than proceedings for an offence against section 67AB or 67A.
- (5e) Except at the instance, or with the consent, of that person, evidence of the result of the drug testing of a sample of a person’s oral fluid by an approved device, shall not be adduced, and if adduced shall not be admitted, in any proceedings other than proceedings for an offence against section 67AB or 67A.
- ”.
- (5) Section 70(6) is amended by deleting “67.” and inserting instead —
- “ 64AB, 67, 67AA or 67A. ”.
- (6) Section 70(7) is amended by inserting in the appropriate alphabetical position —
- “
- “approved expert”** means a qualified clinical pharmacologist approved by the Minister for the



purpose of this section by notice published in the  
*Gazette*;

”.

- (7) Section 70 is amended by inserting after subsections (1)(a) to (d), (2)(ba)(i) to (v) and (2)(bb)(i) to (v) —

“ and ”.

- (8) Section 70 is amended by inserting after subsection (2)(a) and (b), before subsection (2)(bb), before and after subsection (2)(c) and after subsections (2a)(a), (3)(a) and (3b)(a) to (c) —

“ or ”.

**16. Sections 71A and 71B inserted**

After section 71 the following sections are inserted —

“

**71A. Samples not to be used to obtain DNA**

- (1) In this section —

“**sample**” means a sample of blood, urine or oral fluid taken from or provided by a person (the “**subject**”) and given to a member of the Police Force under section 69, 69A or 69B.

- (2) A person must not use a sample to obtain the subject’s DNA.

Penalty: imprisonment for 12 months.

**71B. Power to prevent use of vehicle by suspected offender**

- (1) If a member of the Police Force has reason to suspect that a person (the “**offender**”) is driving, is attempting to drive, has driven or has attempted to drive a motor vehicle in contravention of section 63, 64, 64AA, 64A or 64AB, the member of the Police Force may require

the offender to immediately hand over all keys to any motor vehicle that are there and then in the offender's possession —

- (a) to the member of the Police Force; or
  - (b) to another person who is in the company of the offender if the member of the Police Force is satisfied that the person —
    - (i) is authorised to drive the vehicle on a road; and
    - (ii) is responsible and is able to drive the vehicle properly.
- (2) A member of the Police Force may make a requirement under subsection (1) if satisfied that the requirement is necessary in the circumstances and is in the interest of the offender, or of any other person or of the public, and may do so whether or not the offender has been or is to be charged with an offence.
- (3) If keys to a motor vehicle are handed over under subsection (1)(a), a member of the Police Force may take any steps that, in the opinion of the member of the Police Force, are appropriate and practicable in order to ensure that the vehicle is not causing any obstruction to traffic and is secure.
- (4) Those steps may include moving the vehicle to a more suitable place.
- (5) If a person requests a member of the Police Force to hand over to the person keys to a motor vehicle that have been handed over under subsection (1)(a), the member of the Police Force is to comply with the request if satisfied that the person —

- (a) is entitled to lawful possession of the vehicle or is in the company of a person who is entitled to lawful possession of the vehicle; and
  - (b) is authorised to drive the vehicle on a road; and
  - (c) is responsible and able to drive the vehicle properly.
- (6) Before keys to a motor vehicle are handed over to a person under subsection (1)(b) or (5) a member of the Police Force may, for the purposes of subsection (1)(b)(ii) or (5)(c), require the person to provide a sample of the person's breath for a preliminary test in accordance with the directions of the member of the Police Force.
- (7) If keys to a motor vehicle are not handed over within 24 hours after a request is made under subsection (5), the offender may apply to the Magistrates Court, in accordance with its rules of court, for an order for the keys to be handed over to a person named in the application.
- (8) A person who —
- (a) contravenes any requirement made by a member of the Police Force under subsection (1); or
  - (b) attempts in any manner to obstruct a member of the Police Force in the exercise of any power conferred on the member of the Police Force under subsection (1), (3) or (4),

commits an offence.

Penalty: 8 PU.

”.

**17. Section 72 amended**

(1) Section 72(1) is amended as follows:

- (a) in paragraph (a) by inserting after “breath and” —  
“ oral fluid and ”;
- (b) in paragraph (a) by deleting “and urine;” and inserting  
instead —  
“ , urine and oral fluid; and ”;
- (c) in paragraph (aa) by deleting “urine;” and inserting  
instead —  
“ urine and oral fluid; and ”;
- (d) by inserting after paragraph (ab) —  
“  
and  
(ac) prescribing the manner and methods by which  
samples of blood, urine and oral fluid may be  
analysed for drugs; and  
”;
- (e) by inserting after paragraph (ba) —  
“  
and  
(bb) prescribing the procedure for assessing whether  
a person is drug impaired; and  
(bc) prescribing the procedure for conducting  
preliminary oral fluid tests; and  
(bd) prescribing the procedure for drug testing  
samples of oral fluid by an approved device;  
and  
”;
- (f) in paragraph (d) by deleting “those samples” and  
inserting instead —

“  
of a sample of blood by an analyst, or a sample  
of blood, urine or oral fluid by a drugs analyst,  
”.

(2) After section 72(1) the following subsection is inserted —

“  
(1a) Without limiting subsection (1), procedures may be  
prescribed under subsection (1)(bc) or (bd) by  
reference to instructions provided by the manufacturer  
of a device of a type approved under subsection (2)(c)  
or (d).  
”.

(3) Section 72(2) is amended by deleting the comma after  
paragraph (b) and inserting —

“  
; and  
(c) types of devices for the purpose of conducting  
drug testing of a sample of a person’s oral fluid  
for the purposes of section 66D; and  
(d) types of devices for the purpose of conducting  
preliminary oral fluid tests for the purposes of  
section 66C,  
”.

(4) After section 72(3) the following subsections are inserted —

“  
(4) The Commissioner of Police may, from time to time,  
authorise a person to collect, and conduct drug testing  
of, samples of oral fluid for the purposes of  
section 66D.  
(5) The Commissioner of Police must not authorise a  
person under subsection (4) unless, in the opinion of  
the Commissioner of Police, the person has the

**s. 18**

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appropriate training to collect, and conduct drug testing of, samples of oral fluid in accordance with the regulations.

”.

- (5) Section 72 is amended by inserting after subsections (1)(b) and (3)(a) —

“ and ”.

**18. Section 72A inserted**

After section 72 the following section is inserted in Part V Division 2 —

“

**72A. Review of amendments relating to drugs**

- (1) In this section —

“**amended provisions**” means this Act as amended by the *Road Traffic Amendment (Drugs) Act 2007* Part 2;

“**commencement day**” means the day of the coming into operation of the *Road Traffic Amendment (Drugs) Act 2007* Part 2.

- (2) The Minister is to carry out a review of the operation and effectiveness of the amended provisions as soon as practicable after the end of the period of 12 months beginning on the commencement day.
- (3) In the course of the review the Minister is to consider and have regard to —
- (a) the attainment of the objects of the amended provisions; and
  - (b) the need for the amended provisions to continue in operation; and
  - (c) any other matters that appear to the Minister to be relevant.

- (4) The Minister is to prepare a report following the review and is to cause it to be laid before each House of Parliament before the end of the period of 18 months beginning on the commencement day.
- (5) If a House of Parliament is not sitting, the Minister may transmit a copy of the report to the Clerk of that House.
- (6) A copy of the report transmitted to the Clerk of a House is to be regarded as having been laid before the House.
- (7) The laying of a copy of the report before a House that is regarded as having occurred under subsection (6) is to be reported to the House by the Clerk, and recorded in the Votes and Proceedings or Minutes of Proceedings, on the first sitting day of the House after the Clerk received the copy.
- (8) This section expires as soon as a copy of the report has been laid, or recorded under subsection (7) as having been laid, in each House.

”.

**19. Section 75 amended**

Section 75(6) is amended as follows:

- (a) in paragraph (a) by deleting “or 64” and inserting instead —  
“ , 64 or 64AB ”;
- (b) in paragraph (b) by inserting after “1982” —  
“ or section 67AA of this Act ”.

**20. Section 76 amended**

- (1) Section 76(1a) is amended as follows:

**s. 21**

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- (a) in paragraph (a) by deleting “or section 67(3)(b) or (c);” and inserting instead —

“

, 64AB(2)(b) or (c), 67(3)(b) or (c) or  
67AA(3)(b) or (c);

”;

- (b) in paragraph (b) by deleting “or section 67(3)(a)” and inserting instead —

“ , 64AB(2)(a), 67(3)(a) or 67AA(3)(a) ”.

- (2) Section 76(12)(a) is amended by deleting “or 67(3)(a);” and inserting instead —

“ , 64AB(2)(a), 67(3)(a) or 67AA(3)(a); ”.

**21. Section 106 amended**

- (1) Section 106(3)(c) and (4) are amended by deleting “least the” and inserting instead —

“ least a ”.

- (2) After section 106(5) the following subsections are inserted —

“

- (6) A court sentencing a person who has been convicted of an offence against section 64AB must order a pre-sentence report about the offender under the *Sentencing Act 1995* Part 3 Division 3.

- (7) A court sentencing a person who has been convicted of a first offence against section 64AB or 67AA must, instead of or in addition to imposing a fine —

- (a) order the release of the person and impose a community based order under the *Sentencing Act 1995* with at least a programme requirement as a primary requirement of the order; or



- (b) if the offender is a young person under the *Young Offenders Act 1994*, subject to sections 50, 50A and 50B of that Act, make a youth community based order under that Act imposing at least attendance conditions on the offender.
- (8) A court sentencing a person who has been convicted of a second or subsequent offence against section 64AB or 67AA must, instead of or in addition to imposing a fine —
  - (a) order the release of the person and impose a community based order under the *Sentencing Act 1995* with at least a supervision requirement and a programme requirement as primary requirements of the order; or
  - (b) order the release of the person and impose an intensive supervision order under the *Sentencing Act 1995* with at least a programme requirement as a primary requirement of the order; or
  - (c) if the offender is a young person under the *Young Offenders Act 1994*, subject to sections 50, 50A and 50B of that Act, make a youth community based order, or an intensive youth supervision order, under that Act imposing at least attendance conditions and supervision conditions on the offender.
- (9) Subsections (7) and (8) apply despite the *Sentencing Act 1995* section 39(3) and (4) and the *Young Offenders Act 1994* section 74.
- (10) Subsection (8) does not apply if the court imposes a custodial sentence on the offender.

”.

**Part 3 — Young Offenders Act 1994 amended**

**22. The Act amended in this Part**

The amendments in this Part are to the *Young Offenders Act 1994*\*.

[\* *Reprint 3 as at 15 July 2005.*

*For subsequent amendments see Acts Nos. 27 and 34 of 2004.]*

**23. Schedule 1 amended**

Schedule 1 is amended in the division headed “3. *Road Traffic Act 1974*” as follows:

- (a) by inserting after the item relating to section 63 —

“

s. 64AB	Driving while impaired by drugs
s. 64AC	Driving with prescribed illicit drug in oral fluid or blood

”;

- (b) by deleting the item relating to section 67 and inserting instead —

“

s. 67	Failing to provide a breath sample, allow taking of a blood sample or provide a urine sample
s. 67AA	Failing to undergo a driver assessment, allow taking of a blood sample or provide a urine sample
s. 67AB	Failing to provide a sample of oral fluid or allow taking of a blood sample

”.

