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ENDNOTES | 31
PARLIAMENT OF VICTORIA

Initiated in Assembly 28 October 2003

A BILL

to amend the Road Safety Act 1986 to provide for random drug testing for drivers and create new offences for failing a drug test and for other purposes.

Road Safety (Drug Driving) Act 2003

The Parliament of Victoria enacts as follows:

1. Purpose
   The main purpose of this Act is to amend the Road Safety Act 1986 to provide for random drug testing for drivers and create new offences for failing a drug test.

2. Commencement
   (1) Subject to sub-section (2), this Act (except section 23) comes into operation on a day or days to be proclaimed.

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(2) If a provision of this Act (other than section 23) does not come into operation before 1 December 2004, it comes into operation on that day.

(3) Section 23 comes into operation on 1 July 2005.

3. Principal Act

In this Act, the Road Safety Act 1986 is called the Principal Act.

4. Definitions

(1) In section 3(1) of the Principal Act insert the following definitions—

"drug-driving infringement" means an offence under section 49(1)(bb), (h) or (i), other than an accompanying driver offence, in circumstances where the offence is a first offence having regard to the provisions of section 48(2) or would, because of section 50AA, be treated as a first offence for the purposes of sub-section (1), (1A), (1AB), (1B) or (1E) of section 50;

"prescribed concentration of drugs" means, in the case of a prescribed illicit drug, any concentration of the drug present in the blood or oral fluid of that person;

"prescribed illicit drug" means—

(a) methylamphetamine; or

(b) delta-9-tetrahydrocannabinol;"
(2) In paragraph (b) of the definition of "drink-driving infringement" in section 3(1) of the Principal Act, for "sub-sections (1), (1A), (1AB) and (1B)" substitute "sub-section (1), (1A), (1AB), (1B) or (1E)".

(3) In the definition of "traffic infringement" in section 3(1) of the Principal Act, after paragraph (e) insert—

"(f) a drug-driving infringement; or".

5. Purposes of Part 5

In section 47 of the Principal Act—

(a) in paragraph (c), for "alcohol." substitute "alcohol; and";

(b) after paragraph (c) insert—

"(d) provide a simple and effective means of establishing the presence of a drug in the blood, urine or oral fluid of a driver."

6. Interpretative provisions

(1) After section 48(1)(ab) of the Principal Act insert—

"(ac) if it is established that at any time within 3 hours after an alleged offence against paragraph (bb) of section 49(1), a certain drug was present in the blood or oral fluid of the person charged with the offence it must be presumed, until the contrary is proved, that that drug was present in the person's blood or oral fluid at the time at which the offence is alleged to have been committed; and".
(2) After section 48(1A) of the Principal Act insert—

"(1B) For the purposes of an alleged offence against paragraph (h) or (i) of section 49(1) it must be presumed that a drug found by an analyst to be present in the sample of blood or oral fluid provided by, or taken from, the person charged was not due solely to the consumption or use of that drug after driving or being in charge of a motor vehicle unless the contrary is proved by the person charged on the balance of probabilities by sworn evidence given by him or her which is corroborated by the material evidence of another person.".

7. New offences involving drugs

(1) After section 49(1)(ba) of the Principal Act insert—

"(bb) drives a motor vehicle or is in charge of a motor vehicle while the prescribed concentration of drugs or more than the prescribed concentration of drugs is present in his or her blood or oral fluid; or".

(2) After section 49(1)(ea) of the Principal Act insert—

"(eb) refuses to provide a sample of oral fluid in accordance with section 55D or 55E when required under that section to do so or refuses to comply with any other requirement made under that section; or".

(3) In section 49(1)(g) of the Principal Act—

(a) for "or 56" substitute ", 55B, 55E or 56";

(b) in sub-paragraph (ii), for "motor vehicle." substitute "motor vehicle; or".
(4) After section 49(1)(g) of the Principal Act insert—

"(h) within 3 hours after driving or being in charge of a motor vehicle provides a sample of oral fluid in accordance with section 55E and—

(i) the sample has been analysed by a properly qualified analyst within the meaning of section 57B and the analyst has found that at the time of analysis a prescribed illicit drug was present in that sample in any concentration; and

(ii) the presence of the drug in that sample was not due solely to the consumption or use of that drug after driving or being in charge of the motor vehicle; or

(i) has had a sample of blood taken from him or her in accordance with section 55, 55B, 55E or 56 within 3 hours after driving or being in charge of a motor vehicle and—

(i) the sample has been analysed by a properly qualified analyst within the meaning of section 57 and the analyst has found that at the time of analysis a prescribed illicit drug was present in that sample in any concentration; and

(ii) the presence of the drug in that sample was not due solely to the consumption or use of that drug after driving or being in charge of the motor vehicle.".

(5) After section 49(3) of the Principal Act insert—

"(3AAA) A person who is guilty of an offence under paragraph (bb), (h) or (i) of sub-section (1), other than an accompanying driver offence, is liable—
(a) in the case of a first offence, to a fine of not more than 6 penalty units; and

(b) in the case of a subsequent offence, to a fine of not more than 12 penalty units."

(6) In section 49(5) of the Principal Act, for "(g)" substitute "(g), (h) or (i)".

(7) After section 49(6) of the Principal Act insert—

"(6A) In any proceedings for an offence under paragraph (h) or (i) of sub-section (1) evidence as to the effect of the consumption or use of a drug on the defendant is admissible for the purpose of rebutting the presumption created by section 48(1B) but is otherwise inadmissible.".

(8) After section 49(8) of the Principal Act insert—

"(9) If on a proceeding for an offence under paragraph (ba) of sub-section (1), the court is not satisfied that the defendant is guilty of that offence but is satisfied that the defendant is guilty of an offence under paragraph (bb) of that sub-section, the court may find the defendant guilty of an offence under paragraph (bb) and punish the defendant accordingly.".

8. Provisions about cancellation and disqualification

(1) After section 50(1D) of the Principal Act insert—

"(1E) On convicting a person, or finding a person guilty of an offence under section 49(1)(bb), (h) or (i), the court may, if the offender holds a driver licence or permit, cancel that licence or permit and, whether or not the offender holds a driver licence or permit, disqualify the offender from obtaining one for such period as the court thinks fit, not being more than—"
(a) in the case of a first offence, 3 months; and
(b) in the case of a subsequent offence, 6 months."

2) In column 1 of the Table in section 50AA of the Principal Act, for "and (1B)" substitute ", (1B) and (1E)".

9. Direction to impose alcohol interlock condition

After section 50AAA(3) of the Principal Act insert—

"(4) For the purposes of this section, in determining whether an offence referred to in sub-section (1)(a) was or was not a first offence, any previous conviction or finding of guilt of the person of an offence under section 49(1)(a) (involving only drugs) or of an offence under section 49(1)(ba), (bb), (h) or (i) is to be disregarded, despite section 48(2).".

10. Driver education programs

(1) In section 50A(1A) of the Principal Act—
(a) after "(ba)," insert "(bb),";
(b) for "or (ea)" substitute ", (ea), (h) or (i)".

(2) In section 50A(2) of the Principal Act—
(a) after "(b)," insert "(bb),";
(b) for "or (g)" substitute ", (g), (h) or (i)".

11. Preliminary testing stations

(1) In section 53(1)(b) of the Principal Act, omit "breath".

(2) Insert the following heading to section 54 of the Principal Act—
"Preliminary testing stations".
(3) In section 54(1), (2), (3) and (4) of the Principal Act, for "breath testing" substitute "testing".

(4) In section 54(2)(a) of the Principal Act, for "in quick succession" substitute "or preliminary oral fluid tests".

(5) In section 55A(1)(b) of the Principal Act, omit "breath".

12. Breath analysis

In section 55(1), (2) and (2AA)(a) of the Principal Act, after "has furnished the sample of breath" insert "and any further sample required to be furnished under sub-section (2A)".

13. New sections 55D and 55E inserted

After section 55C of the Principal Act insert—

'55D. Preliminary oral fluid tests

(1) A member of the police force may at any time require—

(a) any person he or she finds driving a motor vehicle or in charge of a motor vehicle; or

(b) the driver of a motor vehicle that has been required to stop at a preliminary testing station under section 54(3); or

(c) any person who he or she believes on reasonable grounds has within the last 3 preceding hours driven or been in charge of a motor vehicle when it was involved in an accident; or

(d) any person who he or she believes on reasonable grounds was, within the last 3 preceding hours, an occupant of a motor vehicle when it was involved in an accident, if it has not been established to the satisfaction of the
member of the police force which of the occupants was driving or in charge of the motor vehicle when it was involved in the accident—

to undergo a preliminary oral fluid test by a prescribed device and, for that purpose, may further require the person, if inside a motor vehicle, to leave the motor vehicle for the purpose of undergoing the test.

(2) An officer of the Corporation or of the Department of Infrastructure who is authorised in writing by the Corporation or the Secretary, as the case requires, for the purposes of this section may at any time require any person he or she finds driving a commercial motor vehicle or in charge of a commercial motor vehicle to undergo a preliminary oral fluid test by a prescribed device and, for that purpose, may further require the person, if inside a motor vehicle, to leave the motor vehicle for the purpose of undergoing the test.

(3) A preliminary oral fluid test must be carried out in accordance with the prescribed procedure.

(4) The Corporation or the Secretary may only authorise an officer for the purposes of this section if satisfied that the officer has the appropriate training to carry out a preliminary oral fluid test in accordance with the prescribed procedure.

(5) A prescribed device may be comprised of a collection unit and a testing unit and one or more other parts.
(6) A person required to undergo a preliminary oral fluid test must do so by placing the prescribed device, or the collection unit of the device, into his or her mouth and chewing or sucking on it until the member of the police force or the officer of the Corporation or of the Department of Infrastructure (as the case requires) is satisfied that a sufficient sample of oral fluid has been captured by the device or unit.

(7) Without limiting section 54(3), a person required to undergo a preliminary oral fluid test is required to remain at the place at which the test is being carried out until the sample of oral fluid provided has been tested by a prescribed device.

(8) A person is not obliged to undergo a preliminary oral fluid test if more than 3 hours have passed since the person last drove, was an occupant of or was in charge of a motor vehicle.

55E. Oral fluid testing and analysis

(1) In this section—

"authorised officer" means a member of the police force or an officer of the Corporation or of the Department of Infrastructure authorised in writing under sub-section (6) by the Chief Commissioner of Police, the Corporation or the Secretary, as the case requires, for the purposes of this section;

"enforcement officer" means an officer of the Corporation or of the Department of Infrastructure authorised under section 55D(2) for the purposes of section 55D.
(2) If a person undergoes a preliminary oral fluid test when required to do so under section 55D by a member of the police force or an enforcement officer and—

(a) the test, in the opinion of the member or enforcement officer in whose presence it is made, indicates that the person's oral fluid contains a prescribed illicit drug; or

(b) the person, in the opinion of the member or enforcement officer, refuses or fails to carry out the test in the manner specified in section 55D(6)—any member of the police force or, if the requirement for the preliminary oral fluid test was made by an enforcement officer, any member of the police force or any enforcement officer may require the person to provide a sample of oral fluid for testing by a prescribed device and, if necessary, analysis by a properly qualified analyst within the meaning of section 57B and for that purpose may further require the person to accompany any member of the police force or, if the requirement for the preliminary oral fluid test was made by an enforcement officer, any member of the police force or any enforcement officer to a place or vehicle where the sample is to be provided and to remain there until—

(c) the person has provided the sample and any further sample required to be provided under sub-section (5), the sample has been tested by a prescribed device and the person has been given (if necessary) a part of the sample under sub-section (11) and complied
with any requirement made of him or her under section 59; or

(d) 3 hours after the driving, being an occupant of or being in charge of the motor vehicle—

whichever is the sooner.

Example

A person may be required to go to a police station, a public building, a booze bus or a police car to provide a sample of oral fluid under this section.

(3) A member of the police force may require any person who is required to undergo an assessment of drug impairment under section 55A or to furnish a sample of breath for analysis by a breath analysing instrument under section 55 to provide a sample of oral fluid for testing by a prescribed device and, if necessary, analysis by a properly qualified analyst within the meaning of section 57B and may, for that purpose, require the person to remain at the place at which the person is required to remain for the purposes of the assessment or furnishing the sample of breath until—

(a) the person has provided the sample of oral fluid and any further sample required to be provided under sub-section (5), the sample has been tested by a prescribed device and the person has been given (if necessary) a part of the sample under sub-section (11) and complied with any requirement made of him or her under section 59 and the assessment has been carried out or the sample of breath has been furnished (as the case requires); or
(b) 3 hours after the driving, being an occupant of or being in charge of the motor vehicle—
whichever is the sooner.

(4) The provision of a sample of oral fluid under this section must be carried out in accordance with the prescribed procedure.

(5) The person who required a sample of oral fluid to be provided under sub-section (2) or (3) may require the person who provided it to provide one or more further samples if it appears to him or her that the prescribed device is incapable of testing for the presence in the sample, or each of the samples, previously provided of a prescribed illicit drug because the amount of sample provided was insufficient or because of a power failure or malfunctioning of the device or for any other reason whatsoever.

(6) Only a member of the police force or an officer of the Corporation or of the Department of Infrastructure authorised in writing by the Chief Commissioner of Police, the Corporation or the Secretary, as the case requires, for the purposes of this section may carry out the procedure for the provision of a sample of oral fluid under this section.

(7) The Chief Commissioner of Police may only authorise a member of the police force, and the Corporation or the Secretary may only authorise an enforcement officer, for the purposes of this section if satisfied that the member or officer (as the case requires) has the appropriate training to carry out the prescribed procedure for the provision of a sample of oral fluid under this section.
(8) A prescribed device may be comprised of a collection unit and a testing unit and one or more other parts.

(9) A person required to provide a sample of oral fluid under this section must do so by placing the prescribed device, or the collection unit of the device, into his or her mouth and chewing or sucking on it until the authorised officer is satisfied that a sufficient sample of oral fluid has been captured by the device or unit.

(10) A person is not obliged to provide a sample of oral fluid under this section if more than 3 hours have passed since the person last drove, was an occupant of or was in charge of a motor vehicle.

(11) If a test by a prescribed device of a sample of oral fluid provided under this section indicates, in the opinion of the authorised officer who carried out the procedure in the course of which the sample was provided, that the person's oral fluid contains a prescribed illicit drug, the authorised officer must deliver a part of the sample to the member of the police force or the enforcement officer who required the sample to be provided and another part to the person by whom the sample was provided.

(12) A person must not be convicted or found guilty of refusing to provide a sample of oral fluid in accordance with this section if he or she satisfies the court that there was some reason of a substantial character for the refusal, other than a desire to avoid providing information which might be used against him or her.
(13) The person who required a sample of oral fluid to be provided under sub-section (2) or (3) may require that person to allow a registered medical practitioner or an approved health professional nominated by the person who required the sample to take from him or her a sample of that person's blood for analysis if it appears to him or her that—

(a) that person is unable to furnish the required sample of oral fluid on medical grounds or because of some physical disability or condition; or

(b) the prescribed device is incapable of testing for the presence in the sample of a prescribed illicit drug for any reason whatsoever—

and for that purpose may further require that person to accompany a member of the police force to a place where the sample of blood is to be taken and to remain there until the sample has been taken or until 3 hours after the driving, being an occupant of or being in charge of the motor vehicle, whichever is the sooner.

(14) The registered medical practitioner or approved health professional who takes a sample of blood under sub-section (13) must deliver a part of the sample to the person who required it to be taken and another part to the person from whom it was taken.

(15) A person who allows the taking of a sample of his or her blood in accordance with sub-section (13) must not be convicted or found guilty of refusing to provide a sample of oral fluid in accordance with this section.
(16) A person must not hinder or obstruct a registered medical practitioner or an approved health professional attempting to take a sample of the blood of any other person in accordance with sub-section (13).

Penalty: Penalty applying to this sub-section: 12 penalty units.

(17) No action lies against a registered medical practitioner or an approved health professional in respect of anything properly and necessarily done by the practitioner or approved health professional in the course of taking any sample of blood which the practitioner or approved health professional believed on reasonable grounds was allowed to be taken under sub-section (13).

(18) A person who is required under this section to provide a sample of oral fluid may, immediately after being given a part of the sample under sub-section (11), request the person making the requirement to arrange for the taking in the presence of any member of the police force (or, if the requirement for the provision of the sample was made by an enforcement officer, any member of the police force or any enforcement officer) of a sample of that person's blood for analysis at that person's own expense by a registered medical practitioner or an approved health professional nominated by the member of the police force or the enforcement officer in whose presence the sample is taken.

(19) A part of a sample of blood taken under sub-section (18) must be delivered to the person who required the oral fluid sample to be provided under this section.
(20) Nothing in sub-section (18) relieves a person from any penalty under section 49(1)(eb) for refusing to provide a sample of oral fluid.

(21) Evidence derived from a sample of oral fluid provided in accordance with a requirement made under this section is not rendered inadmissible by a failure to comply with a request under sub-section (18) if reasonable efforts were made to comply with the request.

(22) In any proceeding under this Act—

(a) the statement of any officer of the Corporation or of the Department of Infrastructure that on a particular date he or she was authorised under section 55D(2) for the purposes of section 55D; or

(b) a certificate purporting to be issued by the Corporation or signed by the Secretary, as the case requires, certifying that a particular officer of the Corporation or of the Department of Infrastructure named in it is authorised under section 55D(2) for the purposes of section 55D; or

(c) the statement of any member of the police force or officer of the Corporation or of the Department of Infrastructure that on a particular date he or she was authorised under subsection (6) for the purposes of this section; or

(d) a certificate purporting to be signed by the Chief Commissioner of Police, issued by the Corporation or signed by the Secretary, as the case requires,
certifying that a particular member of the police force or officer of the Corporation or of the Department of Infrastructure named in it is authorised under sub-section (6) for the purposes of this section—is admissible in evidence and, in the absence of evidence to the contrary, is proof of the authority of that officer or member.'.

14. Evidentiary provisions—blood tests

(1) In section 57(9) of the Principal Act, after "55B" insert "55E(13)".

(2) After section 57(9) of the Principal Act insert—

"(9A) Without limiting section 56(6), evidence of a kind permitted to be given by sub-section (2) in legal proceedings of a kind referred to in sub-section (2)(a), (ab), (b), (c) or (d) is inadmissible as evidence in any other legal proceedings except proceedings for the purposes of the Accident Compensation Act 1985 or the Transport Accident Act 1986.".

15. Evidentiary provisions—urine tests

(1) In section 57A(1) of the Principal Act, after the definition of "approved expert" insert—

"prescribed legal proceeding" means—

(a) a trial for murder or manslaughter or for negligently causing serious injury arising out of the driving of a motor vehicle; or

(b) a trial or hearing for an offence against Subdivision (4) of Division 1 of Part I of the Crimes Act 1958 arising out of the driving of a motor vehicle; or
(c) a trial or hearing for an offence against section 318(1) of the **Crimes Act 1958**; or

(d) a hearing for an offence against section 49(1) of this Act; or

(e) any proceedings conducted by a coroner;'.

(2) In section 57A(2) of the Principal Act, for "on a hearing for an offence against section 49(1)" substitute "in a prescribed legal proceeding".

(3) After section 57A(10) of the Principal Act insert—

"(11) Evidence of a kind permitted to be given by sub-section (2) in a prescribed legal proceeding is inadmissible as evidence in any other legal proceedings.".

16. New section 57B inserted

After section 57A of the Principal Act insert—

'57B. Evidentiary provisions—oral fluid tests

(1) In this section—

"approved analyst" means a person who has been approved by Order of the Governor in Council published in the Government Gazette as a properly qualified analyst for the purposes of this section;

"properly qualified analyst" means—

(a) an approved analyst; or

(b) a person who is considered by the court hearing the charge for the offence to have scientific qualifications, training and experience that qualifies him or
her to carry out the analysis and to express an opinion as to the facts and matters contained in a certificate under sub-section (4).

(2) If a question as to the presence of a prescribed illicit drug in the body of a person at any time is relevant—

(a) on a trial for murder or manslaughter or for negligently causing serious injury arising out of the driving of a motor vehicle; or

(b) on a trial or hearing for an offence against Subdivision (4) of Division 1 of Part I of the Crimes Act 1958 arising out of the driving of a motor vehicle; or

(c) on a trial or hearing for an offence against section 318(1) of the Crimes Act 1958; or

(d) on a hearing for an offence against section 49(1) of this Act; or

(e) in any proceedings conducted by a coroner—

then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given—

(f) of the providing by that person, after that person drove or was in charge of a motor vehicle, of a sample of oral fluid under section 55E;

(g) of the analysis of that sample of oral fluid by a properly qualified analyst within twelve months after it was taken;
(h) of the presence of a prescribed illicit drug in that sample of oral fluid at the time of analysis.

(3) A certificate containing the prescribed particulars purporting to be signed by the person who carried out the procedure in the course of which the sample of oral fluid was provided is admissible in evidence in any hearing referred to in sub-section (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(4) A certificate containing the prescribed particulars purporting to be signed by an approved analyst as to the presence in any sample of oral fluid analysed by the analyst of a substance that is a prescribed illicit drug is admissible in evidence in any hearing referred to in sub-section (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(5) A certificate given under this section must not be tendered in evidence at a hearing referred to in sub-section (2) without the consent of the accused unless a copy of the certificate is proved to have been served on the accused more than 10 days before the day on which the certificate is tendered in evidence.

(6) A copy of a certificate given under this section may be served on the accused by—

(a) delivering it to the accused personally; or

(b) leaving it for the accused at his or her last or most usual place of residence or of business with a person who apparently resides or works there and
who apparently is not less than 16 years of age.

(7) An affidavit or statutory declaration by a person who has served a copy of the certificate on the accused is admissible in evidence at a hearing referred to in subsection (2) and, as to the service of the copy, is proof, in the absence of evidence to the contrary, of the facts and matters deposed to in the affidavit or stated in the statutory declaration.

(8) An accused who has been served with a copy of a certificate given under this section may, with the leave of the court and not otherwise, require the person who has given the certificate or any person employed, or engaged to provide services at, the place at which the sample of oral fluid was provided, to attend at all subsequent proceedings for cross-examination and that person must attend accordingly.

(9) The court must not grant leave under subsection (8) unless it is satisfied—

(a) that the informant has been given at least 7 days' notice of the hearing of the application for leave and has been given an opportunity to make a submission to the court; and

(b) that—

(i) there is a reasonable possibility that the oral fluid referred to in a certificate given by an analyst under sub-section (4) was not that of the accused; or
(ii) there is a reasonable possibility that the oral fluid referred to in a certificate given under sub-section (3) had become contaminated in such a way that a drug found on analysis would not have been found had the oral fluid not been contaminated in that way; or

(iii) there is a reasonable possibility that the sample was not taken within 3 hours after the person who provided the sample drove or was in charge of the vehicle; or

(iv) for some other reason the giving of evidence by the person who gave the certificate would materially assist the court to ascertain relevant facts.

(10) An accused who has been served with a copy of a certificate given under this section may not require the person who has given the certificate or any person employed, or engaged to provide services at, the place at which the sample of oral fluid was provided, to attend the court on the hearing of an application for leave under sub-section (8).

(11) Evidence of a kind permitted to be given by sub-section (2) in legal proceedings of a kind referred to in sub-section (2)(a), (b), (c), (d) or (e) is inadmissible as evidence in any other legal proceedings.'
17. Evidentiary provisions—breath tests

In section 58(1) of the Principal Act—

(a) in paragraph (c), for "Act—" substitute "Act; or";

(b) after paragraph (c) insert—

"(d) in any proceedings conducted by a coroner—".

18. New section 58B inserted

After section 58A of the Principal Act insert—

'58B. Prohibited analysis

(1) In this section—

"DNA database" has the meaning given by section 464(2) of the Crimes Act 1958;

"Part 5 sample" means a sample of blood, urine or oral fluid taken from, or furnished or provided by, a person under this Part;

"permitted purpose", in relation to an analysis of a Part 5 sample, means the purpose of determining—

(a) whether alcohol or any other drug is present in the sample; or

(b) the level of concentration in which alcohol or any other drug is present in the sample;

"prohibited analysis", in relation to a Part 5 sample, means analysis of the sample for a purpose other than the permitted purpose.

Example

Deriving a DNA profile from the sample is a purpose for which analysis is prohibited.
(2) A person who intentionally or recklessly—

(a) supplies a Part 5 sample, or causes a Part 5 sample to be supplied, to a person for prohibited analysis; or

(b) carries out a prohibited analysis of a Part 5 sample; or

(c) includes, or causes the inclusion of, information derived from a prohibited analysis on a DNA database kept under a law of this State or the Commonwealth or of another State or a Territory—

is guilty of an offence and liable to imprisonment for a term of not more than 12 months or to a fine of not more than 120 penalty units.'.

19. Power to prevent driving by incapable persons

After section 62(1) of the Principal Act insert—

"(1A) Without limiting the grounds on which a member of the police force may form the opinion that a person is, by reason of his or her physical or mental condition, incapable of having proper control of a motor vehicle, the fact that—

(a) the person has furnished a sample of breath for analysis by a breath analysing instrument under section 55 and the result of the analysis as recorded or shown by the breath analysing instrument indicates that the prescribed concentration of alcohol or more than the prescribed concentration of alcohol is present in his or her breath; or
(b) a test by a prescribed device under section 55E of a sample of oral fluid provided under that section indicates, in the opinion of the person who carried out the test, that the person's oral fluid contains a prescribed illicit drug—is of itself a sufficient ground for forming that opinion."

20. Drug-driving infringements

(1) In section 88(1A) of the Principal Act, after "drink-driving infringement," insert "a drug-driving infringement".

(2) Insert the following heading to section 89A of the Principal Act—

"Effect of drink-driving infringements, drug-driving infringements and excessive speed infringements".

(3) In section 89A(1) of the Principal Act, after "infringements" (where first occurring) insert "drug-driving infringements".

(4) In section 89A(2) of the Principal Act, after "drink-driving infringement" insert "drug-driving infringement".

(5) In section 89A(7) of the Principal Act, after "drink-driving infringement" insert "drug-driving infringement".

(6) In section 89B(1) of the Principal Act, after "drink-driving infringement" insert "drug-driving infringement".

(7) In section 89E(1), (2), (3) and (4) of the Principal Act, after "drink-driving infringement" insert "drug-driving infringement".
Road Safety (Drug Driving) Act 2003

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21. Supreme Court—limitation of jurisdiction

At the end of section 94B of the Principal Act
insert—

"(2) It is the intention of section 55E(17) to alter or vary section 85 of the Constitution Act 1975.".

22. Regulations

In Schedule 2 to the Principal Act—

(a) for "Alcohol" (where appearing before item 50) substitute "Alcohol or Other Drugs";

(b) after item 51 insert—

"51A. Devices for the purposes of sections 55D and 55E and the procedures to be employed in obtaining samples of oral fluid or carrying out tests under those sections.

51B. The methods and conditions to be observed by persons carrying out procedures under section 55E for collecting oral fluid samples.

51C. The delivering of portions of samples of oral fluid to the people who provided them and to the persons who required them to be provided.";

(c) in items 55A, 56 and 57, for "or urine" substitute ", urine or oral fluid".

23. Sunsetting of drug-driving provisions

(1) In section 3(1) of the Principal Act—

(a) the definitions of "drug-driving infringement", "prescribed concentration of drugs" and "prescribed illicit drug" are repealed;

(b) in paragraph (b) of the definition of "drink-driving infringement", for ", (1B) or (1E)" substitute "or (1B)".
(c) in the definition of "traffic infringement", paragraph (f) is **repealed**.

(2) In section 47 of the Principal Act—

(a) in paragraph (c), for "alcohol; and"

substitute "alcohol."

(b) paragraph (d) is **repealed**.

(3) Section 48(1)(ac) of the Principal Act is **repealed**.

(4) Section 48(1B) of the Principal Act is **repealed**.

(5) Section 49(1)(bb) and (eb) of the Principal Act is **repealed**.

(6) In section 49(1)(g) of the Principal Act—

(a) for ",, 55B, 55E or 56" substitute "or 56";

(b) in sub-paragraph (ii), for "motor vehicle; or"

substitute "motor vehicle."

(7) Section 49(1)(h) and (i) of the Principal Act is **repealed**.

(8) Section 49(3AAA) of the Principal Act is **repealed**.

(9) In section 49(5) of the Principal Act, for "(g), (h) or (i)" substitute "(g)".

(10) Section 49(6A) of the Principal Act is **repealed**.

(11) Section 49(9) of the Principal Act is **repealed**.

(12) Section 50(1E) of the Principal Act is **repealed**.

(13) In column 1 of the Table in section 50AA of the Principal Act, for ",, (1B) and (1E)" substitute "and (1B)".

(14) In section 50AAA(4) of the Principal Act, **omit**, (bb), (h) or (i)".
(15) In section 50A(1A) of the Principal Act—
(a) **omit** "(bb),";
(b) for ", (ea), (h) or (i)" **substitute** "or (ea)".

(16) In section 50A(2) of the Principal Act—
(a) **omit** "(bb),";
(b) for ", (g), (h) or (i)" **substitute** "or (g)".

(17) In section 53(1)(b) of the Principal Act, after "preliminary" **insert** "breath".

(18) **Substitute** the following heading to section 54 of the Principal Act—
"Preliminary breath testing stations".

(19) In section 54(1), (2), (3) and (4) of the Principal Act, before "testing" **insert** "breath".

(20) In section 54(2)(a) of the Principal Act, for "or preliminary oral fluid tests" **substitute** "in quick succession".

(21) In section 55A(1)(b) of the Principal Act, after "preliminary" **insert** "breath".

(22) Sections 55D and 55E of the Principal Act are **repealed**.

(23) In section 57(9) of the Principal Act, **omit** ", 55E(13)".

(24) Section 57B of the Principal Act is **repealed**.

(25) In section 62(1A) of the Principal Act—
(a) in paragraph (a), for "breath; or" **substitute** "breath—";
(b) paragraph (b) is **repealed**.

(26) In section 88(1A) of the Principal Act, **omit** "a drug-driving infringement".
(27) **Substitute** the following heading to section 89A of the Principal Act—

"Effect of drink-driving infringements and excessive speed infringements".

(28) In section 89A(1) of the Principal Act, **omit** ", drug-driving infringements".

(29) In section 89A(2) of the Principal Act, **omit** ", drug-driving infringement".

(30) In section 89A(7) of the Principal Act, **omit** ", or a drug-driving infringement".

(31) In section 89B(1) of the Principal Act, **omit** ", a drug-driving infringement".

(32) In section 89E(1), (2), (3) and (4) of the Principal Act, **omit** ", a drug-driving infringement".

(33) In Schedule 2 to the Principal Act—

(a) for "Alcohol or Other Drugs" (where appearing before item 50) **substitute** "Alcohol";

(b) items 51A, 51B and 51C are **repealed**;

(c) in items 55A, 56 and 57, for ", urine or oral fluid" **substitute** "or urine".