

2008

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Mr Steve Pratt)

# Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Bill 2008

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# Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Bill 2008

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## A Bill for

An Act to amend the *Road Transport (Alcohol and Drugs) Act 1977*

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

**1 Name of Act**

This Act is the *Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Act 2008*.

**2 Commencement**

This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

**3 Legislation amended**

This Act amends the *Road Transport (Alcohol and Drugs) Act 1977*.

**4 Offences against Act—application of Criminal Code etc  
Section 4, note 1, new dot points**

*insert*

- s 20 (Driving while impaired by drug or blood drug concentration exceeded)
- s 22A (Refusing to provide oral fluid sample)
- s 22B (Refusing to undergo drug assessment)

**5 Section 5***substitute***5 Approval of screening devices**

(1) The Minister may approve a device for this subsection (an ***approved alcohol screening device***) if the Minister considers that the device—

(a) is designed and made to indicate, when a sample of the breath of a person is exhaled into the device, whether alcohol is present in the person's blood and, if so, to give an indication of the concentration of alcohol in the person's blood; and

(b) is suitable for use in screening tests under part 2.

(2) The Minister may approve a device for this subsection (an ***approved drug screening device***) if the Minister considers that the instrument—

(a) is designed and made to indicate, when a sample of oral fluid of a person is collected in the device by the person chewing or sucking on it (or a particular part of it), whether a drug is present in the person's oral fluid and, if so, to give an indication of the concentration of the drug in the person's oral fluid; and

(b) is suitable for use in screening tests under part 2.

(3) An approval under this section is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**5A Approval of analysis instruments**

(1) The Minister may approve an instrument for this subsection (an *approved breath analysis instrument*) if the Minister considers that the instrument—

(a) is designed and made to ascertain the concentration of alcohol present in a sample of a person's breath and can record the concentration in grams per 100mL of blood; and

(b) is suitable for use in analysis under part 2.

(2) The Minister may approve an instrument for this subsection (an *approved oral fluid analysis instrument*) if the Minister considers that the instrument—

(a) is designed and made to ascertain the presence of a drug in a sample of the person's oral fluid and can record the concentration whether by a particular figure, level or percentage; and

(b) is suitable for use in analysis under part 2.

(3) An approval under this section is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**6 Approval of operators, analysts and laboratories**  
**New section 6 (1A)**

*insert*

(1A) The chief police officer may authorise a police officer to carry out oral fluid analyses if the officer has—

(a) undergone a course approved by the Minister as a course for the instruction of police officers in the carrying out of oral fluid analyses; and

(b) completed the course to the satisfaction of the chief police officer.



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**7 Sections 11 and 12***substitute***11 Detention for breath or oral fluid analysis**

(1) This section applies if—

(a) a person undergoes a screening test under a requirement made by a police officer under section 8, section 9 or section 10 and an approved alcohol screening device indicates to the police officer—

(i) that the concentration of alcohol in the person's blood is at least the prescribed concentration; or

(ii) for a person the police officer has reasonable grounds to believe is a special driver—that the concentration of alcohol in the person's blood is at least 0.02g of alcohol per 100mL of blood; or

(b) a person undergoes a screening test under a requirement made by a police officer under section 8, section 9 or section 10 and an approved drug screening device indicates to the police officer that—

(i) a drug for which there is a prescribed concentration is present in the person's oral fluid and the concentration of the drug is at least the prescribed concentration; or

(ii) a drug for which there is no prescribed concentration is present in the person's oral fluid; or

(c) a person who has been required by a police officer under section 8, section 9 or section 10 to undergo a screening test refuses to undergo the screening test; or

- 1 (d) a person who has been required by a police officer under  
2 section 8, section 9 or section 10 to undergo a screening test  
3 fails to undergo the screening test in accordance with the  
4 direction of the police officer.
- 5 (2) The police officer may take the person into custody.
- 6 (3) If the person is taken into custody, a police officer must take the  
7 person, as soon as practicable, to a police station or another  
8 convenient place to carry out a breath analysis, an oral fluid analysis  
9 or both for the person.
- 10 (4) In this section:
- 11 *prescribed concentration*, of a drug means—
- 12 (a) for a prescribed illicit drug—any concentration of the drug  
13 present in the blood or oral fluid of a person; and
- 14 (b) for any other drug—the concentration prescribed by regulation.
- 15 *prescribed illicit drug* means—
- 16 (a) methylamphetamine; or
- 17 (b) delta-9-tetrahydrocannabinol; or
- 18 (c) any other drug prescribed by regulation.

19 **12 Breath or oral fluid analysis**

- 20 (1) A person who has been taken into custody under section 11 must  
21 give, in accordance with the reasonable directions of a police  
22 officer, either or both of the following (as directed by the police  
23 officer):
- 24 (a) a sample of the person's breath;
- 25 (b) a sample of the person's oral fluid.
- 26 (2) An analysis of breath must be carried out by an approved operator  
27 using an approved breath analysis instrument.

- 1           (3) An analysis of oral fluid must be carried out by an approved  
2           operator using an approved oral fluid analysis instrument.
- 3           (4) A regulation may make provision about—
  - 4           (a) the procedures to be followed by an approved operator  
5           immediately before, during, and immediately after, carrying  
6           out a breath analysis or oral fluid analysis; and
  - 7           (b) the conditions that must exist for the use of a particular  
8           approved analysis instrument; and
  - 9           (c) the conditions during which a particular approved analysis  
10          instrument must not be used; and
  - 11          (d) the results that must be obtained from procedures to be  
12          followed immediately after carrying out a breath or oral fluid  
13          analysis and without which the analysis must be disregarded  
14          for this Act.
- 15          (5) If, because of a regulation made for subsection (4) (d), an analysis  
16          must be disregarded in relation to a person, a police officer may  
17          require the person to give, in accordance with the reasonable  
18          directions of the officer, another sample of the person's breath or  
19          oral fluid for analysis using another approved analysis instrument.
- 20          (6) As soon as practicable after the analysis has been carried out, the  
21          approved operator who carried out the analysis must give the person  
22          a statement, signed by the operator, containing the particulars  
23          required by regulation.

**8 New section 12A**

*insert*

**12A Assessment of drug impairment**

- (1) This section applies to a person if any 1 or more of the following paragraphs applies to the person:
- (a) the person is the driver of a motor vehicle on a public street or in a public place;
  - (b) a police officer has reasonable cause to suspect that the person was the driver of a motor vehicle on a public street or in a public place;
  - (c) a motor vehicle is involved in an accident on a public street and—
    - (i) a police officer has reasonable cause to suspect that the person was the driver of the motor vehicle at the time of the accident; or
    - (ii) a police officer has reasonable cause to suspect that the person was in the vehicle at the time of the accident, but the police officer does not know or has doubt about who was the driver of the vehicle at the time of the accident;
  - (d) a police officer has reasonable cause to suspect that the person has committed an offence of culpable driving;
  - (e) the person has been required to undergo a screening test under section 8, section 9 or section 10;
  - (f) the person has been required to give a breath or oral fluid sample under section 12.

- 1           (2) If a police officer has reasonable cause to suspect that the person's  
2           behaviour or appearance indicates that the person may be impaired  
3           for a reason other than alcohol alone, the police officer may require  
4           the person to undergo an assessment of drug impairment.
- 5           (3) For the purpose of requiring someone to undergo an assessment of  
6           drug impairment, a police officer may take the person into custody.
- 7           (4) If the person is taken into custody, a police officer must take the  
8           person, as soon as practicable, to a police station or another  
9           convenient place to carry out the assessment.
- 10          (5) The person must undergo an assessment of drug impairment in  
11          accordance with the reasonable directions of a police officer.
- 12          (6) An assessment of drug impairment must be carried out—
- 13               (a) by a police officer authorised by the chief police officer to  
14               carry out assessments of drug impairment; and
- 15               (b) in accordance with the procedure prescribed by regulation; and
- 16               (c) unless a particular time is prescribed by regulation, within the  
17               reasonable time needed to carry out the assessment.
- 18          (7) The carrying out of an assessment of drug impairment must be  
19          videorecorded unless the prosecution satisfies the court that it was  
20          not practicable in the circumstances to make a video recording.
- 21          (8) If a person who undergoes an assessment of drug impairment is  
22          subsequently charged with an offence against section 20, a copy of  
23          the video recording (if any) must be served with the summons or, if  
24          a summons is not issued, not later than 7 days after the day the  
25          person is charged with the offence.

- 1 **9**      **Precautions for privacy**  
2      **Section 13**
- 3      *omit*  
4      breath analysis  
5      *substitute*  
6      breath or oral fluid analysis
- 7 **10**      **Section 14 heading**
- 8      *substitute*
- 9 **14**      **Restrictions on screening tests and breath and oral fluid**  
10      **analyses**
- 11 **11**      **Section 14 (1)**
- 12      *omit everything before paragraph (a), substitute*
- 13      (1) A police officer must not require a person to undergo a screening  
14      test under section 8, section 9 or section 10, to provide a sample of  
15      the person's breath or oral fluid for analysis under section 12, or to  
16      undergo an assessment of drug impairment under section 12A, and a  
17      police officer must not begin or continue the analysis under  
18      section 12 or the assessment under section 12A—
- 19 **12**      **Section 14 (3)**
- 20      *omit everything before paragraph (a), substitute*
- 21      (3) A police officer must not require a person to undergo a screening  
22      test under section 8, section 9 or section 10, to provide a sample of  
23      the person's breath or oral fluid for analysis under section 12, or to  
24      undergo an assessment of drug impairment under section 12A—

**13 Section 14 (3) (a)**

*substitute*

- (a) if it appears to the police officer that it may, because of injury suffered by the person or otherwise, be dangerous or not practicable for the person to undergo the screening test, to provide the sample or to undergo the assessment; or

**14 Taking blood samples from people in custody  
Section 15 (1) (a) and (b)**

*substitute*

- (a) a police officer does not, because of section 14 (3) (a) or (b) require a person to undergo a screening test, to provide a sample of breath or oral fluid for analysis or to undergo an assessment of drug impairment; or
- (b) because the analysis instrument available is not in working order or an approved analysis instrument is not available, it is not practicable to carry out the breath or oral fluid analysis; or
- (c) because it is not practicable to carry out the assessment of drug impairment;

**15 Analysis of blood samples  
Section 15A (1)**

*substitute*

- (1) If only 1 sealed container of a particular person's blood that has been taken under section 15 or section 15AA has been put in a one-way box for collection by an approved analyst, the analyst must analyse the blood to ascertain—
- (a) the concentration of alcohol in the blood; and
- (b) if asked by a police officer to do so—the concentration of drugs in the blood.

**16 Section 15A (2) (a)**

*substitute*

- (a) analyse the blood in 1 of the containers to ascertain—
- (i) the concentration of alcohol in the blood; and
  - (ii) if asked by a police officer to do so—the concentration of drugs in the blood; and

**17 Section 15A (3) and (4)**

*omit*

**18 Medical examinations  
Section 16 (1) (a) (i)**

*substitute*

- (i) has been required to undergo a screening test, to provide a sample of his or her breath or oral fluid for analysis or to undergo an assessment of drug impairment; and

**19 Protection of police officers and medical staff  
Section 18 (3) (a)**

*substitute*

- (a) if the sample of the person's breath or oral fluid has been analysed—the time when the approved operator gives the person the written statement mentioned in section 12 (6); or

**20 Section 18 (3) (c)**

*substitute*

- (c) if the person is required to undergo an assessment of drug impairment—the period mentioned in section 12A (6) (c) ends; and



- (d) the end of whichever of the periods mentioned in section 14 (1) applies in relation to the person.

**21 New section 20**

*insert*

**20 Driving while impaired by drug or blood drug concentration exceeded**

- (1) A person commits an offence if the person—
- (a) drives a motor vehicle on a public street or in a public place; and
  - (b) is impaired by a drug.

Maximum penalty:

- (a) for an offence by a first offender—10 penalty units; and
- (b) for an offence by a repeat offender—25 penalty units, imprisonment for 3 months or both.

- (2) A person commits an offence if the person—

- (a) has been the driver of a motor vehicle on a public street or in a public place; and
- (b) has, within the relevant period, a concentration of drugs in the person's blood equal to or more than the prescribed concentration.

Maximum penalty:

- (a) for an offence by a first offender—5 penalty units; and
- (b) for an offence by a repeat offender—25 penalty units, imprisonment for 3 months or both.

- 1           (3) In this section:
- 2                 *relevant period* means the period beginning when the person
- 3                 stopped being the driver of the vehicle and ending at the latest time
- 4                 when—
- 5                 (a) a breath or oral fluid analysis of the person may be carried out
- 6                     under this Act; or
- 7                 (b) if section 15 (Taking blood samples from people in custody) or
- 8                     section 15AA (Taking blood samples from people in hospital)
- 9                     applies—a sample of the person’s blood may be taken under
- 10                 that section.

11   **22           New section 22A**

12                 *insert*

13   **22A           Refusing to provide oral fluid sample**

- 14           (1) This section applies to a person who—
- 15                 (a) has been the driver of a motor vehicle on a public street or in a
- 16                     public place; and
- 17                 (b) has, in accordance with this Act, been required to provide a
- 18                     sample of oral fluid for analysis.
- 19           (2) The person commits an offence if—
- 20                 (a) the person refuses to provide a sample of oral fluid for
- 21                     analysis; or
- 22                 (b) the person fails to provide a sample of oral fluid in accordance
- 23                     with reasonable directions of a police officer.
- 24                 Maximum penalty: 30 penalty units.

1     **22B       Refusing to undergo drug assessment**

- 2             (1) This section applies to a person who—
- 3                 (a) has been the driver of a motor vehicle on a public street or in a
- 4                     public place; and
- 5                 (b) has, in accordance with this Act, been required to undergo a
- 6                     drug assessment.
- 7             (2) The person commits an offence if—
- 8                 (a) the person refuses to undergo a drug assessment; or
- 9                 (b) the person fails to undergo a drug assessment in accordance
- 10                     with reasonable directions of a police officer.

11             Maximum penalty: 30 penalty units.

12     **23       Section 27 heading**

13             *substitute*

14     **27       Imprisonment—s 22, s 22A, s 22B, s 23 and s 24 offences**

15     **24       Section 27 (a)**

16             *substitute*

- 17             (a) a person is convicted of an offence against any of the following
- 18                 provisions:
- 19                 • section 22 (Refusing to provide breath sample);
- 20                 • section 22A (Refusing to provide oral fluid sample);
- 21                 • section 22B (Refusing to undergo drug assessment);
- 22                 • section 23 (Refusing blood test etc);
- 23                 • section 24 (Driving under the influence of intoxicating
- 24                     liquor or a drug); and

**25**      **Certificate of evidence**  
**New section 41 (1) (ab)**

*insert*

(ab) a certificate purporting to be signed by a police officer and stating—

(i) that the police officer was on a date stated in the certificate an approved operator; and

(ii) that, at a place and at a time and on a date stated in the certificate, a person named in the certificate was required by a stated police officer to provide a sample of the person's oral fluid for analysis by an approved oral fluid analysis instrument; and

(iii) the instrument used in the analysis, by reference to its model number, patent number and serial number; and

(iv) that the approved oral fluid analysis instrument was in proper working order; and

(v) the procedures followed and precautions taken immediately before the breath analysis, during the breath analysis and immediately after the completion of the breath analysis; and

(vi) that the person named in the certificate provided a sample of the person's oral fluid for analysis in accordance with the directions of the police officer who made the requirement; and

(vii) the steps that were taken to ensure that it was not readily apparent to members of the public that the oral fluid analysis was being carried out; and

(viii) that, in following the procedures for which a regulation makes provision that stated results are to be obtained, the results stated in the certificate were obtained; and

(ix) that the result recorded or shown by the instruments as the result of the analysis was a particular figure, level or percentage or was not less than and not more than a particular figure, level or percentage; and

(x) that, as soon as practicable after the oral fluid analysis was carried out, the police officer signed and gave to the person mentioned in subparagraph (ii) the statement required by section 12 (6);

is evidence of the matters stated in the certificate; and

## **26 New section 41 (1) (ba)**

*insert*

(ba) a certificate purporting to be signed by a police officer and stating—

(i) that the police officer was on a date stated in the certificate an approved operator; and

(ii) that, at a place and at a time and on a date stated in the certificate, a person named in the certificate was required by a stated police officer to provide a sample of the person's oral fluid for analysis by an approved oral fluid analysis instrument; and

(iii) the instrument available to be used in the analysis, by reference to its model number, patent number and serial number; and

(iv) that the approved oral fluid analysis instrument was in proper working order; and

(v) the procedures followed immediately before the person was required to provide a sample of the person's oral fluid for analysis and the results obtained in following those procedures; and

1 (vi) that the person refused or failed to provide a sample of  
2 his or her breath for analysis;

3 is evidence of the matters stated in the certificate; and

4 **27 Section 41 (1) (c)**

5 *substitute*

6 (c) a written statement mentioned in section 12 (6) that is a  
7 print-out from an approved breath analysis instrument or  
8 approved oral fluid analysis instrument is evidence of the  
9 matters stated in the statement; and

10 (ca) a certificate purporting to be signed by a police officer and  
11 stating—

12 (i) that the police officer was on a date stated in the  
13 certificate authorised by the chief police officer to carry  
14 out assessments of drug impairment; and

15 (ii) that, at a place and time and on a date stated in the  
16 certificate, a person named in the certificate was required  
17 by a stated police officer to undergo an assessment of  
18 drug impairment; and

19 (iii) the procedures followed in carrying out the assessment of  
20 drug impairment;

21 is evidence of the matters stated in the certificate; and

22 (cb) a certificate purporting to be signed by a police officer and  
23 stating—

24 (i) that the police officer was on a date stated in the  
25 certificate authorised by the chief police officer to carry  
26 out assessments of drug impairment; and

- 1 (ii) that, at a place and time and on a date stated in the  
 2 certificate, a person named in the certificate was required  
 3 by a stated police officer to undergo a drug assessment;  
 4 and
- 5 (iii) that the person refused or failed to undergo a drug  
 6 assessment;
- 7 is evidence of the matters stated in the certificate; and

## 28 Section 41 (1) (e) (iii)

- 9 *omit*
- 10 or to provide a sample of the person's breath for breath analysis  
 11 under section 12 (Breath analysis);
- 12 *substitute*
- 13 , to provide a sample of the person's breath or oral fluid for analysis  
 14 under section 12 (Breath or oral fluid analysis) or to undergo an  
 15 assessment of drug impairment under section 12A (Assessment of  
 16 drug impairment);

## 29 New section 42AA

18 *after section 42, insert*

### 42AA Effect of noncompliance—analysis of oral fluid

- 20 (1) This section applies if the court hearing a charge for an offence  
 21 against this Act arising out of the carrying out of an oral fluid  
 22 analysis is not satisfied that there has been compliance with every  
 23 provision of this Act relating to the carrying out of the analysis.

24 *Note* A reference to an Act includes a reference to the statutory instruments  
 25 made or in force under the Act, including regulations (see Legislation  
 26 Act, s 104).

- (2) Unless the court is satisfied that the failure to comply with the provisions of this Act mentioned in subsection (1) would not have affected the result obtained in the analysis, the court must dismiss the charge.

### **30 New section 42C**

*insert*

#### **42C Effect of noncompliance—refusal to give sample of oral fluid**

- (1) This section applies if the court hearing a charge for an offence against section 22A is not satisfied that there has been compliance with every provision of this Act relating to that part of the carrying out of an oral fluid analysis that is required to be carried out before the sample of oral fluid is supplied.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) Unless the court is satisfied that the failure to comply with the provisions of this Act mentioned in subsection (1) was such that, had the failure not happened and the oral fluid analysis taken place, the result obtained in the analysis would have indicated the presence of a drug, the court must dismiss the charge.

### **31 Dictionary, new definitions of *approved alcohol screening device* and *approved analysis instrument***

*insert*

***approved alcohol screening device*** means a device that is approved by the Minister under section 5 (1).

***approved analysis instrument*** means an approved breath analysis instrument or an approved oral fluid analysis instrument.



**32 Dictionary, definitions of *approved analyst* and *approved breath analysis instrument***

*substitute*

*approved analyst* means a person who is appointed by the Minister under section 6 (2).

*approved breath analysis instrument* means an instrument that is approved by the Minister under section 5A (1).

**33 Dictionary, new definition of *approved drug screening device***

*insert*

*approved drug screening device* means a device that is approved by the Minister under section 5 (2).

**34 Dictionary, definition of *approved operator***

*substitute*

*approved operator* means—

- (a) for a breath analysis—a police officer who is authorised under section 6 (1); and
- (b) for an oral fluid analysis—a police officer who is authorised under section 6 (1A).

**35 Dictionary, new definition of *approved oral fluid analysis instrument***

*insert*

*approved oral fluid analysis instrument* means a device that is approved by the Minister under section 5A (2).

1   **36       Dictionary, definition of *approved screening device***

2       *omit*

3   **37       Dictionary, new definition of *assessment of drug***  
4       ***impairment***

5       *insert*

6       *assessment of drug impairment*, of a person, means an assessment  
7       of drug impairment carried out on the person under section 12A.

8   **38       Dictionary, definition of *disqualifying offence***

9       *substitute*

10      *disqualifying offence* means an offence against—

- 11      (a) section 19 (Prescribed blood alcohol concentration exceeded);  
12      or  
13      (b) section 20 (Driving while impaired by drug or blood drug  
14      concentration exceeded); or  
15      (c) section 22 (Refusing to provide breath sample); or  
16      (d) section 22A (Refusing to provide oral fluid sample); or  
17      (e) section 22B (Refusing to undergo drug assessment); or  
18      (f) section 23 (Refusing blood test etc); or  
19      (g) section 24 (Driving under the influence of intoxicating liquor  
20      or a drug); or  
21      (h) another provision of this Act prescribed by regulation.

---

**39 Dictionary, new definition of *oral fluid analysis***

*insert*

***oral fluid analysis***, in relation to a person, means an analysis of a sample of the person's oral fluid carried out for this Act using an approved oral fluid analysis instrument.

**40 Dictionary, definition of *screening test***

*substitute*

***screening test***, for a person, means either or both of the following (as directed by a police officer):

- (a) a test of a sample of the person's breath using an approved alcohol screening device;
- (b) a test of a sample of the person's oral fluid using an approved drug screening device.

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**Endnotes**

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2008.

**2 Notification**

Notified under the Legislation Act on 2008.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).