

South Australia



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ELIZABETHAE II REGINAE
A.D. 2001

STATUTES AMENDMENT (TRANSPORT PORTFOLIO) ACT 2001

No. 17 of 2001

[Assented to 17 May 2001]

An Act to amend the Harbors and Navigation Act 1993, the Motor Vehicles Act 1959 and the Road Traffic Act 1961.

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The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Transport Portfolio) Act 2001*.

Commencement

2. (1) This Act will come into operation on a day to be fixed by proclamation.

- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to Part 3.

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2
AMENDMENT OF HARBORS AND NAVIGATION ACT 1993**

Amendment of s. 26—Licences for aquatic activities

4. Section 26(4) of the principal Act is amended by striking out the penalty provision at the foot of that subsection and substituting the following:

Maximum penalty: \$750.

Amendment of s. 71—Requirement to submit to alcotest or breath analysis

5. Section 71 of the principal Act is amended—

- (a) by inserting after subsection (3) the following subsection:

(3a) The regulations may prescribe the manner in which an alcotest or breath analysis is to be conducted and may, for example, require that more than one sample of breath is to be provided for testing or analysis and, in such a case, specify which reading of the apparatus or instrument will be taken to be the result of the alcotest or breath analysis for the purposes of this Division and any other Act.;

- (b) by striking out subsection (4) and substituting the following subsection:

(4) It is a defence to a prosecution under subsection (2) that—

- (a) the requirement or direction to which the prosecution relates was not lawfully made; or
- (b) the person was not allowed the opportunity to comply with the requirement or direction after having been given the prescribed oral advice in relation to—
- (i) the consequences of refusing or failing to comply with the requirement or direction; and

- (ii) the person's right to request the taking of a blood sample under section 72; or
- (c) there was, in the circumstances of the case, good reason for the defendant to refuse or fail to comply with the requirement or direction.

Insertion of s. 72C

6. The following section is inserted after section 72B of the principal Act:

Concentration of alcohol in breath taken to indicate concentration of alcohol in blood

72C. Where a person submits to an alcotest or a breath analysis and the alcotest apparatus or the breath analysing instrument produces a reading in terms of a number of grams of alcohol in 210 litres of the person's breath, the reading will, for the purposes of this Act, be taken to be that number of grams of alcohol in 100 millilitres of the person's blood.

Amendment of s. 73—Evidence

7. Section 73 of the principal Act is amended—

(a) by striking out paragraph (b) of subsection (3) and substituting the following paragraph:

(b) the reading produced by the breath analysing instrument.;

(b) by striking out from subsection (5)(b) "that a specified concentration of alcohol was indicated by the breath analysing instrument as being present in the person's blood" and substituting "specifying the reading produced by the breath analysing instrument";

(c) by striking out subparagraph (i) of subsection (5)(bb) and substituting the following subparagraph:

(i) on a day and at a time stated in the certificate, a person named in the certificate submitted to a breath analysis; and;

(d) by striking out paragraph (a) of subsection (5a) and substituting the following paragraph:

(a) that on a day and at a time stated in the certificate, a person named in the certificate submitted to a breath analysis; and.

Amendment of s. 74—Compulsory blood tests of injured persons including water skiers

8. Section 74 of the principal Act is amended by inserting after subsection (16) the following subsection:

(16a) If it is proved by the prosecution in proceedings for an offence against this Division that a concentration of alcohol was present in the defendant's blood at the time at which a sample of blood was taken under this section, it must be conclusively presumed that that concentration of alcohol was present in the defendant's blood throughout the period of two hours immediately preceding the taking of the sample.

Transitional provision

9. An amendment to the principal Act effected by a provision of this Part does not apply in relation to an offence committed before the commencement of that provision.

PART 3
AMENDMENT OF MOTOR VEHICLES ACT 1959

Amendment of s. 24—Duty to grant registration

10. Section 24 of the principal Act is amended—

(a) by inserting after subparagraph (iii) of subsection (2)(b) the following subparagraph:

(iv) is of a class prescribed for the purposes of this section.;

(b) by inserting after subparagraph (iii) of subsection (3)(b) the following subparagraph:

(iv) is of a class prescribed for the purposes of this section.;

(c) by inserting after paragraph (c) of subsection (3) (as substituted by section 14(c) of the *Motor Vehicles (Miscellaneous) Amendment Act 1999*) the following paragraph:

(ca) the vehicle is of a class prescribed for the purposes of this section; or.

Amendment of s. 81A—Provisional licences

11. Section 81A of the principal Act is amended by striking out from subsection (1)(c) (as substituted by section 50(b) of the *Motor Vehicles (Miscellaneous) Amendment Act 1999*) "committing an offence" and substituting "an offence committed or allegedly committed".

Amendment of s. 81B—Consequences of holder of learner's permit, provisional licence or probationary licence contravening conditions, etc.

12. Section 81B of the principal Act is amended—

(a) by striking out paragraph (b) of subsection (2) and substituting the following paragraphs:

(ab) a person expiates an offence of contravening a prescribed condition allegedly committed while the holder of a learner's permit, probationary licence or provisional licence; or

(b) demerit points are incurred by a person and, in consequence, the total number of demerit points recorded against the person in respect of offences committed or allegedly committed while the holder of a learner's permit or a provisional licence equals or exceeds four.;

(b) by inserting in subsection (4) "or allegedly committed" after "committed";

(c) by inserting in subsection (9)(b) (as substituted by section 52(e) of the *Motor Vehicles (Miscellaneous) Amendment Act 1999*) "or allegedly committed" after "committed" wherever it occurs.

Insertion of s. 98AB

13. The following section is inserted in Part 3B of the principal Act before section 98B:

Interpretation

98AB. (1) In this Part, a reference to an offence committed by a person includes a reference to an offence allegedly committed by a person that the person has expiated.

(2) In this Part—

"expiate" includes pay the amount payable in connection with an infringement notice or penalty notice issued under a law of another State or Territory of the Commonwealth in respect of an alleged offence.

Amendment of s. 116A—Appointment of nominal defendant

14. Section 116A of the principal Act is amended by inserting in subsection (1) "(whether a natural person or a body corporate)" after "person".

Amendment of s. 145—Regulations

15. Section 145 of the principal Act is amended by striking out from subsection (8) the definition of "written-off motor vehicle" and substituting the following definition:

"written-off motor vehicle" means a motor vehicle of a class defined by the regulations as written-off vehicles.

PART 4
AMENDMENT OF ROAD TRAFFIC ACT 1961

Amendment of s. 33—Road closing and exemptions for road events

16. Section 33 of the principal Act is amended by striking out from subsection (3) "advertise a copy of the order in two newspapers, one being a newspaper circulating generally in the State" and substituting "cause the order to be advertised in the prescribed manner".

Amendment of s. 47A—Interpretation

17. Section 47A of the principal Act is amended by striking out the definition of "alcotest" and substituting the following definition:

"alcotest" means a test by means of an apparatus of a kind approved by the Governor for the conduct of alcotests;

Amendment of s. 47B—Driving whilst having prescribed concentration of alcohol in blood

18. Section 47B of the principal Act is amended by striking out subsection (2).

Amendment of s. 47E—Police may require alcotest or breath analysis

19. Section 47E of the principal Act is amended—

(a) by striking out subsection (2) and substituting the following subsection:

(2) Performance of an alcotest or breath analysis required under subsection (1) must be commenced within two hours of the event giving rise to the belief referred to in that subsection.;

(b) by inserting after subsection (2b) the following subsections:

(2c) Performance of a breath analysis required under subsection (2b) must be commenced within two hours after the motor vehicle is stopped for the purpose of requiring the driver to submit to an alcotest.

(2d) The performance of an alcotest or breath analysis commences when a direction is first given by a member of the police force that the person concerned exhale into the alcotest apparatus or breath analysing instrument to be used for the alcotest or breath analysis.

(2e) The regulations may prescribe the manner in which an alcotest or breath analysis is to be conducted and may, for example, require that more than one sample of breath is to be provided for testing or analysis and, in such a case, specify which reading of the apparatus or instrument will be taken to be the result of the alcotest or breath analysis for the purposes of this and any other Act.;

(c) by inserting after paragraph (a) of subsection (4) the following paragraph:

(ab) the person was not allowed the opportunity to comply with the requirement or direction after having been given the prescribed oral advice in relation to—

(i) the consequences of refusing or failing to comply with the requirement or direction; and

(ii) the person's right to request the taking of a blood sample under section 47F; or.

Insertion of s. 47EA

20. The following section is inserted after section 47E of the principal Act:

Concentration of alcohol in breath taken to indicate concentration of alcohol in blood
47EA. Where a person submits to an alcotest or a breath analysis and the alcotest apparatus or the breath analysing instrument produces a reading in terms of a number of grams of alcohol in 210 litres of the person's breath, the reading will, for the purposes of this Act and any other Act, be taken to be that number of grams of alcohol in 100 millilitres of the person's blood.

Amendment of s. 47G—Evidence, etc.

21. Section 47G of the principal Act is amended—

(a) by inserting in subsection (1b) "breath or" after "adduced as to a";

(b) by striking out paragraph (a) of subsection (2) and substituting the following paragraph:

(a) the reading produced by the breath analysing instrument; and;

(c) by striking out subparagraph (iii) of subsection (3)(b) and substituting the following subparagraph:

(iii) the provisions of this Act with respect to breath analysing instruments and the manner in which an analysis of breath by means of a breath analysing instrument is to be conducted were complied with,;

(d) by striking out paragraphs (a) and (b) of subsection (5) and substituting the following paragraphs:

(a) a person named in the certificate submitted to an analysis of breath by means of a breath analysing instrument on a day and at a time specified in the certificate; and

(b) the breath analysing instrument produced a reading specified in the certificate; and;

(e) by striking out paragraph (a) of subsection (7) and substituting the following paragraph:

(a) that, on a date and at a time specified in the certificate, a person named in the certificate submitted to an analysis of breath by means of a breath analysing instrument; and.

Amendment of s. 47GA—Breath analysis where drinking occurs after driving

22. Section 47GA of the principal Act is amended by striking out from subsection (2)(b)(i) "section 43(3)(a), (b) and (c)" and substituting "this Act".

Amendment of s. 47I—Compulsory blood tests

23. Section 47I of the principal Act is amended by inserting after subsection (13ba) the following subsection:

(13bb) If it is proved by the prosecution in proceedings for an offence against section 47(1) or 47B(1) that a concentration of alcohol was present in the defendant's blood at the time at which a sample of blood was taken under this section, it must be conclusively presumed that that concentration of alcohol was present in the defendant's blood throughout the period of two hours immediately preceding the taking of the sample.

Amendment of s. 160—Defect notices

24. Section 160 of the principal Act (as amended by section 96 of the *Motor Vehicles (Miscellaneous) Amendment Act 1999*) is amended—

- (a) by striking out from subsection (4a) "motor";
- (b) by striking out from subsection (4b) "motor";
- (c) by striking out from subsection (4c)(c) "motor";
- (d) by striking out from subsection (5) "motor";
- (e) by striking out from subsection (5a) "motor";
- (f) by striking out from subsection (5b) "motor";

- (g) by striking out from subsection (5c)(c) "motor";
- (h) by striking out subparagraph (ii) of subsection (5c)(g) and substituting the following subparagraph:
 - (ii) a certificate (a "clearance certificate") has been issued by a member of the police force, an inspector or a vehicle registration authority certifying that the repairs required by the notice have been made; and;
- (i) by striking out from subsection (5d) "motor";
- (j) by striking out from subsection (5f) "motor";
- (k) by striking out from subsection (5g) "motor";
- (l) by striking out from subsection (7)(a)(ii) "motor";
- (m) by inserting after subsection (14) the following subsection:

(15) Where a copy of a defect notice or clearance certificate is required to be sent to the Registrar of Motor Vehicles, the notice or certificate may be sent in electronic form.

Amendment of s. 167—Causing or permitting certain offences

25. Section 167 of the principal Act is amended by striking out from subsection (2) "section 53 of the *Justices Act 1921*" and substituting "section 267 of the *Criminal Law Consolidation Act 1935*".

Transitional provisions

26. (1) An approval of the Governor issued for the purposes of the definition of "alcotest" in section 47A of the principal Act before the commencement of section 17 continues to operate as such an approval for the purposes of that definition as substituted by section 17.

(2) An amendment to the principal Act effected by a provision of this Part does not apply in relation to an offence committed before the commencement of that provision.