



Australian Capital Territory

# **Road Transport (Alcohol and Drugs) Act 1977**

**A1977-17**

**Republication No 12**

**Effective: 27 May 2004 – 1 March 2005**

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Last amendment made by A2004-10

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Road Transport (Alcohol and Drugs) Act 1977* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 27 May 2004. It also includes any amendment, repeal or expiry affecting the republished law to 27 May 2004.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

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Australian Capital Territory

# Road Transport (Alcohol and Drugs) Act 1977

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An Act to provide for the detection of persons who drive motor vehicles after consuming alcohol or drugs, for offences by those persons, and to provide measures for the treatment and rehabilitation of those persons

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## Part 1 Preliminary

*Note* This Act (including the regulations) forms part of the road transport legislation. Other road transport legislation includes the *Road Transport (Dimensions and Mass) Act 1990*, the *Road Transport (Driver Licensing) Act 1999*, the *Road Transport (General) Act 1999*, the *Road Transport (Public Passenger Services) Act 2001*, the *Road Transport (Safety and Traffic Management) Act 1999*, the *Road Transport (Vehicle Registration) Act 1999* and the regulations made under those Acts. As part of the road transport legislation, this Act is subject to various provisions in the *Road Transport (General) Act 1999* about the administration and enforcement of the road transport legislation generally.

### 1 Name of Act

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

### 3 Definitions—the dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary defines certain words and expressions, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or elsewhere in the road transport legislation.

For example, the signpost definition ‘*driver licence*—see the *Road Transport (Driver Licensing) Act 1999*, dictionary’ means the expression ‘driver licence’ is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

### 4 Notes

A note in this Act is explanatory and is not part of this Act.

*Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.



**4A Meaning of *public place***

(1) For this Act—

*public place* means:

- (a) an off-street parking area; or
- (b) an area for the parking of motor vehicles on, or in the vicinity of, licensed premises; or
- (c) an area for the parking of motor vehicles by people attending a drive-in or other open-air theatre or cinema; or
- (d) a loading area; or
- (e) a wharf, pier or jetty; or
- (f) the foreshores of a lake; or
- (g) a park, reserve, recreational or sporting ground, racecourse or other open place, that is used by the public or to which the public has access, whether with or without payment for admission; or
- (h) the entrances to and the exits from, and the passages and driveways in, an area or place mentioned in paragraphs (a) to (g).

(2) In this section:

*foreshores*, of a lake—see the *Lakes Act 1976*, dictionary.

*lake*—see the *Lakes Act 1976*, dictionary.

*licensed premises*—see the *Liquor Act 1975*, dictionary.

*loading area* means any part of the area, other than an area on which a building is erected, bounded by the public streets known as—

- (a) Petrie Street, Alinga Street, East Row and London Circuit; or
- (b) Petrie Street, Bunda Street, Garema Place and Alinga Street; or

- (c) East Row, Alinga Street, Northbourne Avenue and London Circuit; or
- (d) Northbourne Avenue, Alinga Street, West Row and London Circuit.

*off-street parking area* means an area available for use by the public, whether with or without the payment of money, for the parking of motor vehicles, and includes an area—

- (a) situated between the entrances to and exits from the area and a public street; and
- (b) used for access to the area.

#### **4B Meaning of *special driver***

- (1) For this Act, a person is a special driver if—
  - (a) the person is not the holder of an Australian driver licence or external driver licence; or
  - (b) the person's Australian driver licence or external driver licence is suspended; or
  - (c) the person is disqualified from holding or obtaining an Australian driver licence by a court in Australia or under the law of any jurisdiction; or
  - (d) the person holds a learner licence, provisional licence, probationary licence or restricted licence within the meaning given by the *Road Transport (Driver Licensing) Act 1999*, dictionary; or
  - (e) the person is the holder of an Australian driver licence and is driving a motor vehicle of a kind that the person is not authorised to drive by the licence; or
  - (f) the person is the driver of—
    - (i) a Commonwealth vehicle; or

- (ii) a vehicle on which a sign or marking is required to be displayed under the *Dangerous Substances Act 2004*; or
  - (iii) a heavy vehicle; or
  - (iv) a public vehicle within the meaning of the *Road Transport (General) Act 1999*, section 158;
- (2) However, subsection (1) (a) does not apply to a person who is exempted from holding a driver licence under the *Road Transport (Driver Licensing) Act 1999*.
- (3) The Minister may, in writing, declare a motor vehicle to be a Commonwealth vehicle.
- (4) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (5) In this section:

***Commonwealth vehicle*** means a motor vehicle that is owned by the Commonwealth and—

- (a) bears a label attached to the windscreen that displays the letter ‘C’ followed by a 7-pointed star, both in white on a blue background, and the word ‘COMCAR’ in blue on a white background; or
- (b) is declared under subsection (3) to be a Commonwealth vehicle.

***heavy motor vehicle*** means—

- (a) a motor vehicle that has a GVM over 15t; or
- (b) a motor vehicle and trailer combination, or a combination of semitrailer coupled to a motor vehicle, that has a GCM over 15t.

*Note* ‘t’ is the symbol for tonne(s).

#### 4C Meaning of level of alcohol concentration

A reference in this Act to a concentration of alcohol in blood at a level mentioned in column 2 of an item of table 4C is a reference to a concentration of alcohol in 100mL of blood mentioned in column 3 of that item:

Table 4C

column 1 item	column 2 level	column 3 blood alcohol concentration
1	level 1	0.02g or more but less than 0.05g
2	level 2	0.05g or more but less than 0.08g
3	level 3	0.08g or more but less than 0.15g
4	level 4	0.15g or more

Note 1 'mL' is the symbol for millilitre(s).

Note 2 'g' is the symbol for gram(s).

#### 4D Meaning of *repeat offender* and *first offender*

- (1) A person who is convicted of a disqualifying offence is a *repeat offender* in relation to the offence if the person has been convicted, or found guilty, of a relevant offence within 5 years before being convicted of the disqualifying offence.
- (2) A person who is convicted of a disqualifying offence is a *first offender* in relation to the offence if the person is not a repeat offender in relation to the offence.
- (3) In this section:  
*relevant offence* means—
  - (a) a disqualifying offence; or
  - (b) a corresponding offence; or
  - (c) an offence of culpable driving; or

- (d) an offence against the *Road Transport (Safety and Traffic Management) Act 1999*, section 6 (1) (which is about negligent driving) that occasions death or grievous bodily harm (within the meaning of that subsection); or
- (e) an offence against any of the following provisions of the *Road Transport (Safety and Traffic Management) Act 1999*:
  - (i) section 7 (1) (which is about furious, reckless or dangerous driving);
  - (ii) section 8 (1) or (2) (which are about menacing driving); or
- (f) an offence against any of the following provisions of the *Road Transport (Driver Licensing) Act 1999*:
  - (i) section 32 (1), (2) or (3) (which are about driving or fraudulently applying for a driver licence while disqualified or after licence suspension, cancellation or refusal);
  - (ii) section 33 (1) (which is about contravention of conditions of a restricted licence); or
- (g) an offence against any of the following provisions of the *Motor Traffic Act 1936*:
  - (i) section 11D (which was about contravention of the conditions of a special probationary licence);
  - (ii) section 129 (1) (which was about reckless driving or driving in a dangerous manner);
  - (iii) section 129 (1A) (which was about negligent driving);
  - (iv) section 147A (1) (which was about driving at a dangerous speed);

- (v) section 191P (which was about driving or obtaining a driver licence while disqualified or after licence suspension).

## 5 Approval of instruments etc

- (1) If the Minister is of the opinion that a particular type of instrument—
  - (a) is designed and constructed to ascertain the concentration of alcohol present in a sample of a person's breath and is capable of recording that concentration in grams per 100mL of blood; and
  - (b) is suitable for use in analyses under part 2;the Minister may, in writing, approve that type of instrument for this Act.
- (2) The Minister may, in writing, approve devices of a type described in the notice to be approved screening devices for this Act if he or she is of opinion that—
  - (a) devices of that type have been designed and made for the purpose of indicating, when a sample of the breath of a person is exhaled into the device, whether alcohol is present in the blood of the person and, if so, of giving an indication of the concentration of alcohol in the blood of the person; and
  - (b) devices of that type are suitable devices for use in 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 2001*.

## 6 Approval of operators and analysts

- (1) The chief police officer may, in writing, authorise a police officer to carry out breath 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 breath analyses; and
  - (b) completed the course to the satisfaction of the chief police officer.
- (2) The Minister may, in writing, appoint the analysts that the Minister considers necessary for this Act.
- (3) An authorisation or appointment under this section is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## Part 2 Examination of persons for alcohol or drugs

### 8 Power to require screening test if vehicle not involved in accident

A police officer may require a person to undergo a screening test in accordance with the directions of that officer if—

- (a) the person is the driver of a motor vehicle on a public street or in a public place; or
- (b) the police officer has reasonable cause to suspect that, shortly before the requirement is made, the person was the driver of a motor vehicle on a public street or in a public place.

### 9 Power to require screening test if motor vehicle involved in accident

If a motor vehicle is involved in an accident on a public street or in a public place, a police officer may require a person to undergo a screening test in accordance with the directions of that officer—

- (a) if the police officer has reasonable cause to suspect that the person was the driver of the motor vehicle at the time of the accident; or
- (b) if—
  - (i) the police officer does not know or has doubt as to who was the driver of the motor vehicle at the time of the accident; and
  - (ii) the police officer has reasonable cause to suspect that the person was in the vehicle at the time of the accident.



**10 Power to require screening test for culpable driving**

A police officer who has reasonable cause to suspect that a person has committed an offence of culpable driving may require the person to undergo a screening test in accordance with the directions of that officer.

**11 Detention for breath analysis**

(1) If—

- (a) a person undergoes a screening test under a requirement made by a police officer under section 8, 9 or 10 and the approved screening device used in the screening test indicates to the police officer that the concentration of alcohol in the blood of the person is equal to or more than the prescribed concentration; or
- (b) a person who has been required by a police officer under section 8, 9 or 10 to undergo a screening test refuses to undergo the screening test; or
- (c) a person who has been required by a police officer under section 8, 9 or 10 to undergo a screening test fails to undergo the screening test in accordance with the direction of the police officer;

the police officer may take the person into custody and, if so, the officer shall take the person or shall place the person in the custody of another police officer who shall take the person, as soon as practicable to a police station or some other convenient place for the purpose of having a breath analysis of the person carried out.

(2) If—

- (a) under subsection (1) (a) the approved screening device used in the screening test indicates to the police officer that the concentration of alcohol in the blood of the person is equal to or more than 0.02g of alcohol per 100mL of blood; and

- (b) the police officer has reasonable grounds to believe that the person is a special driver;

subsection (1) applies in relation to that person accordingly.

## **12 Breath analysis**

- (1) Subject to section 14, a person who has been taken into custody under section 11 shall, when required to do so by a police officer, provide, in accordance with the reasonable directions of that officer, a sample of his or her breath for breath analysis.
- (2) A breath analysis shall be carried out by an approved operator.
- (3) The regulations may—
  - (a) make provisions for and in relation to the procedures to be followed by an approved operator immediately before beginning a breath analysis by means of an approved breath analysis instrument, during the breath analysis and immediately after the completion of the breath analysis; and
  - (b) make provision that, unless specified conditions exist when carrying out, and specified results are obtained from the procedures to be followed before beginning, a breath analysis by means of the instrument to be used in the breath analysis, the approved operator shall not use that instrument in carrying out the breath analysis; and
  - (c) make provision that, unless specified results are obtained from the procedures to be followed immediately after the completion of the breath analysis, the analysis of the sample of breath is to be disregarded for this Act.
- (4) Regulations made for subsection (3) may prescribe different procedures in relation to different types of approved breath analysis instruments.
- (5) If, because of regulations made for subsection (3) (c), an analysis of the sample of the breath of a person is to be disregarded for this Act,

the police officer referred to in subsection (1) may, if another breath analysis instrument is available at the police station or other place where the requirement under subsection (1) is made, require the person to provide in accordance with the reasonable directions of that officer, a sample of his or her breath for breath analysis by means of that other instrument.

- (6) As soon as practicable after the breath analysis has been carried out, the approved operator who carried out the breath analysis shall give to the person a written statement, signed by the approved operator, containing the particulars required by the regulations to be included in the statement.

### **13 Precautions for privacy**

- (1) The approved operator carrying out a breath analysis shall take all steps that are reasonably practicable to ensure that it is not readily apparent to members of the public that the breath analysis is being carried out.
- (2) Subsection (1) does not apply if the breath analysis is carried out at a police station.

### **14 Restrictions on screening tests and breath analyses**

- (1) A police officer shall not require a person to undergo a screening test under section 8, 9 or 10 or require a person to provide a sample of his or her breath for breath analysis under section 12, and an approved operator shall not begin or continue the breath analysis of a person under section 12—
  - (a) for an accident—
    - (i) if the person is taken to hospital—if more than 2 hours have elapsed since his or her arrival at the hospital; or
    - (ii) in any other case—if more than 2 hours have elapsed since the accident occurred; or

(c) in any other case—if more than 2 hours have elapsed since the person ceased to be the driver of the motor vehicle.

(2) If subsection (1) (a) (ii) applies and—

(a) a police officer attending the scene of the accident has doubt as to the time when the accident occurred; and

(b) the relevant person is found at or near the scene of the accident; and

(c) the police officer has reasonable cause to suspect that the person was in the vehicle at the time of the accident;

subsection (1) applies in relation to that person if more than 2 hours have elapsed since the person was found.

(3) A police officer shall not require a person to undergo a screening test under section 8, 9 or 10 or to provide a sample of his or her breath for breath analysis under section 12—

(a) if it appears to the police officer that it may be, because of injury suffered by the person or otherwise, dangerous or not practicable for that person to undergo a screening test or to submit his or her breath for analysis; or

(b) if the person is in hospital and the doctor or authorised nurse practitioner attending the person certifies in writing that, in his or her opinion, complying with the requirement would be detrimental to the person's medical condition; or

(c) for a person who is at the place where the person usually lives—

(i) unless the person was, or the police officer has reasonable cause to suspect that the person was, the driver of a motor vehicle at the time when it was involved in an accident on a public street or in a public place; or

- (ii) unless the police officer has reasonable cause to suspect that the person has committed an offence of culpable driving; or
  - (iii) unless the requirement is made immediately after a motor vehicle driven by the person has stopped at or near the place where the person usually lives and the police officer making the requirement has followed the motor vehicle while it was being driven on the public street.
- (4) If the person is in hospital, the police officer must, before making the requirement, tell the doctor or authorised nurse practitioner attending the person of the officer's intention to make the requirement.

## **15 Taking blood samples from persons in custody**

- (1) If—
- (a) a police officer does not, because of section 14 (3) (a) or (b) require a person to undergo a screening test or to provide a sample of his or her breath for breath analysis; or
  - (b) because the breath analysis instrument available is not in working order or an approved breath analysis instrument is not available, it is not practicable to carry out the breath analysis;
- the police officer may require the person to permit a sample of his or her blood to be taken by a doctor or a nurse for analysis and, if the person is not in hospital, may take the person into custody and take the person, or place the person in the custody of another police officer who shall take the person, as soon as practicable to a hospital for that purpose.
- (2) A requirement shall not be made under subsection (1) after the end of whichever of the periods specified in section 14 (1) or (2) applies in relation to the person.

- (3) A reference in this section to the taking of a blood sample is a reference to the taking of a blood sample under a requirement under subsection (1).
- (4) A sample of a person's blood shall be taken as soon as practicable after the arrival of the person at hospital and shall not be taken more than 2 hours after the arrival of the person at hospital.
- (5) A doctor or nurse shall not refuse to take a sample of a person's blood for analysis—
  - (a) if permitted to do so by the person under subsection (1); or
  - (b) if the doctor or nurse is of the opinion that the person is, because of his or her medical condition, incapable of giving or refusing permission to the taking of such a sample—if requested to do so by a police officer under this section.

Maximum penalty: 10 penalty units.

- (6) A police officer shall not make a request under subsection (5) after the end of whichever of the periods specified in section 14 (1) or (2) applies in relation to the person.
- (7) The doctor or nurse taking a sample of a person's blood under this section shall—
  - (a) take a sample of that person's blood in the presence of a police officer; and
  - (b) place approximately equal quantities of the sample blood into 2 containers and, on a label attached to each container, sign his or her name and write the name of the person from whom the sample was taken and the date and time when the sample was taken; and
  - (c) ensure that each container is sealed.
- (8) The doctor or nurse shall—

- (a) if he or she is of the opinion that the person was, at the time the blood sample was taken, incapable of giving or refusing his or her permission to take a sample of his or her blood—put both sealed containers in a one-way box; and
  - (b) in any other case—give 1 sealed container to the person and put the other sealed container in a one-way box.
- (9) The police officer shall arrange for the container or containers to be collected from the one-way box by an approved analyst as soon as practicable.

### **15AA Taking blood samples from persons in hospital**

- (1) A doctor or a nurse who, in a hospital, attends to a person whom the doctor or nurse believes on reasonable grounds to be a driver involved in an accident, shall, within 2 hours of the person's arrival at the hospital, take from that person a sample of the person's blood for analysis.

Maximum penalty: 10 penalty units.

- (2) A person taking a sample of blood under this section shall—
- (a) place approximately equal quantities of the sample into 2 containers; and
  - (b) mark or label each container for future identification; and
  - (c) ensure that each container is sealed.
- (3) A person who has taken a sample of blood under this section shall—
- (a) if satisfied that the person from whom the sample has been taken is incapable of understanding the procedures that have been applied to him or her—put both sealed containers in a one-way box; or
  - (b) in any other case—give 1 sealed container to the person and put the other sealed container in a one-way box.

- (4) A police officer shall arrange for the container or containers to be collected from the one-way box by an approved analyst as soon as practicable.

**15A Analysis of blood samples**

- (1) If only 1 sealed container of a particular person's blood that has been taken under section 15 or 15AA and has been put in a one-way box for collection by an approved analyst, the analyst shall analyse the blood to ascertain the concentration of alcohol in the blood.
- (2) If 2 sealed containers of a particular person's blood have been put in a one-way box for collection by an approved analyst, the analyst shall—
- (a) analyse the blood in 1 of the containers to ascertain the concentration of alcohol in the blood; and
  - (b) keep the other container sealed and under refrigeration until—
    - (i) the person, or another person authorised in writing by the firstmentioned person to collect the unanalysed blood sample, requests the analyst to give him or her that sample; or
    - (ii) 6 months after the blood was taken from the person ends; whichever happens first.
- (3) If a police officer has reasonable cause to suspect that—
- (a) a person whose blood is referred to in this section has in his or her body a drug other than alcohol; or
  - (b) the behaviour of the person does not arise, or does not wholly arise, from the presence of alcohol in his or her body;

the police officer may request an analyst to analyse the sample to ascertain the concentration in the blood of any drug other than alcohol.



- (4) An analyst shall comply with a request under subsection (3).

### **15B Statements to be provided**

- (1) A police officer shall arrange for a person from whom a blood sample has been taken under section 15 or 15AA to be given a written statement within a reasonable time, having regard to the person's medical condition, after an analysis under section 15A is carried out.
- (2) The statement shall specify—
- (a) the date and the time when the blood sample was taken; and
  - (b) the place where the blood sample was taken; and
  - (c) the result of the analysis; and
  - (d) the address where the blood sample is being held.
- (3) If both sealed containers were put in a one-way box for collection by an approved analyst, the statement shall also inform the person to the effect that an unanalysed sample of the person's blood may be obtained from the analyst, within 6 months after the blood sample was taken, on the request of the person or of another person authorised in writing by him or her to collect the blood sample.

### **16 Medical examinations**

- (1) This section applies to—
- (a) a person who—
    - (i) has been required to undergo a screening test or to provide a sample of his or her breath for analysis; and
    - (ii) has been arrested on reasonable suspicion of having committed an offence against section 24 or an offence of culpable driving; and
  - (b) a driver involved in an accident.

- (2) If a police officer has reasonable cause to suspect—
- (a) that a person to whom this section applies has in his or her body a drug other than alcohol; or
  - (b) that the behaviour of the person does not arise, or does not wholly arise, from the presence of alcohol in his or her body;

the police officer may require that person to submit to a medical examination and to give, or permit the taking of, body samples in accordance with this section for the purpose of ascertaining whether the condition of the person is caused, or contributed to, by the presence in his or her body of a drug other than alcohol.

- (3) For a person referred to in subsection (1) (a), if the person is not in hospital, the police officer may take the person into custody and take the person, or place him or her in the custody of another police officer who shall take the person, as soon as practicable to a hospital for the purposes of the medical examination.
- (4) A doctor or authorised nurse practitioner requested by a police officer to carry out a medical examination of a person to whom this section applies for the purpose referred to in subsection (2) shall carry out the medical examination within 2 hours of the person's arrival at hospital.

Maximum penalty: 10 penalty units.

- (5) A doctor or authorised nurse practitioner requested by a police officer to take a sample from the body of a person to whom this section applies for the purpose referred to in subsection (2) shall, within 2 hours of the person's arrival at hospital—
- (a) take the sample; or
  - (b) request a nurse to take the sample.

Maximum penalty: 10 penalty units.

- (6) A nurse requested by a doctor, authorised nurse practitioner or police officer to take a sample from the body of a person to whom

this section applies shall take the sample within 2 hours of the person's arrival at hospital.

Maximum penalty: 10 penalty units.

- (7) A person taking a sample under this section shall—
- (a) place approximately equal quantities of the sample into 2 containers; and
  - (b) mark or label each container for future identification; and
  - (c) ensure that each container is sealed.
- (8) A person who has taken a sample under this section shall—
- (a) if satisfied that the person from whom the sample has been taken is incapable of understanding the procedures that have been applied to him or her—put both sealed containers in a one-way box; or
  - (b) in any other case—give 1 sealed container to the person and put the other sealed container in a one-way box.
- (9) A police officer shall arrange for the container or containers to be collected from the one-way box by an approved analyst as soon as practicable.

## **16A Analysis of body samples**

- (1) Where only 1 sealed container of a particular person's body sample has been put in a one-way box under section 16 (8), the analyst by whom it is collected shall analyse it to ascertain—
- (a) whether any drug other than alcohol was present in the person's body when the sample was taken; and
  - (b) if any such drug is found to have been present—the concentration, quantity or other measurement of that drug; and
  - (c) if the sample is of the person's blood—the concentration of alcohol in the blood.

- (2) If 2 sealed containers of a particular person's body samples have been put in a one-way box under section 16 (8), the analyst by whom they have been collected shall—
- (a) analyse the sample in 1 of the containers in accordance with subsection (1); and
  - (b) keep the other container sealed and under refrigeration until—
    - (i) the person, or another person authorised by the firstmentioned person, requests the analyst to give him or her the sample; or
    - (ii) 6 months have elapsed since the sample was taken from the person.

**17 Exemptions from requirements to take blood samples or carry out examinations**

- (1) In this section:
- specified procedure* means—
- (a) the taking of a sample—
    - (i) of a person's blood under this Act; or
    - (ii) from the body of a person under section 16; or
  - (b) the carrying out of a medical examination under section 16.
- (2) A doctor or nurse is not required to carry out a specified procedure on a person—
- (a) if he or she is of the opinion that to do so would be detrimental to the person's medical condition; or
  - (b) for a procedure under section 15 or 16—if the person objects to the carrying out of the procedure and persists in so objecting after a doctor, nurse or police officer has informed the person that, unless the objection is based on religious or other

conscientious grounds or on medical grounds, the refusal may constitute an offence punishable as provided by this Act; or

- (c) for a procedure under section 15AA—the doctor or nurse believes on reasonable grounds that a sample of the blood of the person—
  - (i) has already been taken under this Act; or
  - (ii) will be taken under section 15.
- (3) It is a defence to a prosecution for a breach of section 15 (5), 15AA (1) or 16 (4), (5) or (6) if the defendant satisfies the court that—
  - (a) because of the behaviour of the person in relation to whom the relevant specified procedure was to be carried out, the defendant was unable to comply with the subsection; or
  - (b) there was other reasonable cause for the failure to comply with the subsection.

## **18 Protection of police officers and medical staff**

- (1) A police officer to whom this section applies who, in the exercise or intended exercise of a power given by this Act, takes a person into custody and takes the person to a place for the purpose of this Act, is not liable, only because of the taking into custody of the person and the holding of the person in custody, in an action arising out of the taking into custody of the person and holding of the person in custody.
- (2) Subsection (1) applies to—
  - (a) a police officer who believes on reasonable grounds that a person who has been taken into custody is liable to be taken into custody; and
  - (b) if such a police officer has taken a person into custody and has placed the person in the custody of another police officer—that other police officer.

- (3) A person who is taken into custody in relation to an offence against this Act shall not be held in custody after—
- (a) if a sample of the breath of the person has been analysed—the time when the approved operator gives to the person the written statement referred to in section 12 (6); or
  - (b) if the person is required to permit the taking of a sample of his or her blood or to submit to a medical examination—the sample of the blood of the person has been taken or the medical examination is completed; or
  - (c) the end of whichever of the periods referred to in section 14 (1) applies in relation to the person.
- (5) The Territory shall indemnify and keep indemnified a doctor or nurse who carries out a specified procedure when required to do so by this Act in relation to any damages that he or she becomes liable to pay as a result of carrying out the procedure.
- (6) In subsection (5):  
*specified procedure*—see section 17.
- (7) Subsection (5) applies whether the person was or was not capable, because of his or her mental condition, of giving or refusing consent to the taking of a sample of blood or to the medical examination.

## 18A Taking blood samples from people involved in accidents

- (1) In this section:

*accident* means an accident on a public street or in a public place, whether within or outside the ACT.

*animal* means a horse, cattle or sheep.

*bicycle* includes a tricycle and any vehicle of a similar nature, but does not include a toy carriage.

***person involved in an accident*** is a person who appears to be at least 15 years old and attends, or is admitted to, a hospital for examination or treatment because of an accident—

- (a) involving a vehicle the person was driving or attempting to drive; or
- (b) involving an animal the person was riding or driving or attempting to ride or drive; or
- (c) in which the person was involved as a pedestrian.

***vehicle*** means—

- (a) a bicycle; or
  - (b) an animal-drawn vehicle.
- (2) Sections 15AA, 15A, 15B, 16, 16A, 17, 23 and 41A apply in relation to a person involved in an accident, or a sample taken from the body of such a person, as if the person were a driver involved in an accident.

## Part 3 Offences

### 19 Prescribed blood alcohol concentration exceeded

- (1) A person who—
- (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 alcohol in his or her blood equal to or more than the prescribed concentration;

commits an offence punishable, on conviction, by a penalty ascertained in accordance with section 26.

- (2) In proceedings for an offence against subsection (1), evidence may be given of the concentration of alcohol in the person's blood as determined by—
- (a) an analysis of a sample of the person's breath or blood carried out in accordance with this Act; or
  - (b) any other analysis.

- (3) In subsection (1) (b):

***relevant period*** means the period beginning when the person ceased to be the driver of the vehicle and ending at the latest time when—

- (a) a breath analysis of the person may be carried out in accordance with this Act; or
- (b) if section 15 or 15AA applies—a sample of the person's blood may be taken in accordance with that section.



**21 Defence if person did not intend to drive motor vehicle**

If a person charged with an offence against section 19 was the driver of the motor vehicle only for the reason that he or she was in, and in charge of, a motor vehicle on a public street in a public place, it is a defence if the person charged establishes that—

- (a) he or she had not started, or attempted to start, the motor vehicle and had not put, or attempted to put, the motor vehicle in motion; and
- (b) he or she did not intend to drive the motor vehicle until a time when the concentration of alcohol in his or her blood would be less than a concentration equal to the prescribed concentration.

**22 Refusing to provide breath sample**

A person who—

- (a) has been the driver of a motor vehicle on a public street or in a public place; and
- (b) has, in accordance with the provisions specified in this Act, been required to provide a sample of breath for breath analysis;

commits an offence punishable, on conviction, by a maximum fine of 30 penalty units if—

- (c) he or she refuses to provide a sample of breath for analysis; or
- (d) he or she fails or refuses to provide a sample of breath in accordance with the reasonable directions of the police officer who made the requirement.

**23 Refusing blood test etc**

- (1) A person who—
- (a) has been the driver of a motor vehicle on a public street or in a public place; and
  - (b) has, in accordance with the provisions specified in this Act, been required to permit a sample of blood to be taken for analysis;

commits an offence punishable, on conviction, by a maximum fine of 30 penalty units if he or she fails or refuses to permit the sample to be taken for that purpose.

- (2) A person from whom a blood sample is required to be taken under section 15AA (1) shall not behave in such a manner as to make it impossible or impractical for the sample to be taken.

Maximum penalty: 30 penalty units.

- (3) A person who is required under section 16 to undergo a medical examination commits an offence punishable, on conviction, by a maximum fine of 30 penalty units if—
- (a) he or she fails or refuses to submit to the medical examination; or
  - (b) he or she fails or refuses, when required by the doctor or authorised nurse practitioner conducting the examination, to give or permit the taking of a sample from his or her body for analysis.

- (4) It is a defence to a prosecution for an offence against subsection (1), (2) or (3) if the person charged establishes that the failure, refusal or behaviour (as the case requires) was based on religious or other conscientious grounds or on medical grounds.

**24 Driving under the influence of intoxicating liquor or a drug**

- (1) A person who drives a motor vehicle on a public street or in a public place while under the influence of intoxicating liquor or of a drug to such an extent as to be incapable of having proper control of the motor vehicle commits an offence.

Maximum penalty: 30 penalty units.

- (2) A charge for an offence against subsection (1) is not open to objection on the ground only that it alleges that the person charged was under the influence of intoxicating liquor or of a drug and on the hearing of such a charge—

- (a) evidence that the person was under the influence of intoxicating liquor or of a drug or of intoxicating liquor and a drug is admissible; and
- (b) if the evidence establishes that the person was under the influence either of intoxicating liquor, of a drug or both intoxicating liquor and a drug, the person may be convicted of the offence.

- (3) If—

- (a) a person is charged with an offence against subsection (1); and
- (b) the charge is made only for the reason that the person was in, and in charge of, the motor vehicle on a public street or in a public place;

it is a defence if the person charged establishes that—

- (c) he or she had not started, or attempted to start, the engine of the motor vehicle and had not put, or attempted to put, the motor vehicle in motion; and
- (d) he or she did not intend to drive the motor vehicle while under the influence of intoxicating liquor, of the drug or both.

**24A Driver etc intoxicated**

- (1) A person must not drive or ride a vehicle or animal on a public street, or be in charge of a vehicle or animal on a public street, while under the influence of alcohol.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person arrested for an offence against this section is entitled to be examined by a doctor or authorised nurse practitioner if the person asks to be examined.
- (3) If a request for examination is made, the person making the arrest must provide reasonable facilities for the examination.
- (4) In this section:

*animal* means a horse, cattle or sheep.

*bicycle* includes a tricycle and any vehicle of a similar nature, but does not include a toy carriage.

*vehicle* means—

- (a) a bicycle; or
- (b) an animal-drawn vehicle.

## Part 4 Penalties

### 26 Fines and imprisonment—s 19 offences

- (1) If a special driver is convicted of an offence against section 19 (1) and the convicting court finds that the concentration of alcohol in the person's blood was at a level specified in column 2 of an item of table 26, the person is punishable—
  - (a) for a first offender—by the maximum penalty specified in column 3 of that item; and
  - (b) for a repeat offender—by the maximum penalty specified in column 4 of that item.
- (2) If a person other than a special driver is convicted of an offence against section 19 (1) and the convicting court finds that the concentration of alcohol in the person's blood was at level 2, 3 or 4, the person is punishable—
  - (a) for a first offender—by the maximum penalty specified in table 26, column 3 opposite the relevant level; and
  - (b) for a repeat offender—by the maximum penalty specified in table 26, column 4 opposite the relevant level.

**Table 26**

column 1 item	column 2 blood alcohol concentration level	column 3 maximum penalty— first offender	column 4 maximum penalty— repeat offender
1	level 1	5 penalty units	10 penalty units
2	level 2	5 penalty units	10 penalty units
3	level 3	10 penalty units, imprisonment for 6 months or both	10 penalty units, imprisonment for 6 months or both

**Part 4** Penalties

Section 27

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<b>column 1</b>	<b>column 2</b>	<b>column 3</b>	<b>column 4</b>
<b>item</b>	<b>blood alcohol concentration level</b>	<b>maximum penalty—first offender</b>	<b>maximum penalty—repeat offender</b>
4	level 4	15 penalty units, imprisonment for 9 months or both	20 penalty units, imprisonment for 12 months or both

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**27 Imprisonment—s 22, s 23 and s 24 offences**

If—

- (a) a person is convicted of an offence against section 22, 23 or 24; and
- (b) the court considers that, in all the circumstances and having regard to the antecedents of the person (including convictions for offences against the road transport legislation, against the *Motor Traffic Act 1936* or for corresponding offences), that it is appropriate to do so;

the court may, in addition to, or in substitution of, a pecuniary penalty, sentence the person to a term of imprisonment not exceeding—

- (c) for an offence by a first offender—6 months; or
- (d) for an offence by a repeat offender—12 months.

**29 Conditional release of convicted person**

- (1) If a person is convicted of an offence against this Act, the court, on an application by the convicted person, may, instead of ordering the convicted person to pay a pecuniary penalty or sentencing him or her to a term of imprisonment, order that the person be discharged on giving security, with or without sureties, by recognisance or otherwise, to the satisfaction of the court that—

- (c) he or she will be of good behaviour for the period, not exceeding 2 years, that the court considers appropriate; and
  - (d) he or she will, during the period so specified or any shorter period the court specifies in the order, undertake an approved rehabilitation program in accordance with the reasonable requirements of the person in charge of the program; and
  - (e) he or she will, during the period so specified, comply with any conditions (including conditions about the undertaking of the approved rehabilitation program) the court specifies in the order; and
  - (f) he or she will pay to the Territory any amount, not exceeding the amount of the pecuniary penalty that might have been imposed on the conviction by specified instalments as provided in the order.
- (2) The court shall only make an order under subsection (1)—
- (a) with the convicted person's consent; and
  - (b) if satisfied that the person in charge of the rehabilitation program has agreed to the convicted person undertaking the program.
- (3) If—
- (a) a person is discharged on giving security as required by subsection (1); and
  - (b) an information is laid before a magistrate or the registrar of the court that the person has failed to comply with any of the conditions specified in the order;

the magistrate or registrar may issue a summons requiring the person to appear before the court and to show cause why he or she should not be dealt with by the court under this section or, if the information is laid on oath, the magistrate or registrar may issue a

warrant for the arrest of the person and for the person to be brought before the court to be dealt with under subsection (4).

- (4) If a person appears before the court on a summons or warrant issued under subsection (3), the court may, if satisfied that the person has failed to comply with the conditions specified in the order, impose on the person any penalty that the court would, if the person had then and there been convicted of the offence originally charged, be empowered to impose or make any order (including a further order under subsection (1)) that the court would then be empowered to make.
- (5) The court may, when making an order under subsection (4), also order that any recognisance given by the person or by a surety for him or her be forfeited and that any other security given by or in relation to him or her be enforced.
- (6) In this section:

*approved rehabilitation program* means—

- (a) in relation to alcohol dependence—a program that is approved by the Minister under section 44 (1); or
- (b) in relation to drug dependence within the meaning of the *Drugs of Dependence Act 1989*—treatment at an approved treatment centre under that Act.

### **30 Power of the court to mitigate total amount to be paid by convicted person**

- (1) If the court makes an order under section 29 (1), the court may include in the order a direction that, if the convicted person has, during a specified period, complied with the conditions specified in the order, the person should have liberty to apply for an order under this section.
- (2) On an application under this section, the court may, after giving notice of the application to any person or persons that it considers



appropriate and on hearing the applicant and the person or persons to whom notice of the application has been given, order that the applicant be no longer required to pay any further instalments and may make any other order in relation to the conditions that it considers appropriate.

- (3) If an order is made under subsection (2) that a person is no longer required to pay any further instalments, the person and any surety each cease to be liable for the payment of any further instalments.

**32 Automatic driver licence disqualification—first offenders, s 19**

- (1) This section applies only to first offenders.
- (2) If a court convicts a special driver of an offence against section 19 (1) and finds that the concentration of alcohol in the person's blood was at a level mentioned in column 2 of an item of table 32, the person is automatically disqualified from holding or obtaining a driver licence for—
  - (a) the period mentioned in column 4 of that item; or
  - (b) if the court orders a shorter period of disqualification that is not less than the period mentioned in column 3 of that item—the shorter period.
- (3) If a court convicts a person other than a special driver of an offence against section 19 (1) and finds that the concentration of alcohol in the person's blood was at level 2, 3 or 4, the person is automatically disqualified from holding or obtaining a driver licence for—
  - (a) the period mentioned in the item applying to that level in table 32, column 4; or
  - (b) if the court orders a shorter period of disqualification that is not less than the period mentioned in that item, column 3—the shorter period.

**Table 32**

<b>column 1 item</b>	<b>column 2 blood alcohol concentration level</b>	<b>column 3 minimum disqualification</b>	<b>column 4 default disqualification</b>
1	level 1	1 month	3 months
2	level 2	2 months	6 months
3	level 3	3 months	12 months
4	level 4	6 months	3 years

*Note* The effect of disqualification is set out in the *Road Transport (General) Act 1999*, s 66.

**33 Automatic driver licence disqualification—repeat offenders, s 19**

- (1) This section applies only to repeat offenders.
- (2) If a court convicts a special driver of an offence against section 19 (1) and finds that the concentration of alcohol in the person’s blood was at a level mentioned in an item of column 2 of an item of table 33, the person is automatically disqualified from holding and obtaining a driver licence for—
  - (a) the period mentioned in column 4 of that item; or
  - (b) if the court orders a shorter period of disqualification that is not less than the period mentioned in column 3 of that item—the shorter period.
- (3) If a court convicts a person other than a special driver of an offence against section 19 (1) and finds that the concentration of alcohol in the person’s blood was at level 2, 3 or 4, the person is automatically disqualified from holding or obtaining a driver licence for—
  - (a) the period mentioned in the item applying to that level in table 33, column 4; or

- (b) if the court orders a shorter period of disqualification that is not less than the period mentioned in column 3 of that item—the shorter period.

**Table 33**

column 1 item	column 2 blood alcohol concentration level	column 3 minimum disqualification	column 4 default disqualification
1	level 1	3 months	12 months
2	level 2	3 months	12 months
3	level 3	6 months	3 years
4	level 4	12 months	5 years

*Note* The effect of disqualification is set out in the *Road Transport (General) Act 1999*, s 66.

### **34 Automatic driver licence disqualification—offences other than s 19**

- (1) If a court convicts a first offender of a disqualifying offence, other than an offence against section 19 (1), the person is automatically disqualified from holding or obtaining a driver licence for—
- (a) 3 years; or
  - (b) if the court orders a shorter period of disqualification that is at least 6 months—the shorter period.
- (2) If a court convicts a repeat offender of a disqualifying offence, other than an offence against section 19 (1), the person is automatically disqualified from holding or obtaining a driver licence for—
- (a) 5 years; or
  - (b) if the court orders a shorter period of disqualification that is at least 12 months—the shorter period.

*Note* The effect of disqualification is set out in the *Road Transport (General) Act 1999*, s 66.

**38 Additional powers of court**

The powers of a court under this part are in addition to any other powers of the court.

## Part 7 Evidence

### 41 Certificate of evidence

- (1) In any proceedings in a court—
  - (a) a certificate purporting to be signed by a police officer and stating—
    - (i) that he or she was on a specified date an approved operator; and
    - (ii) that, at a place and at a time and on a date specified in the certificate a person named in the certificate was required by a specified officer to provide a sample of his or her breath for breath analysis by an approved breath 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 breath 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 his or her breath 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 breath analysis was being carried out; and

- (viii) that, in following such of those procedures in relation to which the regulations make provision that specified results are to be obtained, the results specified in the certificate were obtained; and
- (ix) that the figure recorded or shown by the approved breath analysis instrument as the result of the analysis was a specified figure or was not less than a specified figure and not more than another specified figure, as the case requires; and
- (x) that, as soon as practicable after the breath analysis was carried out, he or she signed and gave to the person referred to in paragraph (a) (ii) a statement as required by section 12 (6);

is evidence of the matters stated in the certificate; and

- (b) a certificate purporting to be signed by a police officer and stating—
  - (i) that he or she was on a specified date an approved operator; and
  - (ii) that, at a place and time and on a date specified in the certificate, a person named in the certificate was required by a specified police officer to provide a sample of his or her breath for breath analysis by an approved breath analysis instrument; and
  - (iii) the instrument available for the purpose of the analysis, by reference to its model number, patent number and serial number; and
  - (iv) that the approved breath analysis instrument was in proper working order; and
  - (v) the procedures followed immediately before the person was required to provide a sample of his or her breath for

the breath analysis and the results obtained in following those procedures; and

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

is evidence of the matters stated in the certificate; and

- (c) a written statement referred to in section 12 (6), being a print-out from an approved breath analysis instrument, is evidence of the matters stated in the statement; and

- (d) a certificate purporting to be signed by a doctor or a nurse stating that—

- (i) he or she is a doctor or a nurse; and

- (ii) at a specified place and on a date and at a time specified, he or she took a sample of blood or other body sample of a person named in the certificate; and

- (iii) he or she placed approximately equal quantities of the sample of blood or other body sample into 2 containers; and

- (iv) on a label attached to each container, he or she signed his or her name and wrote the name of the person from whom the sample was taken and the date and time when the sample was taken; and

- (v) he or she—

- (A) gave 1 container to the person from whom the sample had been taken and put the other container in a one-way box; or

- (B) put both containers in a one-way box;

is evidence of the matters stated in the certificate;

- (e) a certificate purporting to be signed by a doctor or authorised nurse practitioner stating all of the following is evidence of the matters stated in the certificate:
  - (i) that he or she is a doctor or authorised nurse practitioner;
  - (ii) that at a stated hospital, on a stated date and at a stated time, he or she was attending the person named in the certificate;
  - (iii) that he or she was told by a police officer of the officer's intention to require a person to undergo a screening test under section 8 (Power to require screening test if vehicle not involved in accident), section 9 (Power to require screening test if motor vehicle involved in accident) or section 10 (Power to require screening test for culpable driving) or to provide a sample of the person's breath for breath analysis under section 12 (Breath analysis);
  - (iv) that he or she was of the opinion at the time he or she was told that—
    - (A) complying with the requirement would be detrimental to the person's medical condition; or
    - (B) complying with the requirement would not be detrimental to the person's medical condition; and
- (f) a certificate purporting to be signed by a doctor or a nurse stating that—
  - (i) he or she is a doctor or a nurse; and
  - (ii) at a specified place and on a date and at a time specified, he or she took a sample of blood from the person named in the certificate; and
  - (iii) he or she placed approximately equal quantities of the sample of blood into 2 containers; and



- (iv) on a label attached to each container, the doctor or a nurse, signed his or her name and wrote the name of the person from whom the sample was taken and the date and time when the sample was taken; and
- (v) each container was sealed; and
- (vi) he or she—
  - (A) gave 1 container to the person named in the certificate and put the other container in a one-way box; or
  - (B) put both containers in a one-way box; and
- (vii) if the sample of blood was taken under section 15—he or she held the opinion at the time when the sample was taken that the person was at that time, because of the person's medical condition, incapable of giving or refusing permission to take a sample of blood;  
is evidence of the matters stated in the certificate;
- (g) a certificate that appears to be a certificate mentioned in the *Road Transport (Safety and Traffic Management) Act 1999* (NSW), section 33 (4), (5) or (6) is evidence of the matters stated in the certificate; and
- (h) a certificate purporting to be signed by an approved analyst and stating—
  - (i) that he or she is an approved analyst; and
  - (ii) that he or she analysed a sample from a sealed container to which was attached a label purporting to be signed by a doctor or nurse named in the certificate and bearing the name of a person specified in the certificate as the person from whom the sample was taken and the date and time when the sample was taken; and
  - (iii) the analysis to which the sample was subjected; and

- (iv) the result of the analysis;  
is evidence of the matters stated in the certificate; and
  - (i) a certificate expressed to be given for this paragraph, purporting to be signed by a person specified or described in the regulations and containing statements in relation to matters permitted by the regulations to be stated in such a certificate is evidence of matters stated in the certificate.
- (2) A certificate expressed to be given for a paragraph of this section is not inadmissible only because of the fact that the certificate relates to 1, or some only, of the matters referred to in that paragraph.

**41A Evidence for insurance purposes**

- (1) Notwithstanding section 41, evidence—
- (a) that a sample of blood was taken from a person under section 15 (5) or 15AA (1); or
  - (b) that a doctor or nurse dealt with a container holding a sample of blood in accordance with section 15 (8) or 15AA (3); or
  - (c) that a statement was given under section 15B; or
  - (d) of the content of a statement issued under section 15B; or
  - (e) that the person was found guilty of a relevant offence; or
  - (f) that, in consequence of the person's being found guilty or being convicted of a relevant offence, an order was made in relation to the person; or
  - (g) that the person was charged with a relevant offence and, under the *Crimes Act 1900*, section 402, the charge was dismissed, or an order was made in relation to the person; or
  - (h) under the *Crimes Act 1900*, section 357, a relevant offence was taken into account in passing sentence on the person;

is not, in any proceedings in relation to an insurance contract, admissible as evidence that the person was, at any time, under the influence of or in any way affected by alcohol, or was under the influence of or affected by alcohol or a drug to such an extent as to be incapable or of exercising effective control over a motor vehicle.

- (2) A statement given to a person under section 15B is not, in any proceedings in relation to an insurance contract, admissible as evidence that the person was, at any time, under the influence of or in any way affected by alcohol, or was under the influence of or affected by alcohol or a drug to such an extent as to be incapable of driving or of exercising effective control over a motor vehicle.
- (3) A covenant, term, condition or provision of an insurance contract is void to the extent that it purports to exclude, limit, modify or restrict the liability of the insurer if the owner, registered operator or driver of a motor vehicle is convicted or found guilty of an offence against this Act.
- (4) A covenant, term, condition or provision of an insurance contract is void to the extent that it purports to exclude limit, modify or restrict the operation of this section.
- (5) Nothing in this section shall be taken as precluding the inclusion in an insurance contract of a covenant, term, condition or provision that excludes, limits, modifies or restricts the liability of the insurer otherwise than by a covenant, term, condition or provision of a kind referred to in subsection (3) or (4).
- (6) In subsection (1):

*relevant offence* means an offence against section 19 in relation to a sample of blood taken from a person under section 15 (5) or 15AA (1).

## **42 Effect of noncompliance—analysis of breath or blood**

- (1) This section applies if the court hearing a charge for an offence against this Act arising out of the carrying out of a breath analysis or

the taking and analysis of a sample of the blood of a person is not satisfied that there has been compliance with every provision of this Act relating to the carrying out of the breath analysis or the taking and analysis of the sample of blood.

*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 2001*, s 104).

- (2) Unless the court is satisfied that the failure to comply with the provisions of this Act referred to in subsection (1) was such that, had the failure not occurred, the result obtained in—
- (a) the breath analysis would have been, or exceeded, the prescribed concentration; or
  - (b) the analysis of the sample of blood would have been equal to, or exceeded, the prescribed concentration;

as the case requires, the court shall dismiss the charge.

#### **42A Effect of noncompliance—analysis of body sample**

- (1) This section applies if the court hearing a charge for an offence against this Act arising out of the giving or taking, and the analysis, of a sample from the body of a person is not satisfied that there has been compliance with every provision of this Act relating to the giving or taking, and the analysis, of the sample from the body of a person.

*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 2001*, s 104).

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

**42B Effect of noncompliance—refusal to give sample of breath**

- (1) This section applies if the court hearing a charge for an offence against section 22 is not satisfied that there has been compliance with every provision of this Act relating to that part of the carrying out of a breath analysis that is required to be carried out before the sample of breath 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 2001*, s 104).

- (2) Unless the court is satisfied that the failure to comply with the provisions of this Act referred to in subsection (1) was such that, had the failure not occurred and the breath analysis taken place, the result obtained in the analysis would have been, or exceeded, the prescribed concentration, the court shall dismiss the charge.

**43 Oral evidence about s 41 certificate**

- (1) A person who has been charged with an offence against this Act may give written notice to the chief police officer that he or she will require the attendance, for the purpose of giving evidence orally, at court on the hearing of the charge of each or any person by whom a certificate referred to in section 41 is given.
- (2) Notice under subsection (1) may be given by leaving it at, or posting it to, the chief police officer at his or her office, not less than 7 days before the date fixed for the hearing of the proceedings against the person charged or within any shorter period the court allows.
- (3) Notwithstanding that a notice has been given under subsection (2) and that the persons referred to in the notice give evidence relating to the matters stated in the certificates, the certificates referred to in section 41—
- (a) are admissible in evidence; and

**Part 7** Evidence

Section 43

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- (b) are evidence of the matters stated in the certificates and of the facts on which they are based; and
- (c) have the probative value that the court determines consistently with the other evidence before the court.

## Part 8 Rehabilitation programs

### 44 Approval of programs

- (1) For this Act, the Minister may, in writing, approve a program of therapy or education that the Minister believes on reasonable grounds would assist in the rehabilitation of persons suffering from alcohol dependence.
- (2) An approval may be given subject to the conditions (if any) stated in the approval.
- (3) A condition of an approval may require the person in charge of the program to report to the registrar of the court about the progress of people the court has ordered to undertake the program.
- (4) Subsection (3) does not limit the conditions that may be imposed on an approval.
- (5) An approval is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## Part 9 Miscellaneous

### 45 Power of arrest

Notwithstanding the *Crimes Act 1900*, section 352 (2) a police officer who has an approved screening device immediately available for use is not entitled to arrest without a warrant a person whom he or she suspects is guilty of an offence against section 24 (1) unless and until he or she has required that person to undergo a screening test and the person has undergone, or refused to undergo, the screening test.

### 46 Penalty for escaping from custody

A person who, having been taken into custody by a police officer under section 11, 15 or 16, escapes from the custody of that police officer or from the custody of another police officer in whose custody he or she has been placed commits an offence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### 47 Right of arrested person to medical examination

- (1) A police officer who arrests a person for an offence against this Act must tell the arrested person, or someone else acting on behalf of the arrested person, that the arrested person is entitled to be examined by a doctor or authorised nurse practitioner nominated by the arrested person or other person.
- (2) If the arrested person or the other person on his or her behalf requests the police officer to arrange such a medical examination, the police officer shall, as far as it is practicable and as soon as it is practicable to do so, arrange for the medical examination of the arrested person.



**48 When police officer may move person's motor vehicle**

- (1) This section applies to a motor vehicle driven by a person—
  - (a) arrested for an offence against this Act; or
  - (b) taken into custody under section 11, 15 or 16.
- (2) A police officer may take charge of, enter and drive the vehicle to a retention area.
- (3) As soon as practicable after moving the vehicle to a retention area, the police officer must report the action to the police officer in charge of the closest police station and ask that the responsible person for the vehicle (or someone else entitled to possession of the vehicle), and the person who was driving the vehicle before being arrested or taken into custody, be told where it has been moved to.
- (4) A vehicle moved to a retention area is taken to be uncollected goods under the *Uncollected Goods Act 1996* and—
  - (a) the road transport authority is taken to be the possessor of the vehicle under that Act; and
  - (b) the responsible person for the vehicle is taken to be the owner of the vehicle; and
  - (c) the road transport authority may dispose of the vehicle in accordance with that Act, part 3; and
  - (d) reasonable costs of the possessor in complying with that Act are taken to include the cost of moving the vehicle to the retention area.
- (5) The possessor is not required to release the vehicle from the retention area in accordance with the *Uncollected Goods Act 1996*—
  - (a) to the person who has been arrested or taken into custody, unless satisfied, on reasonable grounds, that the person can drive the vehicle without committing an offence against this Act; or

- (b) to a person who appears to be authorised for the purpose by the responsible person or the person arrested or in custody, unless satisfied, on reasonable grounds, that the person appears to understand the nature of the authority.
- (6) However, the responsible person for the vehicle is not required to pay costs under the *Uncollected Goods Act 1996*, section 26 (2) (a) or (b) if the responsible person satisfies the road transport authority that the vehicle was stolen or illegally taken or used at the relevant time.

*Note* The *Uncollected Goods Act 1996*, s 26 (2) (a) and (b) require the owner to pay the reasonable costs incurred by the possessor in complying with that Act and the possessor's reasonable costs in storing and maintaining the goods before they are collected.

#### **49 Default term of imprisonment**

If the court orders a pecuniary penalty to be paid by a person convicted of an offence against this Act, the court shall specify in the order the period of imprisonment to be served by the person convicted in default of payment of the penalty, being a period not exceeding the period of imprisonment for which the person may be sentenced by the court for the offence of which the person is convicted.

#### **50 References to Motor Traffic (Alcohol and Drugs) Act etc**

In any Act or document—

- (a) a reference to the *Motor Traffic (Alcohol and Drugs) Act 1977* is, in relation to anything to which this Act applies after the commencement of this section, a reference to this Act; and

(b) a reference to the *Motor Traffic (Alcohol and Drugs) Regulations* is a reference to the *Road Transport (Alcohol and Drugs) Regulations 2000*.

*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 2001*, s 104).

## **51 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Part 10 Transitional

### 52 Expiry of s 4D (3), def *relevant offence*, par (g)

Section 4D (3), definition of *relevant offence*, paragraph (g) and this section expire on 1 March 2005.

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## Schedule 1      Drugs

(see dict, def of *drug*)

- 1    Amitriptyline and other tricyclic antidepressants
- 2    Antihistamines, and all tertiary nitrogenous organic bases that possess pharmacological properties characteristic of antihistamine substances
- 3    Barbituric acid and its derivatives
- 4    Carbromal
- 5    Chloral hydrate and its derivatives
- 6    Chlor diazepoxide and other substances structurally derived from benzodiazepine with ataractic properties
- 7    Chlormezanone
- 8    Chlorpromazine and other substances structurally derived from phenothiazine with ataractic properties
- 9    Chlorprotixene and other thioxanthines
- 10   Ethchlorvynol
- 11   Ethinamate
- 12   Glutehimide
- 13   Haloperidol and other substances structurally derived from butyrophenone with ataractic properties
- 14   Meprobamate
- 15   Mianserin and other tetracyclic antidepressants
- 16   Paraldehyde
- 17   Phenelzine and other monoamine oxidase inhibitors with ataractic properties.

## Dictionary

(see s 3)

*Note 1* The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- doctor
- exercise
- fail
- function
- nurse
- nurse practitioner.

***accident*** means an accident on a public street or in a public place, whether within or outside the ACT, that involves a motor vehicle.

***another jurisdiction*** means a jurisdiction other than the ACT.

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

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

***approved operator*** means a police officer who is authorised by the chief police officer under section 6 (1).

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

***Australian driver licence***—see the *Road Transport (Driver Licensing) Act 1999*, dictionary.

***authorised nurse practitioner*** means a nurse practitioner who is the occupant of a nurse practitioner position acting within the scope of practice for the position.

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

***corresponding offence*** means an offence against a law of another jurisdiction that corresponds to a disqualifying offence, and includes any offence against the law of another jurisdiction arising out of the driving of a motor vehicle by a person who is or may be affected by alcohol, a drug or both.

***court*** means—

- (a) in relation to proceedings in or a matter before, or in relation to proceedings or matters that may be brought in or before, the Supreme Court—the Supreme Court; and
- (b) in relation to proceedings in or a matter before, or in relation to proceedings or matters that may be brought in or before, the Magistrates Court—the Magistrates Court.

***disqualifying offence*** means an offence against—

- (a) section 19 (Prescribed blood alcohol concentration exceeded); or
- (b) section 22 (Refusing to provide breath sample); or
- (c) section 23 (Refusing blood test etc); or
- (d) section 24 (Driving under the influence of intoxicating liquor or a drug); or
- (e) another provision of this Act prescribed under the regulations.

***drive*** a motor vehicle includes—

- (a) start or attempt to start the engine of the vehicle; and
- (b) put or attempt to put the vehicle in motion; and
- (c) be in, and in charge of, the vehicle; and

- (d) be in control of the steering, movement or propulsion of the vehicle; and
- (e) if the vehicle can be ridden—ride the vehicle.

**driver**, of a motor vehicle, means the person who is driving the vehicle.

**driver involved in an accident** means a driver of a motor vehicle that is involved in an accident who—

- (a) appears to be at least 15 years old; and
- (b) attends, or is admitted to, a hospital for the purpose of examination or treatment as a consequence of the accident.

**driver licence**—see the *Road Transport (Driver Licensing) Act 1999*, dictionary.

**drug** means—

- (a) a substance specified in schedule 1; or
- (b) a substance that is specified in the *Drugs of Dependence Regulations 1993*, schedule 1 or 2; or
- (c) any other substance that, on its own or in combination with alcohol, may influence the driving of the person who has taken the drug.

**external driver licence**—see the *Road Transport (Driver Licensing) Act 1999*, dictionary.

*Note* An external driver licence is a foreign driver licence or an external Territory driver licence.

**first offender**—see section 4D.

**GCM**—see the *Road Transport (Vehicle Registration) Act 1999*, dictionary.

**GVM**—see the *Road Transport (Vehicle Registration) Act 1999*, dictionary.



**jurisdiction** means a State, the Commonwealth or an internal Territory, including the ACT.

**level**, for a concentration of alcohol in blood—see section 4C.

**medical examination** means an examination by a doctor or authorised nurse practitioner.

**motor vehicle** means a vehicle built to be propelled by a motor that forms a part of the vehicle.

**nurse practitioner position**—see the *Health Act 1993*, section 37B (2).

**offence of culpable driving**, for a person, means—

- (a) an offence against the *Crimes Act 1900*, section 29 (Culpable driving); or
- (b) any other offence against the *Crimes Act 1900* if a necessary fact to constitute the offence is that someone dies or is injured because of, or as a result of, the way a person drove a motor vehicle.

**one-way box** means a locked box, with a hole capable of receiving containers of blood samples, from which the containers cannot be removed unless the box is unlocked with a key kept by an approved analyst.

**prescribed concentration** means—

- (a) in relation to a special driver—0.02g of alcohol per 100mL of blood; and
- (b) in relation to any other person—0.05g of alcohol per 100mL of blood.

**public place**—see section 4A.

**public street** means a street, road, lane or footpath (including a street, road, lane or footpath on or forming part of a bridge) that is

open to or used by the public and includes an entrance driveway leading to a parcel of land.

**registered operator**—see the *Road Transport (Vehicle Registration) Act 1999*, dictionary.

**repeat offender**—see section 4D.

**responsible person**, for a vehicle—see the *Road Transport (General) Act 1999*, section 10.

**restricted licence**—see the *Road Transport (Driver Licensing) Act 1999*, dictionary.

**road transport authority** (or **authority**) means the Australian Capital Territory Road Transport Authority.

*Note* The chief executive of the department responsible for the *Road Transport (General) Act 1999* is the road transport authority (see *Road Transport (General) Act 1999*, s 16).

**road transport legislation**—see the *Road Transport (General) Act 1999*, section 6.

**scope of practice**—see the *Health Act 1993*, section 37B (2).

**screening test** in relation to a person, means a test of sample of the breath of the person carried out for this Act by means of an approved screening device.

**special driver**—see section 4B.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Motor Traffic (Alcohol and Drugs) Ordinance 1977* No 17 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

It was renamed as the *Road Transport (Alcohol and Drugs) Act 1977* by the *Road Transport Legislation Amendment Act 1999* (see sch 3).

Before 11 May 1989, ordinances commenced on notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 25).

#### Legislation before becoming Territory enactment

##### **Road Transport (Alcohol and Drugs) Act 1977 No 17**

notified 21 June 1977 (Cwlth Gaz 1977 No S111)

commenced 1 December 1977 (s 2 and Gaz 1977 No S242)

as amended by

##### **Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance 1977 No 52**

notified 27 September 1977 (Cwlth Gaz 1977 No S206)

commenced 27 September 1977

##### **Ordinances Revision Ordinance 1978 No 46**

notified 28 December 1978 (Cwlth Gaz 1978 No S292)

commenced 28 December 1978

##### **Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance 1980 No 37**

notified 14 October 1980 (Cwlth Gaz 1980 No S231)

commenced 14 October 1980

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance  
1981 No 16**

notified 30 June 1981 (Cwlth Gaz 1981 No S128)  
commenced 30 June 1981

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance (No 2)  
1981 No 29**

notified 24 September 1981 (Cwlth Gaz 1981 No S200)  
commenced 24 September 1981

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance  
1982 No 94**

notified 17 December 1982 (Cwlth Gaz 1982 No S263)  
commenced 17 December 1982 (s 2)

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance  
1984 No 63**

notified 2 November 1984 (Cwlth Gaz 1984 No S464)  
commenced 2 November 1984

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance  
1985 No 51**

notified 19 September 1985 (Cwlth Gaz 1985 No S380)  
commenced 19 September 1985

**Magistrates Court Ordinance 1985 No 67 sch pt 1**

notified 19 December 1985 (Cwlth Gaz 1985 No S542)  
commenced 1 February 1986 (s 2 and Gaz 1986 No G3)

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance 1987 No 9**

notified 2 April 1987 (Cwlth Gaz 1987 No S59)  
commenced 2 April 1987

**Drug Laws (Consequential Amendments) Ordinance 1989 No 14 s 4**

notified 15 March 1989 (Gaz 1989 No S109)  
commenced 1 April 1989 (s 2 and Gaz 1989 No S109)

**Self-Government (Consequential Amendments) Ordinance  
1989 No 38 sch 1**

notified 10 May 1989 (Gaz 1989 No S160)  
s 1, s 2 commenced 10 May 1989 (s 2 (1))  
sch 1 commenced 11 May 1989 (s 2 and see Cwlth Gaz 1989  
No S164)

**Legislation after becoming Territory enactment**

**Acts Revision (Arrest Without Warrant) Act 1989 No 23 s 10**

notified 1 December 1989 (Gaz 1989 No S38)

commenced 1 December 1989

**Motor Traffic (Alcohol and Drugs) (Amendment) Act 1989 No 24**

notified 7 December 1989 (Gaz 1989 No S40)

commenced 7 December 1989

**Motor Traffic (Alcohol and Drugs) (Amendment) Act 1990 No 64**

notified 24 December 1990 (Gaz 1990 No S98)

commenced 1 January 1991 (s 2)

**Magistrates and Coroner's Courts (Registrar) Act 1991 No 44 s 7**

notified 20 September 1991 (Gaz 1990 No S95)

s 1, s 2 commenced 20 September 1991 (s 2 (1))

s 7 commenced 25 September 1991 (s 2 (2) and Gaz 1991 No S103)

**Motor Traffic (Alcohol and Drugs) (Amendment) Act 1992 No 63**

notified 30 October 1992 (Gaz 1992 No S183)

commenced 30 October 1992

**Motor Traffic (Alcohol and Drugs) (Amendment) Act 1993 No 22**

notified 5 April 1993 (Gaz 1993 No S47)

commenced 5 April 1993

**Motor Traffic (Alcohol and Drugs) (Amendment) Act (No 2)  
1993 No 50**

notified 27 August 1993 (Gaz 1993 No S165)

ss 1-3 commenced 27 August 1993 (s 2 (1))

remainder commenced 1 September 1993 (s 2 (2) and Gaz 1993  
No S177)

**Motor Traffic (Alcohol and Drugs) (Amendment) Act (No 3)  
1993 No 58**

notified 6 September 1993 (Gaz 1993 No S172)

s 1, s 2 commenced 6 September 1993 (s 2 (1))

remainder commenced 27 September 1993 (s 2 (2) and Gaz 1993  
No S201)

**Statute Law Revision Act 1994 No 26 sch**

notified 31 May 1994 (Gaz 1994 No S93)  
commenced 31 May 1994 (s 2)

**Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S269)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
sch commenced 29 November 1994 (s 2 and Gaz 1994 No S269)

**Motor Traffic (Consequential Provisions) Act 1996 No 7 s 10**

notified 10 April 1996 (Gaz 1996 No S59)  
ss 1-3 commenced 10 April 1996 (s 2 (1))  
s 10 commenced 12 September 1996 (s 2 (2))

**Motor Traffic (Alcohol and Drugs) (Amendment) Act 1996 No 48**

notified 19 September 1996 (Gaz 1996 No S234)  
commenced 19 September 1996 (s 2)

**Motor Traffic (Alcohol and Drugs) (Amendment) Act 1997 No 51**

notified 19 September 1997 (Gaz 1997 No S264)  
ss 1-3 commenced 19 September 1997 (s 2 (1))  
remainder commenced 2 March 1998 (s 2 (2) and Gaz 1997 No S427)

**Motor Traffic (Alcohol and Drugs) (Amendment) Act (No 2)  
1997 No 53**

notified 19 September 1997 (Gaz 1997 No S264)  
ss 1-3 commenced 19 September 1997 (s 2 (1))  
remainder commenced 2 March 1998 (s 2 (2) and Gaz 1997 No S428)

**Motor Traffic (Alcohol and Drugs) (Amendment) Act 1999 No 11**

notified 23 March 1999 (Gaz 1999 No S14)  
commenced 23 March 1999 (s 2)

**Motor Traffic (Alcohol and Drugs) (Amendment) Act (No 2)  
1999 No 18**

notified 14 April 1999 (Gaz 1999 No S16)  
commenced 14 April 1999 (s 2)

**Road Transport Legislation Amendment Act 1999 No 79 sch 3**

notified 23 December 1999 (Gaz 1999 No S65)  
commenced 1 March 2000 (s 2 and see Gaz 2000 No S5)

## Endnotes

3 Legislation history

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**Road Transport Legislation Amendment Act 2001 No 27 sch 3**

notified 24 May 2001 (Gaz 2001 No 21)  
s 1, s 2 commenced 24 May 2001 (IA s 10B)  
sch 3 commenced 24 May 2001 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 334**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 334 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Statute Law Amendment Act 2001 (No 2) 2001 No 56 pt 3.45**

notified 5 September 2001 (Gaz 2001 No S65)  
s 1, s 2 commenced 5 September 2001 (LA s 75)  
pt 3.45 commenced 12 September 2001 (amdt 3.474)

**Road Transport (Public Passenger Services) Act 2001 No 62 pt 1.2**

notified 10 September 2001 (Gaz 2001 No S66)  
s 1, s 2 commenced 10 September 2001 (IA s 10B)  
pt 1.2 commenced 1 December 2001 (s 2 and CN 2001 No 2)

**Statute Law Amendment Act 2002 No 30 pt 3.63**

notified LR 16 September 2002  
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))  
pt 3.63 commenced 17 September 2002 (s 2 (1))

**Statute Law Amendment Act 2002 (No 2) No 49 pt 3.20**

notified LR 20 December 2002  
s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))  
pt 3.20 commenced 17 January 2003 (s 2 (1))

**Dangerous Substances Act 2004 A2004-7 sch 1 pt 1.7**

notified LR 19 March 2004  
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))  
sch 1 pt 1.7 commenced 5 April 2004 (s 2 and CN2004-6)

**Nurse Practitioners Legislation Amendment Act 2004 A2004-10 pt 11**

notified LR 19 March 2004  
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))  
pt 11 commenced 27 May 2004 (s 2 and CN2004-9)



## 4 Amendment history

### Preliminary

pt 1 note am 2001 No 44 amdt 1.3669; 2001 No 62 amdt 1.4

### Name of Act

s 1 sub 1999 No 79 s 5 sch 3

### Commencement

s 2 om 2001 No 27 amdt 3.2

### Definitions—the dictionary

s 3 sub 1999 No 79 s 5 sch 3

### Notes

s 4 am 1980 No 37; 1981 No 29; 1985 Nos 51 and 67; 1989 Nos 14 and 24; 1990 No 64; 1992 No 63; 1993 No 58; 1994 No 26; 1996 Nos 7 and 48; 1997 Nos 51 and 53  
om (in pt) 1999 No 79 s 5 sch 3  
reloc (in pt) to dict 1999 No 79 s 5 sch 3  
sub 1999 No 79 s 5 sch 3

### Meaning of *public place*

s 4A ins 1999 No 79 s 5 sch 3  
am 2002 No 49 amdt 3.223

### Meaning of *special driver*

s 4B ins 1999 No 79 s 5 sch 3  
am 2001 No 44 amdts 1.3670-1.3672; 2001 No 62 amdt 1.5;  
A2004-7 amdt 1.12, amdt 1.13

### Meaning of level of alcohol concentration

s 4C ins 1999 No 79 s 5 sch 3  
table renum R12 LA

### Meaning of *repeat offender* and *first offender*

s 4D ins 1999 No 79 s 5 sch 3  
am 2001 No 27 amdt 3.3, amdt 3.4  
def **relevant offence** am 2001 No 27 amdt 3.5  
par (g) exp 1 March 2005 (s 52)

### Approval of instruments etc

s 5 am 1980 No 37; 1985 No 51; 1992 No 63; 1999 No 79 s 5  
sch 3; 2001 No 44 amdt 1.3673, amdt 1.3674

### Approval of operators and analysts

s 6 am 1985 No 51; 1989 No 24; 1992 No 63; 1999 No 79 s 5  
sch 3; 2001 No 44 amdt 1.3675, amdt 1.3676

## Endnotes

### 4 Amendment history

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#### **Notices to be published in the Gazette**

s 7 am 1978 No 46; 1981 No 16  
sub 1999 No 79 s 5 sch 3  
om 2001 No 44 amdt 1.3677

#### **Power to require screening test if vehicle not involved in accident**

s 8 am 1982 No 94; 1985 No 51; 1989 No 24; 1999 No 79 s 5 sch 3

#### **Power to require screening test if motor vehicle involved in accident**

s 9 am 1985 No 51; 1989 No 24

#### **Power to require screening test for culpable driving**

s 10 am 1985 No 51; 1989 No 24

#### **Written statement relating to screening test**

s 10A ins 1982 No 94  
am 1985 No 51; 1989 No 24; 1990 No 64  
om 1999 No 11

#### **Detention for breath analysis**

s 11 am 1977 No 52; 1985 No 51; 1990 No 64; 1992 No 63; 1997 No 51

#### **Breath analysis**

s 12 am 1982 No 94; 1985 No 51; 1989 No 24; 1992 No 63;  
ss renum R9 LA

#### **Precautions for privacy**

s 13 am 1992 No 63

#### **Restrictions on screening tests and breath analyses**

s 14 am 1982 No 94; 1985 No 51; 1989 No 24; 1999 No 79 s 5 sch 3; ss renum R9 LA; A2004-10 s 40, s 41

#### **Taking blood samples from persons in custody**

s 15 am 1985 No 51; 1989 No 24; 1992 No 63; 1997 No 53; 1999 No 79 s 5 sch 3; ss renum R9 LA

#### **Taking blood samples from persons in hospital**

s 15AA ins 1997 No 53)  
am 1999 No 79 s 5 sch 3

#### **Analysis of blood samples**

s 15A ins 1989 No 24  
am 1997 No 53

#### **Statements to be provided**

s 15B ins 1997 No 53

#### **Medical examinations**

s 16 am 1985 No 51; 1992 No 63; 1997 No 53; 1999 No 79 s 5 sch 3; A2004-10 s 42, s 43

**Analysis of body samples**

s 16A ins 1997 No 53

**Exemptions from requirements to take blood samples or carry out examinations**

s 17 am 1985 No 51; 1992 No 63  
sub 1997 No 53  
am 1999 No 79 s 5 sch 3

**Protection of police officers and medical staff**

s 18 am 1985 No 51; 1989 Nos 38 and 23; 1992 No 63; 1997 No 53; 1999 No 79 s 5 sch 3; ss renum R9 LA

**Taking blood samples from people involved in accidents**

s 18A ins 1999 No 79 s 5 sch 3

**Prescribed blood alcohol concentration exceeded**

s 19 am 1990 No 64; 1992 No 63  
sub 1993 No 22  
am 1994 No 81; 1997 Nos 51 and 53

**Offence where blood alcohol concentration exceeds prescribed concentration**

s 20 am 1989 No 24  
om 1993 No 22

**Defence if person did not intend to drive motor vehicle**

s 21 am 1992 No 63; 1993 No 22

**Refusing to provide breath sample**

s 22 hdg sub 1997 No 51  
s 22 am 1985 No 51; 1992 No 63; 1994 No 81

**Refusing blood test etc**

s 23 hdg sub 1997 No 51  
s 23 am 1992 No 63; 1994 No 81; 1997 No 53; 1999 No 79 s 5 sch 3; A2004-10 s 44; ss renum R12 LA (see A2004-10 s 45)

**Driving under the influence of intoxicating liquor or a drug**

s 24 am 1992 No 63; 1994 No 81

**Driver etc intoxicated**

s 24A ins 1999 No 79 s 5 sch 3  
am A2004-10 s 46

**Interpretation**

s 25 am 1977 No 52; 1985 No 67; 1990 No 64; 1992 No 63; 1993 No 22; 1997 No 51  
om 1999 No 79 s 5 sch 3

## Endnotes

4 Amendment history

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### **Fines and imprisonment—s 19 offences**

s 26 am 1993 No 22  
om 1994 No 81  
ins 1997 No 51  
table renum R12 LA

### **First offenders—traffic infringement notice**

s 26A ins 1990 No 64  
am 1993 No 22; 1993 No 50; 1993 No 58  
om 1997 No 51

### **Imprisonment—s 22, s 23 and s 24 offences**

s 27 am 1993 No 22  
om 1994 No 81  
ins 1999 No 18  
am 1999 No 79 s 5 sch 3

### **Circumstances in which court may impose sentence of imprisonment**

s 28 am 1990 No 64; 1992 No 63; 1993 No 22  
om 1997 No 51

### **Conditional release of convicted person**

s 29 am 1984 No 63; 1989 No 38; 1991 No 44; 1992 No 63; 1997  
No 51; 1999 No 79 s 5 sch 3; ss renum R9 LA

### **Suspension or cancellation of licence or disqualification—first offenders**

s 31 am 1990 No 64; 1992 No 63; 1993 No 22  
sub 1997 No 51  
om 1999 No 79 s 5 sch 3

### **Automatic driver licence disqualification—first offenders, s 19**

s 32 am 1985 No 67; 1990 No 64; 1992 No 63; 1993 No 22; 1993  
No 58  
sub 1997 No 51; 1999 No 79 s 5 sch 3  
am 2001 No 27 amdt 3.6, amdt 3.7  
table renum R12 LA

### **Automatic driver licence disqualification—repeat offenders, s 19**

s 33 sub 1997 No 51; 1999 No 79 s 5 sch 3  
am 2001 No 27 amdt 3.8, amdt 3.9  
table renum R12 LA

### **Automatic driver licence disqualification—offences other than s 19**

s 34 am 1992 No 63; 1994 No 81  
sub 1997 No 51; 1999 No 79 s 5 sch 3  
am 2001 No 27 amdt 3.10, amdt 3.11

### **Timing of licence cancellation and disqualification**

s 35 am 1993 No 58  
sub 1997 No 51  
om 1999 No 79 s 5 sch 3

**Special licences to drive motor vehicles**

pt 5 hdg om 1997 No 51

**Disqualification subject to grant of special licence**s 36 am 1992 No 63  
sub 1997 No 51  
om 1999 No 79 s 5 sch 3**Disqualification etc—further special licence**s 37 am 1992 No 63  
sub 1997 No 51  
om 1999 No 79 s 5 sch 3**Additional powers of court**s 38 am 1992 No 63; 1994 No 81  
sub 1997 No 51**Notice to registrar**s 39 am 1985 No 67  
sub 1997 No 51  
om 1999 No 79 s 5 sch 3**Restoration of cancelled driving licences**

pt 6 hdg om 1997 No 51

**Restoration of cancelled licences**s 40 am 1992 No 63; 1993 No 58; 1994 No 81  
om 1997 No 51**Certificate of evidence**s 41 am 1980 No 37; 1985 No 51; 1989 No 24; 1992 No 63; 1997  
Nos 51 and 53; 1999 No 79 s 5 sch 3; pars renum R9 LA;  
A2004-10 s 47; pars renum R12 LA (see A2004-10 s 48)**Evidence for insurance purposes**s 41A ins 1989 No 24  
am 1993 No 22; 1997 No 53; 1999 No 79 s 5 sch 3**Effect of noncompliance—analysis of breath or blood**s 42 sub 1985 No 51  
am 1990 No 64; 2001 No 44 amdt 1.3678, amdt 1.3679**Effect of noncompliance—analysis of body sample**s 42A ins 1985 No 51  
am 2001 No 44 amdt 1.3680, amdt 1.3681**Effect of noncompliance—refusal to give sample of breath**s 42B ins 1985 No 51  
am 1990 No 64; 2001 No 44 amdts 1.3682-1.3684**Oral evidence about s 41 certificate**

s 43 am 1992 No 63; 1997 No 51; 1999 No 79 s 5 sch 3

## Endnotes

### 4 Amendment history

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#### **Rehabilitation programs**

pt 8 hdg sub 1997 No 51

#### **Approval of programs**

s 44 am 1989 No 38  
sub 1997 No 51  
am 1999 No 79 s 5 sch 3; 2001 No 44 amdt 1.3685, amdt  
1.3686

#### **Conditions**

s 44A ins 1997 No 51  
om 2001 No 44 amdt 1.3687

#### **Review of administrative appeals tribunal**

s 44B ins 1997 No 51  
om 1999 No 79 s 5 sch 3

#### **Power of arrest**

s 45 am 1985 No 51; 1989 No 23; 1992 No 63

#### **Penalty for escaping from custody**

s 46 am 1985 No 51; 1992 No 63; 1994 No 81

#### **Right of arrested person to medical examination**

s 47 am 1985 No 51; 1987 No 9; 1992 No 63; 1997 No 51; 1999  
No 79 s 5 sch 3; A2004-10 s 49

#### **When police officer may move person's motor vehicle**

s 48 am 1992 No 63  
om 1997 No 51  
ins 1999 No 79 s 5 sch 3

#### **Default term of imprisonment**

s 49 am 1992 No 63

#### **References to Motor Traffic (Alcohol and Drugs) Act etc**

s 50 sub 1999 No 79 s 5 sch 3  
am 2001 No 44 amdt 1.3688, amdt 1.3689

#### **Regulation-making power**

s 51 sub 1999 No 79 s 5 sch 3  
am 2001 No 44 amdt 1.3690

#### **Transitional**

pt 10 hdg ins 1999 No 79 s 5 sch 3

#### **Expiry of s 4D (3), def *relevant offence*, par (g)**

s 52 am 1989 No 38  
sub 1999 No 79 s 5 sch 3  
am 2001 No 27 amdt 3.12  
exp 1 March 2005 (s 52)

**Approved operator**

s 53 ins 1999 No 79 s 5 sch 3  
 am 2001 No 27 amdt 3.13  
 exp 1 March 2002 (s 53 (2))

**Drugs**

sch 1 ins 1985 No 51  
 renum as sch R5 LRA  
 renum as sch 1 2001 No 27 amdt 3.14

**Schedule 2**

sch 2 hdg (prev sch hdg) sub 1985 No 51  
 sch 2 (prev sch) ins 1980 No 37  
 am 1989 No 38  
 om 1992 No 63

**Dictionary**

dict ins 1999 No 79 s 5 sch 3  
 am 1999 No 79 s 5 sch 3; 2001 No 27 amdt 3.15; 2002 No 30  
 amdt 3.692; A2004-10 s 50  
 def **authorised nurse practitioner** ins A2004-10 s 51  
 def **doctor** sub 2001 No 56 amdt 3.474  
 om 2002 No 30 amdt 3.693  
 def **drug** am 2001 No 27 amdt 3.15  
 def **medical examination** ins A2004-10 s 51  
 def **nurse** om 2002 No 30 amdt 3.693  
 def **nurse practitioner position** ins A2004-10 s 51  
 def **scope of practice** ins A2004-10 s 51

**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1991 No 44	30 September 1991
2	Act 1993 No 58	30 September 1993
3	Act 1994 No 81	28 February 1995

## Endnotes

### 5 Earlier republications

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<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
4	Act 1997 No 53	2 March 1998
5	Act 1999 No 79	1 March 2000
6	Act 2001 No 56	12 September 2001
7	Act 2001 No 62	3 December 2001
8	Act 2001 No 62	6 June 2002
9	Act 2002 No 30	25 September 2002
10	A2002-49	17 January 2003
11	A2004-7	5 April 2004

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