



Australian Capital Territory

Road Transport (Alcohol and Drugs) Act 1977

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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 13 May 2011. It also includes any amendment, repeal or expiry affecting the republished law to 13 May 2011.

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):

- 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

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

Road Transport (Alcohol and Drugs) Act 1977

Contents

	Page	
Part 1	Preliminary	
1	Name of Act	2
2	Dictionary	3
3	Notes	3
4	Offences against Act—application of Criminal Code etc	4
Part 1A	Important concepts	
4B	Meaning of <i>special driver</i>	5
4BA	Meaning of <i>driver trainer</i>	7
4C	Meaning of <i>prescribed concentration</i> of alcohol	7
4D	How alcohol concentration may be expressed	8
4E	Reference to <i>level</i> of alcohol concentration	8

R25
13/05/11

Road Transport (Alcohol and Drugs) Act 1977
Effective: 13/05/11-01/06/11

contents 1

	Page
4F	Meaning of <i>first offender</i> and <i>repeat offender</i> 9
5	Authorisation of operators 10
5A	Register of authorised operators 10
5B	Appointment of analysts 11
6	Approval of laboratories 11
Part 2	Examination of people for alcohol or drugs
Division 2.1	Important concepts—alcohol and drug tests
7	Meaning of <i>alcohol screening device</i> 12
7A	Meaning of <i>breath analysis instrument</i> 12
7B	Meaning of <i>drug screening device</i> 13
7C	Meaning of <i>oral fluid analysis instrument</i> 13
7D	Testing and maintenance of instruments etc 13
Division 2.2	Alcohol—screening tests
8	Power to require alcohol screening test if vehicle not involved in accident—driver and driver trainer 14
9	Power to require alcohol screening test if vehicle involved in accident—driver 14
9A	Power to require alcohol screening test if vehicle involved in accident—driver trainer 15
10	Power to require alcohol screening test for culpable driving—driver and driver trainer 15
Division 2.3	Alcohol—confirmatory tests
11	Detention for breath analysis 16
12	Breath analysis 17
13	Precautions for privacy—breath analysis 18
Division 2.4	Prescribed drugs—screening tests
13A	Power to require drug screening test if vehicle not involved in accident—driver and driver trainer 18
13B	Power to require drug screening test if vehicle involved in accident—driver 19
13BA	Power to require drug screening test if vehicle involved in accident—driver trainer 20

	Page
13C Power to require drug screening test for culpable driving—driver and driver trainer	20
Division 2.5 Prescribed drugs—confirmatory tests	
13D Detention for oral fluid analysis	21
13E Oral fluid—preliminary analysis	21
13F Precautions for privacy—oral fluid analysis	23
13G Oral fluid—confirmatory analysis	23
13H Oral fluid analysis statement	24
Division 2.6 Restrictions on alcohol and drug tests	
14 Restrictions on tests etc under this part	25
Division 2.7 Analysis of blood—alcohol and drugs	
15 Taking blood samples from people in custody	27
15AA Taking blood samples from people in hospital	29
15A Analysis of blood samples	30
15B Blood analysis statement	32
16 Medical examination—offence against s 24 or culpable driving	33
16A Analysis of body samples	35
16B Body sample statement	37
16C Keeping of samples—request by DPP	37
16D Destruction of samples	38
17 Exemptions from requirements to take blood samples or carry out examinations	39
18 Protection of police officers and medical staff	40
18A Taking blood samples from people involved in accidents	41
18B Permitted use of samples	42
Division 2.8 Search and seizure	
18C Power to search person in custody	42
Part 3 Offences	
19 Prescribed concentration of alcohol in blood or breath	44
19A Defence if person did not intend to drive motor vehicle	45
19B Defence if special driver with lower concentration of alcohol from allowable source	45

	Page	
20	Prescribed drug in oral fluid or blood—driver or driver trainer	46
22	Refusing to provide breath sample	48
22A	Refusing to provide oral fluid sample	48
22B	Failing to stay for drug screening test	49
23	Refusing blood test etc	50
24	Driving under the influence of intoxicating liquor or a drug	51
24A	Driver etc intoxicated	52
Part 4	Penalties	
26	Fines and imprisonment—s 19 offences	53
27	Imprisonment—s 22, s 22A, s 23 and s 24 offences	54
32	Automatic driver licence disqualification—first offenders, s 19	55
33	Automatic driver licence disqualification—repeat offenders, s 19	56
34	Automatic driver licence disqualification—offences other than s 19	57
35	Automatic driver licence disqualification—immediate suspension period	58
Part 7	Evidence	
Division 7.1 Evidence—alcohol-related tests		
41	Evidentiary certificate—alcohol-related tests	59
Division 7.2 Evidence—drug-related tests		
41AA	Evidentiary certificates—drug-related tests	64
41AB	Evidentiary certificate—analysis of oral fluid sample	66
41AC	Evidentiary certificate—blood sample not taken	67
41AD	Evidentiary certificate—analysis of sample for prescribed drug etc	68
41AE	NSW evidentiary certificates—drug-related tests	68
Division 7.3 Other provisions about evidence		
41A	Evidence for insurance purposes	69
42	Effect of noncompliance—analysis of breath or blood	71
42AA	Effect of noncompliance—analysis of oral fluid	72
42A	Effect of noncompliance—analysis of body sample	72
42B	Effect of noncompliance—refusal to give sample of breath	73
42C	Effect of noncompliance—refusal to give sample of oral fluid	73
contents 4	Road Transport (Alcohol and Drugs) Act 1977	R25
	Effective: 13/05/11-01/06/11	13/05/11

	Page
43 Oral evidence about part 7 certificate	74
Part 9	
Miscellaneous	
45 Power of arrest	75
47 Right of arrested person to medical examination	75
47A Stopping, search and detaining—Crimes Act, s 207 and s 209	76
47B Police may direct person not to drive	76
47C Conducting alcohol-related tests and drug-related tests at same time	77
48 When police officer may move person's motor vehicle	78
49 Default term of imprisonment	79
50 References to Motor Traffic (Alcohol and Drugs) Act etc	80
51 Regulation-making power	80
Part 21	
Transitional—Road Transport (Alcohol and Drugs) Legislation Amendment Act 2010	
105 Meaning of <i>commencement day</i> —pt 21	81
106 Approved operator—authorisation in force before commencement day	81
107 Approved analyst—appointment in force before commencement day	82
108 Approved laboratory—approval in force before commencement day	82
109 Transitional regulations	83
110 Expiry—pt 21	83
Schedule 1	
Drugs	84
Dictionary	85
Endnotes	
1 About the endnotes	91
2 Abbreviation key	91
3 Legislation history	92
4 Amendment history	99
5 Earlier republications	116



Australian Capital Territory

Road Transport (Alcohol and Drugs) Act 1977

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

Part 1 Preliminary

1 Name of Act

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

Note 1 This Act is part of the road transport legislation. See the *Road Transport (General) Act 1999* for various provisions about the administration and enforcement of the road transport legislation generally.

Note 2 Other road transport legislation includes the following:

- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (General) Act 1999*
- *Road Transport (Mass, Dimensions and Loading) Act 2009*
- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Third-Party Insurance) Act 2008*
- *Road Transport (Vehicle Registration) Act 1999*.

Note 3 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

2 Dictionary

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

Note 1 The dictionary defines certain terms, and includes references (*signpost definitions*) to other terms 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 term '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, s 155 and s 156 (1)*).

3 Notes

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

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

4 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 19 (Prescribed concentration of alcohol in blood or breath)
- s 20 (Prescribed drug in oral fluid or blood—driver or driver trainer)
- s 22A (Refusing to provide oral fluid sample)
- s 22B (Failing to stay for drug screening test)
- s 47B (Police may direct person not to drive).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 1A Important concepts

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, an external territory driver licence or a foreign driver licence from a recognised country; or
 - (b) the person holds a foreign driver licence that—
 - (i) is not issued under the law of a recognised country; or
 - (ii) if the licence is issued under the law of a recognised country—is a licence that corresponds to a licence mentioned in paragraph (e); or
 - (c) the person's Australian driver licence or external driver licence is suspended; or
 - (d) 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
 - (e) 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
 - (f) 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

- (g) the person is the driver of—
- (i) a vehicle on which a sign, marking or placard is required to be displayed under the *Dangerous Substances Act 2004* or the *Dangerous Goods (Road Transport) Act 2009*; or
- Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).
- (ii) a motor vehicle with a GVM of more than 15t; or
 - (iii) a combination with a GCM of more than 15t; or
 - (iv) a public passenger vehicle; or
- (h) the person is learning to drive a heavy vehicle; or
- (i) the person is a driving instructor who is with a driver for the purposes of—
- (i) driver instruction; or
 - (ii) driver assessment; or
- (j) the person is a heavy vehicle driver assessor who is with a driver for the purposes of driver assessment; or
- (k) the person is a driving supervisor who is with a person who holds a learner licence (a **learner driver**) while the learner driver drives a motor vehicle that displays, or ought to display, L-plates on a road or road related area.
- (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) In this section:
- Austroads**—see the *Road Transport (Driver Licensing) Regulation 2000*, dictionary.

driver assessment—see the *Road Transport (Driver Licensing) Regulation 2000*, dictionary.

driver instruction—see the *Road Transport (Driver Licensing) Regulation 2000*, dictionary.

driving instructor—see the *Road Transport (Driver Licensing) Regulation 2000*, dictionary.

driving supervisor—see the *Road Transport (Driver Licensing) Regulation 2000*, section 21 (1).

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

heavy vehicle driver assessor—see the *Road Transport (Driver Licensing) Regulation 2000*, dictionary.

public passenger vehicle—see the *Road Transport (Public Passenger Services) Act 2001*, dictionary.

recognised country—see the *Road Transport (Driver Licensing) Regulation 2000*, section 141.

4BA Meaning of *driver trainer*

For this Act, ***driver trainer*** means a person mentioned in section 4B (1) (i), (j) or (k).

4C Meaning of *prescribed concentration of alcohol*

For this Act, the ***prescribed concentration*** of alcohol in a person's blood or breath is—

- (a) for a special driver—more than 0g of alcohol in 100mL of blood or 210L of breath; or
- (b) for any other person—0.05g or more of alcohol in 100mL of blood or 210L of breath.

4D How alcohol concentration may be expressed

- (1) For this Act, an analysis of a concentration of alcohol in a person's blood or breath may be expressed as follows:
- (a) the amount of alcohol, in grams, in 100mL of blood if the analysis is based on—
 - (i) a sample of blood; or
 - (ii) a sample of breath measured by a breath analysis instrument;
 - (b) the amount of alcohol, in grams, in 210L of breath if the analysis is based on a sample of breath measured by a breath analysis instrument.
- (2) For this Act, an amount of alcohol measured in grams as part of 210L of breath is equivalent to the same amount of alcohol in grams as part of 100mL of blood.

4E Reference to *level* of alcohol concentration

For this Act, a reference to a concentration of alcohol at a *level* mentioned in an item in table 4E, column 2, is a reference to the concentration of alcohol mentioned in the item, column 3, in 100mL of blood or 210L of breath.

Table 4E

column 1 item	column 2 level	column 3 alcohol concentration range
1	level 1	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

4F Meaning of *first offender* and *repeat offender*

- (1) A person who is convicted or found guilty 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.
- (2) A person who is convicted or found guilty of a disqualifying offence is a ***repeat offender*** in relation to the offence if—
 - (a) the person has been convicted or found guilty of a relevant offence committed at any time before the disqualifying offence was committed (whether or not the person had been convicted or found guilty of the relevant offence when the person committed the disqualifying offence); or
 - (b) the person is convicted or found guilty of 1 or more relevant offences concurrently with being convicted or found guilty of the disqualifying offence, and 1 or more of the relevant offences were committed before the disqualifying offence.
- (3) However, a person who is convicted or found guilty of a disqualifying offence that was committed before the commencement of the *Road Transport (Alcohol and Drugs) Legislation Amendment Act 2010*, section 8 is a ***repeat offender*** in relation to the offence only if—
 - (a) the person has been convicted or found guilty of a relevant offence within 5 years before being convicted or found guilty of the disqualifying offence; or
 - (b) the person is convicted or found guilty of 1 or more relevant offences concurrently with being convicted or found guilty of the disqualifying offence, and 1 or more of the relevant offences were committed before the disqualifying offence.
- (4) Subsection (3) and this subsection expire 5 years after the day this section commences.

(5) In this section:

relevant offence means—

- (a) a disqualifying offence; or
- (b) a corresponding offence; or
- (c) an offence against the *Crimes Act 1900*, section 29 (Culpable driving of motor vehicle), in which the person who committed the offence was incapable of having proper control of a vehicle involved in the offence because of the influence of alcohol or a drug on the person.

Note **Found guilty**, of an offence, includes having the offence taken into account under the *Crimes (Sentencing) Act 2005*, s 57 (Outstanding additional offences taken into account in sentencing), (see Legislation Act, dict, pt 1).

5 Authorisation of operators

- (1) The chief police officer may authorise a police officer to carry out either or both of the following for this Act:
 - (a) breath analysis;
 - (b) oral fluid analysis.
- (2) However, the chief police officer may authorise a police officer to carry out analysis mentioned in subsection (1) only if the chief police officer considers that the police officer is suitably qualified to carry out the analysis for which he or she is to be authorised.

5A Register of authorised operators

- (1) The chief police officer must keep a register of police officers authorised under section 5.
- (2) The register—
 - (a) must state whether a police officer is authorised to carry out breath analysis, oral fluid analysis or both; and

- (b) must include the service number of each police officer authorised under section 5; and
 - (c) may include any other information the chief police officer considers appropriate.
- (3) The register may be kept in any form, including electronically, that the chief police officer decides.
 - (4) The chief police officer may correct any mistake, error or omission in the register subject to any requirements prescribed by regulation.
 - (5) The chief police officer may change a detail included in the register to keep the register up-to-date.
 - (6) The register must be available for public inspection, free of charge, during normal business hours on any business day.

5B Appointment of analysts

The road transport authority may appoint a person as an analyst for this Act.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

6 Approval of laboratories

The road transport authority may, in writing, approve a laboratory or other entity as an approved laboratory for this Act.

Part 2 Examination of people for alcohol or drugs

Division 2.1 Important concepts—alcohol and drug tests

7 Meaning of *alcohol screening device*

In this Act:

alcohol screening device means a device prescribed by regulation that is designed to analyse a sample of a person's breath to indicate if the person's blood or breath contains the presence of alcohol.

Note An alcohol screening device is used to carry out an alcohol screening test.

7A Meaning of *breath analysis instrument*

In this Act:

breath analysis instrument means an instrument prescribed by regulation that is designed to analyse a sample of a person's breath to record the concentration of alcohol in the person's breath in either or both of the following:

- (a) in grams per 100mL of blood;
- (b) in grams per 210L of breath.

Note A breath analysis instrument is used to carry out breath analysis.

7B Meaning of *drug screening device*

In this Act:

drug screening device means a device prescribed by regulation that is designed and made to indicate whether a prescribed drug is present in a person's oral fluid when a sample of the person's oral fluid is applied to the device.

7C Meaning of *oral fluid analysis instrument*

In this Act:

oral fluid analysis instrument means an instrument prescribed by regulation that is designed and made to indicate the presence of a prescribed drug in a sample of a person's oral fluid.

7D Testing and maintenance of instruments etc

- (1) A regulation may make provision in relation to the testing and maintenance of the following:
 - (a) alcohol screening devices;
 - (b) breath analysis instruments;
 - (c) oral fluid analysis instruments.
- (2) Without limiting subsection (1), a regulation may make provision for approval by the chief police officer of people to test and maintain devices and instruments mentioned in that subsection.

Division 2.2 Alcohol—screening tests

8 Power to require alcohol screening test if vehicle not involved in accident—driver and driver trainer

- (1) A police officer may require a person to undergo an alcohol screening test in accordance with the directions of that officer if—
 - (a) the person is—
 - (i) the driver of a motor vehicle on a road or road related area; or
 - (ii) the driver trainer in a motor vehicle on a road or road related area; or
 - (b) the police officer has reasonable cause to suspect that, shortly before the requirement is made, the person was—
 - (i) the driver of a motor vehicle on a road or road related area; or
 - (ii) the driver trainer in a motor vehicle on a road or road related area.
- (2) Nothing in this section prevents a police officer from requiring both the driver and driver trainer to undergo an alcohol screening test.

9 Power to require alcohol screening test if vehicle involved in accident—driver

If a motor vehicle is involved in an accident on a road or road related area, a police officer may require a person to undergo an alcohol 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.

9A Power to require alcohol screening test if vehicle involved in accident—driver trainer

If a motor vehicle is involved in an accident on a road or road related area, a police officer may require a person to undergo an alcohol 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 trainer in 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 trainer in 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 alcohol screening test for culpable driving—driver and driver trainer

- (1) 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 an alcohol screening test in accordance with the directions of that officer.

- (2) A police officer who has reasonable cause to suspect that a person was the driver trainer in a motor vehicle involved in an offence of culpable driving may require the person to undergo an alcohol screening test in accordance with the directions of that officer.

Division 2.3 Alcohol—confirmatory tests

11 Detention for breath analysis

- (1) This section applies if—
- (a) a person undergoes an alcohol screening test under a requirement made by a police officer under section 8, section 9, section 9A or section 10 and the alcohol screening device used for the test indicates that the concentration of alcohol in the person's blood or breath is the prescribed concentration; or
 - (b) a person required by a police officer to undergo an alcohol screening test under section 8, section 9, section 9A or section 10 fails to undergo the test in accordance with the directions of the police officer.

Note **Fail** includes refuse, see the Legislation Act, dict, pt 1.

- (2) The police officer may take the person into custody.
- (3) For subsection (1) (a), if the police officer has reasonable cause to suspect that the person is a special driver, the prescribed concentration for the person is the prescribed concentration for a special driver.

- (4) If a person is taken into custody under this section, a police officer must take the person, as soon as practicable, to a police station or other convenient place (for example, a police vehicle) for the person to undergo breath analysis.

Example—s (4)

A person who is injured and is taken by a police officer to hospital for first aid and then to a police station for breath analysis has been taken to a police station as soon as practicable.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

12 Breath analysis

- (1) A person who has been taken into custody under section 11 must give, in accordance with the reasonable directions of a police officer (the *requesting police officer*), a sample of the person's breath for breath analysis.
- (2) A breath analysis must be carried out by an authorised operator.
- (3) A regulation may make provision in relation to the following:
- (a) the conditions for carrying out breath analysis;
 - (b) the procedures to be followed in relation to carrying out breath analysis;
 - (c) the circumstances in which the result of a breath analysis must be disregarded for this Act.
- (4) If, because of a regulation made for subsection (3) (c), the result of a breath analysis must be disregarded for this Act, the requesting police officer 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 give, in accordance with the officer's reasonable directions, a sample of the person's breath for breath analysis using another breath analysis instrument.

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

Example—written statement

a print-out from the breath analysis instrument

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

13 Precautions for privacy—breath analysis

- (1) The authorised 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.

Division 2.4 Prescribed drugs—screening tests

13A Power to require drug screening test if vehicle not involved in accident—driver and driver trainer

- (1) A police officer may require a person to undergo 1 or more drug screening tests in accordance with the directions of the officer if—
- (a) the person is—
- (i) the driver of a motor vehicle on a road or road related area; or
 - (ii) the driver trainer in a motor vehicle on a road or road related area; or
- (b) the police officer has reasonable cause to suspect that, shortly before the requirement is made, the person was—

- (i) the driver of a motor vehicle on a road or road related area; or
 - (ii) the driver trainer in a motor vehicle on a road or road related area.
- (2) The person must remain at the place where the drug screening test is being carried out until the test is completed in accordance with the police officer's directions.
- (3) Nothing in this section prevents a police officer from requiring both the driver and driver trainer to undergo a drug screening test.

13B Power to require drug screening test if vehicle involved in accident—driver

- (1) If a motor vehicle is involved in an accident on a road or road related area, a police officer may require a person to undergo 1 or more drug screening tests in accordance with the directions of the 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.
- (2) The person must remain at the place where the drug screening test is being carried out until the test is completed in accordance with the police officer's directions.

13BA Power to require drug screening test if vehicle involved in accident—driver trainer

- (1) If a motor vehicle is involved in an accident on a road or road related area, a police officer may require a person to undergo 1 or more drug screening tests in accordance with the directions of the officer—
 - (a) if the police officer has reasonable cause to suspect that the person was the driver trainer in 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 trainer in 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.
- (2) The person must remain at the place where the drug screening test is being carried out until the test is completed in accordance with the police officer's directions.

13C Power to require drug screening test for culpable driving—driver and driver trainer

- (1) 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 1 or more drug screening tests in accordance with the directions of the officer.
- (2) A police officer who has reasonable cause to suspect that a person was the driver trainer in a motor vehicle involved in an offence of culpable driving may require the person to undergo 1 or more drug screening tests in accordance with the directions of that officer.

- (3) The person must remain at the place where the drug screening test is being carried out until the test is completed in accordance with the police officer's directions.

Division 2.5 Prescribed drugs—confirmatory tests

13D Detention for oral fluid analysis

- (1) This section applies if—
- (a) a person undergoes a drug screening test under a requirement made by a police officer under section 13A, section 13B, section 13BA or section 13C and a drug screening device indicates to the police officer that a prescribed drug is present in the person's oral fluid; or
 - (b) a person who has been required by a police officer under section 13A, section 13B, section 13BA or section 13C to undergo a drug screening test fails to undergo the screening test in accordance with the direction of the police officer.

Note **Fail** includes refuse, see the Legislation Act, dict, pt 1.

- (2) The police officer may take the person into custody.
- (3) If the person is taken into custody, a police officer must take the person, as soon as practicable, to a police station or another convenient place (for example, a police vehicle) to carry out an oral fluid analysis for the person.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

13E Oral fluid—preliminary analysis

- (1) A person who has been taken into custody under section 13D must give, in accordance with the reasonable directions of a police officer, a sufficient sample of the person's oral fluid (the *sample*) for oral fluid analysis.

- (2) An authorised operator must carry out an oral fluid analysis on a part of the sample.
- (3) A regulation may make provision in relation the following:
 - (a) the conditions for carrying out an oral fluid analysis;
 - (b) the procedures to be followed in relation to carrying out an oral fluid analysis;
 - (c) the circumstances in which the result of an oral fluid analysis must be disregarded for this Act.
- (4) If, because of a regulation made for subsection (3) (c), the result of an oral fluid analysis must be disregarded, the requesting police officer may, if another oral fluid analysis instrument is available at the police station or other place where the requirement under subsection (1) is made, require the person to give, in accordance with the officer's reasonable directions, another sufficient sample of the person's oral fluid for oral fluid analysis using another oral fluid analysis instrument.
- (5) If an oral fluid analysis is not to be disregarded for this Act, the authorised operator who carried out the analysis must—
 - (a) place the part of the sample not analysed under this section into a container; and
 - (b) attach a label to the container that includes the following information:
 - (i) the authorised operator's name;
 - (ii) the name of the person who gave the sample;
 - (iii) the date and time the sample was given; and
 - (c) ensure that the container is sealed with a tamper-evident seal that has a unique identifying number marked on it.

- (6) As soon as practicable after the oral fluid analysis has been carried out, the authorised operator who carried out the analysis must give the person a written statement, signed by the operator, containing the particulars required by regulation to be included in the statement.

Example—written statement

a print-out from the oral fluid analysis instrument

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

13F Precautions for privacy—oral fluid analysis

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

13G Oral fluid—confirmatory analysis

- (1) This section applies to the part of a sample of a person's oral fluid stored and sealed in a container under section 13E (5) (the *sample*).
- (2) The chief police officer must ensure that the sample is taken to an approved laboratory as soon as practicable after it is stored and sealed under section 13E (5).
- (3) An analyst at the approved laboratory to which the sample is taken under subsection (2) must, as soon as practicable, arrange for the analysis of the sample at the laboratory or another approved laboratory to work out whether a prescribed drug is present in the sample.

- (4) An analyst responsible for testing the sample must take reasonable care to ensure that a part of the sample (the *preserved part*) sufficient for analysis to be carried out for the person who gave the sample (the *tested person*) is protected and preserved until—
 - (a) if a request is made under subsection (6)—the preserved part is sent to the laboratory nominated by the tested person; or
 - (b) in any other case—
 - (i) 1 year has passed since the sample was taken from the tested person; or
 - (ii) if a request is made by the DPP under section 16C (Keeping of samples—request by DPP)—the end of the proceeding to which the sample relates.
- (5) However, subsection (4) does not apply if the amount of sample remaining after analysis under subsection (3) is insufficient for further analysis.
- (6) Before the end of the period mentioned in subsection (4) (b), the tested person may ask that the preserved part of the sample be sent, at the tested person’s expense, to a laboratory nominated by the person.
- (7) If a request is made under subsection (6), the analyst must ensure that the preserved part of the sample is sent to the nominated laboratory as soon as practicable.

13H Oral fluid analysis statement

- (1) As soon as practicable after an analysis of a sample of a person’s oral fluid is carried out under section 13G, the chief police officer must ensure the person is given a written statement that includes the following information:
 - (a) the date and the time the oral fluid sample was taken;
 - (b) the unique identifying number on the tamper-evident seal;

- (c) the result of the analysis;
- (d) the address where the preserved part of the oral fluid sample is being held;
- (e) that the person will be notified, in writing, of a request (if any) by the DPP under section 16C (Keeping of samples—request by DPP);
- (f) that the person may, before the end of the period mentioned in section 13G (4) (b), ask the analyst to send the preserved part of the oral fluid sample to a laboratory nominated by the person, at the person's expense.

(2) In this section:

preserved part—see section 13G (4).

Division 2.6 Restrictions on alcohol and drug tests

14 Restrictions on tests etc under this part

- (1) A police officer must not require a person to undergo a screening test, or provide a sample of the person's breath or oral fluid for analysis under section 12 (Breath analysis) or section 13E (Oral fluid—preliminary analysis)—
 - (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
 - (b) in any other case—if more than 2 hours have elapsed since the person ceased to be the driver of the motor vehicle or the driver trainer in 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 must not require a person to undergo a screening test, or provide a sample of the person's breath or oral fluid for analysis under section 12 or section 13E—
- (a) if it appears to the police officer that it may, because of injury suffered by the person or otherwise, be dangerous or not practicable for the person to undergo the screening test or to provide the sample; 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 officer has reasonable cause to suspect that the person was, the driver of or driver trainer in a motor vehicle when it was involved in an accident on a road or road related area; or
 - (ii) unless the officer has reasonable cause to suspect that the person has committed, or was the driver trainer during the commission of, an offence of culpable driving; or

- (iii) unless the requirement is made immediately after a motor vehicle driven by the person, or in which the person was a driver trainer, has stopped at or near the place where the person usually lives and the officer making the requirement has followed the motor vehicle while it was being driven on the road.
- (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.
- (5) In this section:
screening test means an alcohol screening test or drug screening test.

Division 2.7 Analysis of blood—alcohol and drugs

15 Taking blood samples from people 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 breath or oral fluid for analysis; or
 - (b) it is not practicable to carry out a breath or oral fluid analysis because—
 - (i) for a breath analysis, a breath analysis instrument is not available or an available breath analysis instrument is not in working order; or
 - (ii) for oral fluid analysis, an oral fluid analysis instrument is not available or an available oral fluid analysis instrument is not in working order; or

- (c) a person is unable to provide a sufficient sample of oral fluid for 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 or sampling facility 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) In this section—
- (a) a reference to the taking of a blood sample is a reference to the taking of a blood sample under a requirement under subsection (1); and
- (b) a reference to an analysis of a blood sample is a reference to an analysis of the sample to detect alcohol, or a prescribed drug, or both.
- (4) A sample of a person's blood shall be taken as soon as practicable after the arrival of the person at hospital or at the sampling facility and shall not be taken more than 2 hours after the arrival of the person at hospital or at the facility.
- (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 (the *sample taker*) taking a sample of blood from a person (the *tested person*) must—
 - (a) take the sample in the presence of a police officer; and
 - (b) place the sample into a container; and
 - (c) attach a label to the container that includes the following information:
 - (i) the sample taker's name;
 - (ii) the tested person's name;
 - (iii) the date and time the sample was taken; and
 - (d) ensure that the container is sealed with a tamper-evident seal that has a unique identifying number marked on it; and
 - (e) put the sealed container into a one-way box.
- (8) The chief police officer must, as soon as practicable, arrange for the container to be collected from the one-way box by an analyst.

15AA Taking blood samples from people in hospital

- (1) A person commits an offence if—
 - (a) the person is a doctor or nurse; and
 - (b) the person attends to a person (the *patient*) in hospital; and
 - (c) the person believes, on reasonable grounds, that—
 - (i) the patient was a driver or driver trainer involved in an accident; and
 - (ii) the accident happened not longer than 6 hours before the patient arrived at the hospital; and

- (d) the person does not take a sample of the patient's blood for analysis within 2 hours after the time the patient arrives at the hospital.

Maximum penalty: 10 penalty units.

Note Section 17 contains defences to a prosecution for a breach of this section.

- (2) The person (the *sample taker*) taking a sample of blood from a patient must—
 - (a) place the sample into a container; and
 - (b) attach a label to the container that includes the following information:
 - (i) the sample taker's name;
 - (ii) the patient's name;
 - (iii) the date and time the sample was taken; and
 - (c) ensure that the container is sealed with a tamper-evident seal that has a unique identifying number marked on it; and
 - (d) put the sealed container into a one-way box.
- (3) The chief police officer must, as soon as practicable, arrange for the container to be collected from the one-way box by an analyst.

15A Analysis of blood samples

- (1) This section applies if, under section 15 or section 15AA—
 - (a) a sample of blood is taken from a person (the *tested person*) for analysis; and
 - (b) an analyst has collected the sealed container containing the sample from a one-way box.

- (2) The analyst must, as soon as practicable, arrange for the analysis of the sample of blood at an approved laboratory to work out, in accordance with a request made by a police officer—
 - (a) the concentration of alcohol in the blood; or
 - (b) whether a prescribed drug is present in the blood.
- (3) If a police officer has reasonable cause to suspect that the tested person has a drug other than a prescribed drug or alcohol in the person's body, or that the tested person's behaviour may be affected by the presence of a drug other than a prescribed drug or alcohol in the person's body, the police officer may ask the analyst to work out the following:
 - (a) whether 1 or more drugs other than a prescribed drug or alcohol are present in the sample;
 - (b) if a drug other than a prescribed drug or alcohol is present in the sample—the concentration, quantity or other measurement of the drug.
- (4) The analyst must, as far as practicable, comply with the police officer's request.
- (5) The analyst must take reasonable care to ensure that a part of the sample sufficient for analysis to be carried out for the tested person (the *preserved part*) is protected and preserved until—
 - (a) if a request is made under subsection (7)—the preserved part is sent to the laboratory nominated by the tested person; or
 - (b) in any other case—
 - (i) 1 year has passed since the sample was taken from the tested person; or
 - (ii) if a request is made by the DPP under section 16C (Keeping of samples—request by DPP)—the end of the proceeding to which the sample relates.

- (6) However, subsection (5) does not apply if the amount of sample remaining after analysis under subsection (2) is insufficient for further analysis.
- (7) Before the end of the period mentioned in subsection (5) (b), the tested person may ask that the preserved part of the sample be sent, at the tested person's expense, to a laboratory nominated by the person.
- (8) If a request is made under subsection (7), the analyst must ensure that the preserved part of the sample is sent to the nominated laboratory as soon as practicable.

15B Blood analysis statement

- (1) As soon as practicable after an analysis of a sample of a person's blood is carried out under section 15A, the chief police officer must ensure the person is given a written statement that includes the following information:
 - (a) the date and the time the blood sample was taken;
 - (b) the unique identifying number on the tamper-evident seal;
 - (c) the place where the blood sample was taken;
 - (d) the result of the analysis;
 - (e) the address where the preserved part of the blood sample is being held;
 - (f) that the person will be notified, in writing, of a request (if any) by the DPP under section 16C (Keeping of samples—request by DPP);
 - (g) that the person may, before the end of the period mentioned in section 15A (5) (b), ask the analyst to send the preserved part of the blood sample to a laboratory nominated by the person, at the person's expense.

(2) In this section:

preserved part—see section 15A (5).

16 Medical examination—offence against s 24 or culpable driving

(1) This section applies to a person who has been—

(a) required to undergo—

(i) an alcohol screening test, or to provide a sample of the person's breath for analysis under section 12 (Breath analysis); or

(ii) if it is practicable to do so—a drug screening test, or to provide a sample of the person's oral fluid for analysis under section 13E (Oral fluid—preliminary analysis); and

Examples—impracticability

- 1 drug screening device not readily available
- 2 drug screening test or oral fluid analysis cannot be conducted before time limits for testing the person expire

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(b) arrested on reasonable suspicion of having committed an offence against section 24 (Driving under the influence of intoxicating liquor or a drug) or an offence of culpable driving.

Examples—reasonable suspicion

- 1 the way the person was driving
- 2 the way the person is behaving
- 3 a breath analysis the person was required to undergo indicates that a prescribed concentration of alcohol is present in the person's breath

(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, including a prescribed drug or 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, including a prescribed drug or alcohol.

- (3) For a person mentioned 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 the person in the custody of another police officer who shall take the person, as soon as practicable to a hospital or sampling facility 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 mentioned in subsection (2) shall carry out the medical examination within 2 hours of the person's arrival at hospital or the sampling facility.

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 mentioned in subsection (2) shall, within 2 hours of the person's arrival at hospital or the sampling facility—

- (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 or the sampling facility.

Maximum penalty: 10 penalty units.

- (7) The person (the *sample taker*) taking a sample from a person (the *tested person*) under this section must—
- (a) place the sample into a container; and
 - (b) attach a label to the container that includes the following information:
 - (i) the sample taker's name;
 - (ii) the tested person's name;
 - (iii) the date and time the sample was taken; and
 - (c) ensure that the container is sealed with a tamper-evident seal that has a unique identifying number marked on it; and
 - (d) put the sealed container into a one-way box.
- (8) The chief police officer must, as soon as practicable, arrange for the container to be collected from the one-way box by an analyst.

16A Analysis of body samples

- (1) This section applies if, under section 16—
- (a) a body sample is taken from a person (the *tested person*) for analysis; and
 - (b) an analyst has collected the sealed container containing the sample from a one-way box.

- (2) The analyst must, as soon as practicable, arrange for the analysis of the sample at an approved laboratory to work out, as far as practicable—
 - (a) whether any drug, including a prescribed drug or alcohol was present in the tested person's body when the sample was taken; and
 - (b) if the sample is of the tested person's blood—the concentration, quantity or other measurement of a drug, including a prescribed drug or alcohol, in the sample.
- (3) The analyst must take reasonable care to ensure that a part of the sample sufficient for analysis to be carried out for the tested person (the *preserved part*) is protected and preserved until—
 - (a) if a request is made under subsection (5)—the preserved part is sent to the laboratory nominated by the tested person; or
 - (b) in any other case—
 - (i) 1 year has passed since the sample was taken from the tested person; or
 - (ii) if a request is made by the DPP under section 16C (Keeping of samples—request by DPP)—the end of the proceeding to which the sample relates.
- (4) However, subsection (3) does not apply if the amount of sample remaining after analysis under subsection (2) is insufficient for further analysis.
- (5) Before the end of the period mentioned in subsection (3) (b), the tested person may ask that the preserved part of the sample be sent, at the tested person's expense, to a laboratory nominated by the person.
- (6) If a request is made under subsection (5), the analyst must ensure that the preserved part of the sample is sent to the nominated laboratory as soon as practicable.

16B Body sample statement

- (1) As soon as practicable after an analysis of a person's body sample is carried out under section 16A, the chief police officer must ensure the person is given a written statement that includes the following information:
 - (a) the date and the time the body sample was taken;
 - (b) the unique identifying number on the tamper-evident seal;
 - (c) the place where the body sample was taken;
 - (d) the result of the analysis;
 - (e) the address where the preserved part of the body sample is being held;
 - (f) that the person will be notified, in writing, of a request (if any) by the DPP under section 16C (Keeping of samples—request by DPP);
 - (g) that the person may, before the end of the period mentioned in section 16A (3) (b), ask the analyst to send the preserved part of the body sample to a laboratory nominated by the person, at the person's expense.
- (2) In this section:
preserved part—see section 16A (3).

16C Keeping of samples—request by DPP

- (1) This section applies if—
 - (a) a blood, an oral fluid or other body sample was taken from a person (the *tested person*) under this part for analysis; and
 - (b) the preserved part of the sample—
 - (i) is being kept at the approved laboratory where the analysis was carried out; and

- (ii) has not been sent to a nominated laboratory under section 13G (6) (Oral fluid—confirmatory analysis), section 15A (7) (Analysis of blood samples) or section 16A (5) (Analysis of body samples); and
- (c) a proceeding against the tested person—
 - (i) has not yet begun; or
 - (ii) has begun and not yet been finally decided (including any appeals).
- (2) The DPP may ask the approved laboratory to keep the preserved part of the sample until the end of the proceeding (including any appeals).
- (3) If the DPP makes a request under subsection (2), the DPP must tell the tested person about the request as soon as practicable.
- (4) In this section:
 - preserved part*—
 - (a) in relation to an oral fluid sample— see section 13G (4); or
 - (b) in relation to a blood sample—see section 15A (5); or
 - (c) in relation to a body sample (other than an oral fluid sample)— see section 16A (3).

16D Destruction of samples

- (1) This section applies to the part of a sample preserved under section 13G (4) (Oral fluid—confirmatory analysis), section 15A (5) (Analysis of blood samples) or section 16A (3) (Analysis of body samples).
- (2) An analyst must arrange for the preserved part to be destroyed after the end of the period for which the preserved part must be kept under section 13G (4) (b), section 15A (5) (b) or section 16A (3) (b).

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 (Taking blood samples from persons in custody), section 15AA (Taking blood samples from people in hospital) or section 16 (Medical examination—offence against s 24 or culpable driving)—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), section 15AA (1) or section 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 the sample of the person's breath or oral fluid has been analysed—the time when the authorised operator gives the person the written statement mentioned in section 12 (5) or section 13E (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 mentioned in section 14 (1) applies in relation to the person.
- (4) 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 the doctor or nurse becomes liable to pay as a result of carrying out the procedure.
- (5) In subsection (4):
specified procedure—see section 17.
- (6) Subsection (4) applies whether the person was or was not capable, because of the person's 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 road or road related area, 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.

18B Permitted use of samples

A sample of oral fluid, blood or any other body sample given or taken under this Act may only be used for the following purposes:

- (a) analysis of the sample in accordance with this Act;
- (b) research relating to drivers of motor vehicles affected by drugs, but only if identifying information about the person who provided the sample cannot be ascertained from it;
- (c) a proceeding for an offence of culpable driving.

Division 2.8 Search and seizure

18C Power to search person in custody

- (1) A police officer may search a person who is taken into custody under the following sections and may take possession of anything found in the person's possession:
- (a) section 11 (Detention for breath analysis);
 - (b) section 13D (Detention for oral fluid analysis);
 - (c) section 15 (Taking blood samples from people in custody).

- (2) For the purposes of the search, the officer may request the assistance of another police officer of the same sex as the person being searched.
- (3) A person is entitled to the return of anything taken from the person under subsection (1) when the person ceases to be in custody, other than—
- (a) a seizable item; or
 - (b) an item that may otherwise be seized or retained under another territory law.

- (4) In this section:

search means a search of a person or of anything in the person's possession, and may include—

- (a) requiring the person to remove only the person's overcoat, coat, jacket or a similar article of clothing and any footwear, gloves or headwear; and
- (b) an examination of them.

seizable item means a seizable item under the *Crimes Act 1900*, part 10.

Note A **seizable item** means anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody (see *Crimes Act 1900*, pt 10).

Part 3 Offences

19 Prescribed concentration of alcohol in blood or breath

- (1) A person commits an offence if the person—
 - (a) has been—
 - (i) the driver of a motor vehicle on a road or road related area; or
 - (ii) the driver trainer in a motor vehicle on a road or road related area; and
 - (b) has, within the relevant period, the prescribed concentration of alcohol in the person's blood or breath.
- (2) Strict liability applies to subsection (1).
- (3) A person convicted of an offence against subsection (1) is punishable in accordance with section 26.
- (4) In a proceeding for an offence against subsection (1), evidence may be given of the concentration of alcohol in the person's blood or breath based on—
 - (a) for proof of the concentration of alcohol in the person's blood or breath—an analysis of a sample of the person's breath carried out in accordance with this Act; or
 - (b) for proof of the concentration of alcohol in the person's blood—an analysis of a sample of the person's blood carried out at an approved laboratory and certified accurate by an analyst.

(5) In this section:

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

- (a) a breath analysis of the person could be carried out under this Act; or
- (b) if a sample of the person's blood was taken under section 15 (Taking blood samples from people in custody) or section 15AA (Taking blood samples from people in hospital)—a sample of the person's blood could be taken under the section.

19A 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 the person was in, and in charge of, a motor vehicle on a road or road related area, it is a defence if the person charged establishes that—

- (a) the person 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) the person did not intend to drive the motor vehicle until a time when the concentration of alcohol in the person's blood or breath was no longer the prescribed concentration for the person.

19B Defence if special driver with lower concentration of alcohol from allowable source

(1) This section applies if—

- (a) a person is a special driver charged with an offence against section 19; and

- (b) the concentration of alcohol in the person's blood or breath within the relevant period was less than 0.02g in 100mL of the person's blood or 210L of the person's breath.
- (2) It is a defence to a prosecution for the offence if the defendant proves that the concentration of alcohol in the defendant's blood or breath was caused by—
- (a) the consumption of an alcoholic beverage that formed part of a religious observance; or
 - (b) the consumption or use of a substance that was not, entirely or partly, consumed or used for its alcohol content.

Example—substance

food or medicine that contains alcohol

Note 1 A defendant has a legal burden in relation to the matters mentioned in s (2) (see Criminal Code, s 59).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

20 Prescribed drug in oral fluid or blood—driver or driver trainer

- (1) A person commits an offence if the person—
- (a) has been—
 - (i) the driver of a motor vehicle on a road or road related area; or
 - (ii) the driver trainer in a motor vehicle on a road or road related area; and

- (b) has, within the relevant period, a prescribed drug in the person's oral fluid or blood.

Maximum penalty:

- (a) for an offence by a first offender—10 penalty units; and
 - (b) for an offence by a repeat offender—
 - (i) if the offender is the driver—25 penalty units, imprisonment for 3 months or both; and
 - (ii) if the offender is the driver trainer—20 penalty units.
- (2) Strict liability applies to subsection (1).
- (3) In a proceeding for an offence against subsection (1), evidence may be given that a person has a prescribed drug in the person's oral fluid or blood based on—
- (a) for proof of the presence of a prescribed drug in the person's oral fluid—an analysis of a part of a sample of the person's oral fluid under section 13G (Oral fluid—confirmatory analysis) that indicates that a prescribed drug is present in the sample; or
 - (b) for proof of the presence of a prescribed drug in the person's blood—an analysis of a part of a sample of the person's blood under section 15A (Analysis of blood samples) that indicates that a prescribed drug is present in the sample.
- (4) In this section:
- relevant period*** means the period beginning when the person stopped being the driver of the vehicle or the driver trainer in the vehicle and ending at the latest time when—
- (a) a breath or oral fluid analysis of the person may be carried out under this Act; or

- (b) if section 15 (Taking blood samples from people in custody) or section 15AA (Taking blood samples from people in hospital) applies—a sample of the person’s blood may be taken under that section.

22 Refusing to provide breath sample

A person who—

- (a) has been—
- (i) the driver of a motor vehicle on a road or road related area; or
 - (ii) the driver trainer in a motor vehicle on a road or road related area; 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) the person refuses to provide a sample of breath for analysis; or
- (d) the person fails or refuses to provide a sample of breath in accordance with the reasonable directions of the police officer who made the requirement.

22A Refusing to provide oral fluid sample

- (1) This section applies to a person who—
- (a) has been—
- (i) the driver of a motor vehicle on a road or road related area; or
 - (ii) the driver trainer in a motor vehicle on a road or road related area; and

- (b) has, in accordance with this Act, been required to provide a sample of oral fluid for analysis.
- (2) The person commits an offence if—
- (a) the person refuses to provide a sample of oral fluid for analysis; or
- (b) the person fails to provide a sample of oral fluid in accordance with reasonable directions of a police officer.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) It is a defence to a prosecution for an offence against subsection (2) (b) if the defendant proves that the failure was based on medical grounds.

Note The defendant has a legal burden in relation to the matters mentioned in s (4) (see Criminal Code, s 59).

22B Failing to stay for drug screening test

- (1) A person commits an offence if the person—
- (a) is required by a police officer under division 2.4 to undergo a drug screening test; and
- (b) fails to remain at the place where the test is being carried out until the test is completed in accordance with the police officer's directions.

Maximum penalty: 20 penalty units.

Note 1 A police officer may require a person to undergo a drug screening test under s 13A, s 13B, s 13BA or s 13C.

Note 2 **Fail** includes refuse, see the Legislation Act, dict, pt 1.

- (2) An offence against this section is a strict liability offence.

23 Refusing blood test etc

- (1) A person who—
- (a) has been—
 - (i) the driver of a motor vehicle on a road or road related area; or
 - (ii) the driver trainer in a motor vehicle on a road or road related area; 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 the person 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) the person fails or refuses to submit to the medical examination; or
 - (b) the person 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 road or road related area 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 road or road related area;

it is a defence if the person charged establishes that—

- (c) the person 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) the person 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 road, or be in charge of a vehicle or animal on a road, 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 or breath 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 or breath 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.
- (3) However, if the special driver convicted of an offence against section 19 (1) is a driver trainer, the person is not punishable by a penalty of imprisonment.

Table 26

column 1 item	column 2 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

column 1 item	column 2 alcohol concentration level	column 3 maximum penalty— first offender	column 4 maximum penalty— repeat offender
3	level 3	10 penalty units, imprisonment for 6 months or both	10 penalty units, imprisonment for 6 months or both
4	level 4	15 penalty units, imprisonment for 9 months or both	20 penalty units, imprisonment for 12 months or both

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

If—

- (a) a person is convicted of an offence against any of the following provisions:
 - section 22 (Refusing to provide breath sample);
 - section 22A (Refusing to provide oral fluid sample);
 - section 23 (Refusing blood test etc);
 - section 24 (Driving under the influence of intoxicating liquor or a drug); 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.

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, other than a driver trainer, of an offence against section 19 (1) and finds that the concentration of alcohol in the person's blood or breath 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 or breath 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

column 1 item	column 2 alcohol concentration level	column 3 minimum disqualification	column 4 default disqualification
1	level 1	1 month	3 months
2	level 2	2 months	6 months
3	level 3	3 months	12 months

column 1 item	column 2 alcohol concentration level	column 3 minimum disqualification	column 4 default disqualification
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, other than a driver trainer, of an offence against section 19 (1) and finds that the concentration of alcohol in the person’s blood or breath 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 or breath 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 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, other than a driver trainer, 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, other than a driver trainer, 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.

35 Automatic driver licence disqualification—immediate suspension period

- (1) This section applies to a person if the person—
 - (a) is given an immediate suspension notice; and
 - (b) is convicted or found guilty of the immediate suspension offence to which the notice relates; and
 - (c) is disqualified under this part from holding or obtaining a driver licence.
- (2) The period for which the person is disqualified under this part from holding or obtaining a driver licence (including any period of minimum disqualification under section 32 or section 33) is reduced by the period that the person's driver licence was suspended under the *Road Transport (General) Act 1999*, section 61B.
- (3) However, subsection (2) does not apply if, on hearing the charge for the immediate suspension offence, a court is satisfied that the person did not comply with the immediate suspension notice.
- (4) In this section:

immediate suspension notice—see the *Road Transport (General) Act 1999*, dictionary.

immediate suspension offence—see the *Road Transport (General) Act 1999*, dictionary.

Part 7 Evidence

Division 7.1 Evidence—alcohol-related tests

41 Evidentiary certificate—alcohol-related tests

- (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 authorised 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 a 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 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 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 (5);
- 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 authorised 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 a 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 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;
- is evidence of the matters stated in the certificate; and
- (c) a written statement mentioned in section 12 (5) that is a print-out from a breath analysis instrument is evidence of the matters stated in the statement; and
 - (d) a certificate that appears to be signed by a person who is a doctor or nurse and states the following is evidence of the matter:
 - (i) that the person is a doctor or nurse;
 - (ii) that the person took a sample of blood or other body sample from a person mentioned in the certificate (the *relevant person*) on a stated day, at a stated time, in a stated place;
 - (iii) that the person placed the sample of blood or other body sample into a container;
 - (iv) that the person attached a label to the container that contained the following information:
 - (A) the person's name;
 - (B) the relevant person's name;
 - (C) the date and time the sample was taken;
 - (v) that the person sealed the container with a tamper-evident seal that had a stated unique identifying number marked on it;

- (vi) that the person placed the sealed container into a one-way box;
 - (vii) if the sample was taken under section 15—that, when the sample was taken, the person was of the opinion that the relevant person was, at that time, because of the relevant person's medical condition, incapable of giving or refusing permission to take a sample of blood; and
- (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 the doctor or authorised nurse practitioner was told by a police officer that the police officer intended to require a person to—
 - (A) undergo an alcohol screening test under division 2.2 (Alcohol—screening tests); or
 - (B) provide a sample of the person's breath for 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 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
- (g) a certificate that appears to be signed by a person who is an analyst and states the following is evidence of the matter:
 - (i) that the person is an analyst;
 - (ii) that a blood sample or other body sample (the ***analysed sample***) was analysed at an approved laboratory;
 - (iii) that the analysed sample was in a container—
 - (A) labelled in accordance with section 15 (7) (Taking blood samples from people in custody), section 15AA (2) (Taking blood samples from people in hospital) or section 16 (7) (Medical examination—offence against s 24 or culpable driving); and
 - (B) sealed with a tamper-evident seal marked with a stated unique identifying number;
 - (iv) that the tamper-evident seal did not appear to have been interfered with;
 - (v) the analysis to which the analysed sample was subjected;
 - (vi) the result of the analysis;
 - (vii) that the analysis was accurate; and
- (h) 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 mentioned in that paragraph.

Division 7.2 Evidence—drug-related tests

41AA Evidentiary certificates—drug-related tests

- (1) A certificate that appears to be signed by a police officer and states a matter relevant to any of the following is evidence of the matter:
- (a) that the police officer was on a stated date an authorised operator;
 - (b) that, at a place and at a time and on a date stated in the certificate, a person named in the certificate was required by a stated police officer to provide a sample of the person's oral fluid for analysis by an oral fluid analysis instrument;
 - (c) the instrument used in the analysis, by reference to its model number, patent number and serial number;
 - (d) that the oral fluid analysis instrument was in proper working order;
 - (e) the procedures followed and precautions taken immediately before the oral fluid analysis, during the oral fluid analysis and immediately after the completion of the oral fluid analysis;
 - (f) that the person named in the certificate provided a sample of the person's oral fluid for analysis in accordance with the directions of the police officer who made the requirement;
 - (g) the steps that were taken to ensure that it was not readily apparent to members of the public that the oral fluid analysis was being carried out;
 - (h) that, in following the procedures for which a regulation makes provision that stated results are to be obtained, the results stated in the certificate were obtained;

- (i) that, as soon as practicable after the oral fluid analysis was carried out, the police officer signed and gave to the person mentioned in paragraph (b) the statement required by section 13E (6).
- (2) A certificate that appears to be signed by a police officer and states a matter relevant to any of the following is evidence of the matter:
- (a) that the police officer was on a stated date an authorised operator;
 - (b) that, at a place and at a time and on a date stated in the certificate, a person named in the certificate was required by a stated police officer to provide a sample of the person's oral fluid for analysis by an oral fluid analysis instrument;
 - (c) the instrument available to be used in the analysis, by reference to its model number, patent number and serial number;
 - (d) that the oral fluid analysis instrument was in proper working order;
 - (e) the procedures followed immediately before the person was required to provide a sample of the person's oral fluid for analysis and the results obtained in following those procedures;
 - (f) that the person failed to provide a sample of the person's oral fluid for analysis.

Note **Fail** includes refuse, see the Legislation Act, dict, pt 1.

- (3) A written statement mentioned in section 13E (6) that is a print-out from an oral fluid analysis instrument is evidence of the matters stated in the print-out.
- (4) A certificate that appears to be signed by a person who is a doctor or authorised nurse practitioner and states any of the following is evidence of the matter:
- (a) that the person is a doctor or nurse practitioner;

- (b) that, at a stated hospital, on a stated date and at a stated time, the person was attending the person named in the certificate (the *relevant person*);
- (c) that the person was told by a police officer of the officer's intention to require the relevant person to—
 - (i) undergo a drug screening test under division 2.4 (Prescribed drugs—screening tests); or
 - (ii) provide a sample of the person's oral fluid for analysis under section 13E (Oral fluid—preliminary analysis);
- (d) whether the person was of the opinion, at the time the person was told, that complying with the requirement would, or would not, be detrimental to the relevant person's medical condition.

41AB Evidentiary certificate—analysis of oral fluid sample

A certificate that appears to be signed by a person who is an analyst and states a matter relevant to any of the following is evidence of the matter:

- (a) that the person is an analyst;
- (b) that the person arranged for a sample of oral fluid (the *analysed sample*) to be analysed at an approved laboratory;
- (c) that the analysed sample was—
 - (i) labelled in accordance section 13E (5) (b) (Oral fluid—preliminary analysis); and
 - (ii) sealed with a tamper-evident seal marked with a stated unique identifying number;
- (d) that the tamper-evident seal did not appear to have been interfered with;
- (e) the analysis to which the analysed sample was subjected;

- (f) the result of the analysis;
- (g) that the analysis was accurate.

41AC Evidentiary certificate—blood sample not taken

A certificate that appears to be signed by a person who is a doctor or nurse (a *sample taker*) and states a matter relevant to any of the following is evidence of the matter:

- (a) that the person is a doctor or nurse;
- (b) that the sample taker attended a person mentioned in the certificate (the *relevant person*) on a stated day, at a stated time, in a stated hospital or sampling facility;
- (c) if the relevant person is a person mentioned in section 15 (Taking blood samples from people in custody)—that a police officer had asked the sample taker to take a sample of the person’s blood;
- (d) if the relevant person is a person mentioned in section 15AA (Taking blood samples from people in hospital)—that the sample taker believed that the relevant person—
 - (i) was involved in an accident and had attended the hospital for examination or treatment because of the accident; and
 - (ii) the accident had happened not longer than 6 hours before the relevant person arrived at the hospital;
- (e) whether the sample taker was of the opinion that—
 - (i) taking the sample would, or would not, be detrimental to the relevant person’s health; or
 - (ii) a sample of blood had, or had not, been taken from the relevant person since the accident mentioned in section 15 or section 15AA.

41AD Evidentiary certificate—analysis of sample for prescribed drug etc

A certificate that appears to be signed by a person who is an analyst and states a matter relevant to any of the following is evidence of the matter:

- (a) that the person is an analyst;
- (b) that the analyst arranged for a blood sample or body sample (the *analysed sample*) to be analysed at an approved laboratory to work out whether a prescribed drug, or a drug other than a prescribed drug, or alcohol was present in the sample, in accordance with a request made by a police officer;
- (c) that the analysed sample was in a container—
 - (i) labelled in accordance with section 15 (7) (Taking blood samples from people in custody), section 15AA (2) (Taking blood samples from people in hospital) or section 16 (7) (Medical examination—offence against s 24 or culpable driving); and
 - (ii) sealed with a tamper-evident seal marked with a stated unique identifying number;
- (d) that the tamper-evident seal did not appear to have been interfered with;
- (e) the analysis to which the analysed sample was subjected;
- (f) the result of the analysis;
- (g) that the analysis was accurate.

41AE NSW evidentiary certificates—drug-related tests

A certificate that appears to be a certificate mentioned in the *Road Transport (Safety and Traffic Management) Act 1999* (NSW), section 33B, section 33D or section 35 is evidence of the matters stated in the certificate.

Division 7.3 Other provisions about evidence

41A Evidence for insurance purposes

- (1) For a proceeding in relation to an insurance contract, evidence of any of the following is not admissible as evidence that a person was at any time under the influence of or in any way affected by alcohol or a prescribed drug, or a drug other than alcohol or a prescribed drug, or was incapable of driving or of exercising effective control over a motor vehicle:
- (a) evidence that the person has undergone an alcohol or drug screening test;
 - (b) evidence of the result of an alcohol or drug screening test under part 2 (Examination of people for alcohol or drugs);
 - (c) evidence that the person has provided a sample for a breath analysis under section 12 (Breath analysis);
 - (d) evidence of the result of a breath analysis;
 - (e) evidence that the person has provided a sample of oral fluid for analysis under section 13E (Oral fluid—preliminary analysis);
 - (f) evidence of the result of an oral fluid analysis;
 - (g) evidence that a sample of blood or other body sample was taken from the person under section 15 (5) (Taking blood samples from people in custody), section 15AA (1) (Taking blood samples from people in hospital) or section 16 (2) (Medical examination—offence against s 24 or culpable driving);
 - (h) evidence that a doctor or nurse dealt with a container holding a blood sample in accordance with section 15 (7) or section 15AA (2);

- (i) evidence that a statement was given to the person under section 13H (Oral fluid analysis statement), section 15B (Blood analysis statement) or section 16B (Body sample statement);
 - (j) evidence of the contents of a statement given under section 13H, section 15B, or section 16B;
 - (k) evidence that the person was found guilty of a relevant offence;
 - (l) evidence that, as a result of the person's being found guilty or being convicted of a relevant offence, an order was made in relation to the person;
 - (m) evidence that a non-conviction order was made under the *Crimes (Sentencing) Act 2005*, section 17 (2) (a) (Non-conviction orders—general);
 - (n) evidence that an offence was taken into account by a court under the *Crimes (Sentencing) Act 2005*, part 4.4 (Taking additional offences into account).
- (2) For a proceeding in relation to an insurance contract, a statement given to a person under section 13H, section 15B or section 16B is not admissible as evidence of the fact that the person was at any time under the influence of or in any way affected by alcohol or a prescribed drug, or a drug other than alcohol or a prescribed drug, or was 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—
- (a) to the extent that the operation of this section is excluded, limited, modified or restricted; or
 - (b) to the extent that it purports to exclude, limit, modify or restrict the insurer's liability if an owner, registered operator or driver of a motor vehicle is convicted or found guilty of an offence against this Act.

- (4) However, nothing in subsection (3) precludes the inclusion in an insurance contract of any other covenant, term, condition or provision under which the insurer's liability is excluded or limited.
- (5) In this section:
- relevant offence* means any of the following:
- (a) an offence against section 19 in relation to a blood sample taken from a person under section 15 (5) or section 15AA (1);
 - (b) an offence against section 20 (Prescribed drug in oral fluid or blood—driver or driver trainer);
 - (c) an offence against section 22A (Refusing to provide oral fluid sample);
 - (d) an offence against section 23 (Refusing blood test etc);
 - (e) an offence against another provision of this Act prescribed by regulation;
 - (f) an offence of culpable driving.

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 (a *testing 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 a regulation (see Legislation Act, s 104).

- (2) The court must dismiss the charge unless satisfied that despite the failure to comply with a testing provision the result obtained in the breath analysis, or the blood sample analysis, would have been the prescribed concentration for the person.

42AA Effect of noncompliance—analysis of oral fluid

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

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

- (2) The court must dismiss the charge unless satisfied that despite the failure to comply with a testing provision the result obtained in the oral fluid analysis would have indicated the presence of a prescribed drug.

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 (a *testing 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 a regulation (see Legislation Act, s 104).

- (2) Unless the court is satisfied that the failure to comply with the testing provision 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 (a *testing 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 a regulation (see Legislation Act, s 104).

- (2) The court must dismiss the charge unless satisfied that despite the failure to comply with a testing provision the result obtained in a breath analysis, if it had taken place, would have been the prescribed concentration for the person.

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

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

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

- (2) The court must dismiss the charge unless satisfied that despite the failure to comply with a testing provision the result obtained in an oral fluid analysis, if it had taken place, would have indicated the presence of a prescribed drug.

43 Oral evidence about part 7 certificate

- (1) A person who has been charged with an offence against this Act may give written notice to the chief police officer that the person 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 mentioned in section 41 is given.
- (2) The notice may be given by posting it to the chief police officer, or leaving it for the chief police officer, at the chief police officer's office—
 - (a) for a certificate mentioned in division 7.1 (Evidence—alcohol-related tests)—not less than 7 days before the date fixed for the hearing of the charge; or
 - (b) for a certificate mentioned in division 7.2 (Evidence—drug-related tests)—not less than 21 days before the date fixed for the hearing of the charge; or
 - (c) if the court orders a shorter period for service—not less than the shorter period.
- (3) Notwithstanding that a notice has been given under subsection (2) and that the people mentioned in the notice give evidence relating to the matters stated in the certificates, the certificates mentioned in division 7.1 and division 7.2—
 - (a) are admissible in evidence; and
 - (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 9 Miscellaneous

45 Power of arrest

- (1) A police officer who has a screening device immediately available for use is not entitled to arrest without a warrant a person whom the officer suspects is guilty of an offence against section 24 (1) unless and until the officer has required that person to undergo a screening test and the person has undergone, or refused to undergo, the screening test.

- (2) In this section:

screening device means the following:

- (a) for alcohol—an alcohol screening device;
- (b) for a prescribed drug—a drug screening device.

screening test means the following:

- (a) for alcohol—an alcohol screening test;
- (b) for a prescribed drug—a drug screening test.

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 must, 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.

47A Stopping, search and detaining—Crimes Act, s 207 and s 209

For the *Crimes Act 1900*, section 207 (1) (Stopping, searching and detaining people) or section 209 (1) (Stopping, searching and detaining conveyances), it is not reasonable grounds for suspicion in relation to a person, thing or circumstance if the suspicion is formed on the basis of the result of a drug screening test under this Act only.

47B Police may direct person not to drive

- (1) This section applies if—
- (a) a person has been required under part 2 (Examination of people for alcohol or drugs) to undergo a drug screening test or to give a sample of oral fluid or blood for analysis; and
 - (b) a police officer has reasonable cause to suspect that the person's ability to drive a motor vehicle safely is impaired by a prescribed drug.

Examples—reasonable cause

- the way the person is driving
- the way the person is behaving
- an oral fluid analysis the person was required to undergo indicates that a prescribed drug is present in the person's oral fluid

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The police officer may direct the person not to drive a motor vehicle.
- (3) The direction must—
- (a) be in writing; and
 - (b) state the period, not longer than 12 hours, for which the person must not drive a motor vehicle; and

(c) be signed by the police officer.

- (4) The person commits an offence if the person fails to comply with the direction.

Maximum penalty: 10 penalty units.

Note *Fail* includes refuse, see the Legislation Act, dict, pt 1.

- (5) An offence against subsection (4) is a strict liability offence.
- (6) On request by the person, the chief police officer may revoke the direction if satisfied on reasonable grounds that the person's ability to drive a motor vehicle safely is no longer impaired by a prescribed drug.

47C Conducting alcohol-related tests and drug-related tests at same time

- (1) Nothing in this Act prevents a police officer requiring a person to undergo an alcohol-related test and a drug-related test at the same time.

- (2) In this section:

alcohol-related test means—

- (a) an alcohol screening test under division 2.2 (Alcohol—screening tests); or
- (b) a breath analysis under division 2.3 (Alcohol—confirmatory tests); or
- (c) an analysis of blood for alcohol under 2.7 (Analysis of person's blood—alcohol and drugs).

drug-related test means—

- (a) a drug screening test under division 2.4 (Prescribed drugs—screening tests); or

- (b) an oral fluid analysis under division 2.5 (Prescribed drugs—confirmatory tests); or
- (c) an analysis of blood for a prescribed drug under 2.7 (Analysis of person’s blood—alcohol and drugs).

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, section 13D, section 15 or section 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) Regulation 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, s 104).

51 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) The Executive may also make regulations under this Act, prescribing other areas that are road related areas for the purposes of this Act.

Part 21

Transitional—Road Transport (Alcohol and Drugs) Legislation Amendment Act 2010

105 Meaning of *commencement day*—pt 21

- (1) In this part:

commencement day means the day the *Road Transport (Alcohol and Drugs) Legislation Amendment Act 2010*, section 8 commences.

- (2) This section expires 6 months after the day it commences.

106 Approved operator—authorisation in force before commencement day

- (1) This section applies if—

(a) before the commencement day, the chief police officer authorised a police officer under section 6 (1) (Approval of operators, analysts and laboratories) to carry out breath analysis; and

(b) immediately before the commencement day the authorisation was in force.

- (2) The police officer is taken to be an authorised officer for this Act for 6 months starting on the commencement day unless the authorisation is earlier ended.

- (3) This section expires 6 months after the day it commences.

107 Approved analyst—appointment in force before commencement day

- (1) This section applies if—
 - (a) before the commencement day, the Minister appointed a person as an approved analyst under section 6 (2) (Approval of operators, analysts and laboratories); and
 - (b) immediately before the commencement day the appointment was in force.
- (2) The appointment is taken to be an appointment under section 5B (Appointment of analysts) and continues in force for 6 months starting on the commencement day unless earlier ended.
- (3) This section expires 6 months after the day it commences.

108 Approved laboratory—approval in force before commencement day

- (1) This section applies if—
 - (a) before the commencement day, the Minister approved a laboratory or other entity (however described) under section 6 (3) (Approval of operators, analysts and laboratories) as an approved laboratory; and
 - (b) immediately before the commencement day the approval was in force.
- (2) The approval is taken to be an approval under section 6 (Approval of laboratories) and continues in force for 6 months starting on the commencement day unless earlier ended.
- (3) This section expires 6 months after the day it commences.

109 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Road Transport (Alcohol and Drugs) Legislation Amendment Act 2010*.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.

110 Expiry—pt 21

- (1) This part expires 2 years after the day it commences.
- (2) This part is a law to which the Legislation Act, section 88 (repeal does not end effect of transitional laws etc) applies.

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* 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.

Note 3 The *Road Transport (General) Act 1999* contains definitions relevant to this Act. For example, the following terms are defined in the *Road Transport (General) Act 1999*, dictionary:

- another jurisdiction
- bicycle
- combination
- driver
- jurisdiction
- motor vehicle
- ride
- road
- road related area
- road transport authority (or authority) (see s 16)
- road transport legislation (see s 6).

Note 4 If a word or expression is defined in an Act (but not a regulation or another publication) included in the road transport legislation, the definition applies to each use of the word or expression in other road transport legislation unless the contrary intention appears (see *Road Transport (General) Act 1999*, s 8).

accident means an accident on a road or road related area, whether within or outside the ACT, that involves a motor vehicle.

alcohol screening device—see section 7.

alcohol screening test, for a person, means a test of a sample of the person's breath using an alcohol screening device.

analyst means a person appointed by the road transport authority under section 5B.

another jurisdiction means a jurisdiction other than the ACT.

approved laboratory means a laboratory or other entity approved by the road transport authority under section 6.

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.

authorised operator means the following:

- (a) for breath analysis—a police officer who has been authorised under section 5 to carry out breath analysis for this Act;
- (b) for oral fluid analysis—a police officer who has been authorised under section 5 to carry out oral fluid analysis for this Act.

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

breath analysis instrument—see section 7A.

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 concentration of alcohol in blood or breath); or
- (b) section 20 (Prescribed drug in oral fluid or blood—driver or driver trainer); or
- (c) section 22 (Refusing to provide breath sample); or
- (d) section 22A (Refusing to provide oral fluid sample); or
- (e) section 23 (Refusing blood test etc); or
- (f) section 24 (Driving under the influence of intoxicating liquor or a drug); or
- (g) another provision of this Act prescribed by regulation.

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 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.

driver trainer—see section 4BA.

drug means—

- (a) a substance specified in schedule 1; or
- (b) a controlled drug within the meaning of the Criminal Code, chapter 6 (Serious drug offences); 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.

drug screening device—see section 7B.

drug screening test, for a person, means a test of a sample of the person's oral fluid using a drug screening device.

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.

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

first offender—see section 4F.

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

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

level, for a concentration of alcohol in blood or breath—see section 4E.

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

nurse practitioner position—see the *Health Act 1993*, section 195 (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.

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

oral fluid analysis instrument—see section 7C.

prescribed concentration means—

- (a) for a special driver—see section 4C (a); and
- (b) for any other person—see section 4C (b).

prescribed drug means—

- (a) methylamphetamine; or
- (b) delta-9-tetrahydrocannabinol; or
- (c) N, α -Dimethyl-3,4-(Methylenedioxy)phenylethylamine (MDMA); or
- (d) any other drug prescribed by regulation.

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

repeat offender—see section 4F.

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.

sampling facility means a facility prescribed by regulation to which a person may be taken for the purpose of having a blood sample taken by a doctor or nurse for analysis under part 2 (Examination of people for alcohol or drugs).

Examples—sampling facility

- 1 a police station
- 2 a police vehicle equipped for the purpose of taking blood samples

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

scope of practice—see the *Health Act 1993*, section 195 (2).

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

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

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 Cwlth Gaz 1977 No S242)

as amended by

Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance 1977 Ord1977-52

notified 27 September 1977 (Cwlth Gaz 1977 No S206)

commenced 27 September 1977

Ordinances Revision Ordinance 1978 Ord1978-46

notified 28 December 1978 (Cwlth Gaz 1978 No S292)

commenced 28 December 1978

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance
1980 Ord1980-37**

notified 14 October 1980 (Cwlth Gaz 1980 No S231)
commenced 14 October 1980

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance
1981 Ord1981-16**

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

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance (No 2)
1981 Ord1981-29**

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

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance
1982 Ord1982-94**

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

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance
1984 Ord1984-63**

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

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance
1985 Ord1985-51**

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

Magistrates Court Ordinance 1985 Ord1985-67 sch pt 1

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

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance
1987 Ord1987-9**

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

**Drug Laws (Consequential Amendments) Ordinance 1989 Ord1989-14
s 4**

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

Endnotes

3 Legislation history

Self-Government (Consequential Amendments) Ordinance 1989 Ord1989-38 sch 1

notified 10 May 1989 (Cwlth 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 A1989-23 s 10

notified 1 December 1989 (Gaz 1989 No S38)
commenced 1 December 1989

Motor Traffic (Alcohol and Drugs) (Amendment) Act 1989 A1989-24

notified 7 December 1989 (Gaz 1989 No S40)
commenced 7 December 1989

Motor Traffic (Alcohol and Drugs) (Amendment) Act 1990 A1990-64

notified 24 December 1990 (Gaz 1990 No S98)
commenced 1 January 1991 (s 2)

Magistrates and Coroner's Courts (Registrar) Act 1991 A1991-44 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 A1992-63

notified 30 October 1992 (Gaz 1992 No S183)
commenced 30 October 1992

Motor Traffic (Alcohol and Drugs) (Amendment) Act 1993 A1993-22

notified 5 April 1993 (Gaz 1993 No S47)
commenced 5 April 1993

Motor Traffic (Alcohol and Drugs) (Amendment) Act (No 2) 1993 A1993-50

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 A1993-58**

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 A1994-26 sch

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

Statute Law Revision (Penalties) Act 1994 A1994-81 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 A1996-7 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 A1996-48

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

Motor Traffic (Alcohol and Drugs) (Amendment) Act 1997 A1997-51

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 A1997-53**

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 A1999-11

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

Endnotes

3 Legislation history

Motor Traffic (Alcohol and Drugs) (Amendment) Act (No 2) 1999 A1999-18

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

Road Transport Legislation Amendment Act 1999 A1999-79 sch 3

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

Road Transport Legislation Amendment Act 2001 A2001-27 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 A2001-44 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 A2001-56 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 A2001-62 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 CN2001 No 2)

Statute Law Amendment Act 2002 A2002-30 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) A2002-49 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)

**Justice and Community Safety Legislation Amendment Act 2005
A2005-5 pt 10**

notified LR 23 February 2005
s 1, s 2 commenced 23 February 2005 (LA s 75 (1))
pt 10 commenced 6 March 2005 (s 2 (1) and see Criminal Code
(Serious Drug Offences) Amendment Act 2004 A2004-56, s 2 and LA
s 79)

Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.53

notified LR 12 May 2005
s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))
sch 3 pt 3.53 commenced 2 June 2005 (s 2 (1))

Road Transport (Alcohol and Drugs) Amendment Act 2006 A2006-12

notified LR 5 April 2006
s 1, s 2 commenced 5 April 2006 (LA s 75 (1))
remainder commenced 6 April 2006 (s 2)

Sentencing Legislation Amendment Act 2006 A2006-23 sch 1 pt 1.30

notified LR 18 May 2006
s 1, s 2 commenced 18 May 2006 (LA s 75 (1))
amdt 1.276 commenced 2 June 2007 (s 2 (2))
sch 1 pt 1.30 remainder commenced 2 June 2006 (s 2 (1) and see
Crimes (Sentence Administration) Act 2005 A2005-59 s 2, Crimes
(Sentencing) Act 2005 A2005-58, s 2 and LA s 79)

Health Legislation Amendment Act 2006 A2006-27 sch 2 pt 2.8

notified LR 14 June 2006
s 1, s 2 commenced 14 June 2006 (LA s 75 (1))
sch 2 pt 2.8 commenced 14 December 2006 (s 2 and LA s 79)

Endnotes

**Road Transport (Third-Party Insurance) Act 2008 A2008-1 sch 1 pt 1.3
(as am by A2008-39 s 4)**

notified LR 26 February 2008
s 1, s 2 commenced 26 February 2008 (LA s 75 (1))
sch 1 pt 1.3 commenced 1 October 2008 (s 2 as am by A2008-39 s 4)

**Road Transport (Third-Party Insurance) Amendment Act 2008
A2008-39**

notified LR 22 August 2008
s 1, s 2 commenced 22 August 2008 (LA s 75 (1))
remainder commenced 23 August 2008 (s 2)
Note This Act only amends the Road Transport (Third-Party
Insurance) Act 2008 A2008-1.

**Road Transport (Mass, Dimensions and Loading) Act 2009 A2009-22
sch 1 pt 1.2**

notified LR 3 September 2009
s 1, s 2 commenced 3 September 2009 (LA s 75 (1))
sch 1 pt 1.2 commenced 3 March 2010 (s 2 and LA s 79)

Statute Law Amendment Act 2010 A2010-18 sch 3 pt 3.11

notified LR 13 May 2010
s 1, s 2 commenced 13 May 2010 (LA s 75 (1))
sch 3 pt 3.11 commenced 3 June 2010 (s 2)

**Road Transport (Alcohol and Drugs) (Random Drug Testing)
Amendment Act 2010 A2010-27**

notified LR 13 July 2010
s 1, s 2 commenced 13 July 2010 (LA s 75 (1))
remainder commenced 1 December 2010 (s 2 and CN2010-15)

Liquor (Consequential Amendments) Act 2010 A2010-43 sch 1 pt 1.16

notified LR 8 November 2010
s 1, s 2 commenced 8 November 2010 (LA s 75 (1))
sch 1 pt 1.16 commenced 1 December 2010 (s 2 (4) and see Liquor
Act 2010 A2010-35, s 2 (3) (as am by A2010-43 amdt 1.19) and
CN2010-14)

Road Transport (Alcohol and Drugs) Legislation Amendment Act 2010 A2010-47 pt 2

notified LR 25 November 2010
 s 1, s 2 commenced 25 November 2010 (LA s 75 (1))
 pt 2 commenced 1 December 2010 (s 2 (2) and see Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Act 2010 A2010-27, s 2 and CN2010-15)

Road Transport (Alcohol and Drugs) Legislation Amendment Act 2011 A2011-15 pt 3

notified LR 12 May 2011
 s 1, s 2 commenced 12 May 2011 (LA s 75 (1))
 pt 3 commenced 13 May 2011 (s 2)

4 Amendment history

Preliminary

pt 1 hdg note am A2001-44 amdt 1.3669; A2001-62 amdt 1.4
 om A2005-20 amdt 3.343

Name of Act

s 1 sub A1999-79 sch 3
 am A2005-20 amdt 3.344; A2008-1 amdt 1.12; A2009-22
 amdt 1.2

Dictionary

s 2 hdg (prev s 3 hdg) sub A2005-20 amdt 3.345
 s 2 orig s 2 om A2001-27 amdt 3.2
 (prev s 3) sub A1999-79 sch 3
 renum as s 2 A2006-12 s 4

Notes

s 3 orig s 3 renum as s 2
 (prev s 4) am A1997-51 s 4 (d)
 defs reloc (in pt) to dict A1999-79 sch 3
 om (in pt) A1999-79 sch 3
 sub A1999-79 sch 3
 renum as s 3 A2006-12 s 4
 def **approved analyst** om A1999-79 sch 3
 def **approved breath analysing instrument** am Ord1980-37
 s 3
 om A1992-63 s 3
 def **approved breath analysis instrument** ins A1992-63 s 3
 om A1992-63 s 3
 def **approved operator** am Ord1985-51 sch
 om A1999-79 sch 3

Endnotes

4 Amendment history

- def **approved rehabilitation program** ins A1997-51 s 4 (c)
om A1992-63 s 3
- def **approved screening device** om A1999-79 sch 3
- def **Commonwealth vehicle** ins A1993-58 s 4 (c)
sub A1996-48 s 4
om A1992-63 s 3
- def **dangerous goods vehicle** ins A1990-64 s 4 (b)
om A1992-63 s 3
- def **drive a motor vehicle** om A1999-79 sch 3
- def **experienced driver** ins A1990-64 s 4 (b)
am A1993-58 s 4 (a)
om A1992-63 s 3
- def **heavy motor vehicle** ins A1990-64 s 4 (b)
am A1996-7 s 10
om A1992-63 s 3
- def **level** ins A1997-51 s 4 (c)
om A1992-63 s 3
- def **medical practitioner** am A1989-24 s 3 (a)
om A1999-79 sch 3
- def **offence involving alcohol or drugs** am Ord1981-29 s 2;
A1992-63 sch
om A1997-51 s 4 (b)
- def **public place** om A1999-79 sch 3
- def **special driver** ins A1997-51 s 4 (c)
om A1999-79 sch 3

Offences against Act—application of Criminal Code etc

- s 4 orig s 4 renum as s 3
ins A2006-12 s 5
am A2010-27 s 4; A2010-47 s 4

Important concepts

- pt 1A hdg ins A2010-47 s 5

Meaning of public place

- s 4A ins A1999-79 sch 3
am A2002-49 amdt 3.223; A2010-43 amdts 1.59-1.61
om A2011-15 s 5

Meaning of special driver

- s 4B ins A1999-79 sch 3
am A2001-44 amdts 1.3670-1.3672; A2001-62 amdt 1.5;
A2004-7 amdt 1.12, amdt 1.13; A2010-18 amdt 3.12;
A2010-47 s 6, s 7; A2011-15 s 6, s 7; pars renum R25 LA

Meaning of driver trainer

- s 4BA ins A2011-15 s 8

Meaning of *prescribed concentration of alcohol*

s 4C ins A1999-79 sch 3
table renum R12 LA
sub A2010-47 s 8

How alcohol concentration may be expressed

s 4D ins A1999-79 sch 3
am A2001-27 amdt 3.3, amdt 3.4
def **relevant offence** am A2001-27 amdt 3.5
par (g) exp 1 March 2005 (s 52)
sub A2010-47 s 8

Reference to *level of alcohol concentration*

s 4E ins A2010-47 s 8

Meaning of *first offender and repeat offender*

s 4F ins A2010-47 s 8
(3), (4) exp 1 December 2015 (s 4F (4))

Authorisation of operators

s 5 am Ord1980-37 s 4; Ord1985-51 s 4; A1992-63 s 4, s 8 (2);
A1999-79 sch 3; A2001-44 amdt 1.3673, amdt 1.3674
sub A2010-27 s 5; A2010-47 s 8

Register of authorised operators

s 5A ins A2010-27 s 5
sub A2010-47 s 8

Appointment of analysts

s 5B ins A2010-47 s 8

Approval of laboratories

s 6 am Ord1985-51 s 5, sch; A1989-24 sch; A1992-63 s 8 (2);
A1999-79 sch 3; A2001-44 amdt 1.3675, amdt 1.3676
sub A2006-12 s 6
am A2010-27 s 6
sub A2010-47 s 8

Important concepts—alcohol and drug tests

div 2.1 hdg ins A2010-47 s 9

Meaning of *alcohol screening device*

s 7 am Ord1978-46; Ord1981-16
sub A1999-79 sch 3
om A2001-44 amdt 1.3677
ins A2010-47 s 9

Endnotes

4 Amendment history

Meaning of *breath analysis instrument*

s 7A ins A2010-47 s 9

Meaning of *drug screening device*

s 7B ins A2010-47 s 9

Meaning of *oral fluid analysis instrument*

s 7C ins A2010-47 s 9

Testing and maintenance of instruments etc

s 7D ins A2010-47 s 9

Alcohol—screening tests

div 2.2 hdg ins A2010-47 s 9

**Power to require alcohol screening test if vehicle not involved in accident—
driver and driver trainer**

s 8 hdg sub A2010-47 s 10
s 8 am Ord1982-94; Ord1985-51 sch; A1989-24 sch; A1999-79
sch 3; A2010-47 s 11
sub A2011-15 s 9

**Power to require alcohol screening test if vehicle involved in accident—
driver**

s 9 hdg sub A2010-47 s 12; A2011-15 s 10
s 9 am Ord1985-51 sch; A1989-24 sch; A2010-47 s 13; A2011-15
s 74

**Power to require alcohol screening test if vehicle involved in accident—
driver trainer**

s 9A ins A2011-15 s 11

**Power to require alcohol screening test for culpable driving—driver and
driver trainer**

s 10 hdg sub A2010-47 s 14; A2011-15 s 12
s 10 am Ord1985-51 sch; A1989-24 sch; A2010-47 s 15; A2011-15
s 13

Written statement relating to screening test

s 10A ins Ord1982-94
am Ord1985-51 sch; A1989-24 sch; A1990-64 s 5
om A1999-11 s 4

Alcohol—confirmatory tests

div 2.3 hdg ins A2010-47 s 16

Detention for breath analysis

s 11 am Ord1977-52; Ord1985-51 sch; A1990-64 s 6; A1992-63
s 5; A1997-51 s 5
sub A2010-27 s 7; A2010-47 s 16
am A2011-15 s 14

Breath analysis

s 12 am Ord1982-94; Ord1985-51 s 6, sch; A1989-24
sch; A1992-63 s 8 (1); ss renum R9 LA
sub A2010-27 s 7; A2010-47 s 16
am A2011-15 s 15

Analysis of oral fluid at approved laboratory

s 12AA ins A2010-27 s 8
om A2010-47 s 16

Precautions for privacy—breath analysis

s 13 hdg sub A2010-47 s 17
s 13 am A1992-63 s 6; A2010-27 s 9; A2010-47 s 18, s 19

Prescribed drugs—screening tests

div 2.4 hdg ins A2010-47 s 20

**Power to require drug screening test if vehicle not involved in accident—
driver and driver trainer**

s 13A ins A2010-47 s 20
sub A2011-15 s 16

Power to require drug screening test if vehicle involved in accident—driver

s 13B hdg sub A2011-15 s 17
s 13B ins A2010-47 s 20
am A2011-15 s 74

**Power to require drug screening test if vehicle involved in accident—driver
trainer**

s 13BA ins A2011-15 s 18

**Power to require drug screening test for culpable driving—driver and driver
trainer**

s 13C hdg sub A2011-15 s 19
s 13C ins A2010-47 s 20
am A2011-15 s 20; ss renum R25 LA

Prescribed drugs—confirmatory tests

div 2.5 hdg ins A2010-47 s 20

Detention for oral fluid analysis

s 13D ins A2010-47 s 20
am A2011-15 s 21

Oral fluid—preliminary analysis

s 13E ins A2010-47 s 20
am A2011-15 s 22

Precautions for privacy—oral fluid analysis

s 13F ins A2010-47 s 20

Endnotes

4 Amendment history

Oral fluid—confirmatory analysis

s 13G ins A2010-47 s 20
am A2011-15 s 23, s 24

Oral fluid analysis statement

s 13H ins A2011-15 s 25

Restrictions on alcohol and drug tests

div 2.6 hdg ins A2010-47 s 20

Restrictions on tests etc under this part

s 14 hdg sub A2010-27 s 10; A2010-47 s 21
s 14 am Ord1982-94 s 6; Ord1985-51 sch; A1989-24 s 4; A1999-79
sch 3; ss renum R9 LA; A2004-10 s 40, s 41; pars renum
R23 LA; A2010-27 ss 11-13; A2010-47 ss 22-24; A2011-15
ss 26-28

Analysis of blood—alcohol and drugs

div 2.7 hdg ins A2010-47 s 25

Taking blood samples from people in custody

s 15 am Ord1985-51; A1989-24 s 5; A1992-63 s 8 (1); A1997-53
s 5; A1999-79 sch 3; ss renum R9 LA; A2010-27 s 14;
A2010-47 ss 26-28; A2011-15 ss 29-31

Taking blood samples from people in hospital

s 15AA hdg sub A2006-12 s 7
s 15AA ins A1997-53 s 6
am A1999-79 sch 3; A2006-12 s 8; A2010-47 s 29; A2011-15
s 32

Analysis of blood samples

s 15A ins A1989-24 s 6
am A1997-53 s 7; A2006-12 ss 9-11; A2010-27 s 15, s 16
sub A2010-47 s 30

Blood analysis statement

s 15B ins A1997-53 s 8
sub A2010-47 s 30

Medical examination—offence against s 24 or culpable driving

s 16 hdg sub A2010-47 s 31
s 16 am Ord1985-51 sch; A1992-63 s 8 (3), (4); A1997-53 s 9;
A1999-79 sch 3; A2004-10 s 42, s 43; A2010-27 s 17;
A2010-47 ss 32-34; A2011-15 ss 33-36

Analysis of body samples

s 16A ins A1997-53 s 10
am A2006-12 s 12, s 13
sub A2010-47 s 35
am A2011-15 s 37

Body sample statement

s 16B ins A2010-47 s 35

Keeping of samples—request by DPP

s 16C ins A2010-47 s 35
am A2011-15 ss 38-41; pars renum R25 LA

Destruction of samples

s 16D ins A2010-47 s 35
am A2011-15 s 42, s 43

Exemptions from requirements to take blood samples or carry out examinations

s 17 am Ord1985-51 sch; A1992-63 sch
sub A1997-53 s 10
am A1999-79 sch 3; A2006-12 s 14; A2010-47 s 36

Protection of police officers and medical staff

s 18 am Ord1985-51 sch; Ord1989-38 sch 1; Ord1989-23 s 10 (1);
A1992-63 s 8 (3), sch; A1997-53 s 11; A1999-79 sch 3;
ss renum R9 LA; A2010-27 s 18; A2010-47 s 37, s 38

Taking blood samples from people involved in accidents

s 18A ins A1999-79 sch 3
am A2011-15 s 74

Permitted use of samples

s 18B ins A2010-27 s 19
sub A2010-47 s 39

Search and seizure

div 2.8 hdg ins A2011-15 s 44

Power to search person in custody

s 18C ins A2011-15 s 44

Prescribed concentration of alcohol in blood or breath

s 19 am A1990-64 s 7; A1992-63 s 8 (1), (3)
sub A1993-22 s 3
am A1994-81 sch; A1997-51 s 6; A1997-53 s 12; A2006-12
s 15
sub A2010-47 s 40
am A2011-15 s 45, s 46

Defence if person did not intend to drive motor vehicle

s 19A (prev s 21) am A1992-63 s 8 (2), (3); A1993-22 s 5 (1); A2010-
47 s 43
reloc as s 19A A2010-47 s 44
am A2011-15 s 47

Endnotes

4 Amendment history

Defence if special driver with lower concentration of alcohol from allowable source

s 19B ins A2010-47 s 41
am A2011-15 s 48

Prescribed drug in oral fluid or blood—driver or driver trainer

s 20 hdg sub A2011-15 s 49
s 20 am A1989-24 s 7
om A1993-22 s 3
ins A2010-27 s 20
am A2010-47 s 42; ss renum R24 LA; A2011-15 s 50, s 51

Defence if person did not intend to drive motor vehicle

s 21 reloc as s 19A

Refusing to provide breath sample

s 22 hdg sub A1997-51 note
s 22 am Ord1985-51 sch; A1992-63 sch; A1994-81 sch; A2011-15
s 52

Refusing to provide oral fluid sample

s 22A ins A2010-27 s 21
am A2010-47 s 45; A2011-15 s 53

Failing to stay for drug screening test

s 22B ins A2010-47 s 46
am A2011-15 s 54

Refusing blood test etc

s 23 hdg sub A1997-51 note
s 23 am A1992-63 sch; A1994-81 sch; A1997-53 s 13; A1999-79
sch 3; A2004-10 s 44; ss renum R12 LA (see A2004-10
s 45); A2011-15 s 55

Driving under the influence of intoxicating liquor or a drug

s 24 am A1992-63 s 8 (2), sch; A1994-81 sch; A2011-15 s 74

Driver etc intoxicated

s 24A ins A1999-79 sch 3
am A2004-10 s 46; A2011-15 s 56

Interpretation

s 25 am Ord1977-52 s 4; Ord1985-67 sch pt 1; A1992-63 s 8 (3),
sch; A1997-51 s 7 (d)
om A1999-79 sch 3
def **disqualifying offence** ins A1997-51 s 7 (c)
def **driving licence** ins A1997-51 s 7 (c)
def **first offender** sub A1997-51 s 7 (a)
def **previous offender** om A1997-51 s 7 (b)
def **repeat offender** ins A1997-51 s 7 (c)
def **traffic infringer** ins A1990-64 s 8
am A1993-22 s 5 (1)
om A1997-51 s 7 (b)

Fines and imprisonment—s 19 offences

s 26 am A1993-22 s 5 (2)
om A1994-81 sch
ins A1997-51 s 8
table renum R12 LA
am A2010-47 s 47
table am A2010-47 s 48
am A2011-15 s 57

First offenders—traffic infringement notice

s 26A ins A1990-64 s 9
am A1993-22 s 5 (1); A1993-50 s 4; A1993-58 s 5
om A1997-51 s 8

Imprisonment—s 22, s 22A, s 23 and s 24 offences

s 27 hdg sub A2010-27 s 22
s 27 am A1993-22 s 5 (2)
om A1994-81 sch
ins A1999-18 s 4
am A1999-79 sch 3; A2010-27 s 23

Circumstances in which court may impose sentence of imprisonment

s 28 am A1990-64 s 10; A1992-63 sch; A1993-22 s 5
om A1997-51 s 8

Conditional release of convicted person

s 29 am Ord1984-63; Ord1989-38 sch 1; A1991-44 sch 1;
A1992-63 s 8 (4), sch; A1997-51 s 9; A1999-79 sch 3;
ss renum R9 LA
sub A2006-23 amdt 1.276
om A2010-47 s 49

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

s 30 om A2010-47 s 49

Endnotes

4 Amendment history

Cancellation of driving licence

s 31 am A1990-64 s 11; A1992-63 s 8 (4); A1993-22 s 5 (1)
sub A1997-51 s 10
om A1999-79 sch 3

Automatic driver licence disqualification—first offenders, s 19

s 32 am Ord1985-67 sch pt 1; A1990-64 s 12; A1992-63 s 8 (2),
(4); A1993-22 s 5 (1); A1993-58 s 6
sub A1997-51 s 10; A1999-79 sch 3
am A2001-27 amdt 3.6, amdt 3.7
table renum R12 LA
am A2010-47 s 50
table am A2010-47 s 51
am A2011-15 s 58

Automatic driver licence disqualification—repeat offenders, s 19

s 33 sub A1997-51 s 10; A1999-79 sch 3
am A2001-27 amdt 3.8, amdt 3.9
table renum R12 LA
am A2010-47 s 52
table am A2010-47 s 53
am A2011-15 s 59

Automatic driver licence disqualification—offences other than s 19

s 34 am A1992-63 sch; A1994-81 sch
sub A1997-51 s 10; A1999-79 sch 3
am A2001-27 amdt 3.10, amdt 3.11; A2011-15 s 60

Automatic driver licence disqualification—immediate suspension period

s 35 am A1993-58 s 7
sub A1997-51 s 10
om A1999-79 sch 3
ins A2010-47 s 54

Special licences to drive motor vehicles

pt 5 hdg om A1997-51

Disqualification subject to grant of special licence

s 36 am A1992-63 s 8 (2), sch
sub A1997-51 s 10
om A1999-79 sch 3

Disqualification etc—further special licence

s 37 am A1992-63 sch
sub A1997-51 s 10
om A1999-79 sch 3

Additional powers of court

s 38 am A1992-63 s 8 (3); A1994-81 sch
sub A1997-51 s 10
am A2010-47 s 55

Notice to registrar

s 39 am Ord1985-67 sch pt 1
sub A1997-51 s 10
om A1999-79 sch 3

Restoration of cancelled driving licences

pt 6 hdg om A1997-51

Restoration of cancelled licences

s 40 am A1992-63 s 8 (2), sch; A1993-58 s 8; A1994-81 sch
om A1997-51

Evidence—alcohol-related tests

div 7.1 hdg ins A2010-47 s 56

Evidentiary certificate—alcohol-related tests

s 41 hdg sub A2010-47 s 56
s 41 am Ord1980-37 s 5; Ord1985-51 s 7, sch; A1989-24 s 8;
A1992-63 s 7, s 8 (1); A1997-51 s 11; A1997-53 s 14;
A1999-79 sch 3; pars renum R9 LA; A2004-10 s 47; pars
renum R12 LA (see A2004-10 s 48); A2006-12 s 16, s 17;
A2010-27 ss 24-27; A2010-47 ss 57-69; pars renum R24 LA

Evidence—drug-related tests

div 7.2 hdg ins A2010-47 s 70

Evidentiary certificates—drug-related tests

s 41AA ins A2010-47 s 70
am A2011-15 s 61

Evidentiary certificate—analysis of oral fluid sample

s 41AB ins A2010-47 s 70

Evidentiary certificate—blood sample not taken

s 41AC ins A2010-47 s 70
am A2011-15 s 62

Evidentiary certificate—analysis of sample for prescribed drug etc

s 41AD ins A2010-47 s 70

NSW evidentiary certificates—drug-related tests

s 41AE ins A2010-47 s 70

Other provisions about evidence

div 7.3 hdg ins A2010-47 s 71

Evidence for insurance purposes

s 41A ins A1989-24 s 9
am A1993-22 s 4; A1997-53 s 14; A1999-79 sch 3; A2005-20
amdt 3.346; A2006-23 amdt 1.277
sub A2010-47 s 71
am A2011-15 ss 63-66

Endnotes

4 Amendment history

Effect of noncompliance—analysis of breath or blood

s 42 sub Ord1985-51 s 8
am A1990-64 s 13; A2001-44 amdt 1.3678, amdt 1.3679;
A2010-47 s 72, s 73

Effect of noncompliance—analysis of oral fluid

s 42AA ins A2010-27 s 28
am A2010-47 s 74, s 75

Effect of noncompliance—analysis of body sample

s 42A ins Ord1985-51 s 8
am A2001-44 amdt 1.3680, amdt 1.3681; A2010-47 s 76, s 77

Effect of noncompliance—refusal to give sample of breath

s 42B ins Ord1985-51 s 8
am A1990-64 s 14; A2001-44 amdts 1.3682-1.3684; A2010-47
s 78, s 79

Effect of noncompliance—refusal to give sample of oral fluid

s 42C ins A2010-27 s 29
am A2010-47 s 80, s 81

Oral evidence about part 7 certificate

s 43 hdg sub A2010-47 s 82
s 43 am A1992-63; A1997-51 s 12; A1999-79 sch 3; A2010-47
s 83, s 84

Rehabilitation programs

pt 8 hdg sub A1997-51 s 13
om A2010-47 s 85

Approval of programs

s 44 am Ord1989-38 sch
sub A1997-51 s 13
am A1999-79 sch 3; A2001-44 amdt 1.3685, amdt 1.3686
om A2010-47 s 85

Conditions

s 44A ins A1997-51 s 13
om A2001-44 amdt 1.3687

Review of administrative appeals tribunal

s 44B ins A1997-51 s 13
om A1999-79 sch 3

Power of arrest

s 45 am Ord1985-51 sch; Ord1989-23 s 10 (2); A1992-63 sch;
A2006-23 amdt 1.278; A2010-47 s 86, s 87

Penalty for escaping from custody

s 46 am Ord1985-51 sch; A1992-63 s 8 (2); A1994-81 sch
om A2010-47 s 88

Right of arrested person to medical examination

s 47 am Ord1985-51 sch; Ord1987-9; A1992-63 s 8 (3); A1997-51 s 14; A1999-79 sch 3; A2004-10 s 49

Stopping, search and detaining—Crimes Act, s 207 and s 209

s 47A ins A2010-27 s 30
am A2010-47 s 89

Police may direct person not to drive

s 47B ins A2010-47 s 90

Conducting alcohol-related tests and drug-related tests at same time

s 47C ins A2010-47 s 90

When police officer may move person's motor vehicle

s 48 am A1992-63 s 8 (2)
om A1997-51 s 15
ins A1999-79 sch 3
am A2011-15 s 67

Default term of imprisonment

s 49 am A1992-63 sch

References to Motor Traffic (Alcohol and Drugs) Act etc

s 50 sub A1999-79 sch 3
am A2001-44 amdt 1.3688, amdt 1.3689

Regulation-making power

s 51 sub A1999-79 sch 3
am A2001-44 amdt 1.3690; A2011-15 s 68

Transitional

pt 10 hdg ins A1999-79 sch 3
om R13 LA

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

s 52 am Ord1989-38 sch
sub A1999-79 sch 3
am A2001-27 amdt 3.12
exp 1 March 2005 (s 52)

Approved operator

s 53 ins A1999-79 sch 3
am A2001-27 amdt 3.13
exp 1 March 2002 (s 53 (2))

Transitional—Road Transport (Alcohol and Drugs) Amendment Act 2006

pt 20 hdg ins A2006-12 s 18
exp 6 April 2009 (s 103)

Endnotes

4 Amendment history

Meaning of *relevant commencement* for pt 20

s 100 ins A2006-12 s 18
exp 6 April 2009 (s 103)

Transitional—sample taken before relevant commencement

s 101 ins A2006-12 s 18
exp 6 April 2009 (s 103 (LA s 88 declaration applies))

Transitional—analyst certificates

s 102 ins A2006-12 s 18
exp 6 April 2009 (s 103 (LA s 88 declaration applies))

Expiry—pt 20

s 103 ins A2006-12 s 18
exp 6 April 2009 (s 103)

Transitional—Road Transport (Alcohol and Drugs) Legislation Amendment Act 2010

pt 21 hdg ins A2010-47 s 91
exp 1 December 2012 (s 110 (1) (LA s 88 declaration applies))

Meaning of *commencement day*—pt 21

s 105 ins A2010-47 s 91
exp 1 June 2011 (s 105 (2) (LA s 88 declaration applies))

Approved operator—authorisation in force before commencement day

s 106 ins A2010-47 s 91
exp 1 June 2011 (s 106 (3) (LA s 88 declaration applies))

Approved analyst—appointment in force before commencement day

s 107 ins A2010-47 s 91
exp 1 June 2011 (s 107 (3) (LA s 88 declaration applies))

Approved laboratory—approval in force before commencement day

s 108 ins A2010-47 s 91
exp 1 June 2011 (s 108 (3) (LA s 88 declaration applies))

Transitional regulations

s 109 ins A2010-47 s 91
exp 1 December 2012 (s 110 (1) (LA s 88 declaration applies))

Expiry—pt 21

s 110 ins A2010-47 s 91
exp 1 December 2012 (s 110 (1) (LA s 88 declaration applies))

Drugs

sch 1 ins Ord1985-51 s 9
renum as sch R5 LRA
renum as sch 1 A2001-27 amdt 3.14

Schedule 2

sch 2 hdg

sch 2

(prev sch hdg) sub Ord1985-51 s 10

(prev sch) ins Ord1980-37 s 6

am Ord1989-38 sch

om A1992-63 s 9

Dictionary

dict

ins A1999-79 sch 3

am A1999-79 sch 3; A2001-27 amdt 3.15; A2002-30

amdt 3.692; A2004-10 s 50; A2010-18 amdt 3.13; A2011-15

s 69

def **accident** ins A1997-53 s 4

reloc from s 4 A1999-79 sch 3

am A2011-15 s 74

def **alcohol screening device** ins A2010-47 s 92def **alcohol screening test** ins A2010-47 s 92def **analyst** ins A2010-47 s 93def **another jurisdiction** ins A1999-79 sch 3def **approved alcohol screening device** ins A2010-27 s 31

om A2010-47 s 94

def **approved analysis instrument** ins A2010-27 s 31

om A2010-47 s 94

def **approved analyst** ins A1999-79 sch 3

sub A2010-27 s 32

om A2010-47 s 94

def **approved breath analysis instrument** ins A1999-79

sch 3

sub A2010-27 s 32

om A2010-47 s 94

def **approved drug screening device** ins A2010-27 s 33

om A2010-47 s 94

def **approved laboratory** ins A2006-12 s 19

sub A2010-47 s 95

def **approved operator** ins A1999-79 sch 3

sub A2010-27 s 34

om A2010-47 s 96

def **approved oral fluid analysis instrument** ins A2010-27
s 35

om A2010-47 s 96

def **approved screening device** ins A1999-79 sch 3

om A2010-27 s 36

def **Australian driver licence** ins A1999-79 sch 3def **authorised nurse practitioner** ins A2004-10 s 51def **authorised operator** ins A2010-47 s 97def **breath analysis** am A1992-63 s 8 (1)

reloc from s 4 A1999-79 sch 3

am A2010-47 s 98

def **breath analysis instrument** ins A2010-47 s 99

Endnotes

4 Amendment history

- def **corresponding offence** ins A1999-79 sch 3
- def **court** am Ord1985-67 sch pt 1
reloc from s 4 A1999-79 sch 3
- def **disqualifying offence** ins A1999-79 sch 3
sub A2010-27 s 37
am A2010-47 s 100; A2011-15 s 70
- def **doctor** ins A1999-79 sch 3
sub A2001-56 amdt 3.474
om A2002-30 amdt 3.693
- def **drive** ins A1999-79 sch 3
- def **driver** ins A1999-79 sch 3
om A2010-18 amdt 3.14
- def **driver involved in an accident** ins A1997-53 s 4
reloc from s 4 A1999-79 sch 3
- def **driver licence** ins A1999-79 sch 3
- def **driver trainer** ins A2011-15 s 71
- def **drug** ins Ord1985-51 s 3
am Ord1989-14 s 4; A1994-26 sch; am A2001-27
amdt 3.15; A2005-5 s 38
reloc from s 4 A1999-79 sch 3
- def **drug screening device** ins A2010-47 s 101
- def **drug screening test** ins A2010-47 s 101
- def **external driver licence** ins A1999-79 sch 3
- def **external territory driver licence** ins A2011-15 s 71
- def **first offender** ins A1999-79 sch 3
am A2010-47 s 102
- def **GCM** ins A1999-79 sch 3
- def **GVM** ins A1999-79 sch 3
- def **jurisdiction** ins A1999-79 sch 3
om A2010-18 amdt 3.14
- def **level** ins A1999-79 sch 3
sub A2010-47 s 103
- def **medical examination** ins A2004-10 s 51
- def **motor vehicle** ins A1999-79 sch 3
om A2010-18 amdt 3.14
- def **nurse** ins A1997-53 s 4
reloc from s 4 A1999-79 sch 3
om A2002-30 amdt 3.693
- def **nurse practitioner position** ins A2004-10 s 51
sub A2006-27 amdt 2.12
- def **offence of culpable driving** ins A1999-79 sch 3
- def **one-way box** ins A1989-24 s 3 (b)
reloc from s 4 A1999-79 sch 3
- def **oral fluid analysis** ins A2010-27 s 38
am A2010-47 s 104
- def **oral fluid analysis instrument** ins A2010-47 s 105

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- def **prescribed concentration** sub A1990-64 s 4 (a)
am A1993-58 s 4 (b)
sub A1997-51 s 4 (a)
reloc from s 4 A1999-79 sch 3
sub A2010-47 s 106
- def **prescribed drug** ins A2010-27 s 39
sub A2010-47 s 107
- def **public place** ins A1999-79 sch 3
om A2011-15 s 72
- def **public street** reloc from s 4 A1999-79 sch 3
om A2011-15 s 72
- def **registered operator** ins A1999-79 sch 3
- def **repeat offender** ins A1999-79 sch 3
am A2010-47 s 108
- def **responsible person** ins A1999-79 sch 3
- def **restricted licence** ins A1999-79 sch 3
- def **road transport authority** ins A1999-79 sch 3
om A2010-18 amdt 3.14
- def **road transport legislation** ins A1999-79 sch 3
om A2010-18 amdt 3.14
- def **sampling facility** ins A2011-15 s 73
- def **scope of practice** ins A2004-7 s 53
sub A2006-27 amdt 2.13
- def **screening test** ins A2004-10 s 51
sub A2010-27 s 40
om A2010-47 s 109
- def **special driver** ins A1999-79 sch 3

Endnotes

5 Earlier republications

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. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 30 Sept 1991	25 Sept 1991– 29 Oct 1992	A1991-44	initial republication since self-government
R1 (RI) 30 Jan 2008	25 Sept 1991– 29 Oct 1992	A1991-44	reissue of printed version
R1A 30 Jan 2008	30 Oct 1992– 4 Apr 1993	A1992-63	amendments by A1992-63
R1B 30 Jan 2008	5 Apr 1993– 31 Aug 1993	A1993-22	amendments by A1993-22
R1C 30 Jan 2008	1 Sept 1993– 26 Sept 1993	A1993-50	amendments by A1993-50
R2 30 Sept 1993	27 Sept 1993– 30 May 1994	A1993-58	amendments by A1993-58
R2 (RI) 30 Jan 2008	27 Sept 1993– 30 May 1994	A1993-58	reissue of printed version
R2A 30 Jan 2008	31 May 1994– 28 Nov 1994	A1994-26	amendments by A1994-26
R3 28 Feb 1995	29 Nov 1994– 11 Sept 1996	A1994-81	amendments by A1994-81
R3 (RI) 30 Jan 2008	29 Nov 1994– 11 Sept 1996	A1994-81	reissue of printed version
R3A 30 Jan 2008	12 Sept 1996– 18 Sept 1996	A1996-7	amendments by A1996-7

Republication No and date	Effective	Last amendment made by	Republication for
R3B 30 Jan 2008	19 Sept 1996– 1 Mar 1998	A1996-48	amendments by A1996-48
R4 2 Mar 1998	2 Mar 1998– 22 Mar 1999	A1997-53	amendments by A1997-51 and A1997-53
R4 (RI) 6 Feb 2008	2 Mar 1998– 22 Mar 1999	A1997-53	reissue of printed version
R4A 30 Jan 2008	23 Mar 1999– 13 Apr 1999	A1999-11	amendments by A1999-11
R4B 30 Jan 2008	14 Apr 1999– 29 Feb 2000	A1999-18	amendments by A1999-18
R5 1 Mar 2000	1 Mar 2000– 23 May 2001	A1999-79	renaming and other amendments by A1999-79
R5 (RI) 30 Jan 2008	1 Mar 2000– 23 May 2001	A1999-79	reissue of printed version
R6 12 Sept 2001	24 May 2001– 30 Nov 2001	A2001-56	amendments by A2001-27, A2001-44 and A2001-56
R7 3 Dec 2001	1 Dec 2001– 1 Mar 2002	A2001-62	amendments by A2001-62
R8 6 June 2002	2 Mar 2002– 16 Sept 2002	A2001-62	commenced expiry
R9 25 Sept 2002	17 Sept 2002– 16 Jan 2003	A2002-30	amendments by A2002-30
R10 17 Jan 2003	17 Jan 2003– 4 Apr 2004	A2002-49	amendments by A2002-49
R11 5 Apr 2004	5 Apr 2004– 26 May 2004	A2004-7	amendments by A2004-7
R12 27 May 2004	27 May 2004– 1 Mar 2005	A2004-10	amendments by A2004-10

Endnotes

5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R13 2 Mar 2005	2 Mar 2005– 5 Mar 2005	A2004-10	commenced expiry
R14 6 Mar 2005	6 Mar 2005– 1 June 2005	A2005-5	amendments by A2005-5
R15 2 June 2005	2 June 2005– 5 Apr 2006	A2005-20	amendments by A2005-20
R16* 6 Apr 2006	6 Apr 2006– 1 June 2006	A2006-12	amendments by A2006-12
R17 2 June 2006	2 June 2006– 13 Dec 2006	A2006-23	amendments by A2006-23
R18 14 Dec 2006	14 Dec 2006– 1 June 2007	A2006-27	amendments by A2006-27
R19 2 June 2007	2 June 2007– 30 Sept 2008	A2006-27	amendments by A2006-23
R20* 1 Oct 2008	1 Oct 2008– 6 Apr 2009	A2008-39	amendments by A2008-1 as amended by A2008-39
R21 7 Apr 2009	7 Apr 2009– 2 Mar 2010	A2008-39	commenced expiry
R22 3 Mar 2010	3 Mar 2010– 2 June 2010	A2009-22	amendments by A2009-22
R23 3 June 2010	3 June 2010– 30 Nov 2010	A2010-18	amendments by A2010-18
R24* 1 Dec 2010	1 Dec 2010– 12 May 2011	A2010-47	amendments by A2010-27, A2010-43 and A2010-47

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