



Australian Capital Territory

Road Transport (Alcohol and Drugs) Legislation Amendment Act 2010

A2010-47

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Australian Capital Territory

Road Transport (Alcohol and Drugs) Legislation Amendment Act 2010

A2010-47

An Act to amend legislation about driving under the influence of alcohol and drugs, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Road Transport (Alcohol and Drugs) Legislation Amendment Act 2010*.

2 Commencement

- (1) The following provisions commence on a day fixed by the Minister by written notice:
 - (a) part 3;
 - (b) section 122;
 - (c) section 123;
 - (d) section 126;
 - (e) section 127;
 - (f) section 128;
 - (g) section 137.

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

- (2) The remaining provisions commence on the commencement of the *Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Act 2010*, section 3.
- (3) However, if a provision mentioned in subsection (1) has not commenced within 12 months beginning on this Act's notification day, the provision automatically commences on the first day after that period.

- (4) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to the provisions mentioned in subsection (1).

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

3 Legislation amended

This Act amends the following legislation:

- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (Driver Licensing) Regulation 2000*
- *Road Transport (General) Act 1999*
- *Road Transport (General) Regulation 2000*
- *Road Transport (Offences) Regulation 2005.*

Note This Act also amends the following legislation (see sch 1):

- *Crimes Act 1900*
- *Road Transport (Alcohol and Drugs) Regulation 2000*
- *Spent Convictions Act 2000*
- *Workers Compensation Act 1951.*

Part 2 Road Transport (Alcohol and Drugs) Act 1977

Note Schedule 1 contains amendments of other Acts that are consequential on the amendments of the *Road Transport (Alcohol and Drugs) Act 1977* in this part.

4 Offences against Act—application of Criminal Code etc Section 4, note 1

substitute

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 (Driving with prescribed drug in oral fluid or blood)
- 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*).

5 New part 1A heading

before section 4A, insert

Part 1A Important concepts

6 **Meaning of *special driver***
Section 4B (1) (f)

substitute

- (f) 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
- (g) the person is learning to drive a heavy vehicle; or
- (h) the person is a driving instructor who is with a driver for the purposes of—
- (i) driver instruction; or
 - (ii) driver assessment; or
- (i) the person is a heavy vehicle driver assessor who is with a driver for the purposes of driver assessment; or
- (j) 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.

7 Section 4B (3) to (5)

substitute

(3) In this section:

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.

8 Sections 4C to 6

substitute

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.

9 New division 2.1

before section 8, insert

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

10 Section 8 heading

substitute

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

11 Section 8

omit

a screening test

substitute

an alcohol screening test

12 Section 9 heading

substitute

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

13 Section 9

omit

a screening test

substitute

an alcohol screening test

14 Section 10 heading

substitute

10 Power to require alcohol screening test for culpable driving

15 Section 10

omit

a screening test

substitute

an alcohol screening test

16 Sections 11, 12 and 12AA

substitute

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 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 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 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.

17 Section 13 heading

substitute

13 Precautions for privacy—breath analysis

18 Section 13 (1)

omit

approved operator

insert

authorised operator

19 Section 13

omit

or oral fluid

20 New division 2.4

after section 13, insert

Division 2.4 Prescribed drugs—screening tests**13A Power to require drug screening test if vehicle not involved in accident**

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

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

- (1) If a motor vehicle is involved in an accident on a public street or in a public place, a police officer may require a person to undergo 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.

13C Power to require drug screening test for culpable driving

- (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) 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 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 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.

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 must, as soon as practicable, arrange for the analysis of the sample at an approved laboratory to work out whether a prescribed drug is present in the sample.
- (4) The analyst 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.

Division 2.6 Restrictions on alcohol and drug tests

21 Section 14 heading

substitute

14 Restrictions on tests etc under this part

22 Section 14 (1)

omit everything before paragraph (a), substitute

- (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), and a police officer must not begin or continue an analysis under section 12 or section 13E—

23 Section 14 (3)

omit everything before paragraph (a), substitute

- (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—

24 New section 14 (5)

insert

(5) In this section:

screening test means an alcohol screening test or drug screening test.

25 New division 2.7 heading

before section 15, insert

Division 2.7 Analysis of blood—alcohol and drugs**26 Taking blood samples from people in custody
Section 15 (1) (b)**

substitute

- (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;

27 Section 15 (3)

substitute

- (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.

28 Section 15 (7), (8) and (9)

substitute

- (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.

**29 Taking blood samples from people in hospital
Section 15AA (2) to (4)**

substitute

- (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.

30 Sections 15A and 15B

substitute

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).

31 Section 16 heading

substitute

16 Medical examination—offence against s 24 or culpable driving

32 Section 16 (1)

substitute

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

- (a) required to undergo an alcohol or drug screening test, or to 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); and
- (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.

33 Section 16 (2)

omit

drug other than alcohol

substitute

drug (other than a prescribed drug) or alcohol

34 Section 16 (7) to (9)

substitute

- (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.

35 Section 16A

substitute

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 (other than 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 (other than 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 or a 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 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 a blood sample—see section 15A (5); or
 - (b) in relation to a body sample—see section 16A (3).

16D Destruction of samples

- (1) This section applies to the part of a sample preserved under 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 15A (5) (b) or section 16A (3) (b).

**36 Exemptions from requirements to take blood samples or carry out examinations
Section 17 (2) (b)**

omit

section 16 (Medical examinations)

substitute

section 16 (Medical examination—offence against s 24 or culpable driving)

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

omit

approved operator

substitute

authorised operator

38 Section 18 (3) (a)

omit

section 12 (7)

substitute

section 12 (5) or section 13E (6)

39 Section 18B

substitute

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.

40 Section 19

substitute

19 Prescribed concentration of alcohol in blood or breath

- (1) A person commits an offence if the person—
 - (a) has been the driver of a motor vehicle on a public street or in a public place; and
 - (b) has, within the relevant period, 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 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.

41 New section 19B

insert

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 not more 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).

**42 Driving with prescribed drug in oral fluid or blood
New section 20 (1A) and (1B)**

insert

- (1A) Strict liability applies to subsection (1).
- (1B) 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.

**43 Defence if person did not intend to drive motor vehicle
Section 21 (b)**

substitute

- (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.

44 Section 21 (as amended)

relocate as section 19A

**45 Refusing to provide oral fluid sample
New section 22A (3) and (4)**

insert

- (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).

46 New section 22B

insert

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 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.

**47 Fines and imprisonment—s 19 offences
Section 26**

after

person's blood

insert

or breath

48 Table 26, column 2 heading

substitute

column 2

**alcohol
concentration level**

49 Sections 29 and 30

omit

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

after

person's blood

insert

or breath

51 Table 32, column 2 heading

substitute

column 2

**alcohol
concentration level**

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

after

person's blood

insert

or breath

53 Table 33, column 2 heading

substitute

column 2

**alcohol
concentration level**

54 New section 35

insert

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.

**55 Additional powers of court
Section 38**

omit

56 Section 41 heading

substitute

Division 7.1 Evidence—alcohol-related tests

41 Evidentiary certificate—alcohol-related tests

57 Section 41 (1) (a) (i)

omit

approved operator

substitute

authorised operator

58 Section 41 (1) (a) (ii)

omit

an approved breath analysis instrument

substitute

a breath analysis instrument

59 Section 41 (1) (a) (iv) and (ix)

omit

approved breath analysis instrument

substitute

breath analysis instrument

60 Section 41 (1) (aa)

omit

61 Section 41 (1) (b) (i)

omit

approved operator

substitute

authorised operator

62 Section 41 (1) (b) (ii)

omit

an approved breath analysis instrument

substitute

a breath analysis instrument

63 Section 41 (1) (b) (iv)

omit

approved breath analysis instrument

substitute

breath analysis instrument

64 Section 41 (1) (b) (vi)

omit

analysis; and

substitute

analysis;

65 Section 41 (ba)

omit

66 Section 41 (1) (c) and (d)

substitute

- (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

67 Section 41 (1) (e) (iii)

substitute

- (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);

68 Section 41 (1) (f)

omit

69 Section 41 (1) (h)

substitute

- (h) 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

70 New division 7.2

before section 41A, insert

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;

- (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;
- (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.

71 Section 41A

substitute

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 15B (Blood analysis statement) or section 16B (Body sample statement);
 - (j) evidence of the contents of a statement given under 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 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 (Driving with prescribed drug in oral fluid or blood);
 - (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.

**72 Effect of noncompliance—analysis of breath or blood
Section 42 (1)**

after

provision

insert

(a *testing provision*)

73 Section 42 (2)

substitute

- (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.

**74 Effect of noncompliance—analysis of oral fluid
Section 42AA (1)**

after

provision

insert

(a *testing provision*)

75 Section 42AA (2)

substitute

- (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.

**76 Effect of noncompliance—analysis of body sample
Section 42A (1)**

after

provision

insert

(a *testing provision*)

77 Section 42A (2)

omit

the provision of this Act mentioned in subsection (1)

substitute

the testing provision

**78 Effect of noncompliance—refusal to give sample of
breath
Section 42B (1)**

after

provision

insert

(a *testing provision*)

79 Section 42B (2)

substitute

- (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.

**80 Effect of noncompliance—refusal to give sample of oral fluid
Section 42C (1)**

after

provision

insert

(a *testing provision*)

81 Section 42C (2)

substitute

- (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.

82 Section 43 heading

substitute

43 Oral evidence about part 7 certificate

83 Section 43 (2)

substitute

- (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.

84 Section 43 (3)

omit

section 41

substitute

division 7.1 and division 7.2

**85 Rehabilitation programs
Part 8**

omit

**86 Power of arrest
Section 45**

omit

an approved screening device

substitute

a screening device

87 New section 45 (2)

insert

(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.

**88 Penalty for escaping from custody
Section 46**

omit

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

before

screening

insert

drug

90 New sections 47B and 47C

insert

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).

91 New part 21

insert

**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.

92 Dictionary, new definitions

insert

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.

93 Dictionary, new definition of *analyst*

insert

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

94 Dictionary

omit the definitions of

approved alcohol screening device

approved analysis instrument

approved analyst

approved breath analysis instrument

approved drug screening device

95 Dictionary, definition of *approved laboratory*

substitute

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

96 Dictionary, definitions of *approved operator* and *approved oral fluid analysis instrument*

omit

97 Dictionary, new definition of *authorised operator*

insert

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.

98 Dictionary, definition of *breath analysis*

omit

means of an approved breath analysis instrument

substitute

a breath analysis instrument

99 Dictionary, new definition of *breath analysis instrument*

insert

breath analysis instrument—see section 7A.

100 Dictionary, definition of *disqualifying offence*, paragraph (a)

substitute

(a) section 19 (Prescribed concentration of alcohol in blood or breath); or

101 Dictionary, new definitions

insert

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.

102 Dictionary, definition of *first offender*

omit

section 4D

substitute

section 4F

103 Dictionary, definition of *level*

substitute

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

104 Dictionary, definition of *oral fluid analysis*

omit

approved

105 Dictionary, new definition of *oral fluid analysis instrument*

insert

oral fluid analysis instrument—see section 7C.

106 Dictionary, definition of *prescribed concentration*

substitute

prescribed concentration means—

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

107 Dictionary, definition of *prescribed drug*

substitute

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.

108 Dictionary, definition of *repeat offender*

omit

section 4D

substitute

section 4F

109 Dictionary, definition of *screening test*

omit

110 Legislative instruments repealed

All legislative instruments under the *Road Transport (Alcohol and Drugs) Act 1977*, section 6 are repealed.

Part 3 Road Transport (Driver Licensing) Act 1999

111 Driver licensing system New section 28 (2) (s) and (t)

insert

- (s) require a person convicted or found guilty of a disqualifying offence, that relates to alcohol, against the *Road Transport (Alcohol and Drugs) Act 1977* to complete a course approved by the road transport authority about the effects of alcohol, including its effects on driving and health; and
- (t) require a person convicted or found guilty of a disqualifying offence, that relates to a prescribed drug, against the *Road Transport (Alcohol and Drugs) Act 1977* to complete a course approved by the road transport authority about the effects of drugs, including their effects on driving and health.

Part 4 Road Transport (Driver Licensing) Regulation 2000

112 Driver licence condition codes Table 10, item 8

substitute

| | | |
|---|---|---|
| 8 | The licence holder must not drive a motor vehicle if the holder has a concentration of alcohol of more than 0g in 100mL of blood or 210L of breath. | Z |
|---|---|---|

113 Restrictions on learner motorcycle licence riders Section 20 (6), note

omit

114 Restrictions on learner car licence drivers Section 21 (1), new definition of *driving supervisor*

insert

driving supervisor means a person, other than a driving instructor, who holds a full car licence, or a full licence of a higher class, and who is performing driver instruction.

115 Section 21 (4)

omit

person who holds a full car licence or a full licence of a higher class

substitute

driving supervisor

116 Section 21 (5)

omit

person

substitute

driving supervisor

117 Section 21 (6), note

omit

**118 Provisional motorcycle licences—towing restrictions
Section 36A (3), note 3**

omit

**119 Provisional car licences—towing restrictions
Section 37A (3), note 3**

omit

**120 Eligibility to apply to Magistrates Court for order
authorising issue of restricted licence
Section 45 (2), notes 1 and 2**

substitute

Note 1 A person is not eligible to apply for a restricted licence if any of the following provisions of the *Road Transport (General) Act 1999* apply to the person:

- s 66A (which is about disqualification in another jurisdiction)
- s 67 (which is about disqualification of repeat offenders)
- s 67A (2) (which is about disqualification of a first offender, under the *Road Transport (Alcohol and Drugs) Act 1977*, who exceeds the prescribed concentration of alcohol for the person by 0.05g or more)

- s 67B (which is about disqualification until a court orders otherwise)
- s 67C (which is about disqualification while holding a restricted licence)
- s 88 (4) (which is about suspension or disqualification for default in payment of an outstanding fine).

Note 2 Under the *Road Transport (General) Act 1999*, s 67A (4) and (5), a person disqualified from holding a driver licence under an automatic disqualification provision (see *Road Transport (General) Act 1999*, s 61A), other than as a first offender under the *Road Transport (Alcohol and Drugs) Act 1977*, is not eligible to apply for a restricted licence during the minimum period of disqualification.

**121 Issue of restricted licence by road transport authority
Section 49 (3), note**

omit

122 Section 49 (3), new note

insert

Note The road transport authority must not issue a restricted licence to a person if s 73E (2) or s 73N (2) applies.

**123 When probationary licence must be issued
Section 52 (3), new note**

insert

Note The road transport authority must not issue a probationary licence to a person if s 73D (3) or s 73M (3) applies.

**124 Conditions of probationary licences
Section 54, note 2**

omit

**125 Issue of driver licence that includes public vehicle licence
Section 63 (3), note 2**

omit

126 New divisions 3.13 and 3.14

insert

Division 3.13 Alcohol awareness courses

73A Application—div 3.13

This division applies to a person who commits an alcohol-related disqualifying offence on or after the day the Act, section 28 (2) (s) commences.

73B Definitions—div 3.13

In this division:

alcohol awareness course means a course approved under section 73I (Alcohol awareness course—approval).

alcohol-related disqualifying offence means an offence against any of the following provisions of the *Road Transport (Alcohol and Drugs) Act 1977* that relates to alcohol:

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

**73C Requirement to complete alcohol awareness course—
person not disqualified**

- (1) This section applies to a person who—
 - (a) is found guilty of an alcohol-related disqualifying offence; and
 - (b) is not disqualified from holding or obtaining a driver licence; and
 - (c) has not completed an alcohol awareness course within the previous 12 months.
- (2) The person must complete an alcohol awareness course within 6 months after being found guilty of the disqualifying offence.
- (3) If the person does not complete an alcohol awareness course and give the road transport authority written evidence to that effect within the 6-month period, the authority must suspend the person's driver licence.
- (4) However, the road transport authority must end the suspension if the authority receives written evidence that the person has completed an alcohol awareness course.

**73D Requirement to complete alcohol awareness course—
person disqualified and not eligible for restricted licence**

- (1) This section applies to a person who—
 - (a) is convicted or found guilty of an alcohol-related disqualifying offence; and
 - (b) is disqualified from holding or obtaining a driver licence; and
 - (c) is not eligible to apply for, or be issued with, a restricted licence; and

- (d) has not completed an alcohol awareness course within the previous 12 months.
- (2) The person must complete an alcohol awareness course before the end of the period of disqualification.
- (3) Despite section 52 (3) (When probationary licence must be issued), if the person does not complete an alcohol awareness course and give the road transport authority written evidence to that effect before the end of the period of disqualification, the authority must not issue a probationary licence to the person.
- (4) However, the road transport authority must issue a probationary licence to the person if—
 - (a) after the end of the period of disqualification, the authority receives written evidence that the person has completed an alcohol awareness course; or
 - (b) the authority—
 - (i) receives written notice from the person before the end of the period of disqualification stating that—
 - (A) the person has made genuine attempts to enrol in an alcohol awareness course before the end of the period of disqualification but has not been able to do so; and
 - (B) the person is enrolled in an alcohol awareness course that will be completed on a stated date after the end of the period of disqualification; and
 - (ii) is satisfied on reasonable grounds of the matters mentioned in the notice.

Examples—s (4) (b) (i) (A)

- 1 all alcohol awareness courses are fully booked during the person's period of disqualification
- 2 no alcohol awareness courses are being conducted during the person's period of disqualification

Note 1 A probationary licence issued under s (4) (b) is issued after the person's period of disqualification has ended—see s 52 (1).

Note 2 An example is part of the regulation, 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).

- (5) If, in relation to a person issued with a probationary licence under subsection (4) (b) the road transport authority does not, within 7 days after the day the alcohol awareness course mentioned in that subsection ends, receive written evidence that the person has completed the course, the authority must suspend the licence.
- (6) However, the road transport authority must end the suspension if the authority receives written evidence that the person has completed an alcohol awareness course.

**73E Requirement to complete alcohol awareness course—
person disqualified and eligible for restricted licence**

- (1) This section applies to a person if—
 - (a) the person is convicted or found guilty of an alcohol-related disqualifying offence; and
 - (b) the person is disqualified from holding or obtaining a driver licence; and
 - (c) the Magistrates Court has made an order authorising the road transport authority to issue a restricted licence to the person; and
 - (d) the person has not completed an alcohol awareness course within the previous 12 months.

- (2) Despite section 49 (Issue of restricted licence by road transport authority), the road transport authority must not issue a restricted licence to the person unless the person has completed an alcohol awareness course and given the road transport authority written evidence to that effect.

**73F Requirement to complete alcohol awareness course—
person no longer disqualified and eligible for
probationary licence**

- (1) This section applies to a person if—
- (a) the person was convicted or found guilty of an alcohol-related disqualifying offence; and
 - (b) the person was disqualified from holding or obtaining a driver licence for the offence; and
 - (c) the Magistrates Court made an order authorising the road transport authority to issue a restricted licence to the person for the period of disqualification; and
 - (d) the person—
 - (i) did not apply for, or was not issued with, a restricted licence; and
 - (ii) is eligible to apply for, or be issued with, a probationary licence because the person is no longer disqualified from holding or obtaining a probationary driver licence; and
 - (iii) has not completed an alcohol awareness course within the previous 12 months.
- (2) Despite section 52 (3) (When probationary licence must be issued), the road transport authority must not issue a probationary licence to the person unless the person has completed an alcohol awareness course and given the road transport authority written evidence to that effect.

73G Exemption from alcohol awareness course—application

- (1) The road transport authority may, on application, grant a person an exemption from the requirement to complete an alcohol awareness course because of exceptional circumstances.
- (2) The road transport authority may, in writing, require the applicant to give the authority additional information or documents that the authority reasonably needs to decide the application.
- (3) If the applicant does not comply with a requirement under subsection (2), the road transport authority may refuse to consider the application.

73H Exemption from alcohol awareness course—decision on application

- (1) On an application by a person for an exemption from the requirement to attend an alcohol awareness course, the road transport authority must—
 - (a) grant the exemption; or
 - (b) refuse to grant the exemption.
- (2) The road transport authority must refuse to grant the exemption if satisfied on reasonable grounds that exceptional circumstances do not exist for granting the exemption.

73I Alcohol awareness course—approval

- (1) The road transport authority may approve a course (an *alcohol awareness course*) about the effects of alcohol, including its effects on driving and health.
- (2) An approval is a notifiable instrument.

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

Division 3.14 Drug awareness courses

73J Application—div 3.14

This division applies to a person who commits a drug-related disqualifying offence on or after the day the Act, section 28 (2) (t) commences.

73K Definitions—div 3.14

In this division:

drug awareness course means a course approved under section 73R (Drug awareness course—approval).

drug-related disqualifying offence means an offence against any of the following provisions of the *Road Transport (Alcohol and Drugs) Act 1977* that relates to a prescribed drug:

- (a) section 20 (Driving with prescribed drug in oral fluid or blood);
- (b) section 22A (Refusing to provide oral fluid sample);
- (c) section 23 (Refusing blood test etc);
- (d) section 24 (Driving under the influence of intoxicating liquor or a drug);
- (e) another provision prescribed by regulation.

73L Requirement to complete drug awareness course—person not disqualified

- (1) This section applies to a person who—
 - (a) is found guilty of a drug-related disqualifying offence; and
 - (b) is not disqualified from holding or obtaining a driver licence; and

- (c) has not completed a drug awareness course within the previous 12 months.
- (2) The person must complete a drug awareness course within 6 months after being found guilty of the disqualifying offence.
- (3) If the person does not complete a drug awareness course and give the road transport authority written evidence to that effect within the 6-month period, the authority must suspend the person's driver licence.
- (4) However, the road transport authority must end the suspension if the authority receives written evidence that the person has completed a drug awareness course.

**73M Requirement to complete drug awareness course—
person disqualified and not eligible for restricted licence**

- (1) This section applies to a person who—
 - (a) is convicted or found guilty of a drug-related disqualifying offence; and
 - (b) is disqualified from holding or obtaining a driver licence; and
 - (c) is not eligible to apply for, or be issued with, a restricted licence; and
 - (d) has not completed a drug awareness course within the previous 12 months.
- (2) The person must complete a drug awareness course before the end of the period of disqualification.
- (3) Despite section 52 (3) (When probationary licence must be issued), if the person does not complete a drug awareness course and give the road transport authority written evidence to that effect before the end of the period of disqualification, the authority must not issue a probationary licence to the person.

- (4) However, the road transport authority must issue a probationary licence to the person if—
- (a) after the end of the period of disqualification, the authority receives written evidence that the person has completed a drug awareness course; or
 - (b) the authority—
 - (i) receives written notice from the person before the end of the period of disqualification stating that—
 - (A) the person has made genuine attempts to enrol in a drug awareness course before the end of the period of disqualification but has not been able to do so; and
 - (B) the person is enrolled in a drug awareness course that will be completed on a stated date after the end of the period of disqualification; and
 - (ii) is satisfied on reasonable grounds of the matters mentioned in the notice.

Examples—s (4) (b) (i) (A)

- 1 all drug awareness courses are fully booked during the person's period of disqualification
- 2 no drug awareness courses are being conducted during the person's period of disqualification

Note 1 A probationary licence issued under s (4) (b) is issued after the person's period of disqualification has ended—see s 52 (1).

Note 2 An example is part of the regulation, 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).

- (5) If, in relation to a person issued with a probationary licence under subsection (4) (b), the road transport authority does not, within 7 days after the day the drug awareness course mentioned in that subsection ends, receive written evidence that the person has completed the course, the authority must suspend the licence.
- (6) However, the road transport authority must end the suspension if the authority receives written evidence that the person has completed a drug awareness course.

**73N Requirement to complete drug awareness course—
person disqualified and eligible for restricted licence**

- (1) This section applies to a person if—
 - (a) the person is convicted or found guilty of a drug-related disqualifying offence; and
 - (b) the person is disqualified from holding or obtaining a driver licence; and
 - (c) the Magistrates Court has made an order authorising the road transport authority to issue a restricted licence to the person; and
 - (d) the person has not completed a drug awareness course within the previous 12 months.
- (2) Despite section 49 (Issue of restricted licence by road transport authority), the road transport authority must not issue a restricted licence to the person unless the person has completed a drug awareness course and given the road transport authority written evidence to that effect.

**730 Requirement to complete drug awareness course—
person no longer disqualified and eligible for
probationary licence**

- (1) This section applies to a person if—
 - (a) the person was convicted or found guilty of a drug-related disqualifying offence; and
 - (b) the person was disqualified from holding or obtaining a driver licence for the offence; and
 - (c) the Magistrates Court made an order authorising the road transport authority to issue a restricted licence to the person for the period of disqualification; and
 - (d) the person—
 - (i) did not apply for, or was not issued with, a restricted licence; and
 - (ii) is eligible to apply for, or be issued with, a probationary licence because the person is no longer disqualified from holding or obtaining a probationary driver licence; and
 - (iii) has not completed a drug awareness course within the previous 12 months.
- (2) Despite section 52 (3) (When probationary licence must be issued), the road transport authority must not issue a probationary licence to the person unless the person has completed a drug awareness course and given the road transport authority written evidence to that effect.

73P Exemption from drug awareness course—application

- (1) The road transport authority may, on application, grant a person an exemption from the requirement to complete a drug awareness course because of exceptional circumstances.
- (2) The road transport authority may, in writing, require the applicant to give the authority additional information or documents that the authority reasonably needs to decide the application.
- (3) If the applicant does not comply with a requirement under subsection (2), the road transport authority may refuse to consider the application.

73Q Exemption from drug awareness course—decision on application

- (1) On an application by a person for an exemption from the requirement to attend a drug awareness course, the road transport authority must—
 - (a) grant the exemption; or
 - (b) refuse to grant the exemption.
- (2) The road transport authority must refuse to grant the exemption if satisfied on reasonable grounds that exceptional circumstances do not exist for granting the exemption.

73R Drug awareness course—approval

- (1) The road transport authority may approve a course (a *drug awareness course*) about the effects of prescribed drugs, including their effects on driving and health.
- (2) An approval is a notifiable instrument.

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

127 **When authority may vary, suspend or cancel driver licences**
New section 87 (1) (p)

before the note, insert

- (p) the person has failed to complete—
- (i) an alcohol awareness course as required under section 73C (Requirement to complete alcohol awareness course—person not disqualified); or
 - (ii) a drug awareness course as required under section 73L (Requirement to complete drug awareness course—person not disqualified).

128 **Dictionary, new definitions**

insert

alcohol awareness course, for division 3.13 (Alcohol awareness courses)—see section 73B.

alcohol-related disqualifying offence, for division 3.13 (Alcohol awareness courses)—see section 73B.

drug awareness course, for division 3.14 (Drug awareness courses)—see section 73K.

drug-related disqualifying offence, for division 3.14 (Drug awareness courses)—see section 73K.

Part 5 Road Transport (General) Act 1999

129 New section 5A

in part 1, insert

5A Offences against this Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

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

- s 58 (Police officer or authorised person may require name, date of birth, address and driver licence—driver or rider)
- s 58A (Police officer or authorised person may require name, date of birth, address and driver licence—supervisor, instructor or assessor)
- s 61C (Drive while suspension notice in effect)
- s 61D (Failure to surrender suspended licence).

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.

130 Sections 58 and 58A

substitute

58 Police officer or authorised person may require name, date of birth, address and driver licence—driver or rider

- (1) A police officer or authorised person may, in the execution of any of his or her functions under the road transport legislation, require the driver of a vehicle, or the rider of an animal, to do any or all of the following:
- (a) for the driver of a motor vehicle—produce the person’s Australian driver licence or external driver licence;
 - (b) state the person’s name;
 - (c) state the person’s date of birth;
 - (d) state the person’s home address.
- (2) A person commits an offence if the person fails to comply with a request made by a police officer or authorised person under subsection (1).

Maximum penalty: 20 penalty units.

Note It is an offence to produce false or misleading documents (see Criminal Code, s 339).

- (3) An offence against this section is a strict liability offence.
- (4) It is a defence to a prosecution for an offence against subsection (1) (a) if the defendant proves that the defendant—
- (a) was not the driver of a heavy vehicle, or heavy combination, when required to produce the licence; and
 - (b) has a reasonable excuse for failing to produce the licence when required to do so; and

- (c) within 3 days after being required to produce the licence, produces the licence at a place prescribed by regulation or as directed by the police officer or authorised person.

Note A defendant has a legal burden in relation to the matters mentioned in s (3) (see Criminal Code, s 59).

58A Police officer or authorised person may require name, date of birth, address and driver licence—supervisor, instructor or assessor

- (1) This section applies to a person if—
- (a) the person is a driving instructor who is with a driver for the purposes of—
 - (i) driver instruction; or
 - (ii) driver assessment; or
 - (b) the person is a heavy vehicle driver assessor who is with a driver for the purposes of driver assessment; or
 - (c) 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) A police officer or authorised person may require the person to do any or all of the following:
- (a) produce the person's Australian driver licence;
 - (b) state the person's name;
 - (c) state the person's date of birth;
 - (d) state the person's home address.

- (3) A person commits an offence if the person fails to comply with a request made by a police officer or authorised person under subsection (2).

Maximum penalty: 20 penalty units.

Note It is an offence to produce false or misleading documents (see Criminal Code, s 339).

- (4) An offence against this section is a strict liability offence.
- (5) It is a defence to a prosecution for an offence against subsection (2) (a) if the defendant proves that the defendant—
- (a) was a driving supervisor, driving instructor or heavy vehicle driver assessor when required to produce the licence; and
 - (b) has a reasonable excuse for failing to produce the licence when required to do so; and
 - (c) within 3 days after being required to produce the licence, produced the licence at a place prescribed by regulation or as directed by the police officer or authorised person.

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

- (6) In this section:

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

131 Division 4.2 heading

substitute

Division 4.2 Licence suspension, disqualification and related matters

61A Definitions—div 4.2

In this division:

automatic disqualification provision means any of the following provisions:

- (a) section 62 (Automatic disqualification for culpable driving);
- (b) section 63 (Automatic disqualification for certain other driving offences);
- (c) *Road Transport (Alcohol and Drugs) Act 1977*, section 32 (which is about automatic disqualification of first offender drivers for exceeding the prescribed blood alcohol concentration);
- (d) *Road Transport (Alcohol and Drugs) Act 1977*, section 33 (which is about automatic disqualification of repeat offender drivers for exceeding the prescribed blood alcohol concentration);
- (e) *Road Transport (Alcohol and Drugs) Act 1977*, section 34 (which is about automatic disqualification for other offences against that Act);

- (f) *Road Transport (Driver Licensing) Act 1999*, section 31 (3) (which is about automatic disqualification for repeat offenders for driving while not holding (and never having held) an Australian driver licence);
- (g) *Road Transport (Driver Licensing) Act 1999*, section 32 (5) (which is about automatic disqualification for an offence of driving or fraudulently applying for a driver licence while disqualified, or after licence suspension, cancellation or refusal).

immediate suspension notice (or ***suspension notice***) means a notice under section 61B given to a person for an immediate suspension offence.

immediate suspension offence (or ***suspension offence***) means an offence against any of the following provisions of the *Road Transport (Alcohol and Drugs) Act 1977* in the circumstances (if any) mentioned for the provision:

- (a) section 19 (Prescribed concentration of alcohol in blood or breath), if the person to whom the offence relates is—
 - (i) a special driver with a concentration of alcohol in the person's blood or breath that is 0.05g or more per 100mL of blood or 210L of breath; or
 - (ii) a driver, other than a special driver, with a concentration of alcohol in the person's blood or breath that is 0.1g or more per 100mL of blood or 210L of breath;
- (b) section 22 (Refusing to provide breath sample);
- (c) section 23 (Refusing blood test etc);
- (d) section 24 (Driving under the influence of intoxicating liquor or a drug);

- (e) an offence prescribed for the *Road Transport (Alcohol and Drugs) Act 1977*, dictionary definition of **disqualifying offence**, paragraph (e) by regulation under that Act.

interstate driver licence means a licence (including a conditional licence, learner licence, probationary licence, provisional licence or restricted licence or a driver licence receipt) issued under the law of another State authorising the holder to drive a motor vehicle on a road or road related area.

special driver—see the *Road Transport (Alcohol and Drugs) Act 1977*, dictionary.

suspension notice—see **immediate suspension notice**.

suspension offence—see **immediate suspension offence**.

61B Immediate suspension of licence

- (1) If a police officer believes on reasonable grounds that a person has committed an immediate suspension offence, the police officer must give the person an immediate suspension notice for the offence.
- (2) A suspension notice must include the following information:
 - (a) a unique identifying number;
 - (b) the date and time the notice is given;
 - (c) the full name, or surname and initials, and home address of the person;
 - (d) particulars of the suspension offence to which the notice relates and, if the offence is against the *Road Transport (Alcohol and Drugs) Act 1977*, section 19 (Prescribed concentration of alcohol in blood or breath), the concentration of alcohol alleged to be present in the person's blood or breath;
 - (e) the service number of the police officer who gave the suspension notice;

- (f) a statement telling the person that while the notice is in effect—
 - (i) if the person is the holder of a driver licence—the person’s licence is suspended; and
 - (ii) if the person is the holder of an interstate driver licence or an external driver licence—the person’s right to drive in the ACT is suspended; and
 - (iii) the person’s driver licence must be surrendered to a police officer in accordance with the requirements of the notice; and
 - (iv) if the person is the holder of a driver licence—the person must not drive a vehicle; and
 - (v) if the person is the holder of an interstate driver licence or an external driver licence—the person must not drive a vehicle in the ACT; and
 - (vi) the person is not eligible to apply for a driver licence; and
 - (vii) the person has a right to apply to the Magistrates Court for a stay of the suspension notice;
 - (g) a statement telling the person that the notice ceases to have effect if any of the circumstances mentioned in subsection (5) apply;
 - (h) anything else prescribed by regulation.
- (3) A suspension notice takes effect as soon as it is served on the person.
- (4) The following provisions apply if a person is served with a suspension notice:
- (a) if the person is the holder of a driver licence—the person’s licence is suspended;

- (b) if the person is the holder of an interstate driver licence or an external driver licence—the person's right to drive in the ACT is suspended;
- (c) the person must surrender to a police officer the person's driver licence or, if the person is unable to do so at the time, the person must surrender the licence as soon as practicable in accordance with the requirements of the suspension notice;
- (d) if the person is the holder of a driver licence—the person must not drive a vehicle;
- (e) if the person is the holder of an interstate driver licence or an external driver licence—the person must not drive a vehicle in the ACT;
- (f) the person is not entitled to apply for, or be issued with, a restricted licence during the suspension period.

Note A person served with a suspension notice may apply to the Magistrates Court for a stay of the operation of the suspension notice (see s 61F).

- (5) A suspension notice ceases to have effect if—
 - (a) the Magistrates Court orders a stay of the notice; or
 - (b) the proceeding for the suspension offence for which the notice was issued is withdrawn or discontinued; or
 - (c) the suspension offence for which the notice was issued is found proved, dismissed or taken into account by a court; or
 - (d) 90 days have elapsed since the day the notice was served and an event mentioned in paragraph (a), (b) or (c) has not happened in relation to the notice.

61C Drive while suspension notice in effect

- (1) A person commits an offence if—
 - (a) the person has been served with an immediate suspension notice; and
 - (b) the notice has not ceased to have effect; and
 - (c) the person contravenes section 61B (4) (d) or section 61B (4) (e), whichever applies.

Maximum penalty: 20 penalty units.

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

61D Failure to surrender suspended licence

- (1) A person commits an offence if the person fails to surrender the person's driver licence when required to do so under section 61B (4) (c).

Maximum penalty: 20 penalty units.

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

61E Surrendered licences

- (1) This section applies if a driver licence is surrendered to a police officer under section 61B.
- (2) The police officer must give the licence to the road transport authority as soon as practicable (but within 14 days) after the licence is surrendered to the police officer.

61F Application for stay of suspension notice

- (1) A person served with a suspension notice under section 61B (Immediate suspension of licence) may apply to the Magistrates Court for a stay of the operation of the suspension notice.
- (2) The application may be made by filing the following documents not later than 28 days after the day the applicant was served with the suspension notice:
 - (a) a notice setting out the grounds of the application;
 - (b) an affidavit in support of the application.
- (3) The registrar must, as soon as practicable after the application is filed—
 - (a) set a hearing date for the application; and
 - (b) give the applicant and the chief police officer written notice of the time and place of the hearing of the application.
- (4) The chief police officer must file any relevant material that the chief police officer proposes to rely on at the hearing of the application, not later than 10 days after the day the chief police officer was given the documents mentioned in subsection (2).
- (5) The registrar must, as soon as practicable after the chief police officer has filed any documents under subsection (4), give the applicant a copy of the documents.
- (6) Despite any error in a notice under subsection (3) or a failure to give notice under that subsection, the court may hear and decide the application if it is satisfied that the parties—
 - (a) knew about the time and place of the hearing; and
 - (b) were not prejudiced by the error or failure.

61G Deciding application

- (1) The Magistrates Court may hear and decide an application under section 61F and may make—
 - (a) an order confirming the decision to give the applicant an immediate suspension notice; or
 - (b) an order staying the operation of the suspension notice; or
 - (c) any other order the court considers appropriate.
- (2) However, the court must not make an order under subsection (1) (b) unless satisfied that exceptional circumstances justify making the order.
- (3) The court must take into account the following matters when deciding if exceptional circumstances justify making an order under subsection (1) (b):
 - (a) the risk to the safety of other road users;
 - (b) the applicant's need for a licence;
 - (c) the matters contained in the suspension notice;
 - (d) any other matter the court considers relevant.
- (4) In deciding a person's application under section 61F, the court must not decide—
 - (a) the guilt or innocence of the person for the offence to which the suspension notice relates; or
 - (b) the imposition or level of a penalty for the offence.

132 Section 64

substitute

64 Court may order disqualification for other offences

- (1) A court that convicts a person, or finds a person guilty, of an offence against the road transport legislation may disqualify the person from holding or obtaining a driver licence for the period the court considers appropriate.
- (2) However, if the offence is an offence against an automatic disqualification provision, any order under subsection (1) is subject to the automatic disqualification period for the offence.
- (3) If the court disqualifies the person, the person is disqualified from holding or obtaining a driver licence for the period ordered by the court.
- (4) A disqualification under this section is in addition to any penalty imposed for the offence.

Note A court may also order that a driver is disqualified from obtaining or holding an Australian driver licence under the *Road Transport (Mass, Dimensions and Loading) Act 2009*, s 204.

**133 Effect of disqualification
Section 66 (6) and (7)**

substitute

- (6) Subject to any other provision of this division, a person who is disqualified from holding or obtaining a driver licence is not eligible to apply for, or be issued with, another driver licence, other than a restricted licence, during the period of disqualification.

Note 1 Sections 66A to 67C affect the eligibility of a person to apply for or be issued with a restricted licence.

Note 2 The following provisions of the road transport legislation also contain limitations on the issue of restricted licences:

- s 45 (3) (which is about suspension for nonpayment of an infringement notice)
- s 88 (4) (which is about suspension or disqualification for default in payment of an outstanding fine)
- the *Road Transport (Driver Licensing) Act 1999*, s 18 (4), s 19 (7), s 20 (3) and s 21 (7) (which are about suspension or licence ineligibility under the demerit points system)
- the *Road Transport (Driver Licensing) Act 1999*, s 33 (5) (which is about cancellation of a restricted licence because of contravention of its conditions)
- the *Road Transport (Driver Licensing) Regulation 2000*.

66A Person disqualified in another jurisdiction not eligible for restricted licence

- (1) This section applies to a person if the person is disqualified from holding or obtaining an Australian driver licence in another jurisdiction.
- (2) The person is not eligible to apply for, or be issued with, a restricted licence during the period of disqualification.

134 Section 67

substitute

67 Disqualified repeat offender not eligible for restricted licence—automatic disqualification provisions

- (1) This section applies to a person if the person is—
 - (a) disqualified from holding or obtaining a driver licence under an automatic disqualification provision; and
 - (b) a repeat offender for the offence to which the disqualification relates.

- (2) The person is not eligible to apply for, or be issued with, a restricted driver licence during the period of disqualification.

67A Eligibility of disqualified first offender for restricted licence—automatic disqualification provisions

- (1) This section applies to a person if the person is—
- (a) disqualified from holding or obtaining a driver licence under an automatic disqualification provision; and
 - (b) a first offender for the offence to which the disqualification relates.
- (2) Subsection (3) applies to the person if—
- (a) the person is disqualified from holding or obtaining a driver licence under the *Road Transport (Alcohol and Drugs) Act 1977*, section 32 (Automatic driver licence disqualification—first offenders, s 19) because the person was convicted or found guilty of an offence against that Act, section 19; and
 - (b) when the person committed the offence the person was either—
 - (i) a special driver with a concentration of alcohol of 0.05g or more in 100mL of the person's blood or 210L of the person's breath; or
 - (ii) a driver other than a special driver with a concentration of alcohol of 0.1g or more in 100mL of the person's blood or 210L of the person's breath when the person committed the offence.
- (3) The person is not eligible to apply for, or be issued with, a restricted licence during the period of disqualification.

- (4) Subsection (5) applies to the person if the person is disqualified from holding or obtaining a driver licence under an automatic disqualification provision, other than the *Road Transport (Alcohol and Drugs) Act 1977*, section 32.
- (5) The person is not eligible to apply for, or be issued with, a restricted licence until the end of the minimum period of disqualification applying to the person under the automatic disqualification provision in relation to the offence (whether or not the period is expressed to be such a minimum period).

Examples—minimum periods of disqualification

- 1 For s 62, the minimum period of disqualification is 6 months (see s 62 (1) (a)).
- 2 For the *Road Transport (Alcohol and Drugs) Act 1977*, s 34, the minimum period of disqualification is 6 months (see that Act, s 34 (1) (b)).
- 3 For the *Road Transport (Driver Licensing) Act 1999*, s 32 (1), (2) or (3), the minimum period of disqualification is 12 months (see that Act, s 32 (5) (a)).

Note 1 The *Road Transport (Alcohol and Drugs) Act 1977*, s 32 applies to first offenders and only applies for this section if the offender has a limited concentration of alcohol in his or her blood or breath. That Act, s 33, applies to repeat offenders.

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).

- (6) In this section:
special driver—see the *Road Transport (Alcohol and Drugs) Act 1977*, dictionary.

67B Person disqualified until court order not eligible for restricted licence

- (1) This section applies to a person if the person is disqualified from holding or obtaining a driver licence under section 65 (Disqualification until court order).
- (2) The person is not eligible to apply for, or be issued with, a restricted licence during the period of disqualification.

67C Disqualification while holder of restricted licence

- (1) This section applies to a person who is the holder of a restricted licence and is disqualified (whether or not by court order) from holding or obtaining a driver licence because of being convicted or found guilty by a court in Australia of an offence against the law of any jurisdiction.
- (2) The person is not eligible to apply for, or be issued with, another restricted licence for the remainder of the period for which the person was originally disqualified from holding or obtaining a driver licence.

135 Dictionary, new definitions

insert

automatic disqualification provision, for division 4.2 (Licence suspension, disqualification and related matters)—see section 61A.

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

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

immediate suspension notice (or ***suspension notice***), for division 4.2 (Licence suspension, disqualification and related matters)—see section 61A.

immediate suspension offence (or *suspension offence*), for division 4.2 (Licence suspension, disqualification and related matters)—see section 61A.

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

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

special driver, for division 4.2 (Licence suspension, disqualification and related matters)—see section 61A.

suspension notice—see *immediate suspension notice*.

suspension offence—see *immediate suspension offence*.

Part 6 Road Transport (General) Regulation 2000

136 Schedule 1, part 1.1

omit

137 Schedule 1, part 1.4, new items 24A and 24B

insert

| | | |
|-----|-------------|--|
| 24A | 73H (1) (b) | road transport authority—refuse to grant exemption from requirement to attend alcohol awareness course |
| 24B | 73Q (1) (b) | road transport authority—refuse to grant exemption from requirement to attend drug awareness course |

Part 7 Road Transport (Offences) Regulation 2005

138 Schedule 1, part 1.3, new item 6A

insert

| | | | | | |
|------|---|---|-------------------------------|--|--|
| 6A | 20 (1) | | | | |
| 6A.1 | <ul style="list-style-type: none">first offender | drive motor vehicle on street/place with prescribed drug in oral fluid or blood—first offender | 10 | | |
| 6A.2 | <ul style="list-style-type: none">repeat offender | drive motor vehicle on street/place with prescribed drug in oral fluid or blood—repeat offender | 25 pu/3 months prison/both | | |

139 Schedule 1, part 1.3, new items 8A to 8C*insert*

| | | | | | |
|------|---|---|-------------------------------|--|--|
| 8A | 22A (2) (a) | | | | |
| 8A.1 | <ul style="list-style-type: none"> first offender | refuse to provide sample of oral fluid for analysis | 30pu/6 months prison/both | | |
| 8A.2 | <ul style="list-style-type: none"> repeat offender | refuse to provide sample of oral fluid for analysis | 30pu/12 months prison/both | | |
| 8B | 22A (2) (b) | | | | |
| 8B.1 | <ul style="list-style-type: none"> first offender | fail to provide sample of oral fluid in accordance with reasonable directions of police officer | 30pu/6 months prison/both | | |
| 8B.2 | <ul style="list-style-type: none"> repeat offender | fail to provide sample of oral fluid in accordance with reasonable directions of police officer | 30pu/12 months prison/both | | |

Part 7 Road Transport (Offences) Regulation 2005

Section 140

| | | | | | |
|----|-----|---|----|--|--|
| 8C | 22B | failing to stay for drug screening test | 20 | | |
|----|-----|---|----|--|--|

140 Schedule 1, part 1.3, items 10 to 12

substitute

| | | | | | |
|------|---|---|--------------------------------|--|--|
| 10 | 23 (2) | | | | |
| 10.1 | <ul style="list-style-type: none"> first offender | behave in manner so impossible/impractical for blood sample to be taken—first offender | 30 pu/6 months prison/both | | |
| 10.2 | <ul style="list-style-type: none"> repeat offender | behave in manner so impossible/impractical for blood sample to be taken—repeat offender | 30 pu/12 months prison/both | | |
| 11 | 23 (3) (a) | | | | |
| 11.1 | <ul style="list-style-type: none"> first offender | fail/refuse to submit to medical examination—first offender | 30 pu/6 months prison/both | | |

| | | | | | |
|------|---|---|--------------------------------|--|--|
| 11.2 | <ul style="list-style-type: none"> repeat offender | fail/refuse to submit to medical examination—repeat offender | 30 pu/12 months prison/both | | |
| 12 | 23 (3) (b) | | | | |
| 12.1 | <ul style="list-style-type: none"> first offender | fail/refuse to give/permit taking of body sample—first offender | 30 pu/6 months prison/both | | |
| 12.2 | <ul style="list-style-type: none"> repeat offender | fail/refuse to give/permit taking of body sample —repeat offender | 30 pu/12 months prison/both | | |

141 Schedule 1, part 1.3, item 15*substitute*

| | | | | | |
|----|-----|---|----|--|--|
| 15 | 47B | fail to comply with police officer's direction not to drive | 10 | | |
|----|-----|---|----|--|--|

Part 7 Road Transport (Offences) Regulation 2005

Section 142

142 Schedule 1, part 1.6, items 11 and 12

substitute

| | | | | | |
|----|------------|--|----|----|--|
| 11 | 21 (5) (a) | driving supervisor not supervise learner driver | 20 | 99 | |
| 12 | 21 (5) (b) | driving supervisor not take precautions to prevent contravention by learner driver | 20 | 99 | |

143 Schedule 1, part 1.7, items 6 to 8

substitute

| | | | | | |
|-----|--|----------------------------------|----|----|--|
| 6 | 58 (2) | | | | |
| 6.1 | <ul style="list-style-type: none">requirement under 58 (1) (a) | driver/rider not produce licence | 20 | 99 | |
| 6.2 | <ul style="list-style-type: none">requirement under 58 (1) (b) | driver/rider not state name | 20 | | |

| | | | | | |
|-----|---|--|----|----|--|
| 6.3 | <ul style="list-style-type: none"> requirement under 58 (1) (c) | driver/rider not state date of birth | 20 | | |
| 6.4 | <ul style="list-style-type: none"> requirement under 58 (1) (d) | driver/rider not state home address | 20 | | |
| 7 | 58A (3) | | | | |
| 7.1 | <ul style="list-style-type: none"> requirement under 58A (2) (a) | supervisor/instructor/assessor not produce licence | 20 | 99 | |
| 7.2 | <ul style="list-style-type: none"> requirement under 58A (2) (b) | supervisor/instructor/assessor not state name | 20 | | |
| 7.3 | <ul style="list-style-type: none"> requirement under 58A (2) (c) | supervisor/instructor/assessor not state date of birth | 20 | | |
| 7.4 | <ul style="list-style-type: none"> requirement under 58A (2) (d) | supervisor/instructor/assessor not state home address | 20 | | |

144 Schedule 1, part 1.7, new items 12A and 12B

insert

| | | | | | |
|-------|---|---|----|--|--|
| 12A | 61C | | | | |
| 12A.1 | <ul style="list-style-type: none">holder of driver licence contravenes 61B (4) (d) | drive while suspension notice in effect (driver licence holder) | 20 | | |
| 12A.2 | <ul style="list-style-type: none">holder of interstate driver licence/external driver licence contravenes 61B (4) (e) | drive while suspension notice in effect (interstate/external driver licence holder) | 20 | | |
| 12B | 61D (1) | fail to surrender suspended licence | 20 | | |

145 Schedule 1, part 1.7, item 13*substitute*

| | | | | | |
|----|--------|---|----|--|--|
| 13 | 66 (4) | not surrender licence when disqualified | 20 | | |
|----|--------|---|----|--|--|

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Crimes Act 1900

[1.1] Section 220 (4), definition of *relevant offence*, paragraph (b) (iv)

substitute

- (iv) the *Road Transport (Alcohol and Drugs) Act 1977*, section 19 (Prescribed concentration of alcohol in blood or breath) or section 20 (Driving with prescribed drug in oral fluid or blood);

[1.2] Section 252F (3) (b)

omit

breath analysis

substitute

a drug screening test, or breath or oral fluid analysis,

Part 1.2 Road Transport (Alcohol and Drugs) Regulation 2000

[1.3] Section 4

substitute

2 Alcohol screening device—Act, s 7, def *alcohol screening device*

The following devices are prescribed:

- (a) Alcolizer LE;
- (b) lion alcolmeter SD-400.

3 Breath analysis instrument—Act, s 7A, def *breath analysis instrument*

The Dräger Alcotest 7110 MKV is prescribed.

4 Breath analysis—requirements for statement under Act, s 12 (5)

A statement given to a person under the Act, section 12 (5) in relation to an analysis of a sample of the person's breath must include the information mentioned in schedule 1.

5 Oral fluid analysis—requirements for statement under Act, s 13E (6)

A statement given to a person under the Act, section 13E (6) in relation to an analysis of a sample of the person's oral fluid must include the following information:

- (a) the date and time the sample was taken;
- (b) the place where the sample was taken;
- (c) the result of the oral fluid analysis;

- (d) that a part of the sample has been sent to an approved laboratory for confirmation of the result;
- (e) the name and address of the approved laboratory;
- (f) that the sample has been stored in a container sealed with a tamper-evident seal marked with a unique identifying number;
- (g) the unique identifying number marked on the tamper-evident seal;
- (h) that the person will be given written notification of the result of the laboratory analysis.

[1.4] Schedule 1 heading

substitute

**Schedule 1 Particulars for breath analysis
carried out using a Dräger
Alcotest 7110 MKV**

[1.5] Schedule 1, item 5

omit

approved operator

substitute

authorised operator

Part 1.3 Spent Convictions Act 2000

[1.6] Section 14 (4) (c)

omit everything after

part 3

insert

(which is about drivers having the prescribed concentration of alcohol in blood or breath, driving with a prescribed drug in oral fluid or blood, refusing to provide a breath sample, oral fluid, blood test for analysis, failing to stay for a drug screening test or driving under the influence of intoxicating liquor);

Part 1.4 Workers Compensation Act 1951

[1.7] Section 82 (4) (a)

substitute

- (a) at the time of the injury, the worker was under the influence of alcohol or a prescribed drug, unless the alcohol or prescribed drug did not contribute to the injury or was not consumed or taken voluntarily; or

[1.8] Section 82 (5)

substitute

- (5) In this section:

prescribed drug—see the *Road Transport (Alcohol and Drugs) Act 1977*, dictionary.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 28 October 2010.

2 Notification

Notified under the Legislation Act on 25 November 2010.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Road Transport (Alcohol and Drugs) Legislation Amendment Bill 2010, which was passed by the Legislative Assembly on 18 November 2010.

Acting Clerk of the Legislative Assembly

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