

2010

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Transport)

# Road Transport (Alcohol and Drugs) Legislation Amendment Bill 2010

## Contents

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|               | Page   |
|---------------|--|
| <b>Part 1</b> | <b>Preliminary</b>   |
| 1             | Name of Act 2  |
| 2             | Commencement 2   |
| 3             | Legislation amended 3  |
| <b>Part 2</b> | <b>Road Transport (Alcohol and Drugs) Act 1977</b>                           |
| 4             | Offences against Act—application of Criminal Code etc<br>Section 4, note 1 4 |
| 5             | New part 1A heading 4  |

## Contents

---

|    | Page   |    |
|----|--|----|
| 6  | Meaning of <i>special driver</i>             |    |
|    | Section 4B (1) (f)                           | 5  |
| 7  | Section 4B (3) to (5)                        | 6  |
| 8  | Sections 4C to 6                             | 6  |
| 9  | New division 2.1                             | 11 |
| 10 | Section 8 heading                            | 13 |
| 11 | Section 8                                    | 13 |
| 12 | Section 9 heading                            | 13 |
| 13 | Section 9                                    | 13 |
| 14 | Section 10 heading                           | 14 |
| 15 | Section 10                                   | 14 |
| 16 | Sections 11, 12 and 12AA                     | 14 |
| 17 | Section 13 heading                           | 16 |
| 18 | Section 13 (1)                               | 16 |
| 19 | Section 13                                   | 16 |
| 20 | New division 2.4                             | 17 |
| 21 | Section 14 heading                           | 22 |
| 22 | Section 14 (1)                               | 22 |
| 23 | Section 14 (3)                               | 22 |
| 24 | New section 14 (5)                           | 23 |
| 25 | New division 2.7 heading                     | 23 |
| 26 | Taking blood samples from people in custody  |    |
|    | Section 15 (1) (b)                           | 23 |
| 27 | Section 15 (3)                               | 24 |
| 28 | Section 15 (7), (8) and (9)                  | 24 |
| 29 | Taking blood samples from people in hospital |    |
|    | Section 15AA (2) to (4)                      | 25 |
| 30 | Sections 15A and 15B                         | 25 |
| 31 | Section 16 heading                           | 28 |
| 32 | Section 16 (1)                               | 28 |
| 33 | Section 16 (2)                               | 28 |
| 34 | Section 16 (7) to (9)                        | 29 |
| 35 | Section 16A                                  | 29 |

## Contents

---

|    | Page   |
|----|--|
| 36 | Exemptions from requirements to take blood samples or carry out examinations |
|    | Section 17 (2) (b) 33  |
| 37 | Protection of police officers and medical staff                              |
|    | Section 18 (3) (a) 33  |
| 38 | Section 18 (3) (a) 33  |
| 39 | Section 18B 34   |
| 40 | Section 19 34  |
| 41 | New section 19B 35   |
| 42 | Driving with prescribed drug in oral fluid or blood                          |
|    | New section 20 (1A) and (1B) 36  |
| 43 | Defence if person did not intend to drive motor vehicle                      |
|    | Section 21 (b) 37  |
| 44 | Section 21 (as amended) 37   |
| 45 | Refusing to provide oral fluid sample  |
|    | New section 22A (3) and (4) 37   |
| 46 | New section 22B 37   |
| 47 | Fines and imprisonment—s 19 offences   |
|    | Section 26 38  |
| 48 | Table 26, column 2 heading 38  |
| 49 | Sections 29 and 30 38  |
| 50 | Automatic driver licence disqualification—first offenders, s 19              |
|    | Section 32 39  |
| 51 | Table 32, column 2 heading 39  |
| 52 | Automatic driver licence disqualification—repeat offenders, s 19             |
|    | Section 33 39  |
| 53 | Table 33, column 2 heading 39  |
| 54 | New section 35 40  |
| 55 | Additional powers of court   |
|    | Section 38 40  |
| 56 | Section 41 heading 41  |
| 57 | Section 41 (1) (a) (i) 41  |
| 58 | Section 41 (1) (a) (ii) 41   |
| 59 | Section 41 (1) (a) (iv) and (ix) 41  |
| 60 | Section 41 (1) (aa) 41   |

## Contents

---

|    | Page   |
|----|--|
| 61 | Section 41 (1) (b) (i) 42  |
| 62 | Section 41 (1) (b) (ii) 42   |
| 63 | Section 41 (1) (b) (iv) 42   |
| 64 | Section 41 (1) (b) (vi) 42   |
| 65 | Section 41 (ba) 42   |
| 66 | Section 41 (1) (c) and (d) 43  |
| 67 | Section 41 (1) (e) (iii) 44  |
| 68 | Section 41 (1) (f) 44  |
| 69 | Section 41 (1) (h) 44  |
| 70 | New division 7.2 45  |
| 71 | Section 41A 51   |
| 72 | Effect of noncompliance—analysis of breath or blood<br>Section 42 (1) 53           |
| 73 | Section 42 (2) 54  |
| 74 | Effect of noncompliance—analysis of oral fluid<br>Section 42AA (1) 54              |
| 75 | Section 42AA (2) 54  |
| 76 | Effect of noncompliance—analysis of body sample<br>Section 42A (1) 54              |
| 77 | Section 42A (2) 55   |
| 78 | Effect of noncompliance—refusal to give sample of breath<br>Section 42B (1) 55     |
| 79 | Section 42B (2) 55   |
| 80 | Effect of noncompliance—refusal to give sample of oral fluid<br>Section 42C (1) 55 |
| 81 | Section 42C (2) 56   |
| 82 | Section 43 heading 56  |
| 83 | Section 43 (2) 56  |
| 84 | Section 43 (3) 57  |
| 85 | Rehabilitation programs<br>Part 8 57   |
| 86 | Power of arrest<br>Section 45 57   |
| 87 | New section 45 (2) 57  |

## Contents

---

|               | Page   |    |
|---------------|--|----|
| 88            | Penalty for escaping from custody<br>Section 46  | 58 |
| 89            | Stopping, search and detaining—Crimes Act, s 207 and s 209<br>Section 47A                              | 58 |
| 90            | New sections 47B and 47C   | 58 |
| 91            | New part 21  | 61 |
| 92            | Dictionary, new definitions  | 63 |
| 93            | Dictionary, new definition of <i>analyst</i>   | 63 |
| 94            | Dictionary   | 64 |
| 95            | Dictionary, definition of <i>approved laboratory</i>   | 64 |
| 96            | Dictionary, definitions of <i>approved operator</i> and <i>approved oral fluid analysis instrument</i> | 64 |
| 97            | Dictionary, new definition of <i>authorised operator</i>   | 64 |
| 98            | Dictionary, definition of <i>breath analysis</i>   | 65 |
| 99            | Dictionary, new definition of <i>breath analysis instrument</i>  | 65 |
| 100           | Dictionary, definition of <i>disqualifying offence</i> , paragraph (a)                                 | 65 |
| 101           | Dictionary, new definitions  | 65 |
| 102           | Dictionary, definition of <i>first offender</i>  | 65 |
| 103           | Dictionary, definition of <i>level</i>   | 66 |
| 104           | Dictionary, definition of <i>oral fluid analysis</i>   | 66 |
| 105           | Dictionary, new definition of <i>oral fluid analysis instrument</i>                                    | 66 |
| 106           | Dictionary, definition of <i>prescribed concentration</i>  | 66 |
| 107           | Dictionary, definition of <i>prescribed drug</i>   | 66 |
| 108           | Dictionary, definition of <i>repeat offender</i>   | 67 |
| 109           | Dictionary, definition of <i>screening test</i>  | 67 |
| 110           | Legislative instruments repealed   | 67 |
| <b>Part 3</b> | <b>Road Transport (Driver Licensing) Act 1999</b>  |    |
| 111           | Driver licensing system<br>New section 28 (2) (s)  | 68 |
| <b>Part 4</b> | <b>Road Transport (Driver Licensing) Regulation 2000</b>   |    |
| 112           | Driver licence condition codes<br>Table 10, item 8   | 69 |

## Contents

---

|   | Page  |    |
|---|---|----|
| 113   | Restrictions on learner motorcycle licence riders<br>Section 20 (6), note   | 69 |
| 114   | Restrictions on learner car licence drivers<br>Section 21 (1), new definition of <i>driving supervisor</i>                      | 69 |
| 115   | Section 21 (4)  | 69 |
| 116   | Section 21 (5)  | 70 |
| 117   | Section 21 (6), note  | 70 |
| 118   | Provisional motorcycle licences—towing restrictions<br>Section 36A (3), note 3  | 70 |
| 119   | Provisional car licences—towing restrictions<br>Section 37A (3), note 3   | 70 |
| 120   | Eligibility to apply to Magistrates Court for order authorising issue of<br>restricted licence<br>Section 45 (2), notes 1 and 2 | 70 |
| 121   | Issue of restricted licence by road transport authority<br>Section 49 (3), note   | 71 |
| 122   | Section 49 (3), new note  | 71 |
| 123   | When probationary licence must be issued<br>Section 52 (3), new note  | 71 |
| 124   | Conditions of probationary licences<br>Section 54, note 2   | 72 |
| 125   | Issue of driver licence that includes public vehicle licence<br>Section 63 (3), note 2  | 72 |
| 126   | New division 3.13   | 72 |
| 127   | When authority may vary, suspend or cancel driver licences<br>New section 87 (1) (p)  | 77 |
| 128   | Dictionary, new definitions   | 77 |
| <br><b>Part 5 Road Transport (General) Act 1999</b> |   |    |
| 129   | New section 5A  | 78 |
| 130   | Sections 58 and 58A   | 79 |
| 131   | Division 4.2 heading  | 82 |
| 132   | Section 64  | 88 |
| 133   | Effect of disqualification<br>Section 66 (6) and (7)  | 89 |
| 134   | Section 67  | 90 |

|  | Page |
|--|------|
| 135 Dictionary, new definitions                                    | 93   |
| <b>Part 6 Road Transport (General) Regulation 2000</b>             |      |
| 136 Schedule 1, part 1.1   | 94   |
| 137 Schedule 1, part 1.4, new item 24A                             | 94   |
| <b>Part 7 Road Transport (Offences) Regulation 2005</b>            |      |
| 138 Schedule 1, part 1.3, new item 6A                              | 95   |
| 139 Schedule 1, part 1.3, new items 8A to 8C                       | 96   |
| 140 Schedule 1, part 1.3, items 10 to 12                           | 97   |
| 141 Schedule 1, part 1.3, item 15                                  | 98   |
| 142 Schedule 1, part 1.6, items 11 and 12                          | 99   |
| 143 Schedule 1, part 1.7, items 6 to 8                             | 99   |
| 144 Schedule 1, part 1.7, new item 12A                             | 101  |
| 145 Schedule 1, part 1.7, item 13                                  | 101  |
| <b>Schedule 1 Consequential amendments</b>                         | 102  |
| <b>Part 1.1 Crimes Act 1900</b>                                    | 102  |
| <b>Part 1.2 Road Transport (Alcohol and Drugs) Regulation 2000</b> | 103  |
| <b>Part 1.3 Spent Convictions Act 2000</b>                         | 105  |
| <b>Part 1.4 Workers Compensation Act 1951</b>                      | 105  |





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FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Transport)

## Road Transport (Alcohol and Drugs) Legislation Amendment Bill 2010

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### A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

5 **2 Commencement**

6 (1) The following provisions commence on a day fixed by the Minister  
7 by written notice:

- 8 (a) part 3;  
9 (b) section 122;  
10 (c) section 123;  
11 (d) section 126;  
12 (e) section 127;  
13 (f) section 128;  
14 (g) section 137.

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

17 (2) The remaining provisions commence on the commencement of the  
18 *Road Transport (Alcohol and Drugs) (Random Drug Testing)*  
19 *Amendment Act 2010*, section 3.

20 (3) However, if a provision mentioned in subsection (1) has not  
21 commenced within 12 months beginning on this Act's notification  
22 day, the provision automatically commences on the first day after  
23 that period.

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

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

### 7 **3 Legislation amended**

8 This Act amends the following legislation:

- 9 • *Road Transport (Alcohol and Drugs) Act 1977*
- 10 • *Road Transport (Driver Licensing) Act 1999*
- 11 • *Road Transport (Driver Licensing) Regulation 2000*
- 12 • *Road Transport (General) Act 1999*
- 13 • *Road Transport (General) Regulation 2000*
- 14 • *Road Transport (Offences) Regulation 2005.*

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

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

1 **Part 2** **Road Transport (Alcohol and**  
2 **Drugs) Act 1977**

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

6 **4 Offences against Act—application of Criminal Code etc**  
7 **Section 4, note 1**

8 *substitute*

9 *Note 1 Criminal Code*

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

- 12 • s 19 (Prescribed concentration of alcohol in blood or breath)
- 13 • s 20 (Driving with prescribed drug in oral fluid or blood)
- 14 • s 22A (Refusing to provide oral fluid sample)
- 15 • s 22B (Failing to stay for drug screening test)
- 16 • s 47B (Police may direct person not to drive).

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

21 **5 New part 1A heading**

22 *before section 4A, insert*

23 **Part 1A** **Important concepts**

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

3 *substitute*

4 (f) the person is the driver of—

5 (i) a vehicle on which a sign, marking or placard is required  
6 to be displayed under the *Dangerous Substances*  
7 *Act 2004* or the *Dangerous Goods (Road*  
8 *Transport) Act 2009*; or

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

12 (ii) a motor vehicle with a GVM of more than 15t; or

13 (iii) a combination with a GCM of more than 15t; or

14 (iv) a public passenger vehicle; or

15 (g) the person is learning to drive a heavy vehicle; or

16 (h) the person is a driving instructor who is with a driver for the  
17 purposes of—

18 (i) driver instruction; or

19 (ii) driver assessment; or

20 (i) the person is a heavy vehicle driver assessor who is with a  
21 driver for the purposes of driver assessment; or

22 (j) the person is a driving supervisor who is with a person who  
23 holds a learner licence (a ***learner driver***) while the learner  
24 driver drives a motor vehicle that displays, or ought to display,  
25 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 instructor**—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.

1 **4D How alcohol concentration may be expressed**

- 2 (1) For this Act, an analysis of a concentration of alcohol in a person's  
3 blood or breath may be expressed as follows:
- 4 (a) the amount of alcohol, in grams, in 100mL of blood if the  
5 analysis is based on—
- 6 (i) a sample of blood; or
- 7 (ii) a sample of breath measured by a breath analysis  
8 instrument;
- 9 (b) the amount of alcohol, in grams, in 210L of breath if the  
10 analysis is based on a sample of breath measured by a breath  
11 analysis instrument.
- 12 (2) For this Act, an amount of alcohol measured in grams as part of  
13 210L of breath is equivalent to the same amount of alcohol in grams  
14 as part of 100mL of blood.

15 **4E Reference to *level* of alcohol concentration**

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

20 **Table 4E**

| column 1<br>item | column 2<br>level | column 3<br>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                           |

- 1     **4F           Meaning of *first offender* and *repeat offender***
- 2           (1) A person who is convicted or found guilty of a disqualifying offence
- 3           is a ***first offender*** in relation to the offence if the person is not a
- 4           repeat offender in relation to the offence.
- 5           (2) A person who is convicted or found guilty of a disqualifying offence
- 6           is a ***repeat offender*** in relation to the offence if—
- 7               (a) the person has been convicted or found guilty of a relevant
- 8               offence committed at any time before the disqualifying offence
- 9               was committed (whether or not the person had been convicted
- 10              or found guilty of the relevant offence when the person
- 11              committed the disqualifying offence); or
- 12              (b) the person is convicted or found guilty of 1 or more relevant
- 13              offences concurrently with being convicted or found guilty of
- 14              the disqualifying offence, and 1 or more of the relevant
- 15              offences were committed before the disqualifying offence.
- 16           (3) However, a person who is convicted or found guilty of a
- 17           disqualifying offence that was committed before the commencement
- 18           of the *Road Transport (Alcohol and Drugs) Legislation Amendment*
- 19           *Act 2010*, section 8 is a ***repeat offender*** in relation to the offence
- 20           only if—
- 21               (a) the person has been convicted or found guilty of a relevant
- 22               offence within 5 years before being convicted or found guilty
- 23               of the disqualifying offence; or
- 24               (b) the person is convicted or found guilty of 1 or more relevant
- 25               offences concurrently with being convicted or found guilty of
- 26               the disqualifying offence, and 1 or more of the relevant
- 27               offences were committed before the disqualifying offence.
- 28           (4) Subsection (3) and this subsection expire 5 years after the day this
- 29           section commences.



1 (5) In this section:

2 *relevant offence* means—

3 (a) a disqualifying offence; or

4 (b) a corresponding offence; or

5 (c) an offence against the *Crimes Act 1900*, section 29 (Culpable  
6 driving of motor vehicle), in which the person who committed  
7 the offence was incapable of having proper control of a vehicle  
8 involved in the offence because of the influence of alcohol or a  
9 drug on the person.

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

## 14 **5 Authorisation of operators**

15 (1) The chief police officer may authorise a police officer to carry out  
16 either or both of the following for this Act:

17 (a) breath analysis;

18 (b) oral fluid analysis.

19 (2) However, the chief police officer may authorise a police officer to  
20 carry out analysis mentioned in subsection (1) only if the chief  
21 police officer considers that the police officer is suitably qualified to  
22 carry out the analysis for which he or she is to be authorised.

- 1     **5A           Register of authorised operators**
- 2           (1) The chief police officer must keep a register of police officers  
3           authorised under section 5.
- 4           (2) The register—
- 5                 (a) must state whether a police officer is authorised to carry out  
6                 breath analysis, oral fluid analysis or both; and
- 7                 (b) must include the service number of each police officer  
8                 authorised under section 5; and
- 9                 (c) may include any other information the chief police officer  
10                considers appropriate.
- 11          (3) The register may be kept in any form, including electronically, that  
12          the chief police officer decides.
- 13          (4) The chief police officer may correct any mistake, error or omission  
14          in the register subject to any requirements prescribed by regulation.
- 15          (5) The chief police officer may change a detail included in the register  
16          to keep the register up-to-date.
- 17          (6) The register must be available for public inspection, free of charge,  
18          during normal business hours on any business day.
- 19     **5B           Appointment of analysts**
- 20           The road transport authority may appoint a person as an analyst for  
21           this Act.
- 22           *Note 1*   For the making of appointments (including acting appointments), see  
23           the Legislation Act, pt 19.3.
- 24           *Note 2*   In particular, a person may be appointed for a particular provision of a  
25           law (see Legislation Act, s 7 (3)) and an appointment may be made by  
26           naming a person or nominating the occupant of a position (see  
27           Legislation Act, s 207).

---

1 **6 Approval of laboratories**

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

4 **9 New division 2.1**

5 *before section 8, insert*

6 **Division 2.1 Important concepts—alcohol and**  
7 **drug tests**

8 **7 Meaning of *alcohol screening device***

9 In this Act:

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

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

15 **7A Meaning of *breath analysis instrument***

16 In this Act:

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

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

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

1 **7B Meaning of *drug screening device***

2 In this Act:

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

7 **7C Meaning of *oral fluid analysis instrument***

8 In this Act:

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

12 **7D Testing and maintenance of instruments etc**

13 (1) A regulation may make provision in relation to the testing and  
14 maintenance of the following:

- 15 (a) alcohol screening devices;  
16 (b) breath analysis instruments;  
17 (c) oral fluid analysis instruments.

18 (2) Without limiting subsection (1), a regulation may make provision  
19 for approval by the chief police officer of people to test and  
20 maintain devices and instruments mentioned in that subsection.

21 **Division 2.2 Alcohol—screening tests**

1 **10 Section 8 heading**

2 *substitute*

3 **8 Power to require alcohol screening test if vehicle not**  
4 **involved in accident**

5 **11 Section 8**

6 *omit*

7 a screening test

8 *substitute*

9 an alcohol screening test

10 **12 Section 9 heading**

11 *substitute*

12 **9 Power to require alcohol screening test if vehicle**  
13 **involved in accident**

14 **13 Section 9**

15 *omit*

16 a screening test

17 *substitute*

18 an alcohol screening test

1 **14 Section 10 heading**

2 *substitute*

3 **10 Power to require alcohol screening test for culpable**  
4 **driving**

5 **15 Section 10**

6 *omit*

7 a screening test

8 *substitute*

9 an alcohol screening test

10 **16 Sections 11, 12 and 12AA**

11 *substitute*

12 **Division 2.3 Alcohol—confirmatory tests**

13 **11 Detention for breath analysis**

14 (1) This section applies if—

15 (a) a person undergoes an alcohol screening test under a  
16 requirement made by a police officer under section 8, section 9  
17 or section 10 and the alcohol screening device used for the test  
18 indicates that the concentration of alcohol in the person's blood  
19 or breath is the prescribed concentration; or

20 (b) a person required by a police officer to undergo an alcohol  
21 screening test under section 8, section 9 or section 10 fails to  
22 undergo the test in accordance with the directions of the police  
23 officer.

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

25 (2) The police officer may take the person into custody.

1 (3) For subsection (1) (a), if the police officer has reasonable cause to  
2 suspect that the person is a special driver, the prescribed  
3 concentration for the person is the prescribed concentration for a  
4 special driver.

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

9 **Example—s (4)**

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

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

16 **12 Breath analysis**

17 (1) A person who has been taken into custody under section 11 must  
18 give, in accordance with the reasonable directions of a police officer  
19 (the *requesting police officer*), a sample of the person's breath for  
20 breath analysis.

21 (2) A breath analysis must be carried out by an authorised operator.

22 (3) A regulation may make provision in relation the following:

23 (a) the conditions for carrying out breath analysis;

24 (b) the procedures to be followed in relation to carrying out breath  
25 analysis;

26 (c) the circumstances in which the result of a breath analysis must  
27 be disregarded for this Act.

- 1 (4) If, because of a regulation made for subsection (3) (c), the result of a  
2 breath analysis must be disregarded for this Act, the requesting  
3 police officer may, if another breath analysis instrument is available  
4 at the police station or other place where the requirement under  
5 subsection (1) is made, require the person to give, in accordance  
6 with the officer's reasonable directions, a sample of the person's  
7 breath for breath analysis using another breath analysis instrument.
- 8 (5) As soon as practicable after the breath analysis has been carried out,  
9 the authorised operator who carried out the analysis must give the  
10 person a written statement, signed by the operator, containing the  
11 particulars required by regulation to be included in the statement.

12 **17 Section 13 heading**

13 *substitute*

14 **13 Precautions for privacy—breath analysis**

15 **18 Section 13 (1)**

16 *omit*

17 approved operator

18 *insert*

19 authorised operator

20 **19 Section 13**

21 *omit*

22 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

- 1 (b) if—
- 2 (i) the police officer does not know or has doubt as to who
- 3 was the driver of the motor vehicle at the time of the
- 4 accident; and
- 5 (ii) the police officer has reasonable cause to suspect that the
- 6 person was in the vehicle at the time of the accident.
- 7 (2) The person must remain at the place where the drug screening test is
- 8 being carried out until the test is completed in accordance with the
- 9 police officer's directions.

10 **13C Power to require drug screening test for culpable driving**

- 11 (1) A police officer who has reasonable cause to suspect that a person
- 12 has committed an offence of culpable driving may require the
- 13 person to undergo 1 or more drug screening tests in accordance with
- 14 the directions of the officer.
- 15 (2) The person must remain at the place where the drug screening test is
- 16 being carried out until the test is completed in accordance with the
- 17 police officer's directions.

18 **Division 2.5 Prescribed drugs—confirmatory tests**

19 **13D Detention for oral fluid analysis**

- 20 (1) This section applies if—
- 21 (a) a person undergoes a drug screening test under a requirement
- 22 made by a police officer under section 13A, section 13B or
- 23 section 13C and a drug screening device indicates to the police
- 24 officer that a prescribed drug is present in the person's oral
- 25 fluid; or

- 1 (b) a person who has been required by a police officer under  
2 section 13A, section 13B or section 13C to undergo a drug  
3 screening test fails to undergo the screening test in accordance  
4 with the direction of the police officer.

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

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

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

### 14 **13E Oral fluid—preliminary analysis**

- 15 (1) A person who has been taken into custody under section 13D must  
16 give, in accordance with the reasonable directions of a police  
17 officer, a sufficient sample of the person's oral fluid (the *sample*)  
18 for oral fluid analysis.
- 19 (2) An authorised operator must carry out an oral fluid analysis on a  
20 part of the sample.
- 21 (3) A regulation may make provision in relation the following:
- 22 (a) the conditions for carrying out an oral fluid analysis;
- 23 (b) the procedures to be followed in relation to carrying out an oral  
24 fluid analysis;
- 25 (c) the circumstances in which the result of an oral fluid analysis  
26 must be disregarded for this Act.

- 1 (4) If, because of a regulation made for subsection (3) (c), the result of  
2 an oral fluid analysis must be disregarded, the requesting police  
3 officer may, if another oral fluid analysis instrument is available at  
4 the police station or other place where the requirement under  
5 subsection (1) is made, require the person to give, in accordance  
6 with the officer's reasonable directions, another sufficient sample of  
7 the person's oral fluid for oral fluid analysis using another oral fluid  
8 analysis instrument.
- 9 (5) If an oral fluid analysis is not to be disregarded for this Act, the  
10 authorised operator who carried out the analysis must—
- 11 (a) place the part of the sample not analysed under this section into  
12 a container; and
- 13 (b) attach a label to the container that includes the following  
14 information:
- 15 (i) the authorised operator's name;
- 16 (ii) the name of the person who gave the sample;
- 17 (iii) the date and time the sample was given; and
- 18 (c) ensure that the container is sealed with a tamper-evident seal  
19 that has a unique identifying number marked on it.
- 20 (6) As soon as practicable after the oral fluid analysis has been carried  
21 out, the authorised operator who carried out the analysis must give  
22 the person a written statement, signed by the operator, containing  
23 the particulars required by regulation to be included in the  
24 statement.

25 **13F Precautions for privacy—oral fluid analysis**

- 26 (1) The authorised operator carrying out an oral fluid analysis must take  
27 all steps that are reasonably practicable to ensure that it is not  
28 readily apparent to members of the public that the oral fluid analysis  
29 is being carried out.

- 1 (2) Subsection (1) does not apply if the oral fluid analysis is carried out  
2 at a police station.

3 **13G Oral fluid—confirmatory analysis**

- 4 (1) This section applies to the part of a sample of a person's oral fluid  
5 stored and sealed in a container under section 13E (5) (the *sample*).
- 6 (2) The chief police officer must ensure that the sample is taken to an  
7 approved laboratory as soon as practicable after it is stored and  
8 sealed under section 13E (5).
- 9 (3) An analyst must, as soon as practicable, arrange for the analysis of  
10 the sample at an approved laboratory to work out whether a  
11 prescribed drug is present in the sample.
- 12 (4) The analyst must take reasonable care to ensure that a part of the  
13 sample (the *preserved part*) sufficient for analysis to be carried out  
14 for the person who gave the sample (the *tested person*) is protected  
15 and preserved until—
- 16 (a) if a request is made under subsection (6)—the preserved part is  
17 sent to the laboratory nominated by the tested person; or
- 18 (b) in any other case—
- 19 (i) 1 year has passed since the sample was taken from the  
20 tested person; or
- 21 (ii) if a request is made by the DPP under section 16C  
22 (Keeping of samples—request by DPP)—the end of the  
23 proceeding to which the sample relates.
- 24 (5) However, subsection (4) does not apply if the amount of sample  
25 remaining after analysis under subsection (3) is insufficient for  
26 further analysis.

- 1 (6) Before the end of the period mentioned in subsection (4) (b), the  
2 tested person may ask that the preserved part of the sample be sent,  
3 at the tested person's expense, to a laboratory nominated by the  
4 person.
- 5 (7) If a request is made under subsection (6), the analyst must ensure  
6 that the preserved part of the sample is sent to the nominated  
7 laboratory as soon as practicable.

8 **Division 2.6 Restrictions on alcohol and drug tests**

9 **21 Section 14 heading**

10 *substitute*

11 **14 Restrictions on tests etc under this part**

12 **22 Section 14 (1)**

13 *omit everything before paragraph (a), substitute*

- 14 (1) A police officer must not require a person to undergo a screening  
15 test, or provide a sample of the person's breath or oral fluid for  
16 analysis under section 12 (Breath analysis) or section 13E (Oral  
17 fluid—preliminary analysis), and a police officer must not begin or  
18 continue an analysis under section 12 or section 13E—

19 **23 Section 14 (3)**

20 *omit everything before paragraph (a), substitute*

- 21 (3) A police officer must not require a person to undergo a screening  
22 test, or provide a sample of the person's breath or oral fluid for  
23 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.



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1 **29 Taking blood samples from people in hospital**  
2 **Section 15AA (2) to (4)**

3 *substitute*

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

17 **30 Sections 15A and 15B**

18 *substitute*

19 **15A Analysis of blood samples**

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

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

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

11 **15B Blood analysis statement**

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

- 1 (2) In this section:  
2 *preserved part*—see section 15A (5).

3 **31 Section 16 heading**

4 *substitute*

5 **16 Medical examination—offence against s 24 or culpable**  
6 **driving**

7 **32 Section 16 (1)**

8 *substitute*

- 9 (1) This section applies to a person who has been—  
10 (a) required to undergo an alcohol or drug screening test, or to  
11 provide a sample of the person's breath or oral fluid for  
12 analysis under section 12 (Breath analysis) or section 13E  
13 (Oral fluid—preliminary analysis); and  
14 (b) arrested on reasonable suspicion of having committed an  
15 offence against section 24 (Driving under the influence of  
16 intoxicating liquor or a drug) or an offence of culpable driving.

17 **33 Section 16 (2)**

18 *omit*

19 drug other than alcohol

20 *substitute*

21 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.

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

1    **16B       Body sample statement**

2           (1) As soon as practicable after an analysis of a person's body sample is  
3           carried out under section 16A, the chief police officer must ensure  
4           the person is given a written statement that includes the following  
5           information:

6                   (a) the date and the time the body sample was taken;

7                   (b) the unique identifying number on the tamper-evident seal;

8                   (c) the place where the body sample was taken;

9                   (d) the result of the analysis;

10                  (e) the address where the preserved part of the body sample is  
11                  being held;

12                  (f) that the person will be notified, in writing, of a request (if any)  
13                  by the DPP under section 16C (Keeping of samples—request  
14                  by DPP);

15                  (g) that the person may, before the end of the period mentioned in  
16                  section 16A (3) (b), ask the analyst to send the preserved part  
17                  of the body sample to a laboratory nominated by the person, at  
18                  the person's expense.

19           (2) In this section:

20                   *preserved part*—see section 16A (3).

21    **16C       Keeping of samples—request by DPP**

22           (1) This section applies if—

23                   (a) a blood or a body sample was taken from a person (the *tested*  
24                   *person*) under this part for analysis; and

25                   (b) the preserved part of the sample—

26                           (i) is being kept at the approved laboratory where the  
27                           analysis was carried out; and

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

17 **16D Destruction of samples**

- 18 (1) This section applies to the part of a sample preserved under  
19 section 15A (5) (Analysis of blood samples) or section 16A (3)  
20 (Analysis of body samples).
- 21 (2) An analyst must arrange for the preserved part to be destroyed after  
22 the end of the period for which the preserved part must be kept  
23 under section 15A (5) (b) or section 16A (3) (b).



- 1 **36 Exemptions from requirements to take blood samples or**  
2 **carry out examinations**  
3 **Section 17 (2) (b)**
- 4 *omit*  
5 section 16 (Medical examinations)
- 6 *substitute*  
7 section 16 (Medical examination—offence against s 24 or culpable  
8 driving)
- 9 **37 Protection of police officers and medical staff**  
10 **Section 18 (3) (a)**
- 11 *omit*  
12 approved operator
- 13 *substitute*  
14 authorised operator
- 15 **38 Section 18 (3) (a)**
- 16 *omit*  
17 section 12 (7)
- 18 *substitute*  
19 section 12 (5) or section 13E (6)

1 **39 Section 18B**

2 *substitute*

3 **18B Permitted use of samples**

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

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

11 **40 Section 19**

12 *substitute*

13 **19 Prescribed concentration of alcohol in blood or breath**

- 14 (1) A person commits an offence if the person—
- 15 (a) has been the driver of a motor vehicle on a public street or in a  
16 public place; and
- 17 (b) has, within the relevant period, the prescribed concentration of  
18 alcohol in the person's blood or breath.
- 19 (2) Strict liability applies to subsection (1).
- 20 (3) A person convicted of an offence against subsection (1) is  
21 punishable in accordance with section 26.

- 1 (4) In a proceeding for an offence against subsection (1), evidence may  
2 be given of the concentration of alcohol in the person's blood or  
3 breath based on—
- 4 (a) for proof of the concentration of alcohol in the person's blood  
5 or breath—an analysis of a sample of the person's breath  
6 carried out in accordance with this Act; or
- 7 (b) for proof of the concentration of alcohol in the person's  
8 blood—an analysis of a sample of the person's blood carried  
9 out at an approved laboratory and certified accurate by an  
10 analyst.
- 11 (5) In this section:
- 12 *relevant period* means the period beginning when the person ceased  
13 to be the driver of the vehicle and ending at the latest time when—
- 14 (a) a breath analysis of the person could be carried out under this  
15 Act; or
- 16 (b) if a sample of the person's blood was taken under section 15  
17 (Taking blood samples from people in custody) or  
18 section 15AA (Taking blood samples from people in  
19 hospital)—a sample of the person's blood could be taken under  
20 the section.

21 **41 New section 19B**

22 *insert*

23 **19B Defence if special driver with lower concentration of**  
24 **alcohol from allowable source**

- 25 (1) This section applies if—
- 26 (a) a person is a special driver charged with an offence against  
27 section 19; and

- 1 (b) the concentration of alcohol in the person's blood or breath  
2 within the relevant period was not more than 0.02g in 100mL  
3 of the person's blood or 210L of the person's breath.
- 4 (2) It is a defence to a prosecution for the offence if the defendant  
5 proves that the concentration of alcohol in the defendant's blood or  
6 breath was caused by—
- 7 (a) the consumption of an alcoholic beverage that formed part of a  
8 religious observance; or
- 9 (b) the consumption or use of a substance that was not, entirely or  
10 partly, consumed or used for its alcohol content.
- 11 **Example—substance**  
12 food or medicine that contains alcohol
- 13 *Note 1* A defendant has a legal burden in relation to the matters  
14 mentioned in s (2) (see Criminal Code, s 59).
- 15 *Note 2* An example is part of the Act, is not exhaustive and may extend,  
16 but does not limit, the meaning of the provision in which it  
17 appears (see Legislation Act, s 126 and s 132).

18 **42 Driving with prescribed drug in oral fluid or blood**  
19 **New section 20 (1A) and (1B)**

- 20 *insert*
- 21 (1A) Strict liability applies to subsection (1).
- 22 (1B) For subsection (1), a person is taken to have a prescribed drug in—
- 23 (a) the person's oral fluid if an analysis of a part of a sample of the  
24 person's oral fluid under section 13G (Oral fluid—  
25 confirmatory analysis) confirms that a prescribed drug is  
26 present in the sample; or
- 27 (b) the person's blood if an analysis of a part of a sample of the  
28 person's blood under section 15A (Analysis of blood samples)  
29 confirms that a prescribed drug is present in the sample.

1 **43 Defence if person did not intend to drive motor vehicle**  
2 **Section 21 (b)**

3 *substitute*

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

8 **44 Section 21 (as amended)**

9 *relocate as section 19A*

10 **45 Refusing to provide oral fluid sample**  
11 **New section 22A (3) and (4)**

12 *insert*

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

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

19 **46 New section 22B**

20 *insert*

21 **22B Failing to stay for drug screening test**

- 22 (1) A person commits an offence if the person—  
23 (a) is required by a police officer under division 2.4 to undergo a  
24 drug screening test; and

1 (b) fails to remain at the place where the test is being carried out  
2 until the test is completed in accordance with the police  
3 officer's directions.

4 Maximum penalty: 20 penalty units.

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

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

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

9 **47 Fines and imprisonment—s 19 offences**  
10 **Section 26**

11 *after*  
12 person's blood  
13 *insert*  
14 or breath

15 **48 Table 26, column 2 heading**

16 *substitute*  
17 **column 2**  
18 **alcohol**  
19 **concentration level**

20 **49 Sections 29 and 30**

21 *omit*

1 **50 Automatic driver licence disqualification—first offenders,**  
2 **s 19**  
3 **Section 32**

4 *after*  
5 person's blood  
6 *insert*  
7 or breath

8 **51 Table 32, column 2 heading**

9 *substitute*  
10 **column 2**  
11 **alcohol**  
12 **concentration level**

13 **52 Automatic driver licence disqualification—repeat**  
14 **offenders, s 19**  
15 **Section 33**

16 *after*  
17 person's blood  
18 *insert*  
19 or breath

20 **53 Table 33, column 2 heading**

21 *substitute*  
22 **column 2**  
23 **alcohol**  
24 **concentration level**

- 1 **54 New section 35**
- 2 *insert*
- 3 **35 Automatic driver licence disqualification—immediate**  
4 **suspension period**
- 5 (1) This section applies to a person if the person—
- 6 (a) is given an immediate suspension notice; and
- 7 (b) is convicted or found guilty of the immediate suspension  
8 offence to which the notice relates; and
- 9 (c) is disqualified under this part from holding or obtaining a  
10 driver licence.
- 11 (2) The period for which the person is disqualified under this part from  
12 holding or obtaining a driver licence (including any period of  
13 minimum disqualification under section 32 or section 33) is reduced  
14 by the period that the person’s driver licence was suspended under  
15 the *Road Transport (General) Act 1999*, section 61B.
- 16 (3) However, subsection (2) does not apply if, on hearing the charge for  
17 the immediate suspension offence, a court is satisfied that the person  
18 did not comply with the immediate suspension notice.
- 19 (4) In this section:
- 20 *immediate suspension notice*—see the *Road Transport (General)*  
21 *Act 1999*, dictionary.
- 22 *immediate suspension offence*—see the *Road Transport (General)*  
23 *Act 1999*, dictionary.
- 24 **55 Additional powers of court**  
25 **Section 38**
- 26 *omit*



1 **56 Section 41 heading**

2 *substitute*

3 **Division 7.1 Evidence—alcohol-related tests**

4 **41 Evidentiary certificate—alcohol-related tests**

5 **57 Section 41 (1) (a) (i)**

6 *omit*

7 approved operator

8 *substitute*

9 authorised operator

10 **58 Section 41 (1) (a) (ii)**

11 *omit*

12 an approved breath analysis instrument

13 *substitute*

14 a breath analysis instrument

15 **59 Section 41 (1) (a) (iv) and (ix)**

16 *omit*

17 approved breath analysis instrument

18 *substitute*

19 breath analysis instrument

20 **60 Section 41 (1) (aa)**

21 *omit*

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

2 *omit*

3 approved operator

4 *substitute*

5 authorised operator

6 **62 Section 41 (1) (b) (ii)**

7 *omit*

8 an approved breath analysis instrument

9 *substitute*

10 a breath analysis instrument

11 **63 Section 41 (1) (b) (iv)**

12 *omit*

13 approved breath analysis instrument

14 *substitute*

15 breath analysis instrument

16 **64 Section 41 (1) (b) (vi)**

17 *omit*

18 analysis; and

19 *substitute*

20 analysis;

21 **65 Section 41 (ba)**

22 *omit*

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

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*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;

- 1 (vii) if the sample was taken under section 15—that, when the  
2 sample was taken, the person was of the opinion that the  
3 relevant person was, at that time, because of the relevant  
4 person’s medical condition, incapable of giving or  
5 refusing permission to take a sample of blood; and

6 **67 Section 41 (1) (e) (iii)**

7 *substitute*

- 8 (iii) that the doctor or authorised nurse practitioner was told  
9 by a police officer that the police officer intended to  
10 require a person to—  
11 (A) undergo an alcohol screening test under division 2.2  
12 (Alcohol—screening tests); or  
13 (B) provide a sample of the person’s breath for analysis  
14 under section 12 (Breath analysis);

15 **68 Section 41 (1) (f)**

16 *omit*

17 **69 Section 41 (1) (h)**

18 *substitute*

- 19 (h) a certificate that appears to be signed by a person who is an  
20 analyst and states the following is evidence of the matter:  
21 (i) that the person is an analyst;  
22 (ii) that a blood sample or other body sample (the *analysed*  
23 *sample*) was analysed at an approved laboratory;

- 1 (iii) that the analysed sample was in a container—
- 2 (A) labelled in accordance with section 15 (7) (Taking
- 3 blood samples from people in custody),
- 4 section 15AA (2) (Taking blood samples from
- 5 people in hospital) or section 16 (7) (Medical
- 6 examination—offence against s 24 or culpable
- 7 driving); and
- 8 (B) sealed with a tamper-evident seal marked with a
- 9 stated unique identifying number;
- 10 (iv) that the tamper-evident seal did not appear to have been
- 11 interfered with;
- 12 (v) the analysis to which the analysed sample was subjected;
- 13 (vi) the result of the analysis;
- 14 (vii) that the analysis was accurate; and

15 **70 New division 7.2**

16 *before section 41A, insert*

17 **Division 7.2 Evidence—drug-related tests**

18 **41AA Evidentiary certificates—drug-related tests**

- 19 (1) A certificate that appears to be signed by a police officer and states a
- 20 matter relevant to any of the following is evidence of the matter:
- 21 (a) that the police officer was on a stated date an authorised
- 22 operator;
- 23 (b) that, at a place and at a time and on a date stated in the
- 24 certificate, a person named in the certificate was required by a
- 25 stated police officer to provide a sample of the person's oral
- 26 fluid for analysis by an oral fluid analysis instrument;

- 1 (c) the instrument used in the analysis, by reference to its model  
2 number, patent number and serial number;
- 3 (d) that the oral fluid analysis instrument was in proper working  
4 order;
- 5 (e) the procedures followed and precautions taken immediately  
6 before the oral fluid analysis, during the oral fluid analysis and  
7 immediately after the completion of the oral fluid analysis;
- 8 (f) that the person named in the certificate provided a sample of  
9 the person's oral fluid for analysis in accordance with the  
10 directions of the police officer who made the requirement;
- 11 (g) the steps that were taken to ensure that it was not readily  
12 apparent to members of the public that the oral fluid analysis  
13 was being carried out;
- 14 (h) that, in following the procedures for which a regulation makes  
15 provision that stated results are to be obtained, the results  
16 stated in the certificate were obtained;
- 17 (i) that, as soon as practicable after the oral fluid analysis was  
18 carried out, the police officer signed and gave to the person  
19 mentioned in paragraph (b) the statement required by  
20 section 13E (6).
- 21 (2) A certificate that appears to be signed by a police officer and states a  
22 matter relevant to any of the following is evidence of the matter:
- 23 (a) that the police officer was on a stated date an authorised  
24 operator;
- 25 (b) that, at a place and at a time and on a date stated in the  
26 certificate, a person named in the certificate was required by a  
27 stated police officer to provide a sample of the person's oral  
28 fluid for analysis by an oral fluid analysis instrument;
- 29 (c) the instrument available to be used in the analysis, by reference  
30 to its model number, patent number and serial number;

- 1 (d) that the oral fluid analysis instrument was in proper working  
2 order;
- 3 (e) the procedures followed immediately before the person was  
4 required to provide a sample of the person's oral fluid for  
5 analysis and the results obtained in following those procedures;
- 6 (f) that the person failed to provide a sample of the person's oral  
7 fluid for analysis.
- 8 *Note* **Fail** includes refuse, see the Legislation Act, dict, pt 1.
- 9 (3) A written statement mentioned in section 13E (6) that is a print-out  
10 from an oral fluid analysis instrument is evidence of the matters  
11 stated in the print-out.
- 12 (4) A certificate that appears to be signed by a person who is a doctor or  
13 authorised nurse practitioner and states any of the following is  
14 evidence of the matter:
- 15 (a) that the person is a doctor or nurse;
- 16 (b) that, at a stated hospital, on a stated date and at a stated time,  
17 the person was attending the person named in the certificate  
18 (the *relevant person*);
- 19 (c) that the person was told by a police officer of the officer's  
20 intention to require the relevant person to—
- 21 (i) undergo a drug screening test under division 2.4  
22 (Prescribed drugs—screening tests); or
- 23 (ii) provide a sample of the person's oral fluid for analysis  
24 under section 13E (Oral fluid—preliminary analysis);
- 25 (d) whether the person was of the opinion, at the time the person  
26 was told, that complying with the requirement would, or would  
27 not, be detrimental to the relevant person's medical condition.

1    **41AB     Evidentiary certificate—analysis of oral fluid sample**

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

- 5           (a) that the person is an analyst;
- 6           (b) that the person arranged for a sample of oral fluid  
7           (the *analysed sample*) to be analysed at an approved  
8           laboratory;
- 9           (c) that the analysed sample was—
- 10                 (i) labelled in accordance section 13E (5) (b) (Oral fluid—  
11                 preliminary analysis); and
- 12                 (ii) sealed with a tamper-evident seal marked with a stated  
13                 unique identifying number;
- 14           (d) that the tamper-evident seal did not appear to have been  
15           interfered with;
- 16           (e) the analysis to which the analysed sample was subjected;
- 17           (f) the result of the analysis;
- 18           (g) that the analysis was accurate.

19    **41AC     Evidentiary certificate—blood sample not taken**

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

- 23           (a) that the person is a doctor or nurse;
- 24           (b) that the sample taker attended a person mentioned in the  
25           certificate (the *relevant person*) on a stated day, at a stated  
26           time, in a stated hospital;



- 1 (c) if the relevant person is a person mentioned in section 15  
2 (Taking blood samples from people in custody)—that a police  
3 officer had asked the sample taker to take a sample of the  
4 person’s blood;
- 5 (d) if the relevant person is a person mentioned in section 15AA  
6 (Taking blood samples from people in hospital)—that the  
7 sample taker believed that the relevant person—
- 8 (i) was involved in an accident and had attended the hospital  
9 for examination or treatment because of the accident; and
- 10 (ii) the accident had happened not longer than 6 hours before  
11 the relevant person arrived at the hospital;
- 12 (e) whether the sample taker was of the opinion that—
- 13 (i) taking the sample would, or would not, be detrimental to  
14 the relevant person’s health; or
- 15 (ii) a sample of blood had, or had not, been taken from the  
16 relevant person since the accident mentioned in  
17 section 15 or section 15AA.

18 **41AD Evidentiary certificate—analysis of sample for prescribed**  
19 **drug etc**

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

- 23 (a) that the person is an analyst;
- 24 (b) that the analyst arranged for a blood sample or body sample  
25 (the *analysed sample*) to be analysed at an approved laboratory  
26 to work out whether a prescribed drug, or a drug other than a  
27 prescribed drug, or alcohol was present in the sample, in  
28 accordance with a request made by a police officer;

- 1 (c) that the analysed sample was in a container—
- 2 (i) labelled in accordance with section 15 (7) (Taking blood
- 3 samples from people in custody), section 15AA (2)
- 4 (Taking blood samples from people in hospital) or
- 5 section 16 (7) (Medical examination—offence against
- 6 s 24 or culpable driving); and
- 7 (ii) sealed with a tamper-evident seal marked with a stated
- 8 unique identifying number;
- 9 (d) that the tamper-evident seal did not appear to have been
- 10 interfered with;
- 11 (e) the analysis to which the analysed sample was subjected;
- 12 (f) the result of the analysis;
- 13 (g) that the analysis was accurate.

14 **41AE NSW evidentiary certificates—drug-related tests**

15 A certificate that appears to be a certificate mentioned in the *Road*

16 *Transport (Safety and Traffic Management) Act 1999* (NSW),

17 section 33B, section 33D or section 35 is evidence of the matters

18 stated in the certificate.

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**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);

- 1 (h) evidence that a doctor or nurse dealt with a container holding a  
2 blood sample in accordance with section 15 (7) or  
3 section 15AA (2);
- 4 (i) evidence that a statement was given to the person under  
5 section 15B (Blood analysis statement) or section 16B (Body  
6 sample statement);
- 7 (j) evidence of the contents of a statement given under  
8 section 15B or section 16B;
- 9 (k) evidence that the person was found guilty of a relevant offence;
- 10 (l) evidence that, as a result of the person's being found guilty or  
11 being convicted of a relevant offence, an order was made in  
12 relation to the person;
- 13 (m) evidence that a non-conviction order was made under the  
14 *Crimes (Sentencing) Act 2005*, section 17 (2) (a)  
15 (Non-conviction orders—general);
- 16 (n) evidence that an offence was taken into account by a court  
17 under the *Crimes (Sentencing) Act 2005*, part 4.4 (Taking  
18 additional offences into account).
- 19 (2) For a proceeding in relation to an insurance contract, a statement  
20 given to a person under section 15B or section 16B is not admissible  
21 as evidence of the fact that the person was at any time under the  
22 influence of or in any way affected by alcohol or a prescribed drug,  
23 or a drug other than alcohol or a prescribed drug, or was incapable  
24 of driving or of exercising effective control over a motor vehicle.
- 25 (3) A covenant, term, condition or provision of an insurance contract is  
26 void—
- 27 (a) to the extent that the operation of this section is excluded,  
28 limited, modified or restricted; or

- 1 (b) to the extent that it purports to exclude, limit, modify or restrict  
2 the insurer's liability if an owner, registered operator or driver  
3 of a motor vehicle is convicted or found guilty of an offence  
4 against this Act.
- 5 (4) However, nothing in subsection (3) precludes the inclusion in an  
6 insurance contract of any other covenant, term, condition or  
7 provision under which the insurer's liability is excluded or limited.
- 8 (5) In this section:
- 9 *relevant offence* means any of the following:
- 10 (a) an offence against section 19 in relation to a blood sample  
11 taken from a person under section 15 (5) or section 15AA (1);
- 12 (b) an offence against section 20 (Driving with prescribed drug in  
13 oral fluid or blood);
- 14 (c) an offence against section 22A (Refusing to provide oral fluid  
15 sample);
- 16 (d) an offence against section 23 (Refusing blood test etc);
- 17 (e) an offence against another provision of this Act prescribed by  
18 regulation;
- 19 (f) an offence of culpable driving.

20 **72 Effect of noncompliance—analysis of breath or blood**  
21 **Section 42 (1)**

- 22 *after*  
23 provision  
24 *insert*  
25 *(a testing provision)*

- 1 **73 Section 42 (2)**
- 2 *substitute*
- 3 (2) The court must dismiss the charge unless satisfied that despite the
- 4 failure to comply with a testing provision the result obtained in the
- 5 breath analysis, or the blood sample analysis, would have been the
- 6 prescribed concentration for the person.
- 7 **74 Effect of noncompliance—analysis of oral fluid**
- 8 **Section 42AA (1)**
- 9 *after*
- 10 provision
- 11 *insert*
- 12 *(a testing provision)*
- 13 **75 Section 42AA (2)**
- 14 *substitute*
- 15 (2) The court must dismiss the charge unless satisfied that despite the
- 16 failure to comply with a testing provision the result obtained in the
- 17 oral fluid analysis would have indicated the presence of a prescribed
- 18 drug.
- 19 **76 Effect of noncompliance—analysis of body sample**
- 20 **Section 42A (1)**
- 21 *after*
- 22 provision
- 23 *insert*
- 24 *(a testing provision)*

1 **77 Section 42A (2)**

2 *omit*

3 the provision of this Act mentioned in subsection (1)

4 *substitute*

5 the testing provision

6 **78 Effect of noncompliance—refusal to give sample of**  
7 **breath**  
8 **Section 42B (1)**

9 *after*

10 provision

11 *insert*

12 (*a testing provision*)

13 **79 Section 42B (2)**

14 *substitute*

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

19 **80 Effect of noncompliance—refusal to give sample of oral**  
20 **fluid**  
21 **Section 42C (1)**

22 *after*

23 provision

24 *insert*

25 (*a testing provision*)

1 **81 Section 42C (2)**

2 *substitute*

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

7 **82 Section 43 heading**

8 *substitute*

9 **43 Oral evidence about part 7 certificate**

10 **83 Section 43 (2)**

11 *substitute*

12 (2) The notice may be given by posting it to the chief police officer, or  
13 leaving it for the chief police officer, at the chief police officer's  
14 office—

15 (a) for a certificate mentioned in division 7.1 (Evidence—  
16 alcohol-related tests)—not less than 7 days before the date  
17 fixed for the hearing of the charge; or

18 (b) for a certificate mentioned in division 7.2 (Evidence—  
19 drug-related tests)—not less than 21 days before the date fixed  
20 for the hearing of the charge; or

21 (c) if the court orders a shorter period for service—not less than  
22 the shorter period.



1 **84 Section 43 (3)**

2 *omit*

3 section 41

4 *substitute*

5 division 7.1 and division 7.2

6 **85 Rehabilitation programs**  
7 **Part 8**

8 *omit*

9 **86 Power of arrest**  
10 **Section 45**

11 *omit*

12 an approved screening device

13 *substitute*

14 a screening device

15 **87 New section 45 (2)**

16 *insert*

17 (2) In this section:

18 *screening device* means the following:

19 (a) for alcohol—an alcohol screening device;

20 (b) for a prescribed drug—a drug screening device.

- 1 *screening test* means the following:
- 2 (a) for alcohol—an alcohol screening test;
- 3 (b) for a prescribed drug—a drug screening test.

4 **88 Penalty for escaping from custody**

5 **Section 46**

6 *omit*

7 **89 Stopping, search and detaining—Crimes Act, s 207 and**

8 **s 209**

9 **Section 47A**

10 *before*

11 screening

12 *insert*

13 drug

14 **90 New sections 47B and 47C**

15 *insert*

16 **47B Police may direct person not to drive**

- 17 (1) This section applies if—
- 18 (a) a person has been required under part 2 (Examination of people
- 19 for alcohol or drugs) to undergo a drug screening test or to give
- 20 a sample of oral fluid or blood for analysis; and

1 (b) a police officer has reasonable cause to suspect that the  
2 person's ability to drive a motor vehicle safely is impaired by a  
3 prescribed drug.

4 **Examples—reasonable cause**

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

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

12 (2) The police officer may direct the person not to drive a motor  
13 vehicle.

14 (3) The direction must—

15 (a) be in writing; and

16 (b) state the period, not longer than 12 hours, for which the person  
17 must not drive a motor vehicle; and

18 (c) be signed by the police officer.

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

21 Maximum penalty: 10 penalty units.

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

23 (5) An offence against subsection (4) is a strict liability offence.

24 (6) On request by the person, the chief police officer may revoke the  
25 direction if satisfied on reasonable grounds that the person's ability  
26 to drive a motor vehicle safely is no longer impaired by a prescribed  
27 drug.

1     **47C     Conducting alcohol-related tests and drug-related tests at**  
2     **same time**

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

6           (2) In this section:

7           *alcohol-related test* means—

8           (a) an alcohol screening test under division 2.2 (Alcohol—  
9           screening tests); or

10          (b) a breath analysis under division 2.3 (Alcohol—confirmatory  
11          tests); or

12          (c) an analysis of blood for alcohol under 2.7 (Analysis of  
13          person’s blood—alcohol and drugs).

14          *drug-related test* means—

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

17          (b) an oral fluid analysis under division 2.5 (Prescribed drugs—  
18          confirmatory tests); or

19          (c) an analysis of blood for a prescribed drug under 2.7 (Analysis  
20          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.

- 1     **107**     **Approved analyst—appointment in force before**  
2               **commencement day**
- 3             (1) This section applies if—
- 4                 (a) before the commencement day, the Minister appointed a  
5                         person as an approved analyst under section 6 (2) (Approval of  
6                         operators, analysts and laboratories); and
- 7                 (b) immediately before the commencement day the appointment  
8                         was in force.
- 9             (2) The appointment is taken to be an appointment under  
10                 section 5B (Appointment of analysts) and continues in force for  
11                 6 months starting on the commencement day unless earlier ended.
- 12            (3) This section expires 6 months after the day it commences.
- 13     **108**     **Approved laboratory—approval in force before**  
14               **commencement day**
- 15            (1) This section applies if—
- 16                 (a) before the commencement day, the Minister approved a  
17                         laboratory or other entity (however described) under  
18                         section 6 (3) (Approval of operators, analysts and laboratories)  
19                         as an approved laboratory; and
- 20                 (b) immediately before the commencement day the approval was  
21                         in force.
- 22            (2) The approval is taken to be an approval under section 6 (Approval  
23                 of laboratories) and continues in force for 6 months starting on the  
24                 commencement day unless earlier ended.
- 25            (3) This section expires 6 months after the day it commences.

1 **109 Transitional regulations**

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

11 **110 Expiry—pt 21**

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

15 **92 Dictionary, new definitions**

16 *insert*

17 *alcohol screening device*—see section 7.

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

20 **93 Dictionary, new definition of *analyst***

21 *insert*

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

- 1 **94 Dictionary**
- 2 *omit the definitions of*
- 3 *approved alcohol screening device*
- 4 *approved analysis instrument*
- 5 *approved analyst*
- 6 *approved breath analysis instrument*
- 7 *approved drug screening device*
- 8 **95 Dictionary, definition of *approved laboratory***
- 9 *substitute*
- 10 *approved laboratory* means a laboratory or other entity approved by
- 11 the road transport authority under section 6.
- 12 **96 Dictionary, definitions of *approved operator* and**
- 13 ***approved oral fluid analysis instrument***
- 14 *omit*
- 15 **97 Dictionary, new definition of *authorised operator***
- 16 *insert*
- 17 *authorised operator* means the following:
- 18 (a) for breath analysis—a police officer who has been authorised
- 19 under section 5 to carry out breath analysis for this Act;
- 20 (b) for oral fluid analysis—a police officer who has been
- 21 authorised under section 5 to carry out oral fluid analysis for
- 22 this Act.



1 **98 Dictionary, definition of *breath analysis***

2 *omit*

3 means of an approved breath analysis instrument

4 *substitute*

5 a breath analysis instrument

6 **99 Dictionary, new definition of *breath analysis instrument***

7 *insert*

8 *breath analysis instrument*—see section 7A.

9 **100 Dictionary, definition of *disqualifying offence*,**  
10 **paragraph (a)**

11 *substitute*

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

14 **101 Dictionary, new definitions**

15 *insert*

16 *drug screening device*—see section 7B.

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

19 **102 Dictionary, definition of *first offender***

20 *omit*

21 section 4D

22 *substitute*

23 section 4F

- 1 **103 Dictionary, definition of *level***
- 2 *substitute*
- 3 *level*, for a concentration of alcohol in blood or breath—see
- 4 section 4E.
- 5 **104 Dictionary, definition of *oral fluid analysis***
- 6 *omit*
- 7 approved
- 8 **105 Dictionary, new definition of *oral fluid analysis***
- 9 ***instrument***
- 10 *insert*
- 11 *oral fluid analysis instrument*—see section 7C.
- 12 **106 Dictionary, definition of *prescribed concentration***
- 13 *substitute*
- 14 *prescribed concentration* means—
- 15 (a) for a special driver—see section 4C (a); and
- 16 (b) for any other person—see section 4C (b).
- 17 **107 Dictionary, definition of *prescribed drug***
- 18 *substitute*
- 19 *prescribed drug* means—
- 20 (a) methylamphetamine; or
- 21 (b) delta-9-tetrahydrocannabinol; or
- 22 (c) N, $\alpha$ -Dimethyl-3,4-(Methylenedioxy)phenylethylamine
- 23 (MDMA); or

1 (d) any other drug prescribed by regulation.

2 **108 Dictionary, definition of *repeat offender***

3 *omit*

4 section 4D

5 *substitute*

6 section 4F

7 **109 Dictionary, definition of *screening test***

8 *omit*

9 **110 Legislative instruments repealed**

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

1 **Part 3** **Road Transport (Driver**  
2 **Licensing) Act 1999**

3 **111** **Driver licensing system**  
4 **New section 28 (2) (s)**

5 *insert*

6 (s) require a person convicted or found guilty of a disqualifying  
7 offence, that relates to alcohol, against the *Road Transport*  
8 *(Alcohol and Drugs) Act 1977* to complete a course approved  
9 by the road transport authority about the effects of alcohol,  
10 including its effects on driving and health.

1 **Part 4** **Road Transport (Driver**  
 2 **Licensing) Regulation 2000**

3 **112** **Driver licence condition codes**  
 4 **Table 10, item 8**

5 *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 |
|---|---|---|

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

8 *omit*

9 **114** **Restrictions on learner car licence drivers**  
 10 **Section 21 (1), new definition of *driving supervisor***

11 *insert*

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

15 **115** **Section 21 (4)**

16 *omit*

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

18 *substitute*

19 driving supervisor

1 **116 Section 21 (5)**

2 *omit*

3 person

4 *substitute*

5 driving supervisor

6 **117 Section 21 (6), note**

7 *omit*

8 **118 Provisional motorcycle licences—towing restrictions**  
9 **Section 36A (3), note 3**

10 *omit*

11 **119 Provisional car licences—towing restrictions**  
12 **Section 37A (3), note 3**

13 *omit*

14 **120 Eligibility to apply to Magistrates Court for order**  
15 **authorising issue of restricted licence**  
16 **Section 45 (2), notes 1 and 2**

17 *substitute*

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

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

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

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

13 **121 Issue of restricted licence by road transport authority**  
14 **Section 49 (3), note**

15 *omit*

16 **122 Section 49 (3), new note**

17 *insert*

18 *Note* Under s 73E (2), the road transport authority must not issue a restricted  
19 licence to a person required to complete an alcohol awareness course  
20 unless the person has given the authority written evidence that the  
21 person has completed the course.

22 **123 When probationary licence must be issued**  
23 **Section 52 (3), new note**

24 *insert*

25 *Note* Under s 73D (3), the road transport authority must not issue a  
26 probationary licence to a person whose driver licence has been  
27 disqualified as a consequence of a conviction, or finding of guilt, for an  
28 offence against the *Road Transport (Alcohol and Drugs) Act 1977* if the  
29 person has not given the authority written evidence that the person has  
30 completed an alcohol awareness course.

1 **124 Conditions of probationary licences**  
2 **Section 54, note 2**

3 *omit*

4 **125 Issue of driver licence that includes public vehicle licence**  
5 **Section 63 (3), note 2**

6 *omit*

7 **126 New division 3.13**

8 *insert*

9 **Division 3.13 Alcohol awareness courses**

10 **73A Application—div 3.13**

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

14 **73B Definitions—div 3.13**

15 In this division:

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

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

- 21 (a) section 19 (Prescribed concentration of alcohol in blood or  
22 breath);  
23 (b) section 22 (Refusing to provide breath sample);  
24 (c) section 23 (Refusing blood test etc);



1 (d) section 24 (Driving under the influence of intoxicating liquor  
2 or a drug);

3 (e) another provision prescribed by regulation.

4 **73C Requirement to complete alcohol awareness course—**  
5 **person not disqualified**

6 (1) This section applies to a person who—

7 (a) is found guilty of an alcohol-related disqualifying offence; and

8 (b) is not disqualified from holding or obtaining a driver licence;  
9 and

10 (c) has not completed an alcohol awareness course within the  
11 previous 12 months.

12 (2) The person must complete an alcohol awareness course within  
13 6 months after being found guilty of the disqualifying offence.

14 (3) If the person does not complete an alcohol awareness course and  
15 give the road transport authority written evidence to that effect  
16 within the 6-month period, the authority must suspend the person's  
17 driver licence.

18 (4) However, the road transport authority must end the suspension if the  
19 authority receives written evidence that the person has completed an  
20 alcohol awareness course.

21 **73D Requirement to complete alcohol awareness course—**  
22 **person disqualified and not eligible for restricted licence**

23 (1) This section applies to a person who—

24 (a) is convicted or found guilty of an alcohol-related disqualifying  
25 offence; and

26 (b) is disqualified from holding or obtaining a driver licence; and

- 1 (c) is not eligible to apply for, or be issued with, a restricted  
2 licence; and
- 3 (d) has not completed an alcohol awareness course within the  
4 previous 12 months.
- 5 (2) The person must complete an alcohol awareness course before the  
6 end of the period of disqualification.
- 7 (3) Despite section 52 (3) (When probationary licence must be issued),  
8 if the person does not complete an alcohol awareness course and  
9 give the road transport authority written evidence to that effect  
10 before the end of the period of disqualification, the authority must  
11 not issue a probationary licence to the person.
- 12 (4) However, the road transport authority must issue a probationary  
13 licence to the person if the authority receives written evidence that  
14 the person has completed an alcohol awareness course after the end  
15 of the disqualification period.

16 **73E Requirement to complete alcohol awareness course—**  
17 **person disqualified and eligible for restricted licence**

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

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

6 **73F Requirement to complete alcohol awareness course—**  
7 **person no longer disqualified and eligible for**  
8 **probationary licence**

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

- 1     **73G       Exemption from alcohol awareness course—application**
- 2           (1) The road transport authority may, on application, grant a person an
- 3           exemption from the requirement to complete an alcohol awareness
- 4           course because of exceptional circumstances.
- 5           (2) The road transport authority may, in writing, require the applicant to
- 6           give the authority additional information or documents that the
- 7           authority reasonably needs to decide the application.
- 8           (3) If the applicant does not comply with a requirement under
- 9           subsection (2), the road transport authority may refuse to consider
- 10          the application.
- 11     **73H       Exemption from alcohol awareness course—decision on**
- 12     **application**
- 13           (1) On an application by a person for an exemption from the
- 14           requirement to attend an alcohol awareness course, the road
- 15           transport authority must—
- 16               (a) grant the exemption; or
- 17               (b) refuse to grant the exemption.
- 18           (2) The road transport authority must refuse to grant the exemption if
- 19           satisfied on reasonable grounds that exceptional circumstances do
- 20           not exist for granting the exemption.
- 21     **73I       Alcohol awareness course—approval**
- 22           (1) The road transport authority may approve a course (an *alcohol*
- 23           *awareness course*) about the effects of alcohol, including its effects
- 24           on driving and health.
- 25           (2) An approval is a notifiable instrument.
- 26           *Note*     A notifiable instrument must be notified under the Legislation Act.

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

4 *before the note, insert*

5 (p) the person has failed to complete an alcohol awareness course  
6 as required under section 73C (Requirement to complete  
7 alcohol awareness course—person not disqualified).

8 **128** **Dictionary, new definitions**

9 *insert*

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

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

1 **Part 5** **Road Transport (General)**  
2 **Act 1999**

3 **129** **New section 5A**

4 *in part 1, insert*

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

7 Other legislation applies in relation to offences against this Act.

8 *Note 1* *Criminal Code*

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

- 11 • s 58 (Police officer or authorised person may require name, date of  
12 birth, address and driver licence—driver or rider)
- 13 • s 58A (Police officer or authorised person may require name, date  
14 of birth, address and driver licence—supervisor, instructor or  
15 assessor)
- 16 • s 61C (Failure to surrender suspended licence).

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

21 *Note 2* *Penalty units*

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

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**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

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

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

6 **58A Police officer or authorised person may require name,  
7 date of birth, address and driver licence—supervisor,  
8 instructor or assessor**

- 9 (1) This section applies to a person if—
- 10 (a) the person is a driving instructor who is with a driver for the  
11 purposes of—
- 12 (i) driver instruction; or  
13 (ii) driver assessment; or
- 14 (b) the person is a heavy vehicle driver assessor who is with a  
15 driver for the purposes of driver assessment; or
- 16 (c) the person is a driving supervisor who is with a person who  
17 holds a learner licence (a *learner driver*) while the learner  
18 driver drives a motor vehicle that displays, or ought to display,  
19 L-plates on a road or road related area.
- 20 (2) A police officer or authorised person may require the person to do  
21 any or all of the following:
- 22 (a) produce the person's Australian driver licence;  
23 (b) state the person's name;  
24 (c) state the person's date of birth;  
25 (d) state the person's home address.



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

4 Maximum penalty: 20 penalty units.

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

7 (4) An offence against this section is a strict liability offence.

8 (5) It is a defence to a prosecution for an offence against  
9 subsection (2) (a) if the defendant proves that the defendant—

10 (a) was a driving supervisor, driving instructor or heavy vehicle  
11 driver assessor when required to produce the licence; and

12 (b) has a reasonable excuse for failing to produce the licence when  
13 required to do so; and

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

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

19 (6) In this section:

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

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

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

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

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

3 **131 Division 4.2 heading**

4 *substitute*

5 **Division 4.2 Licence suspension, disqualification**  
6 **and related matters**

7 **61A Definitions—div 4.2**

8 In this division:

9 *automatic disqualification provision* means any of the following  
10 provisions:

- 11 (a) section 62 (Automatic disqualification for culpable driving);
- 12 (b) section 63 (Automatic disqualification for certain other driving  
13 offences);
- 14 (c) *Road Transport (Alcohol and Drugs) Act 1977*, section 32  
15 (which is about automatic disqualification of first offender  
16 drivers for exceeding the prescribed blood alcohol  
17 concentration);
- 18 (d) *Road Transport (Alcohol and Drugs) Act 1977*, section 33  
19 (which is about automatic disqualification of repeat offender  
20 drivers for exceeding the prescribed blood alcohol  
21 concentration);
- 22 (e) *Road Transport (Alcohol and Drugs) Act 1977*, section 34  
23 (which is about automatic disqualification for other offences  
24 against that Act);

1 (f) *Road Transport (Driver Licensing) Act 1999*, section 31 (3)  
2 (which is about automatic disqualification for repeat offenders  
3 for driving while not holding (and never having held) an  
4 Australian driver licence);

5 (g) *Road Transport (Driver Licensing) Act 1999*, section 32 (5)  
6 (which is about automatic disqualification for an offence of  
7 driving or fraudulently applying for a driver licence while  
8 disqualified, or after licence suspension, cancellation or  
9 refusal).

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

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

17 (a) section 19 (Prescribed concentration of alcohol in blood or  
18 breath), if the person to whom the offence relates is—

19 (i) a special driver with a concentration of alcohol in the  
20 person's blood or breath that is 0.05g or more per 100mL  
21 of blood or 210L of breath; or

22 (ii) a driver, other than a special driver, with a concentration  
23 of alcohol in the person's blood or breath that is 0.1g or  
24 more per 100mL of blood or 210L of breath;

25 (b) section 22 (Refusing to provide breath sample);

26 (c) section 23 (Refusing blood test etc);

27 (d) section 24 (Driving under the influence of intoxicating liquor  
28 or a drug);

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

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

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

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

8 **61B Immediate suspension of licence**

9 (1) If a police officer believes on reasonable grounds that a person has  
10 committed an immediate suspension offence, the police officer must  
11 give the person an immediate suspension notice for the offence.

12 (2) A suspension notice must include the following information:

13 (a) a unique identifying number;

14 (b) the date and time the notice is given;

15 (c) the full name, or surname and initials, and home address of the  
16 person;

17 (d) particulars of the suspension offence to which the notice relates  
18 and, if the offence is against the *Road Transport (Alcohol and*  
19 *Drugs) Act 1977*, section 19 (Prescribed concentration of  
20 alcohol in blood or breath), the concentration of alcohol  
21 alleged to be present in the person's blood or breath;

22 (e) the service number of the police officer who gave the  
23 suspension notice;

24 (f) a statement telling the person that while the notice is in  
25 effect—

26 (i) the notice suspends the person's driver licence; and

- 1 (ii) the person's driver licence must be surrendered to a  
2 police officer in accordance with the requirements of the  
3 notice; and
- 4 (iii) the person must not drive a vehicle in the ACT; and
- 5 (iv) the person is not eligible to apply for a driver licence; and
- 6 (v) the person has a right to apply to the Magistrates Court  
7 for a stay of the suspension notice;
- 8 (g) a statement telling the person that the notice ceases to have  
9 effect if any of the circumstances mentioned in subsection (5)  
10 apply;
- 11 (h) anything else prescribed by regulation.
- 12 (3) A suspension notice takes effect as soon as it is served on the  
13 person.
- 14 (4) The following provisions apply if a person is served with a  
15 suspension notice:
- 16 (a) the person's driver licence is suspended;
- 17 (b) the person must surrender to a police officer the person's driver  
18 licence or, if the person is unable to do so at the time, the  
19 person must surrender the licence as soon as practicable in  
20 accordance with the requirements of the suspension notice;
- 21 (c) the person must not drive a vehicle in the ACT;
- 22 (d) the person is not entitled to apply for, or be issued with, a  
23 restricted licence during the suspension period.
- 24 *Note* A person served with a suspension notice may apply to the Magistrates  
25 Court for a stay of the operation of the suspension notice (see s 61E).
- 26 (5) A suspension notice ceases to have effect if—
- 27 (a) the Magistrates Court orders a stay of the notice; or

- 1 (b) the proceeding for the suspension offence for which the notice  
2 was issued is withdrawn or discontinued; or
- 3 (c) the suspension offence for which the notice was issued is found  
4 proved, dismissed or taken into account by a court; or
- 5 (d) 90 days have elapsed since the day the notice was served and  
6 an event mentioned in paragraph (a), (b) or (c) has not  
7 happened in relation to the notice.

8 **61C Failure to surrender suspended licence**

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

12 Maximum penalty: 20 penalty units.

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

14 **61D Surrendered licences**

- 15 (1) This section applies if a driver licence is surrendered to a police  
16 officer under section 61B.

- 17 (2) The police officer must give the licence to the road transport  
18 authority as soon as practicable (but within 14 days) after the licence  
19 is surrendered to the police officer.

20 **61E Application for stay of suspension notice**

- 21 (1) A person served with a suspension notice under section 61B  
22 (Immediate suspension of licence) may apply to the Magistrates  
23 Court for a stay of the operation of the suspension notice.

- 24 (2) The application may be made by filing the following documents not  
25 later than 28 days after the day the applicant was served with the  
26 suspension notice:

- 27 (a) a notice setting out the grounds of the application;

- 1 (b) an affidavit in support of the application.
- 2 (3) The registrar must, as soon as practicable after the application is  
3 filed—
- 4 (a) set a hearing date for the application; and
- 5 (b) give the applicant and the chief police officer written notice of  
6 the time and place of the hearing of the application.
- 7 (4) The chief police officer must file any relevant material that the chief  
8 police officer proposes to rely on at the hearing of the application,  
9 not later than 10 days after the day the chief police officer was given  
10 the documents mentioned in subsection (2).
- 11 (5) The registrar must, as soon as practicable after the chief police  
12 officer has filed any documents under subsection (4), give the  
13 applicant a copy of the documents.
- 14 (6) Despite any error in a notice under subsection (3) or a failure to give  
15 notice under that subsection, the court may hear and decide the  
16 application if it is satisfied that the parties—
- 17 (a) knew about the time and place of the hearing; and
- 18 (b) were not prejudiced by the error or failure.

19 **61F Deciding application**

- 20 (1) The Magistrates Court may hear and decide an application under  
21 section 61E and may make—
- 22 (a) an order confirming the decision to give the applicant an  
23 immediate suspension notice; or
- 24 (b) an order staying the operation of the suspension notice; or
- 25 (c) any other order the court considers appropriate.

- 1 (2) However, the court must not make an order under subsection (1) (b)  
2 unless satisfied that exceptional circumstances justify making the  
3 order.
- 4 (3) The court must take into account the following matters when  
5 deciding if exceptional circumstances justify making an order under  
6 subsection (1) (b):
- 7 (a) the risk to the safety of other road users;  
8 (b) the applicant's need for a licence;  
9 (c) the matters contained in the suspension notice;  
10 (d) any other matter the court considers relevant.
- 11 (4) In deciding a person's application under section 61E, the court must  
12 not decide—
- 13 (a) the guilt or innocence of the person for the offence to which  
14 the suspension notice relates; or  
15 (b) the imposition or level of a penalty for the offence.

16 **132 Section 64**

17 *substitute*

18 **64 Court may order disqualification for other offences**

- 19 (1) A court that convicts a person, or finds a person guilty, of an offence  
20 against the road transport legislation may disqualify the person from  
21 holding or obtaining a driver licence for the period the court  
22 considers appropriate.
- 23 (2) However, if the offence is an offence against an automatic  
24 disqualification provision, any order under subsection (1) is subject  
25 to the automatic disqualification period for the offence.



1 (3) If the court disqualifies the person, the person is disqualified from  
2 holding or obtaining a driver licence for the period ordered by the  
3 court.

4 (4) A disqualification under this section is in addition to any penalty  
5 imposed for the offence.

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

9 **133 Effect of disqualification**  
10 **Section 66 (6) and (7)**

11 *substitute*

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

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

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

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

- 1 **66A Person disqualified in another jurisdiction not eligible for**  
2 **restricted licence**
- 3 (1) This section applies to a person if the person is disqualified from  
4 holding or obtaining an Australian driver licence in another  
5 jurisdiction.
- 6 (2) The person is not eligible to apply for, or be issued with, a restricted  
7 licence during the period of disqualification.

8 **134 Section 67**

9 *substitute*

- 10 **67 Disqualified repeat offender not eligible for restricted**  
11 **licence—automatic disqualification provisions**
- 12 (1) This section applies to a person if the person is—
- 13 (a) disqualified from holding or obtaining a driver licence under  
14 an automatic disqualification provision; and
- 15 (b) a repeat offender for the offence to which the disqualification  
16 relates.
- 17 (2) The person is not eligible to apply for, or be issued with, a restricted  
18 driver licence during the period of disqualification.

- 19 **67A Eligibility of disqualified first offender for restricted**  
20 **licence—automatic disqualification provisions**
- 21 (1) This section applies to a person if the person is—
- 22 (a) disqualified from holding or obtaining a driver licence under  
23 an automatic disqualification provision; and
- 24 (b) a first offender for the offence to which the disqualification  
25 relates.

- 1 (2) Subsection (3) applies to the person if—
- 2 (a) the person is disqualified from holding or obtaining a driver  
3 licence under the *Road Transport (Alcohol and Drugs)*  
4 *Act 1977*, section 32 (Automatic driver licence  
5 disqualification—first offenders, s 19) because the person was  
6 convicted or found guilty of an offence against that Act,  
7 section 19; and
- 8 (b) when the person committed the offence the person was  
9 either—
- 10 (i) a special driver with a concentration of alcohol of 0.05g  
11 or more in 100mL of the person’s blood or 210L of the  
12 person’s breath; or
- 13 (ii) a driver other than a special driver with a concentration  
14 of alcohol of 0.1g or more in 100mL of the person’s  
15 blood or 210L of the person’s breath when the person  
16 committed the offence.
- 17 (3) The person is not eligible to apply for, or be issued with, a restricted  
18 licence during the period of disqualification.
- 19 (4) Subsection (5) applies to the person if the person is disqualified  
20 from holding or obtaining a driver licence under an automatic  
21 disqualification provision, other than the *Road Transport (Alcohol*  
22 *and Drugs) Act 1977*, section 32.
- 23 (5) The person is not eligible to apply for, or be issued with, a restricted  
24 licence until the end of the minimum period of disqualification  
25 applying to the person under the automatic disqualification  
26 provision in relation to the offence (whether or not the period is  
27 expressed to be such a minimum period).

28 **Examples—minimum periods of disqualification**

- 29 1 For s 62, the minimum period of disqualification is 6 months  
30 (see s 62 (1) (a)).

1 2 For the *Road Transport (Alcohol and Drugs) Act 1977*, s 34, the minimum  
2 period of disqualification is 6 months (see that Act, s 34 (1) (b)).

3 3 For the *Road Transport (Driver Licensing) Act 1999*, s 32 (1), (2) or (3), the  
4 minimum period of disqualification is 12 months (see that Act, s 32 (5) (a)).

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

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

12 (6) In this section:

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

15 **67B Person disqualified until court order not eligible for**  
16 **restricted licence**

17 (1) This section applies to a person if the person is disqualified from  
18 holding or obtaining a driver licence under section 65  
19 (Disqualification until court order).

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

22 **67C Disqualification while holder of restricted licence**

23 (1) This section applies to a person who is the holder of a restricted  
24 licence and is disqualified (whether or not by court order) from  
25 holding or obtaining a driver licence because of being convicted or  
26 found guilty by a court in Australia of an offence against the law of  
27 any jurisdiction.

- 1           (2) The person is not eligible to apply for, or be issued with, another  
2           restricted licence for the remainder of the period for which the  
3           person was originally disqualified from holding or obtaining a driver  
4           licence.

### 5   **135   Dictionary, new definitions**

6           *insert*

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

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

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

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

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

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

1 **Part 6 Road Transport (General)**  
2 **Regulation 2000**

3 **136 Schedule 1, part 1.1**

4 *omit*

5 **137 Schedule 1, part 1.4, new item 24A**

6 *insert*

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

1 **Part 7 Road Transport (Offences) Regulation 2005**

2 **138 Schedule 1, part 1.3, new item 6A**

3 *insert*

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

1 **139 Schedule 1, part 1.3, new items 8A to 8C**2 *insert*

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



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

1 **140 Schedule 1, part 1.3, items 10 to 12**

2 *substitute*

|      |   |   |                                |  |  |
|------|---|---|--------------------------------|--|--|
| 10   | 23 (2)  |   |                                |  |  |
| 10.1 | <ul style="list-style-type: none"> <li>first offender</li> </ul>  | behave in manner so impossible/impractical for blood sample to be taken—first offender  | 30 pu/6 months<br>prison/both  |  |  |
| 10.2 | <ul style="list-style-type: none"> <li>repeat offender</li> </ul> | behave in manner so impossible/impractical for blood sample to be taken—repeat offender | 30 pu/12 months<br>prison/both |  |  |
| 11   | 23 (3) (a)  |   |                                |  |  |
| 11.1 | <ul style="list-style-type: none"> <li>first offender</li> </ul>  | fail/refuse to submit to medical examination—first offender                             | 30 pu/6 months<br>prison/both  |  |  |
| 11.2 | <ul style="list-style-type: none"> <li>repeat offender</li> </ul> | fail/refuse to submit to medical  | 30 pu/12                       |  |  |

**Part 7** Road Transport (Offences) Regulation 2005

Section 141

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

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

2 *substitute*

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

**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 | • requirement under 58 (1) (a) | driver/rider not produce licence | 20 | 99 |  |
| 6.2 | • requirement under 58 (1) (b) | driver/rider not state name      | 20 |    |  |

**Part 7**

## Road Transport (Offences) Regulation 2005

## Section 143

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

1 **144 Schedule 1, part 1.7, new item 12A**2 *insert*

|     |             |                                 |    |  |  |
|-----|-------------|---------------------------------|----|--|--|
| 12A | 61B (4) (b) | not surrender suspended licence | 20 |  |  |
|-----|-------------|---------------------------------|----|--|--|

3 **145 Schedule 1, part 1.7, item 13**4 *substitute*

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

1 **Schedule 1 Consequential amendments**

2 (see s 3)

3 **Part 1.1 Crimes Act 1900**

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

6 *substitute*

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

11 **[1.2] Section 252F (3) (b)**

12 *omit*

13 breath analysis

14 *substitute*

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

1 **Part 1.2** **Road Transport (Alcohol and**  
2 **Drugs) Regulation 2000**

3 **[1.3] Section 4**

4 *substitute*

5 **2 Alcohol screening device—Act, s 7, def *alcohol screening***  
6 ***device***

7 The following devices are prescribed:

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

10 **3 Breath analysis instrument—Act, s 7A, def *breath***  
11 ***analysis instrument***

12 The Dräger Alcotest 7110 MKV is prescribed.

13 **4 Breath analysis—requirements for statement under Act,**  
14 **s 12 (5)**

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

18 **5 Oral fluid analysis—requirements for statement under**  
19 **Act, s 13E (6)**

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

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

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

10 **[1.4] Schedule 1 heading**

11 *substitute*

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

15 **[1.5] Schedule 1, item 5**

16 *omit*

17 approved operator

18 *substitute*

19 authorised operator



1 **Part 1.3** **Spent Convictions Act 2000**

2 **[1.6] Section 14 (4) (c)**

3 *omit everything after*

4 *part 3*

5 *insert*

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

11 **Part 1.4** **Workers Compensation Act 1951**

12 **[1.7] Section 82 (4) (a)**

13 *substitute*

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

18 **[1.8] Section 82 (5)**

19 *substitute*

20 (5) In this section:

21 *prescribed drug*—see the *Road Transport (Alcohol and Drugs)*  
22 *Act 2010*, dictionary.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2010.

**2 Notification**

Notified under the Legislation Act on 2010.

**3 Republications of amended laws**

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

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