

**MOTOR TRAFFIC (ROAD SAFETY) AMENDMENT ACT, 1985,  
No. 18**

*New South Wales*



ANNO TRICESIMO QUARTO

**ELIZABETHÆ II REGINÆ**

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**Act No. 18, 1985.**

An Act to amend the Motor Traffic Act, 1909, so as to make further provision with respect to offences relating to alcohol and the driving of motor vehicles; and for other purposes. [Assented to, 2nd April, 1985.]

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title.**

1. This Act may be cited as the "Motor Traffic (Road Safety) Amendment Act, 1985".

**Principal Act.**

2. The Motor Traffic Act, 1909, is referred to in this Act as the Principal Act.

**Schedules.**

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BREATH TESTING OF NOVICE DRIVERS.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PERSONS SUPERVISING LEARNERS.

**Amendment of Act No. 5, 1909.**

4. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

**Transitional.**

5. (1) The Principal Act applies to and in respect of offences committed before the date of assent to this Act as if this Act had not been enacted.

(2) Nothing in subsection (1) shall be construed as preventing an offence committed before the date of assent to this Act from being regarded as a major offence within the meaning of the Principal Act, as amended by this Act.

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## SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BREATH TESTING OF  
NOVICE DRIVERS.

## (1) (a) Section 2 (1), definition of "Driver's license"—

After the definition of "Driver", insert:—

"Driver's license" includes—

- (a) a probationary license, a provisional license and a restricted license issued under and in accordance with the regulations; and
- (b) a learner's permit.

## (b) Section 2 (2A)—

After section 2 (2), insert:—

(2A) In this Act, a reference—

- (a) to a learner's permit in respect of a motor vehicle; or
- (b) to a license in respect of a motor vehicle, being a license of any class or description,

is a reference to a learner's permit or a license of that class or description which authorises its holder to drive motor vehicles of a class which includes the motor vehicle.

## (c) Section 2 (3) (a1)—

Before section 2 (3) (a), insert:—

- (a1) the special range prescribed concentration of alcohol is a reference to a concentration of 0.02 grammes or more, but less than 0.05 grammes, of alcohol in 100 millilitres of blood;

## (2) Section 3 (1) (m)—

Before "testing" where firstly occurring, insert "qualifications and".

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SCHEDULE 1—*continued*.

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BREATH TESTING OF  
NOVICE DRIVERS—*continued*.

(3) (a) Section 4E (1), (1A), (1D)—

Before section 4E (1E), insert:—

(1) In this section—

“driver’s license” does not include—

(a) a probationary license, a provisional license or  
a restricted license issued under and in  
accordance with the regulations; or

(b) a learner’s permit;

“first-year provisional license” means a provisional license  
issued under and in accordance with the regulations  
to a person who has not previously held, for a period  
of 12 months or more, a license authorising the  
person to drive a motor vehicle.

(1A) A person who is the holder of a provisional license  
issued under the regulations shall, for the purposes of this  
section, be deemed to be the holder of a first-year provisional  
license unless the person satisfies the court to the contrary.

(1D) Any person (being the holder of a learner’s permit in  
respect of the motor vehicle or of a first-year provisional license  
in respect of the motor vehicle) who while there is present in  
the person’s blood the special range prescribed concentration of  
alcohol—

(a) drives a motor vehicle; or

(b) occupies the driving seat of a motor vehicle and  
attempts to put the motor vehicle in motion,

shall be guilty of an offence under this Act and shall be liable—

(c) in the case of a first offence—to a penalty not  
exceeding \$500; or

(d) in the case of a second or subsequent offence—to a  
penalty not exceeding \$1,000.

(b) Section 4E (1H)—

Before “(1E)”, insert “(1D),”.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BREATH TESTING OF  
NOVICE DRIVERS—*continued.*

(c) Section 4E (1JA)—

After section 4E (1J), insert:—

(1JA) If, on a prosecution of a person for an offence under subsection (1E), (1F) or (1G), relating to driving a motor vehicle or to occupying the driving seat of a motor vehicle and attempting to put the motor vehicle in motion, the court is satisfied that, at the time the person drove the motor vehicle or occupied the driving seat and attempted to put the motor vehicle in motion—

- (a) the person was the holder of a learner's permit in respect of the motor vehicle or of a first-year provisional license in respect of the motor vehicle; and
- (b) there was not present in the person's blood the high range prescribed concentration of alcohol, the middle range prescribed concentration of alcohol or the low range prescribed concentration of alcohol,

but that there was present in the person's blood the special range prescribed concentration of alcohol, the court may convict the person of an offence under subsection (1D).

(d) Section 4E (1K) (a1)—

Before section 4E (1K) (a), insert:—

- (a1) an offence under subsection (1D) if the defendant proves that, at the time the defendant did the act referred to in subsection (1D) (a) or (b), as the case may be, there was present in the defendant's blood a concentration of alcohol of 0.05 grammes or more in 100 millilitres of the blood;

(e) Section 4E (3) (a)—

Omit the paragraph, insert instead:—

- (a) it appears to a member of the police force in consequence of a breath test carried out under a preceding subsection by the member—
  - (i) on a person the member has reasonable cause to believe is the holder of a learner's permit or of a first-year provisional license—that the device

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BREATH TESTING OF  
NOVICE DRIVERS—*continued.*

by means of which the test was carried out indicates that there may be present in that person's blood a concentration of alcohol of not less than 0.02 grammes in 100 millilitres of the blood; or

- (ii) on any person—that the device by means of which the test was carried out indicates that there may be present in that person's blood a concentration of alcohol of not less than 0.05 grammes in 100 millilitres of the blood; or

(f) Section 4E (11)—

Before “(1E)” where firstly occurring, insert “(1D),”.

(g) Section 4E (11) (a1)—

Before section 4E (11) (a), insert:—

- (a1) in the case of an offence under subsection (1D), less than 0.02 grammes of alcohol in 100 millilitres of the blood;

(h) Section 4E (11)—

Omit “or (1J)”, insert instead “, (1J) or (1JA)”.

(i) Section 4E (12) (a), (13) (a)—

Before “(1E)” wherever occurring, insert “(1D),”.

(4) (a) Section 4G (8)—

After “4E” where firstly occurring, insert “(1D),”.

(b) Section 4G (8) (a1)—

Before section 4G (8) (a), insert:—

- (a1) in the case of an offence under section 4E (1D), less than 0.02 grammes of alcohol in 100 millilitres of the blood;

(c) Section 4G (8)—

Omit “or (1J)”, insert instead “, (1J) or (1JA)”.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BREATH TESTING OF  
NOVICE DRIVERS—*continued.*

(5) Sections 4G (9)–(11), 10 (5), 10A (1) (b) (ii)—

Before “(1E)” wherever occurring, insert “(1D),”.

(6) (a) Section 10A (2) (a1)—

Before section 10A (2) (a), insert:—

(a1) where the conviction is for an offence under section 4E  
(1D)—

(i) the person shall be disqualified by the conviction  
and without any specific order for 3 months  
from holding a driver’s license under this Act or  
under the Transport Act, 1930; or

(ii) where the court upon the conviction thinks fit to  
order a shorter period of disqualification, the  
person shall be disqualified for such shorter  
period as may be specified in the order;

(b) Section 10A (3) (a1)—

Before section 10A (3) (a), insert:—

(a1) where the conviction is for an offence under section 4E  
(1D)—

(i) the person shall be disqualified by the conviction  
and without any specific order for 12 months  
from holding a driver’s license under this Act or  
under the Transport Act, 1930; or

(ii) where the court upon the conviction thinks fit to  
order a shorter period (but not shorter than 3  
months) or longer period of disqualification, the  
person shall be disqualified for such period as  
may be specified in the order;

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## SCHEDULE 2.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PERSONS SUPERVISING  
LEARNERS.

## (1) Section 2 (4)—

After section 2 (3), insert:—

## (4) Where a person holding a learner's permit—

(a) is driving a motor vehicle; and

(b) is accompanied by another person occupying the seat next to the person by reason of a requirement made by the regulations,

the other person shall, for the purposes of sections 4E and 5, be deemed to be the holder of a driver's license.

## (2) (a) Section 4E (1L)—

After section 4E (1K), insert:—

(1L) Any person (being the holder of a driver's license) who, while there is present in the person's blood a concentration of alcohol of 0.05 grammes or more in 100 millilitres of the blood, occupies the seat next to a holder of a learner's permit who is driving a motor vehicle (not being a motor cycle) shall be guilty of an offence under this Act and shall be liable to a penalty not exceeding \$1,000.

## (b) Section 4E (2AA)—

After section 4E (2A), insert:—

(2AA) Where a member of the police force is empowered by subsection (2) or (2A) to require a person who is or was driving a motor vehicle to undergo a breath test and the member has reasonable cause to believe that the person is the holder of a learner's permit, the member may require any other person who is or was occupying the seat in or on the motor vehicle next to the person who is or was driving it to undergo a breath test in accordance with the directions of a member of the police force.



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SCHEDULE 2—*continued*.

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PERSONS SUPERVISING  
LEARNERS—*continued*.

(c) Section 4E (3) (b), (5) (c), (6)—

Omit “subsection (2) or (2A)” wherever occurring, insert instead  
“a preceding subsection of this section”.

(d) Section 4E (7) (b), (11), (15)—

Omit “or (2A) (a) or (b)” wherever occurring, insert instead “,  
(2A) (a) or (b) or (2AA)”.

(e) Section 4E (11), (12) (a)—

Omit “or (1G)” wherever occurring, insert instead “, (1G) or  
(1L)”.

(f) Section 4E (11) (a)—

After “(1E)”, insert “or (1L)”.

(g) Section 4E (13) (a)—

After “, (1G)”, insert “, (1L)”.

(3) (a) Section 4G (8)—

Omit “or (2A) (a) or (b)”, insert instead “, (2A) (a) or (b) or  
(2AA)”.

(b) Section 4G (8)–(11)—

Omit “or (1G)” wherever occurring, insert instead “, (1G) or  
(1L)”.

(c) Section 4G (8) (a)—

After “(1E)”, insert “or (1L)”.

(4) (a) Section 5 (1A)—

After section 5 (1), insert:—

(1A) In subsection (1), a reference to a driver of a motor  
vehicle includes, where the driver is the holder of a learner’s

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PERSONS SUPERVISING  
LEARNERS—*continued.*

permit and the motor vehicle is not a motor cycle, a reference to a holder of a driver's license occupying the seat in or on the motor vehicle next to the driver.

(b) Section 5 (2) (a)—

Omit "or".

(c) Section 5 (2) (c)—

At the end of section 5 (2) (b), insert:—

; or

(c) being the holder of a driver's license, occupies the seat in or on a motor vehicle next to a holder of a learner's permit who is driving the motor vehicle,

(d) Section 5 (2)—

Omit "liable to a penalty not exceeding \$1,000 or to imprisonment for a period not exceeding six months or to both such penalty and imprisonment.", insert instead:—

liable—

(d) in the case of an offence to which paragraph (c) relates—to a penalty not exceeding \$1,000; or

(e) in any other case—to a penalty not exceeding \$1,000 or to imprisonment for a period not exceeding 6 months or to both that penalty and that imprisonment.

(5) Section 10 (5)—

After ", (1G)", insert ", (1L)".

(6) Section 10A (1) (b) (ii)—

After "section 5 (2)", insert "(paragraph (c) excepted)".

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