



New South Wales

Road Transport (Safety and Traffic Management) Amendment (Alcohol) Act 2004 No 17

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New South Wales

Road Transport (Safety and Traffic Management) Amendment (Alcohol) Act 2004 No 17

Act No 17, 2004

An Act to amend the *Road Transport (Safety and Traffic Management) Act 1999* to prohibit learner drivers and provisional licence holders from driving with any alcohol present in their blood; and for other purposes. [Assented to 24 March 2004]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Road Transport (Safety and Traffic Management) Amendment (Alcohol) Act 2004*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Road Transport (Safety and Traffic Management) Act 1999 No 20

The *Road Transport (Safety and Traffic Management) Act 1999* is amended as set out in Schedule 1.

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Road Transport (Safety and Traffic Management) Act 1999

(Section 3)

[1] Section 8 Interpretation

Omit section 8 (1) and (2).

[2] Section 8 (3) (a)

Omit the paragraph. Insert instead:

- (a) if the person is the holder of a learner licence, or the holder of a provisional licence issued under the *Road Transport (Driver Licensing) Act 1998*, for motor vehicles of a class that includes that motor vehicle, or

[3] Section 8 (3) (d)

Omit the paragraph.

[4] Section 9 Presence of prescribed concentration of alcohol in person's blood

Insert before section 9 (1):

(1A) **Offence—novice range prescribed concentration of alcohol**

If a person is the holder of a learner licence, or of a provisional licence issued under the *Road Transport (Driver Licensing) Act 1998*, in respect of a motor vehicle, the person must not, while there is present in his or her blood the novice range prescribed concentration of alcohol:

- (a) drive the motor vehicle, or
- (b) occupy the driving seat of the motor vehicle and attempt to put the motor vehicle in motion.

Maximum penalty: 10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence).

[5] Section 9 (1) (c), (2) (c), (3) (c) and (4) (c)

Insert “(other than a provisional licence or a learner licence issued under the *Road Transport (Driver Licensing) Act 1998*)” after “driver licence” wherever occurring.

[6] Section 10 Alternative verdicts for lesser offences

Insert after section 10 (3):

(4) Alternative verdict for lesser offence in prosecution of learner licence holders or provisional licence holders

If, on a prosecution of a person for an offence under section 9 (1), (2), (3) or (4), 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 licence, or of a provisional licence issued under the *Road Transport (Driver Licensing) Act 1998*, 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, the low range prescribed concentration of alcohol or the special range prescribed concentration of alcohol,

but that there was present in the person's blood the novice range prescribed concentration of alcohol, the court may convict the person of an offence under section 9 (1A).

[7] Section 11 Presence of higher concentration of alcohol not defence

Insert before section 11 (1):

- (1A) It is not a defence to a prosecution for an offence under section 9 (1A) if the defendant proves that, at the time he or she did the act referred to in section 9 (1A) (a) or (b), there was present in the defendant's blood a concentration of alcohol of 0.02 grammes or more in 100 millilitres of the defendant's blood.

[8] Section 11A

Insert after section 11:

11A Defence for offence relating to novice range prescribed concentration of alcohol

It is a defence to a prosecution for an offence under section 9 (1A) if the defendant proves that, at the time the defendant did the act referred to in section 9 (1A) (a) or (b), the presence in the defendant's blood of the novice range prescribed concentration of alcohol was not caused (in whole or in part) by any of the following:

- (a) the consumption of an alcoholic beverage (otherwise than for the purposes of religious observance),
- (b) the consumption or use of any other substance (for example, food or medicine) for the purpose of consuming alcohol.

[9] Section 14 Arrest following failed breath test

Insert before section 14 (1) (a):

- (a1) it appears to the officer from a breath test carried out under section 13 (1) by the officer that the device by means of which the test was carried out indicates that there may be present in the person's blood a concentration of alcohol of more than zero grammes in 100 millilitres of the blood and the officer has reasonable cause to believe the person is the holder of a learner licence, or of a provisional licence issued under the *Road Transport (Driver Licensing) Act 1998*, in respect of the motor vehicle concerned, or

[10] Section 32 Evidence of alcohol concentration revealed by breath or blood analysis in proceedings for offence under section 9

Insert before section 32 (2) (a):

- (a1) in the case of an offence under section 9 (1A)—zero grammes of alcohol in 100 millilitres of the defendant's blood, or

[11] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Road Transport (Safety and Traffic Management) Amendment (Alcohol) Act 2004, but only to the extent that it amends this Act

[12] Schedule 2

Insert at the end of the Schedule, with appropriate Part and clause numbers:

Part Provisions consequent on enactment of Road Transport (Safety and Traffic Management) Amendment (Alcohol) Act 2004

Definitions

In this Part:

amending Act means the *Road Transport (Safety and Traffic Management) Amendment (Alcohol) Act 2004*.

Amendments not to apply to offences occurring before commencement of amendments

- (1) Proceedings for offences committed, or alleged to have been committed, before the commencement of Schedule 1 to the amending Act are to be determined as if the amending Act had not been enacted.
- (2) Accordingly, the law (including any relevant provision of this Act) that would have been applicable to the proceedings had the amending Act not been enacted continues to apply to the proceedings as if the amending Act had not been enacted.

Review of amending Act

- (1) The Minister is to review the amending Act to determine whether the policy objectives of the amending Act remain valid and whether the terms of the amending Act remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of 4 years from the date of assent to the amending Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 4 years.

[13] Dictionary

Insert in alphabetical order in clause 1:

novice range prescribed concentration of alcohol means a concentration of more than zero grammes, but less than 0.02 grammes, of alcohol in 100 millilitres of blood.

[14] Dictionary, clause 1

Omit the definition of *provisional licence*.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Crimes Act 1900 No 40

Section 353A Power to search person, make medical examination, take photograph, finger-print or palm-print

Insert "(1A)," after "section 9" in section 353A (7) (c) (i).

2.2 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Section 134 Orders for the taking of identification particulars

Insert "(1A)," after "section 9" in section 134 (5) (c) (i).

2.3 Road Transport (General) Act 1999 No 18

[1] Section 25 Disqualification for certain major offences

Insert "(1A)," after "section 9" in paragraph (c) (iv) of the definition of *convicted person* in section 25 (1).

[2] Section 25 (2) (a) and (3) (a)

Insert "(1A)," after "section 9" wherever occurring.

[3] Section 25A Interpretation

Insert before paragraph (a) in the definition of *alcohol-related major offence*:

- (a1) an offence under section 9 (1A) of the *Road Transport (Safety and Traffic Management) Act 1999*,

[4] Schedule 1A Interlock participation and disqualification compliance periods

Insert "(1A)," after "section 9" in item 4 of Column 1.

[5] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Road Transport (Safety and Traffic Management)
Amendment (Alcohol) Act 2004*, but only to the extent that it
amends this Act

[Second reading speech made in—
Legislative Assembly on 3 December 2003
Legislative Council on 16 March 2004]

BY AUTHORITY