



New South Wales

Road Transport Legislation Amendment (Drug Testing) Act 2006 No 79

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New South Wales

Road Transport Legislation Amendment (Drug Testing) Act 2006 No 79

Act No 79, 2006

An Act to amend the *Road Transport (Safety and Traffic Management) Act 1999* and certain other Acts with respect to random roadside oral fluid drug testing, drug testing persons involved in fatal motor vehicle accidents, and offences relating to driving a motor vehicle with any presence of certain drugs in the driver's oral fluid, blood or urine; and for other purposes. [Assented to 27 October 2006]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Road Transport Legislation Amendment (Drug Testing) Act 2006*.

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.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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

(Section 3)

[1] Part 2, Division 1A

Insert after Division 1 of Part 2:

Division 1A Offences involving certain drugs (other than alcohol) in oral fluid, blood or urine

11B Presence of certain drugs (other than alcohol) in oral fluid, blood or urine

(1) Presence of prescribed illicit drug in person's oral fluid, blood or urine

A person must not, while there is present in his or her oral fluid, blood or urine any prescribed illicit drug:

- (a) drive a motor vehicle, or
- (b) occupy the driving seat of a motor vehicle and attempt to put the motor vehicle in motion, or
- (c) if the person is the holder of a driver licence (other than a provisional licence or a learner licence issued under the *Road Transport (Driver Licensing) Act 1998*)—occupy the seat in a motor vehicle next to a holder of a learner licence who is driving the vehicle.

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).

(2) If a person is charged with an offence under subsection (1):

- (a) the court attendance notice may allege that more than one prescribed illicit drug was present in the oral fluid, blood or urine of the person and the proceedings are not liable to be dismissed on the ground of uncertainty or duplicity if each of those drugs is described in the court attendance notice, and
- (b) the offence is proved if the court is satisfied beyond reasonable doubt that there was present in the oral fluid, blood or urine of the defendant:
 - (i) a drug described in the court attendance notice, or

- (ii) a combination of drugs any one or more of which was or were described in the court attendance notice.

(3) **Presence of morphine or cocaine in person's blood or urine**

A person must not, while there is present in his or her blood or urine any morphine or cocaine:

- (a) drive a motor vehicle, or
- (b) occupy the driving seat of a motor vehicle and attempt to put the motor vehicle in motion, or
- (c) if the person is the holder of a driver licence (other than a provisional licence or a learner licence issued under the *Road Transport (Driver Licensing) Act 1998*)—occupy the seat in a motor vehicle next to a holder of a learner licence who is driving the vehicle.

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).

(4) If a person is charged with an offence under subsection (3):

- (a) the court attendance notice may allege that both morphine and cocaine were present in the blood or urine of the person and the proceedings are not liable to be dismissed on the ground of uncertainty or duplicity if each of those drugs is described in the court attendance notice, and
- (b) the offence is proved if the court is satisfied beyond reasonable doubt that there was present in the blood or urine of the defendant:
 - (i) a drug described in the court attendance notice, or
 - (ii) a combination of drugs any one or more of which was or were described in the court attendance notice.

(5) **Defence for offence relating to presence of morphine in person's blood or urine**

It is a defence to a prosecution for an offence under subsection (3) if the defendant proves that, at the time the defendant did the act referred to in subsection (3) (a), (b) or (c), the presence in the defendant's blood or urine of morphine was caused by the consumption of a substance for medicinal purposes.

- (6) In this section, a substance is consumed for medicinal purposes only if it is:
- (a) a drug prescribed by a medical practitioner taken in accordance with a medical practitioner's prescription, or
 - (b) a codeine-based medicinal drug purchased from a pharmacy that has been taken in accordance with the manufacturer's instructions.

Note. Division 1 of Part 5.4 of the *Road Transport (General) Act 2005* provides for the disqualification of persons from holding driver licences for certain offences (including offences under this section).

The offences of driving with a prescribed concentration of alcohol in the blood, and of driving under the influence of alcohol or any other drug, are dealt with in sections 9 and 12, respectively.

[2] Section 17 When breath test or breath analysis not permitted

Omit "place of abode" from section 17 (d). Insert instead "home".

[3] Part 2, Division 3A

Insert after Division 3 of Part 2:

Division 3A Random oral fluid testing for prescribed illicit drugs

18A Definitions

In this Division:

approved oral fluid analysing instrument means any instrument designed to ascertain, by analysis of a person's oral fluid, the presence of any prescribed illicit drug in that person's oral fluid, being an instrument that:

- (a) meets the standards prescribed by the regulations for such instruments, and
- (b) is approved by the Governor by order published in the Gazette.

approved oral fluid testing device means a device designed to indicate the presence of any prescribed illicit drug in a person's oral fluid, being a device that:

- (a) meets the standards prescribed by the regulations for such devices, and
- (b) is approved by the Governor by order published in the Gazette.

oral fluid analysis means a test carried out by an approved oral fluid analysing instrument for the purpose of ascertaining, by analysis of a person's oral fluid, the presence of prescribed illicit drugs in that person's oral fluid.

oral fluid test means a test carried out by an approved oral fluid testing device for the purpose of ascertaining whether any prescribed illicit drugs are present in that person's oral fluid.

18B Power to conduct random oral fluid testing

- (1) A police officer may require a person to undergo one or more oral fluid tests for prescribed illicit drugs in accordance with the officer's directions if the officer has reasonable cause to believe that the person:
 - (a) is or was driving a motor vehicle on a road or road related area, or
 - (b) is or was occupying the driving seat of a motor vehicle on a road or road related area and attempting to put the motor vehicle in motion, or
 - (c) being the holder of a driver licence, is or was occupying the seat in a motor vehicle next to a holder of a learner licence while the holder of the learner licence is or was driving the vehicle on a road or road related area.
- (2) A person must not, when required by a police officer to undergo an oral fluid test under subsection (1), refuse or fail to undergo the oral fluid test in accordance with the directions of the officer.
Maximum penalty: 10 penalty units.
- (3) It is a defence to a prosecution for an offence under subsection (2) if the defendant satisfies the court that the defendant was unable, on medical grounds, to undergo an oral fluid test at the time the defendant was required to do so.
- (4) Without limiting any other power or authority, a police officer may, for the purposes of this section, request or signal the driver of a motor vehicle to stop the vehicle.
- (5) A person must comply with any request or signal made or given to the person by a police officer under subsection (4).
Maximum penalty: 10 penalty units.

18C Arrest following failed oral fluid test or refusal or inability to undergo test

- (1) A police officer may exercise the powers referred to in subsection (2) in respect of a person if:
 - (a) it appears to the officer from one or more oral fluid tests carried out under section 18B (1) by the officer that the device by means of which the test was carried out indicates that there may be one or more prescribed illicit drugs present in the person's oral fluid, or
 - (b) the person refused to undergo an oral fluid test required by an officer under section 18B (1) or fails to undergo that test in accordance with the directions of the officer.
- (2) A police officer may:
 - (a) arrest a person referred to in subsection (1) without warrant, and
 - (b) take the person (or cause the person to be taken) with such force as may be necessary to a police station or such other place as the officer considers desirable and there detain the person (or cause the person to be detained) for the purpose of the person providing oral fluid samples in accordance with this Division, and
 - (c) if section 18E permits the taking of a blood sample from the person—take the person (or cause the person to be taken) with such force as may be necessary to a hospital or a place prescribed by the regulations and there detain the person (or cause the person to be detained) for the purpose of the person providing such a blood sample in accordance with that section.

18D Providing an oral fluid sample for oral fluid analysis following arrest

- (1) A police officer may require a person who has been arrested under section 18C to provide an oral fluid sample in accordance with the directions of the officer.
- (2) A person who is required by a police officer under subsection (1) to provide an oral fluid sample must not refuse or fail to provide that sample in accordance with the directions of the officer.
Maximum penalty: 30 penalty units (in the case of a first offence) or 50 penalty units or imprisonment for 18 months or both (in the case of a second or subsequent offence).

- (3) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant was unable, on medical grounds, to provide an oral fluid sample at the time the defendant was required to do so.
- (4) A police officer who is provided with an oral fluid sample under subsection (1) must:
 - (a) place the sample into a container, and
 - (b) fasten and seal the container, and
 - (c) mark or label the container for future identification, and
 - (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's oral fluid, and
 - (e) as soon as reasonably practicable after the sample is provided, arrange for the sample to be submitted to a laboratory prescribed by the regulations for oral fluid analysis.
- (5) The person who provided the sample may, within 6 months after the taking of the sample or such longer period as is prescribed by the regulations, apply to the laboratory prescribed under this section for a portion of the sample to be sent, for oral fluid analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.
- (6) An analyst at the laboratory to which a sample of oral fluid is submitted for oral fluid analysis under this section may carry out an analysis of the sample, or of a portion of the sample, to determine the presence of prescribed illicit drugs in the oral fluid.
- (7) An oral fluid analysis referred to in subsection (6) may be carried out, and any act, matter or thing in connection with the analysis (including the receipt of the sample of oral fluid to be analysed and the breaking of any seal securing the sample) may be done, by a person acting under the supervision of an analyst, and in that event is taken to have been carried out or done by the analyst.

18E Taking blood sample following arrest

- (1) Except as provided by section 18F, a police officer may require a person who has attempted to provide an oral fluid sample as directed under section 18D (1), but has been unable to comply (for example, because no oral fluid was physically able to be produced), to provide a sample of the person's blood (whether or not the person consents to the provision of the sample) in accordance with the directions of a medical practitioner, registered nurse or prescribed sample taker.
- (2) The police officer must inform any such medical practitioner, registered nurse or prescribed sample taker that the sample is required to be taken for the purposes of this section.
- (3) The medical practitioner, registered nurse or prescribed sample taker by whom or under whose directions a sample of blood is taken in accordance with this section must:
 - (a) place the sample into a container, and
 - (b) fasten and seal the container, and
 - (c) mark or label the container for future identification, and
 - (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood.
- (4) The medical practitioner, registered nurse or prescribed sample taker must, as soon as reasonably practicable after the sample of blood is taken, arrange for the sample to be submitted to a laboratory prescribed by the regulations for analysis by an analyst to determine whether the blood contains any prescribed illicit drugs.
- (5) The person from whom the sample of blood was taken may, within 12 months after the taking of the sample, apply to the laboratory prescribed under this section for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.
- (6) An analyst at a laboratory prescribed by the regulations to whom any blood sample is submitted for analysis under this section may carry out an analysis of the blood to determine whether it contains any prescribed illicit drugs.

- (7) Any duty of a medical practitioner, registered nurse or prescribed sample taker under this section and any relevant provisions of the regulations may be performed by a person acting under the supervision of the medical practitioner, registered nurse or prescribed sample taker. A duty performed by any such person is taken to have been performed by the medical practitioner, registered nurse or prescribed sample taker.
- (8) An analysis under this section may be carried out, and anything in connection with the analysis (including the receipt of the blood sample to be analysed and the breaking of any seal) may be done, by a person acting under the supervision of an analyst and, in that event, is taken to have been carried out or done by the analyst.
- (9) A person must not, on being required under this section by a police officer to provide a sample of blood, refuse or fail to submit to the taking of the sample of blood in accordance with the directions of a medical practitioner, registered nurse or prescribed sample taker.

Maximum penalty (subsection (9)): 30 penalty units (in the case of a first offence) or 50 penalty units or imprisonment for 18 months or both (in the case of a second or subsequent offence).

18F When oral fluid test or sampling not permitted

A police officer cannot require a person to undergo an oral fluid test or provide any sample under this Division:

- (a) if that person has been admitted to hospital for medical treatment, unless the medical practitioner in immediate charge of the person's treatment has been notified of the intention to make the requisition and the medical practitioner does not object on the grounds that compliance with it would be prejudicial to the proper care or treatment of the person, or
- (b) if it appears to the officer that it would, because of any injuries sustained by the person, be dangerous to that person's medical condition to undergo an oral fluid test or provide a sample, or
- (c) in relation to an oral fluid test or oral fluid sample—at any time after the expiration of 2 hours from the occurrence of the event that entitled the officer under section 18B (1) to require the person to undergo an oral fluid test or provide a sample, or

- (d) in relation to a blood sample—at any time after the expiration of 4 hours from the occurrence of the event that entitled the officer under section 18B (1) to require the person to undergo an oral fluid test, or
- (e) at the person's home.

18G Offences related to testing and sampling for drugs

- (1) A person must not:
 - (a) wilfully do anything to introduce, or alter the amount of, any prescribed illicit drug in the person's oral fluid between the time of the event referred to in section 18B (1) (a), (b) or (c) in respect of which the person has been required by a police officer to undergo an oral fluid test and the time when the person undergoes that test, or
 - (b) wilfully do anything to introduce, or alter the amount of, any prescribed illicit drug in the person's oral fluid or blood between the time of the event referred to in section 18B (1) (a), (b) or (c) in respect of which the person has been required by a police officer to undergo an oral fluid test and the time when the person provides a sample of the person's oral fluid or blood.

Maximum penalty: 30 penalty units (in the case of a first offence) or 50 penalty units (in the case of a second or subsequent offence).

- (2) It is a defence to a prosecution of a person for an offence under subsection (1) of wilfully doing anything to introduce, or alter the amount of, a prescribed illicit drug in the person's oral fluid if the person satisfies the court that the thing was done more than 2 hours after the time of the event referred to in section 18B (1) (a), (b) or (c).
- (3) It is a defence to a prosecution of a person for an offence under subsection (1) of wilfully doing anything to introduce, or alter the amount of, a prescribed illicit drug in the person's blood if the person satisfies the court that the thing was done more than 4 hours after the time of the event referred to in section 18B (1) (a), (b) or (c).
- (4) If a medical practitioner, registered nurse or prescribed sample taker is informed by a police officer in accordance with this Division that a blood sample is required to be taken for the purposes of this Division, the medical practitioner, registered nurse or prescribed sample taker must not:
 - (a) fail to take the sample, or

- (b) fail to comply with any requirement made by section 18E (3) or (4) in relation to the sample.

Maximum penalty: 20 penalty units.

- (5) It is a defence to a prosecution for an offence under subsection (4) if the medical practitioner, registered nurse or prescribed sample taker satisfies the court that:
 - (a) the practitioner, nurse or prescribed sample taker believed on reasonable grounds that the taking of the sample from the person would be prejudicial to the proper care and treatment of the person, or
 - (b) the practitioner, nurse or prescribed sample taker believed on reasonable grounds that the person was less than 15 years of age, or
 - (c) the practitioner, nurse or prescribed sample taker was, because of the behaviour of the person, unable to take the sample, or
 - (d) there was other reasonable cause for the practitioner, nurse or prescribed sample taker not to take the sample.
- (6) A person must not hinder or obstruct a police officer in attempting to administer an oral fluid test on, or take a sample of oral fluid from, any other person in accordance with this Division.

Maximum penalty: 20 penalty units.
- (7) A person must not hinder or obstruct a medical practitioner, registered nurse or prescribed sample taker in attempting to take a sample of the blood of any other person in accordance with this Division.

Maximum penalty: 20 penalty units.

18H Prohibited analysis

- (1) In this section:
 - Division 3A sample*** means a sample of oral fluid or blood taken from, or furnished or provided by, a person under this Division.
 - DNA database*** means any database that contains DNA data and includes any DNA database system within the meaning of the *Crimes (Forensic Procedures) Act 2000*.
 - permitted purpose***, in relation to an analysis of a Division 3A sample, means the purpose of determining whether any prescribed illicit drugs are present in the sample.

prohibited analysis, in relation to a Division 3A sample, means analysis of the sample for a purpose other than the permitted purpose.

Note. For example, deriving a DNA profile from the sample is a purpose for which analysis is prohibited.

- (2) A person must not intentionally or recklessly:
- (a) supply a Division 3A sample, or cause or permit a Division 3A sample to be supplied, to a person for prohibited analysis, or
 - (b) carry out, or cause or permit to be carried out, a prohibited analysis of a Division 3A sample, or
 - (c) include, or cause the inclusion of, information derived from a prohibited analysis on a DNA database kept under a law of this State or the Commonwealth or of another State or a Territory.

Maximum penalty: 30 penalty units.

[4] Part 2, Division 4, heading

Omit the heading to Division 4 of Part 2. Insert instead:

Division 4 Blood analysis of accident patients following accidents

[5] Section 23 Analysis of samples of blood taken under this Division

Omit section 23 (6). Insert instead:

- (6) A police officer may not make arrangements under subsection (5) for analysis of a blood sample to determine the concentration in the blood of a drug other than alcohol unless:
- (a) the following circumstances apply:
 - (i) the accident that caused the person to attend at or be admitted to hospital was a fatal accident, and
 - (ii) the person from whom the sample was taken was a person referred to in section 20 (5) (a), (b) or (f), or
 - (b) the following circumstances apply:
 - (i) the police officer has reasonable grounds to believe that, at the time of the accident concerned, the person from whom the sample was taken was under the influence of a drug other than alcohol, and

- (ii) no police officer attended the scene of the accident that led to the taking of the sample or, although a police officer or police officers attended the scene of the accident, there was no reasonable opportunity to require the person from whom the sample was taken to submit, in accordance with Division 5, to an assessment of his or her sobriety.

[6] Part 2, Division 4A

Insert after Division 4 of Part 2:

Division 4A Blood and urine analysis of persons who are not accident patients following fatal accidents

24A Power to arrest persons involved in fatal accidents for blood and urine tests

- (1) This section applies to a person who:
 - (a) is at least 15 years old, and
 - (b) at the time of an accident, was:
 - (i) driving a motor vehicle involved in the accident, or
 - (ii) occupying the driving seat of a motor vehicle involved in the accident and attempting to put the motor vehicle in motion, or
 - (iii) the holder of a driver licence and occupying the seat in the motor vehicle next to a holder of a learner licence who was driving a motor vehicle involved in the accident, and
 - (c) is not an accident patient within the meaning of section 20.
- (2) A police officer may exercise the powers referred to in subsection (3) in relation to a person to whom this section applies if the police officer believes that:
 - (a) the accident is a fatal accident, or
 - (b) it is more likely than not that a person will die within 30 days as a consequence of the accident.
- (3) A police officer may:
 - (a) arrest the person without warrant, and
 - (b) take the person (or cause the person to be taken) with such force as may be necessary to a hospital or other prescribed place, and

- (c) detain the person, or cause the person to be detained, at the hospital or other prescribed place to enable the person to provide blood and urine samples in accordance with this Division.
- (4) In this Division, *accident* means an accident on a road or road related area involving a motor vehicle or other vehicle or a horse.

24B Procedure for taking samples following arrest

- (1) Except as provided by section 24C, a police officer may require a person who has been arrested under section 24A to provide samples of the person's blood and urine (whether or not the person consents to the samples being taken) in accordance with the directions of a medical practitioner, registered nurse or prescribed sample taker.
- (2) The police officer must inform any such medical practitioner, registered nurse or prescribed sample taker that the samples are required to be taken for the purposes of this Division.
- (3) The medical practitioner, registered nurse or prescribed sample taker by whom or under whose directions a sample of blood is taken in accordance with this Division must:
 - (a) place the sample into a container, and
 - (b) fasten and seal the container, and
 - (c) mark or label the container for future identification, and
 - (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood.
- (4) The medical practitioner, registered nurse or prescribed sample taker must, as soon as reasonably practicable after the sample of blood is taken, arrange for the sample to be submitted to a laboratory prescribed by the regulations for analysis by an analyst to determine whether the blood contains a drug.
- (5) The person from whom the sample of blood was taken may, within 12 months after the taking of the sample, apply to the laboratory prescribed under this section for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.

- (6) The medical practitioner, registered nurse or prescribed sample taker under whose directions a sample of urine is provided in accordance with this Division must:
 - (a) divide the sample into 2 approximately equal portions, and
 - (b) place each portion into a container, and
 - (c) fasten and seal each container, and
 - (d) mark or label each container for future identification.
- (7) Of the 2 sealed containers:
 - (a) one must be handed by the medical practitioner, registered nurse or prescribed sample taker to the person from whom it was taken or to some other person on behalf of that person, and
 - (b) the other must be handed by the practitioner, nurse or prescribed sample taker to the police officer present when the sample was taken and forwarded to a laboratory prescribed by the regulations for analysis by an analyst to determine whether the urine contains a drug.
- (8) An analyst at a laboratory prescribed by the regulations to whom any blood or urine is submitted for analysis under this section may carry out an analysis of the blood or urine to determine whether it contains a drug, but only if a police officer has notified the analyst in writing that a person involved in the accident that led to the sample of blood or urine being submitted for analysis:
 - (a) has died within 30 days of the accident, or
 - (b) has died during the period beginning 30 days after the accident and ending 12 months after the accident and a medical practitioner has given advice that the person died as a result of the accident.
- (9) Any duty of a medical practitioner, registered nurse or prescribed sample taker under this Division and any relevant provisions of the regulations may be performed by a person acting under the supervision of the practitioner, nurse or prescribed sample taker. A duty performed by any such person is taken to have been performed by the medical practitioner, registered nurse or prescribed sample taker.
- (10) An analysis under this section may be carried out, and anything in connection with the analysis (including the receipt of the blood or urine to be analysed and the breaking of any seal) may be done, by a person acting under the supervision of an analyst and, in that event, is taken to have been carried out or done by the analyst.

- (11) A blood or urine sample that has been provided under this section must be destroyed by or at the direction of the analyst who has custody of the sample without being analysed if, at the expiry of 13 months after the accident concerned, no police officer has made a notification relating to a death under subsection (8).

24C When taking of samples not permitted

A police officer cannot require a person to provide a sample under this Division:

- (a) if a medical practitioner, registered nurse or prescribed sample taker has objected on the grounds that compliance would be dangerous to the person's health, or
- (b) if it appears to that officer that it would, because of any injuries to the person, be dangerous to the person's medical condition to provide the sample, or
- (c) at any time after the expiration of 4 hours from the occurrence of the accident concerned.

24D Offences related to testing for drugs

- (1) A person must not:
- (a) on being required under this Division by a police officer to provide samples of blood and urine:
 - (i) refuse or fail to submit to the taking of the sample of blood, or
 - (ii) refuse or fail to provide the sample of urine, in accordance with the directions of a medical practitioner, registered nurse or prescribed sample taker, or
 - (b) between the time of the fatal accident concerned and the time when the person provides a sample that the person is required to provide under this Division, wilfully do anything to introduce, or alter the amount of, a drug in the person's blood or urine (except at the direction or under the supervision of an appropriate health professional).

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

- (2) It is a defence to a prosecution for an offence under subsection (1) (a) if the defendant satisfies the court that the defendant was unable, on medical grounds, to provide a sample when the defendant was required to do so.

- (3) It is a defence to a prosecution of a person for an offence under subsection (1) (b) of wilfully doing anything to introduce, or alter the amount of, a drug in the person's blood or urine if the person satisfies the court that the thing was done more than 4 hours after the time of the fatal accident concerned.
- (4) If a medical practitioner, registered nurse or prescribed sample taker is informed by a police officer in accordance with this Division that a sample is required to be taken for the purposes of this Division, the medical practitioner, registered nurse or prescribed sample taker must not:
- (a) fail to take the sample, or
 - (b) fail to comply with any requirement made by section 24B (3), (4), (6) or (7) in relation to the sample.
- Maximum penalty: 20 penalty units.
- (5) It is a defence to a prosecution for an offence under subsection (4) if the medical practitioner, registered nurse or prescribed sample taker satisfies the court that:
- (a) the practitioner, nurse or prescribed sample taker believed on reasonable grounds that the taking of the sample from the person would be prejudicial to the proper care and treatment of the person, or
 - (b) the practitioner, nurse or prescribed sample taker believed on reasonable grounds that the person was less than 15 years of age, or
 - (c) the practitioner, nurse or prescribed sample taker was, because of the behaviour of the person, unable to take the sample, or
 - (d) there was other reasonable cause for the practitioner, nurse or prescribed sample taker not to take the sample.
- (6) A person must not hinder or obstruct a medical practitioner, registered nurse or prescribed sample taker in attempting to take a sample of the blood or urine of any other person in accordance with this Division.
- Maximum penalty: 20 penalty units.

[7] Sections 27 (1), (2), (2A), (2B), (3), (4) (a) and (6) and 29 (2) (a), (5), (6) and (7)

Insert “, registered nurse or prescribed sample taker” after “medical practitioner” wherever occurring.

[8] Sections 27 (4) (b) and 29 (6) (a)–(d)

Insert “, nurse or prescribed sample taker” after “practitioner” wherever occurring.

[9] Section 28 When sobriety assessment and taking of samples not permitted

Omit “2 hours” from section 28 (c). Insert instead “4 hours”.

[10] Section 29 Offences related to sobriety assessments and testing for drugs

Omit “2 hours” from section 29 (4). Insert instead “4 hours”.

[11] Sections 33A–33D

Insert after section 33:

33A Evidence of presence of prescribed illicit drug revealed by oral fluid analysis in proceedings for offence under section 11B

- (1) In proceedings for an offence under section 11B in relation to a prescribed illicit drug, evidence may be given of the presence of a prescribed illicit drug in the oral fluid of the person charged as determined by an oral fluid analysis under Division 3A of a sample of the person’s oral fluid.
- (2) In proceedings for an offence under section 11B, the presence of a prescribed illicit drug in a person’s oral fluid so determined is taken to show the presence of the drug at the time of the occurrence of the relevant event referred to in section 11B (1) (a), (b) or (c) if the oral fluid sample analysed was provided within 2 hours after the event, unless the defendant proves the absence of the drug when the event occurred.

33B Certificate evidence about oral fluid analysis in proceedings for offences under section 11B

- (1) In proceedings for an offence under section 11B, a certificate purporting to be signed by a police officer certifying any one or more of the following matters is evidence (unless evidence to the contrary is adduced) of the particulars certified in and by the certificate:
 - (a) that the officer took a sample of the oral fluid of the person named in the certificate in accordance with Division 3A, and any relevant provisions of the regulations, on the day and at the time stated in the certificate,
 - (b) that the officer dealt with the sample in accordance with section 18D and any relevant provisions of the regulations,

- (c) that the container was sealed, and marked or labelled, in a specified manner,
 - (d) that the officer arranged for the sample to be submitted for oral fluid analysis to determine the presence of any prescribed illicit drugs in the oral fluid.
- (2) In proceedings for an offence under section 11B, a certificate purporting to be signed by an analyst certifying any one or more of the following matters:
- (a) that the analyst received, on a specified day, a sample of a specified person's oral fluid in a container submitted for analysis under this Part,
 - (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner,
 - (c) that on receipt by the analyst of the container, the seal was unbroken,
 - (d) that the analyst carried out an oral fluid analysis of the sample to determine the presence of any prescribed illicit drugs in the sample,
 - (e) that a specified prescribed illicit drug was determined pursuant to the oral fluid analysis to be present in that sample,
 - (f) that the analyst was, at the time of the analysis, an analyst within the meaning of this Act,
- is evidence (unless evidence to the contrary is adduced):
- (g) of the particulars certified in and by the certificate, and
 - (h) that the sample was the sample of the oral fluid of that specified person, and
 - (i) that the sample had not been tampered with before it was received by the analyst.
- (3) In proceedings for an offence under section 11B, a certificate purporting to be signed by a person who, in another State or Territory:
- (a) took an oral fluid sample, or
 - (b) analysed an oral fluid sample,
- in accordance with provisions of a law of that State or Territory that substantially correspond to the provisions of Division 3A is evidence (unless evidence to the contrary is adduced) of the particulars certified in and by the certificate, and an analysis to which any such certificate relates is taken to be an analysis under that Division.

33C Evidence of presence of drug revealed by blood or urine analysis in proceedings for offence under section 11B

- (1) In proceedings for an offence under section 11B, evidence may be given of the presence of a prescribed illicit drug, morphine or cocaine in the blood or urine of the person charged as determined by an analysis of the person's blood or urine under this Part.
- (2) In proceedings for an offence under section 11B, if such an analysis determines the presence of a prescribed illicit drug, morphine or cocaine in the person's blood or urine, that drug is taken to be so present at the time of the occurrence of the relevant event referred to in section 11B (1) (a), (b) or (c) or (3) (a), (b) or (c) if the blood or urine sample was taken within 4 hours after the event, unless the defendant proves the absence of the drug when the event occurred.

33D Certificate evidence about blood or urine analysis in proceedings for offences under section 11B

- (1) In proceedings for an offence under section 11B a certificate purporting to be signed by a medical practitioner, registered nurse or prescribed sample taker certifying any one or more of the following matters is evidence (unless evidence to the contrary is adduced) of the particulars certified in and by the certificate:
 - (a) that he or she was a medical practitioner, registered nurse or prescribed sample taker who attended a specified person who attended at or was admitted into a hospital or a place prescribed by the regulations as referred to in Division 3A, 4, 4A or 5,
 - (b) that he or she took a sample of the person's blood or urine in accordance with Division 3A, 4, 4A or 5, and any relevant provisions of the regulations, on the day and at the time stated in the certificate,
 - (c) that he or she dealt with the sample in accordance with Division 3A, 4, 4A or 5 and any relevant provisions of the regulations,
 - (d) that the container was sealed, and marked or labelled, in a specified manner.

- (2) In proceedings for an offence under section 11B, a certificate purporting to be signed by a police officer certifying any one or more of the following matters is evidence (unless evidence to the contrary is adduced) of the particulars certified in and by the certificate:
- (a) that the officer received a sample of a specified person's blood or urine taken in accordance with Division 3A, 4, 4A or 5,
 - (b) that the officer arranged for the sample to be submitted for analysis by an analyst to determine whether any drug was present in the sample,
 - (c) that the container was sealed, and marked or labelled, in a specified manner.
- (3) In proceedings for an offence under section 11B, a certificate purporting to be signed by an analyst certifying any one or more of the following matters:
- (a) that the analyst received, on a specified day, a sample of a specified person's blood or urine in a container submitted for analysis under this Part,
 - (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner,
 - (c) that on receipt by the analyst of the container, the seal was unbroken,
 - (d) that the analyst carried out an analysis of the sample to determine the presence of the following in the sample,
 - (i) any prescribed illicit drug,
 - (ii) any prescribed illicit drug, morphine or cocaine,
 - (e) that the analyst was, at the time of the analysis, an analyst within the meaning of this Act,
- is evidence (unless evidence to the contrary is adduced):
- (f) of the particulars certified in and by the certificate, and
 - (g) that the sample was a sample of the blood or urine of that specified person, and
 - (h) that the sample had not been tampered with before it was received by the analyst.
- (4) In proceedings for an offence under section 11B, a certificate purporting to be signed by a person who, in another State or Territory:
- (a) took a blood or urine sample, or

(b) analysed a blood or urine sample, in accordance with provisions of a law of that State or Territory that substantially correspond to the provisions of Division 3A, 4, 4A or 5 is evidence (unless evidence to the contrary is adduced) of the particulars certified in and by the certificate, and an analysis to which any such certificate relates is taken to be an analysis under those Divisions.

[12] Section 34 Evidence of drugs revealed by blood or urine analysis in proceedings for offence under section 12

Omit "Division 4" from section 34 (a).

Insert instead "Division 3A, 4, 4A".

[13] Section 34

Omit "2 hours". Insert instead "4 hours".

[14] Section 35 Certificate evidence about blood or urine analysis in proceedings for offences under section 12

Omit "practitioner or nurse" wherever occurring in section 35 (1).

Insert instead "practitioner, nurse or prescribed sample taker".

[15] Section 35 (1) (a), (b) and (c), (2) (a) and (3) (a)

Omit "Division 4" wherever occurring.

Insert instead "Division 3A, 4, 4A".

[16] Section 37 Evidence of breath test, breath analysis, oral fluid test, oral fluid analysis or blood or urine analysis and related facts not admissible in insurance cases to prove intoxication or drug use

Insert after section 37 (1) (b):

(b1) the fact that a person has undergone an oral fluid test or provided a sample for oral fluid analysis under Division 3A,

(b2) the result of an oral fluid test or oral fluid analysis,

[17] Section 37 (1) (c)

Omit "section 9, 13 (2), 15 (4) or 16".

Insert instead "section 9, 11B (1) or (3), 13 (2), 15 (4), 16, 18B (2), 18D (2), 18E (9) or 18G (1)".

[18] Section 37 (2)

Omit "Division 4". Insert instead "Division 3A, 4, 4A".

[19] Section 37 (5) (b)

Omit “section 9 or Division 3”.

Insert instead “section 9, 11B (1) or (3) or Division 3 or 3A”.

[20] Section 38 Double jeopardy in relation to alcohol and other drug offences

Omit “16, 22 (2)” wherever occurring in section 38 (1) and (2).

Insert instead “16, 18D (2), 18E (9), 18G (1), 22 (2), 24D (1) and (6)”.

[21] Section 38 (3A) and (3B)

Insert after section 38 (3):

(3A) If a person has been convicted of an offence under section 11B, the person is not liable to be convicted of an offence under section 12 (1) if the offence for which the person has been convicted and the other offence arose directly or indirectly out of the same circumstances.

(3B) If a person has been convicted of an offence under section 12 (1), the person is not liable to be convicted of an offence under section 11B if the offence for which the person has been convicted and the other offence arose directly or indirectly out of the same circumstances.

[22] Section 39 Personal liability for good faith taking of samples

Omit “or nurse” wherever occurring in section 39 (1).

Insert instead “, nurse or prescribed sample taker”.

[23] Section 39 (1) (b)

Insert “or 4A” after “Division 4”.

[24] Section 39 (2)

Omit the subsection. Insert instead:

(2) Subsection (1) extends to any person acting under the supervision of the medical practitioner, nurse or prescribed sample taker as referred to in section 18E (7), 24, 24B (9) or 27 (6).

[25] Part 2, Division 9

Insert after Division 8 of Part 2:

Division 9 Random breath and oral fluid testing at same time

39A Police may conduct random breath and oral fluid testing at same time

- (1) Nothing in this Act prevents a police officer requiring a person to undergo both breath testing and oral fluid testing.
- (2) If a police officer requests or signals a driver of a motor vehicle to stop for the purpose of both section 13 (Power to conduct random breath testing) and section 18B (Power to conduct random oral fluid testing) and the driver fails to comply with the request or signal, the driver may be convicted of an offence under section 13 (5) or an offence under section 18B (5), but not both.

[26] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Road Transport Legislation Amendment (Drug Testing) Act 2006

[27] Schedule 2

Insert at the end of the Schedule:

Part 5 Provisions consequent on enactment of Road Transport Legislation Amendment (Drug Testing) Act 2006

8 Review of Road Transport Legislation Amendment (Drug Testing) Act 2006

- (1) The Minister is to review the *Road Transport Legislation Amendment (Drug Testing) Act 2006* (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 12 months from the date of commencement of Division 3A or 4A of Part 2 of this Act (whichever is the earlier).
- (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 12 months referred to in subclause (2).

[28] Dictionary

Insert in alphabetical order in clause 1:

approved oral fluid analysing instrument—see section 18A.

approved oral fluid testing device—see section 18A.

fatal accident means an accident on a road or road related area involving a motor vehicle that results in the death of one or more persons.

oral fluid analysis—see section 18A.

oral fluid test—see section 18A.

prescribed illicit drug means any of the following:

- (a) delta-9-tetrahydrocannabinol (also known as THC),
- (b) methylamphetamine (also known as speed),
- (c) methylenedioxymethylamphetamine (also known as ecstasy).

prescribed sample taker means a person, or class of persons, prescribed by the regulations as authorised to take the following samples:

- (a) samples of blood for the purposes of Division 3A of Part 2,
- (b) samples of blood or urine, or both, for the purposes of Divisions 4A and 5 of Part 2.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Crimes Act 1900 No 40

[1] Section 52AA Dangerous driving: procedural matters

Insert “—alcohol” after “intoxication” in the heading to section 52AA (2).

[2] Section 52AA (2)

Insert “or 4A” after “Division 4”.

[3] Section 52AA (3A) and (3B)

Insert after section 52AA (3):

(3A) Evidence of intoxication—drugs

For the purposes of section 52A, evidence may be given of the concentration of a drug (other than alcohol) present in the accused’s blood or urine at the time of the impact occasioning death or grievous bodily harm occurring at a place that is not a road or road related area within the meaning of the *Road Transport (General) Act 2005* (other than a road or road related area that is the subject of a declaration made under section 15 (1) (b) of that Act relating to all of the provisions of that Act) as determined by a blood or urine analysis carried out in accordance with Division 4 or 4A of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999*.

(3B) Time of intoxication

A concentration of a drug (other than alcohol) determined by the means referred to in subsection (3A) is taken to be the concentration of the drug in the accused’s blood or urine at the time of the impact occasioning death or grievous bodily harm:

- (a) if the blood or urine sample that was analysed was taken within 4 hours after the impact, and
- (b) unless the accused proves that there was no such drug in the accused’s blood or urine at the time of the impact.

2.2 Criminal Procedure Act 1986 No 209

Section 283 Law enforcement devices

Insert “33D,” after “section 33,” in section 283 (1) (a).

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

[1] Sections 189A–189C

Insert after section 189:

189A Power to prevent persons who are under the influence of alcohol or other drugs supervising learner drivers

- (1) If a police officer is of the opinion that a person who was occupying a seat in a motor vehicle next to a holder of a learner licence while the holder of the learner licence was driving (or about to drive) the motor vehicle is under the influence of alcohol or any other drug, or a combination of drugs, the police officer may prohibit the person from occupying a seat in a motor vehicle next to a holder of a learner licence while the person is under the influence of alcohol or that other drug or a combination of drugs.
- (2) If the police officer is of the opinion that the person concerned is under the influence of alcohol, the person is entitled to request that the person undergo a breath test in order to determine whether or not the person is under the influence of alcohol. If such a request is made, the police officer may not take any action under subsection (1) until the person undergoes the breath test.
- (3) Despite subsection (2), a police officer may take action under subsection (1) if the police officer reasonably suspects that the person is likely to abscond before undergoing the breath test.

189B Power to prevent driving by persons who have failed oral fluid test or refused or failed to undergo oral fluid test or refused to provide oral fluid sample

- (1) A police officer may exercise the powers referred to in subsection (2) in respect of a person who is driving (or about to drive) a motor vehicle if the person has:
 - (a) undergone an oral fluid test and the test has indicated that one or more prescribed illicit drugs may be present in the person's oral fluid, or
 - (b) refused or failed to undergo an oral fluid test, or
 - (c) refused or failed to provide an oral fluid sample in accordance with the directions of a police officer.
- (2) A police officer may:
 - (a) prohibit the person from driving a motor vehicle for a period of 24 hours, and

-
- (b) require the person to immediately hand over all ignition or other keys of the motor vehicle in the person's actual possession:
 - (i) to the police officer, or
 - (ii) to another person in the company of the person whom the police officer is satisfied is responsible and capable of exercising proper control of the motor vehicle, and
 - (c) take such other steps as, in the opinion of the police officer, are necessary in order:
 - (i) to immobilise the motor vehicle, or
 - (ii) to remove the motor vehicle to a place of safety and detain it at that place.
 - (3) In this section, *oral fluid test* and *prescribed illicit drug* have the same meaning as in the *Road Transport (Safety and Traffic Management) Act 1999*.

189C Power to prevent persons who have failed oral fluid test or refused or failed to undergo oral fluid test or refused to provide oral fluid sample supervising learner drivers

- (1) A police officer may exercise the power referred to in subsection (2) in respect of a person who was occupying a seat in a motor vehicle next to a holder of a learner licence while the holder of the learner licence was driving (or about to drive) the motor vehicle if the person has:
 - (a) undergone an oral fluid test and the test has indicated that one or more prescribed illicit drugs may be present in the person's oral fluid, or
 - (b) refused or failed to undergo an oral fluid test, or
 - (c) refused or failed to provide an oral fluid sample in accordance with the directions of a police officer.
- (2) A police officer may prohibit the person from occupying a seat in a motor vehicle next to a holder of a learner licence for a period of 24 hours.
- (3) In this section, *oral fluid test* and *prescribed illicit drug* have the same meaning as in the *Road Transport (Safety and Traffic Management) Act 1999*.

[2] Section 190 Detention of keys or vehicles may be continued

Insert "or 189B" after "section 189" in section 190 (1).

[3] Section 190 (1)

Omit “that section”. Insert instead “either of those sections”.

[4] Section 190 (1) (a)

Omit the paragraph. Insert instead:

- (a) the return of the keys or the motor vehicle is requested by:
 - (i) in relation to a power exercised by a police officer under section 189—any person, or
 - (ii) in relation to a power exercised by a police officer under section 189B—any person (other than the person referred to in section 189B (1)), and

2.4 Road Transport (General) Act 2005 No 11

[1] Section 187 Court may impose penalty and disqualify driver on conviction

Omit “section 9, 12 (1), 15 (4), 16, 43 or 70” from section 187 (6) (c).

Insert instead “section 9, 11B, 12 (1), 15 (4), 16, 18D (2), 18E (9), 18G (1), 24D (1), 43 or 70”.

[2] Section 188 Disqualification for certain major offences

Omit “or” from paragraph (c) (viii) of the definition of *convicted person* in section 188 (1).

[3] Section 188 (1), definition of “convicted person”

Insert after paragraph (c) (viii):

- (ix) section 11B, 18D (2), 18E (9), 18G (1) or 24D (1) of the *Road Transport (Safety and Traffic Management) Act 1999*, or

[4] Section 188 (2) (a)

Insert “or 11B (1) or (3)” after “section 9 (1A), (1) or (2)”.

[5] Section 188 (2) (c)

Omit “section 29 (2)”.

Insert instead “section 18D (2), 18E (9), 18G (1), 24D (1) or 29 (2)”.

[6] Section 188 (3) (a)

Insert “or 11B (1) or (3)” after “section 9 (1A), (1) or (2)”.

[7] Section 188 (3) (c)

Omit “section 29 (2)”.

Insert instead “section 18D (2), 18E (9), 18G (1), 24D (1) or 29 (2)”.

[Second reading speech made in—

Legislative Assembly on 19 September 2006

Legislative Council on 18 October 2006]

BY AUTHORITY