



New South Wales

# Road Transport Legislation Amendment (Road Safety) Act 2018 No 15

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New South Wales

# Road Transport Legislation Amendment (Road Safety) Act 2018 No 15

Act No 15, 2018

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An Act to amend the *Road Transport Act 2013* to make further provision with respect to drug use by drivers and the enforcement of mobile phone use offences; and for other purposes. [Assented to 9 May 2018]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Road Transport Legislation Amendment (Road Safety) Act 2018*.

**2 Commencement**

This Act commences on 1 July 2018.

## Schedule 1 Amendment of Road Transport Act 2013 No 18

**[1] Section 4 Definitions**

Insert after paragraph (c) of the definition of *prescribed illicit drug* in section 4 (1):

- (d) cocaine.

**[2] Section 111 Presence of certain drugs (other than alcohol) in oral fluid, blood or urine**

Omit “or cocaine” wherever occurring in section 111 (3) (including the heading to that subsection).

**[3] Section 111 (4)**

Omit the subsection. Insert instead:

- (4) If a person is charged with an offence against subsection (3), the offence is proved if the court is satisfied beyond reasonable doubt that morphine was present in the blood or urine of the defendant (whether or not in combination with any other drugs).

**[4] Section 112 Use or attempted use of a vehicle under the influence of alcohol or any other drug**

Omit the penalty to section 112 (1). Insert instead:

Maximum penalty:

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

**[5] Section 134 Approval of devices by Governor**

Insert after section 134 (1) (g):

- (h) photographing the driver of a vehicle using a mobile phone in contravention of the statutory rules.

**[6] Section 134 (2) (f2)**

Insert after section 134 (2) (f1):

- (f2) in the case of a device that photographs the driver of a vehicle using a mobile phone in contravention of the statutory rules—the registration number of the vehicle,

**[7] Section 135 Definitions**

Insert at the end of the definition of *detectable traffic offence* in section 135 (1):

- (e) a mobile phone use offence.

**[8] Section 135 (1), definition of “mobile phone use offence”**

Insert in alphabetical order:

*mobile phone use offence* means an offence against the statutory rules involving the use of a mobile phone by the driver of a motor vehicle.

**[9] Section 135 (2) (h)**

Insert at the end of section 135 (2) (g):

, and

- (h) an approved traffic enforcement device is *approved for mobile phone use offences* if it is approved under section 134 for the use referred to in section 134 (1) (h).

**[10] Section 138 Admissibility of photographs taken by devices—generally**

Insert after section 138 (1) (e):

- (f) in the case of proceedings for a mobile phone use offence—a photograph that is tendered as:
  - (i) being taken by means of the operation, on a day specified on the photograph, of an approved traffic enforcement device that is approved for mobile phone use offences, and
  - (ii) if the photograph is taken by a digital camera device—bearing a security indicator of a kind prescribed by the statutory rules.

**[11] Section 139 Admissibility of photographs taken by devices—unauthorised vehicle use offences**

Insert “and section 139A” after “In this section” in section 139 (4).

**[12] Section 139A**

Insert after section 139:

**139A Admissibility of photographs taken by devices (other than a device approved for mobile phone use offences) for mobile phone use offences**

- (1) A photograph of a vehicle:
  - (a) taken by an approved traffic enforcement device (other than a device approved for mobile phone use offences) that is evidence under this Division of a detectable traffic offence (other than a mobile phone use offence), or
  - (b) taken by an approved toll camera that is evidence of a toll offence against section 250A of the *Roads Act 1993*,  
may also be tendered in evidence in proceedings for a mobile phone use offence involving the driver of the vehicle.
- (2) For this purpose, the provisions of this Division or section 250A of the *Roads Act 1993* that apply in relation to the tendering, admission and use in evidence of a photograph for the detectable traffic offence (for which the device is approved) or toll offence of which the photograph is also evidence are taken to extend to the tendering, admission and use in evidence of the photograph for the mobile phone use offence.
- (3) Nothing in this section prevents a photograph taken by an approved traffic enforcement device being tendered and used in evidence both in proceedings for a mobile phone use offence and proceedings for a detectable traffic offence (other than a mobile phone use offence) or toll offence.

**[13] Section 148EA**

Insert after section 148E:

**148EA Additional power to prevent driving by persons who are under the influence of alcohol or other drugs following failure to submit to (or pass) sobriety assessment**

Without limiting the power of a police officer under section 148E (1), a police officer who arrests a person under clause 14 of Schedule 3 may prohibit the person from driving a motor vehicle for a period of 48 hours.

**[14] Section 183 Definitions**

Insert at the end of paragraph (f) of the definition of *appropriate approved traffic enforcement device* in section 183 (1):

, or

- (g) in the case of a mobile phone use offence—an approved traffic enforcement device that is approved for mobile phone use offences or approved toll camera (within the meaning of section 250A of the *Roads Act 1993*) that has taken a photograph which may be tendered in evidence under section 139A in proceedings for such an offence.

**[15] Section 183 (1), definition of “camera recorded offence”**

Insert after paragraph (g):

- (h) a mobile phone use offence in respect of which the penalty notice or the court attendance notice indicates that the offence was detected by an appropriate approved traffic enforcement device for the offence.

**[16] Section 205 Disqualification for certain major offences**

Omit “or 112 (1)” wherever occurring in section 205 (2) (b) and (3) (b).

**[17] Section 224 When immediate licence suspension notice may be issued by police officer**

Omit “offence against section 110 (4) or (5),” from section 224 (1) (b).

Insert instead “an offence against section 110 (4) or (5), 112 (1),”.

**[18] Schedule 3 Testing for alcohol or drug use**

Omit “prescribed illicit drug, morphine or cocaine” from clause 32 (3) (a).

Insert instead “prescribed illicit drug or morphine”.

## Schedule 2 Amendment of other Acts

### 2.1 Marine Safety Act 1998 No 121

**[1] Section 25 Presence of certain drugs (other than alcohol) in oral fluid, blood or urine**

Omit “or cocaine” wherever occurring in section 25 (3) (including the heading to that subsection).

**[2] Section 25 (4)**

Omit the subsection. Insert instead:

- (4) If a person is charged with an offence against subsection (3), the offence is proved if the court is satisfied beyond reasonable doubt that morphine was present in the blood or urine of the defendant (whether or not in combination with any other drugs).

**[3] Schedule 1 Testing for alcohol and drug use**

Omit “prescribed illicit drug, morphine or cocaine” from clause 33 (3) (a).

Insert instead “prescribed illicit drug or morphine”.

### 2.2 Transport Administration Act 1988 No 109

**[1] Section 80H Payments into Community Road Safety Fund**

Insert after section 80H (1) (a):

- (a1) all fines and penalties recovered for camera recorded mobile phone use offences, and

**[2] Section 80H (4)**

Insert in alphabetical order:

*camera recorded mobile phone use offence* means a mobile phone use offence (within the meaning of Division 5 of Part 5.3 of the *Road Transport Act 2013*) in respect of which the penalty notice or the court attendance notice indicates that the offence was detected by the appropriate approved traffic enforcement device (within the meaning of Division 2 of Part 7.3 of that Act) for the offence.

[Second reading speech made in—

Legislative Assembly on 6 March 2018

Legislative Council on 2 May 2018]