



New South Wales

Road Transport Legislation Amendment (Drink and Drug Driving Offence) Act 2021 No 3

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Road Transport Legislation Amendment (Drink and Drug Driving Offence) Act 2021 No 3

Act No 3, 2021

An Act to amend the *Road Transport Act 2013* to introduce a combined alcohol and drug driving offence; and for other purposes. [Assented to 24 February 2021]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Road Transport Legislation Amendment (Drink and Drug Driving Offence) Act 2021*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on a day or days to be appointed by proclamation.
- (2) Schedule 2.6 commences on the date of assent to this Act.

Schedule 1 Amendment of Road Transport Act 2013 No 18

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

combined alcohol and drug driving offence means an offence against section 111A(1), (2) or (3).

[2] Section 4(1), definition of “major offence”

Insert after paragraph (d)—

(d1) a combined alcohol and drug driving offence,

[3] Section 111A

Insert after section 111—

111A Presence of both prescribed illicit drug in person’s oral fluid, blood or urine and prescribed concentration of alcohol in person’s breath or blood

(1) Offence—high range prescribed concentration of alcohol and presence of prescribed illicit drug

A person must not, while there is present in the person’s breath or blood the high range prescribed concentration of alcohol and present in the person’s oral fluid, blood or urine a 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 an applicable driver licence, other than an applicable provisional licence or applicable learner licence—occupy the seat in a motor vehicle next to a learner driver who is driving the vehicle.

Maximum penalty—

- (a) for a first offence—50 penalty units or imprisonment for 2 years or both, or
- (b) for a second or subsequent offence—100 penalty units or imprisonment for 2 years or both.

(2) Offence—middle range prescribed concentration of alcohol and presence of prescribed illicit drug

A person must not, while there is present in the person’s breath or blood the middle range prescribed concentration of alcohol and present in the person’s oral fluid, blood or urine a 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 an applicable driver licence, other than an applicable provisional licence or applicable learner licence—occupy the seat in a motor vehicle next to a learner driver who is driving the vehicle.

Maximum penalty—

- (a) for a first offence—30 penalty units or imprisonment for 18 months or both, or

(b) for a second or subsequent offence—60 penalty units or imprisonment for 2 years or both.

(3) **Offence—second or subsequent offence of combined alcohol and drug driving offence**

A person commits an offence against this subsection if—

- (a) the person commits an offence under section 110(1), (2) or (3), while there is present in the person's oral fluid, blood or urine, a prescribed illicit drug, and
- (b) the person has been convicted of an offence against this subsection or subsection (1) or (2) in the previous 5 years.

Maximum penalty—50 penalty units or imprisonment for 18 months or both.

(4) A person cannot be convicted of an offence against this section and section 110, 111(1) or 112 in relation to the same conduct.

(5) **Alternative verdicts**

If the court, on a prosecution of a person for an offence against a subsection of this section, is not satisfied that the offence is proven but is satisfied that the person has committed an offence against another subsection of this section or against section 110 or 111(1), having the same or a lesser maximum penalty, the court may acquit the person of the offence with which the person is charged and find the person guilty of the other offence, and the person is liable to be punished accordingly.

(6) **Presence of higher concentration of alcohol not defence**

It is not a defence to a prosecution for an offence against a subsection of this section if the defendant proves that, at the time the defendant engaged in the conduct that is alleged to have contravened the subsection, a greater concentration of alcohol was present in the defendant's breath or blood than the prescribed concentration of alcohol referred to in the offence.

(7) **Defence for offence relating to novice range prescribed concentration of alcohol**

It is a defence to a prosecution for an offence against subsection (3), if—

- (a) an element of the offence under subsection (3) is that the person is alleged to have committed an offence under section 110(1), and
- (b) the defendant proves to the court's satisfaction that, at the time the defendant engaged in the conduct that is alleged to have contravened section 110(1), the presence in the defendant's breath or blood of the novice range prescribed concentration of alcohol was not caused, in whole or in part, by—
 - (i) the consumption of an alcoholic beverage, other than for the purposes of religious observance, or
 - (ii) the consumption or use of another substance, for example, food or medicine, for the purpose of consuming alcohol.

[4] Section 113 Detention of vehicle in certain cases

Insert after section 113(2)—

- (3) Subsection (1) extends to a police officer dealing with a vehicle in respect of which the offence that has been committed is subsequently determined to be an offence against section 111A.

[5] Section 202 Period within which certain other proceedings may be commenced

Insert “, 111A” after “111” in section 202(1)(d).

[6] Section 203 Section 10 of Crimes (Sentencing Procedure) Act 1999 not applicable in certain circumstances

Insert “111A,” after “111,” in section 203(2)(a).

[7] Section 205 Disqualification for certain major offences

Insert after section 205(2)(b)—

- (b1) where the conviction is for an offence against section 111A(2)—
 - (i) the person is automatically disqualified for 2 years from holding a driver licence, or
 - (ii) if the court that convicts the person thinks fit to order a shorter period, but not shorter than 12 months, or longer period of disqualification—the person is disqualified from holding a driver licence for the period specified in the order, or

[8] Section 205(2)(c1)

Insert after section 205(2)(c)—

- (c1) where the conviction is for an offence against section 111A(1)—
 - (i) the person is automatically disqualified for 4 years from holding a driver licence, or
 - (ii) if the court that convicts the person thinks fit to order a shorter period, but not shorter than 18 months, or longer period of disqualification—the person is disqualified from holding a driver licence for the period specified in the order, or

[9] Section 205(3)(a1)

Insert after section 205(3)(a)—

- (a1) where the conviction is for an offence against section 111A(3)—
 - (i) the person is automatically disqualified for 2 years from holding a driver licence, or
 - (ii) if the court that convicts the person thinks fit to order a shorter period, but not shorter than 18 months, or longer period of disqualification—the person is disqualified from holding a driver licence for the period specified in the order, or

[10] Section 205(3)(b1)

Insert after section 205(3)(b)—

- (b1) where the conviction is for an offence against section 111A(2)—
 - (i) the person is automatically disqualified for 4 years from holding a driver licence, or
 - (ii) if the court that convicts the person thinks fit to order a shorter period, but not shorter than 2 years, or longer period of disqualification—the person is disqualified from holding a driver licence for the period specified in the order, or

[11] Section 205(3)(c1)

Insert after section 205(3)(c)—

- (c1) where the conviction is for an offence against section 111A(1)—

- (i) the person is automatically disqualified for 6 years from holding a driver licence, or
- (ii) if the court that convicts the person thinks fit to order a shorter period, but not shorter than 3 years, or longer period of disqualification—the person is disqualified from holding a driver licence for the period specified in the order, or

[12] Section 205(4)

Insert “other than for an offence against section 111A(1), (2) or (3),” after “or trailer,”.

[13] Section 205(4A)

Insert after section 205(4)—

(4A) Calculation of disqualification periods in case of multiple offences including a combined alcohol and drug driving offence

If 2 or more convictions of a person are made, whether or not at the same time, for crimes or offences arising out of a single incident involving the use of a motor vehicle or trailer, and one of the offences is an offence against section 111A(1), (2) or (3), the following provisions apply—

- (a) for the purpose of ascertaining whether subsection (2) or (3) should apply in relation to the conviction—
 - (i) the other of those convictions are to be disregarded, and
 - (ii) subsection (2) or (3), as the case may require, is, accordingly, to be the applicable subsection,
- (b) the maximum period of automatic disqualification for all crimes or offences is to be—
 - (i) if subsection (2) is applicable—4 years, or
 - (ii) if subsection (3) is applicable—6 years,
- (c) a minimum period of ordered disqualification is, for the crimes or offences, to be disregarded to the extent that the total period of ordered and, where relevant, automatic disqualification would exceed—
 - (i) where subsection (2) is applicable—18 months, or
 - (ii) where subsection (3) is applicable—3 years.

However, nothing in paragraph (c) prevents the court, if it thinks fit, from making an order it could have made if paragraph (c) had not been enacted.

[14] Section 209 Definitions

Insert after paragraph (e) of the definition of *alcohol-related major offence* in section 209(1)—

- (e1) a combined alcohol and drug driving offence,

[15] Section 209(1), definition of “mandatory interlock offence”

Insert after paragraph (e)—

- (e1) a combined alcohol and drug driving offence that is a first offence or a second or subsequent offence by the offender for any other alcohol-related major offence,

[16] Section 211 Mandatory interlock orders

Insert in appropriate order in the Table to the section—

An offence against section 111A(1) that is a first offence by the offender for any other alcohol-related major offence	6 months	9 months	24 months
An offence against section 111A(1) that is a second or subsequent offence by the offender for any other alcohol-related major offence	9 months	12 months	48 months
An offence against section 111A(2) that is a first offence by the offender for any other alcohol-related major offence	3 months	6 months	12 months
An offence against section 111A(2) that is a second or subsequent offence by the offender for any other alcohol-related major offence	6 months	9 months	24 months
An offence against section 111A(3)	1 month	3 months	12 months

[17] Section 212 Interlock exemption orders

Insert “or 111A(2)” after “or (c)” wherever occurring in section 212(3)(c) and (5).

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

Insert after section 224(4)—

- (4A) If a driver is given an immediate licence suspension notice under subsection (1) in relation to an offence against section 110, other than a driver issued with a penalty notice for an offence under section 224(1)(a1), and the driver is subsequently charged with an offence against section 111A, the licence suspension continues until—
- (a) the charge for the offence against section 111A is withdrawn or heard and determined by the court, and
 - (b) any other charges for which the immediate licence suspension notice was given are withdrawn or heard and determined by the court.

[19] Section 237 Definitions

Insert after paragraph (a1) of the definition of *sanctionable offence* in section 237(1)—

- (a2) an offence against—
- (i) section 111A(2), but only if the person has been convicted of an alcohol-related major offence, within the meaning of Part 7.4, Division 2, during the period of 5 years before the new offence was committed, or
 - (ii) section 111A(1) or (3),

[20] Section 238 When additional sanctions may be imposed

Insert after section 238(b)—

- (b1) is being or has, on that day or during the past 60 days, been operated on a road by an offending operator of the vehicle to commit a sanctionable offence of a kind specified in section 237(1), definition of *sanctionable offence*, paragraph (a2), or

[21] Schedule 3 Testing for alcohol and drug use

Insert after clause 32—

32A Evidence of alcohol concentration in proceedings for offences against section 111A

- (1) This clause applies to proceedings for an offence against section 111A in relation to evidence of alcohol concentration.
- (2) Evidence may be given in the proceedings of the concentration of alcohol present in the breath or blood of the person charged as determined by—
 - (a) a breath analysis carried out by a police officer authorised to do so by the Commissioner of Police, or
 - (b) an analysis of the person's blood under this Schedule.
- (3) In the proceedings, the concentration of alcohol determined under subsection (2) is taken to be the concentration of alcohol in the person's breath or blood at the time of the occurrence of the relevant event referred to in clause 3(1)(a), (b) or (c) if the breath analysis was made, or blood sample taken, within 2 hours after the event unless the defendant proves that the concentration of alcohol in the defendant's breath or blood at the time was—
 - (a) less than an amount in the range of the prescribed concentration of alcohol relevant to the offence charged, or
 - (b) zero grams of alcohol in 210 litres of breath or 100 millilitres of blood.
- (4) Nothing in subclause (3) affects the operation of section 111A(5).

32B Evidence of presence of prescribed illicit drug in proceedings for offences against section 111A

- (1) This clause applies to proceedings for an offence against section 111A in relation to evidence of a prescribed illicit drug.
- (2) In the proceedings in relation to a prescribed illicit drug—
 - (a) 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 this Schedule of a sample of the person's oral fluid, and
 - (b) the presence of a prescribed illicit drug in a person's oral fluid determined by an oral fluid analysis under this Schedule is taken to show the presence of the drug at the time of the occurrence of the relevant event referred to in section 111A(1), (2) or (3) 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.
- (3) In the proceedings in relation to a prescribed illicit drug—
 - (a) evidence may be given of the presence of a prescribed illicit drug in the blood or urine of the person charged as determined by an analysis of the person's blood or urine under this Schedule, and
 - (b) the drug the presence of which is determined by an analysis of the person's blood or urine under this Schedule is taken to be present at the time of the occurrence of the relevant event referred to in section 111A(1), (2) or (3) 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.

[22] Schedule 3, clause 34(1)(e)(iia)

Insert after clause 34(1)(e)(ii)—
(iia) section 111A,

[23] Schedule 3, clause 34(5)(b)(i)

Omit “or 111(1) or (3)”. Insert instead “, 111(1) or (3) or 111A”.

[24] Schedule 3, clause 35(1)(a1)

Insert after clause 35(1)(a)—
(a1) proceedings for a combined alcohol and drug driving offence,

[25] Schedule 3, clause 36(1)(b1)

Insert after clause 36(1)(b)—
(b1) proceedings for a combined alcohol and drug driving offence,

[26] Schedule 3, clause 40(4)

Insert after paragraph (b) of the definition of *related alcohol or drug offence*—
(b1) section 111A,

Schedule 2 Amendment of other legislation

2.1 Criminal Procedure Regulation 2017

Clause 24 Offences for which briefs of evidence not required

Insert “, 111A” after “section 110” in clause 24(c)(ii).

2.2 Health Services Regulation 2018

Clause 15 Definitions

Insert “111A,” after “111,” in paragraph (b) of the definition of *traffic offence* in clause 15.

2.3 Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017

Clause 24 Disqualifying offences

Insert “111A,” after “111,” in clause 24(2)(f).

2.4 Recreation Vehicles Act 1983 No 136

Section 23 Application of certain offences under Road Transport Act 2013

Insert “111A,” after “110,” wherever occurring.

2.5 Road Transport (General) Regulation 2013

Clause 28AA

Insert after clause 28—

28AA Corresponding combined alcohol and drug driving offences

- (1) An offence under the law of another jurisdiction is a *corresponding combined alcohol and drug driving offence* if the offence involves—
 - (a) the presence of alcohol in a person’s breath or blood if the presence is a range that would, for the person, be considered to be an offence in New South Wales, and
 - (b) the presence of a prescribed illicit drug in a person’s oral fluid, blood or urine.
- (2) For the purposes of section 9(5)(e) of the Act, a corresponding combined alcohol and drug driving offence is declared to be an equivalent offence to a combined alcohol and drug driving offence.

2.6 Road Transport Legislation Amendment (Penalties and Other Sanctions) Act 2018 No 54

[1] Schedule 1 Amendment of Road Transport Act 2013 No 18

Omit “The Authority” wherever occurring in Schedule 1[16].

Insert instead “Transport for NSW”.

[2] Schedule 1[16] and [21]

Omit “the Authority” wherever occurring. Insert instead “Transport for NSW”.

[3] Schedule 1[16]

Insert “, 111A” after “, 111” in proposed section 215C(1)(a).

[Second reading speech made in—
Legislative Assembly on 10 February 2021
Legislative Council on 18 February 2021]