

[Act 1999 No 20]



New South Wales

Road Transport (Safety and Traffic Management) Bill 1999

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Road Transport (General) Bill 1999*.

Overview of Bill

The objects of this Bill are:

- (a) to provide for a system of safety and traffic management that is consistent with the uniform national approach envisaged by the agreements scheduled to the *National Road Transport Commission Act 1991* of the Commonwealth, and
 - (b) to re-enact with some modifications certain other provisions presently contained in the *Traffic Act 1909* (which is to be repealed by the proposed *Road Transport Legislation Amendment Act 1999*) relating to safety and traffic management, including provisions relating to the following:
 - (i) the monitoring of the observance of speed limits and traffic lights,
 - (ii) the testing for the use of alcohol and other drugs on roads and road related areas,
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- (iii) the use of heavy vehicles and vehicles carrying dangerous goods,
- (iv) accidents on roads and road related areas.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out the objects of the proposed Act.

Clause 4 provides that expressions used in the proposed Act have the meanings given to them in the Dictionary at the end of the proposed Act.

Clause 5 provides that the proposed Act binds the Crown.

Clause 6 enables the regulations to apply any or all of the provisions of the *Acts Interpretation Act 1901* of the Commonwealth to the interpretation of the proposed Act or the regulations (or to specified provisions of this Act or the regulations) or to any instrument made under the proposed Act or the regulations (or to specified provisions of any such instrument). The principal purpose of the provision is to enable common interpretation provisions to be applied to uniform national law that is applied, incorporated or adopted in New South Wales by or under the proposed Act.

Clause 7 provides that notes in the proposed Act do not form part of the Act.

Part 2 Alcohol and other drug use

Division 1 **Offences involving prescribed concentrations of alcohol**

Clause 8 sets out definitions that are used in the Division, including definitions of *special category driver* and *special category supervisor*. Special category drivers include drivers with learner licences and certain provisional licences and drivers whose driver licences have been suspended or cancelled or who have been

disqualified from driving. A special category supervisor is a person who, were the person driving the motor vehicle, would be a special category driver in respect of the motor vehicle.

The proposed section substantially re-enacts the definitions set out in section 4E (1)–(1C) of the *Traffic Act 1909*.

Clause 9 creates 4 offences involving the presence of certain prescribed concentrations of alcohol in a driver's and, in some cases, a passenger's blood.

Firstly, the proposed section makes it an offence for a special category driver to drive or attempt to drive a motor vehicle while the special range prescribed concentration of alcohol is in the person's blood. It also makes it an offence for a driver licence holder who is a special category supervisor having that concentration of alcohol in his or her blood to occupy the seat in a motor vehicle next to a holder of a learner licence who is driving the vehicle. The ***special range prescribed concentration of alcohol*** is defined in the Dictionary to be a concentration of 0.02 grammes or more, but less than 0.05 grammes, of alcohol in 100 millilitres of blood. The maximum penalty for such an offence will be 10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence).

Secondly, the proposed section makes it an offence for a person to drive or attempt to drive a motor vehicle while the low range prescribed concentration of alcohol is in the person's blood. It also makes it an offence for a driver licence holder having that concentration of alcohol in his or her blood to occupy the seat in a motor vehicle next to a holder of a learner licence who is driving the vehicle. The ***low range prescribed concentration of alcohol*** is defined in the Dictionary to be a concentration of 0.05 grammes or more, but less than 0.08 grammes, of alcohol in 100 millilitres of blood. The maximum penalty for such an offence will be 10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence).

Thirdly, the proposed section makes it an offence for a person to drive or attempt to drive a motor vehicle while the middle range prescribed concentration of alcohol is in the person's blood. It also makes it an offence for a driver licence holder having that concentration of alcohol in his or her blood to occupy the seat in a motor vehicle next to a holder of a learner licence who is driving the vehicle. The ***middle range prescribed concentration of alcohol*** is defined in the Dictionary to be a concentration of 0.08 grammes or more, but less than 0.15 grammes, of alcohol in 100 millilitres of blood. The maximum penalty for such an offence will be 20 penalty units or imprisonment for 9 months or both (in the case of a first offence) or 30 penalty units or imprisonment for 12 months or both (in the case of a second or subsequent offence).

Finally, the proposed section makes it an offence for a person to drive or attempt to drive a motor vehicle while the high range prescribed concentration of alcohol is in the person's blood. It also makes it an offence for a driver licence holder having that concentration of alcohol in his or her blood to occupy the seat in a motor vehicle next to a holder of a learner licence who is driving the vehicle. The ***high range prescribed concentration of alcohol*** is defined in the Dictionary to be a concentration of 0.15 grammes or more of alcohol in 100 millilitres of blood. The maximum penalty for such an offence will be 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).

The proposed section substantially re-enacts the provisions of section 4E (1D)–(1G) of the *Traffic Act 1909*.

Clause 10 enables a court to convict a defendant who is charged with an offence under proposed section 9 with a lesser offence under that section if the more serious offence is not established and the less serious offence is established.

The proposed section substantially re-enacts the provisions of section 4E (1I)–(1JA) of the *Traffic Act 1909*.

Clause 11 provides that a defendant cannot plead as a defence that he or she had a concentration of alcohol in his or her blood that was greater than the concentration of alcohol specified for the offence with which he or she is charged.

The proposed section substantially re-enacts the provisions of section 4E (1K) of the *Traffic Act 1909*.

Division 2 Offences involving driving under the influence of alcohol or other drug

Clause 12 makes it an offence for a person, while under the influence of alcohol or any other drug:

- (a) to drive a vehicle, or
- (b) to occupy the driving seat of a vehicle and attempt to put the vehicle in motion, or
- (c) to occupy the seat in or on a motor vehicle next to a holder of a learner licence who is driving the motor vehicle, but only where the person is the holder of a driver licence (other than a provisional licence or a learner licence).

The maximum penalty for the offences will be 20 penalty units (in the case of an offence referred to in paragraph (c) above), 20 penalty units or imprisonment for 9 months or both (in the case of a first offence referred to in paragraph (a) or (b))

above) or 30 penalty units or imprisonment for 12 months or both (in the case of a second or subsequent offence referred to in paragraph (a) or (b) above).

The proposed section substantially re-enacts the provisions of section 5 (2) and (2A) of the *Traffic Act 1909*.

Division 3 Random breath testing and breath analysis

Clause 13 enables a police officer to conduct a random breath test of a person if the police officer has reasonable cause to suspect that the person is or was driving or attempting to drive a motor vehicle on a road or road related area or that the person was the holder of a driver licence sitting next to a learner driver. A failure to undergo a random breath test when required will be an offence for which the maximum penalty will be 10 penalty units.

The proposed section substantially re-enacts the provisions of section 4E (2A), (2B), (6) and (8) of the *Traffic Act 1909*.

Clause 14 authorises a police officer to arrest and detain a person after a random breath test if the test indicates that the person had any one of certain prescribed concentrations of alcohol in his or her blood or if the person refuses to undergo a breath test.

The proposed section substantially re-enacts the provisions of section 4E (3) of the *Traffic Act 1909*.

Clause 15 enables a police officer to require a person arrested under proposed section 14 to submit to a further breath analysis. A refusal or failure to do so will be an offence for which the maximum penalty will be 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).

The proposed section substantially re-enacts the provisions of section 4E (4), (7), (8) and (10) of the *Traffic Act 1909*.

Clause 16 makes it an offence for a person to wilfully alter the concentration of alcohol in his or her blood following a request for breath test or breath analysis. The maximum penalty for such an offence will be 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).

The proposed section substantially re-enacts the provisions of section 4E (7) and (8) of the *Traffic Act 1909*.

Clause 17 specifies the circumstances when a breath test or breath analysis is not permissible.

The proposed section substantially re-enacts the provisions of section 4E (5) of the *Traffic Act 1909*.

Clause 18 specifies the procedure to be followed when a person is required to submit to a breath analysis.

The proposed section substantially re-enacts the provisions of section 4E (9) of the *Traffic Act 1909*.

Division 4 Blood analysis following accidents

Clause 19 provides that a reference in the Division to *hospital* includes a reference to any premises, institution or establishment prescribed by the regulations as a hospital for the purposes of the Division.

The proposed section substantially re-enacts the provisions of section 4F (12) of the *Traffic Act 1909*.

Clause 20 places a duty on a medical practitioner or nurse attending certain road accident patients at hospitals to take blood samples from such persons for analysis, whether with or without the patient's consent.

The proposed section substantially re-enacts the provisions of section 4F (1)–(3) of the *Traffic Act 1909*.

Clause 21 makes it an offence for a medical practitioner or nurse to fail to take a person's blood sample as required under the Division for which the maximum penalty will be 20 penalty units.

The proposed section substantially re-enacts the provisions of section 4F (4) and (5) of the *Traffic Act 1909*.

Clause 22 makes it an offence for a person to hinder or obstruct a medical practitioner or nurse in attempting to take a sample of the blood of any other person in accordance with the Division for which the maximum penalty will be 20 penalty units.

It also makes it an offence for a person (other than a secondary participant) to prevent a medical practitioner or nurse from taking a sample of the person's blood in accordance with this Division or wilfully do anything to alter the concentration of alcohol in the person's blood (except at the direction or under the supervision of an appropriate health professional). The maximum penalty for such an offence will be 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). A secondary participant will also commit an offence in such circumstances for which the maximum penalty will be 30 penalty units. A *secondary participant*, in relation to an accident, is any person involved in the accident who was a pedestrian or driving or riding a vehicle (other than a motor vehicle or a horse).

The proposed section substantially re-enacts the provisions of section 4F (6)–(7B) of the *Traffic Act 1909*.

Clause 23 specifies the procedure to be followed in the analysis of samples of blood taken under the Division.

The proposed section substantially re-enacts the provisions of section 4G (1)–(6) of the *Traffic Act 1909*.

Clause 24 enables a person who is supervised by a medical practitioner to perform the functions of the medical practitioner under the Division.

The proposed section substantially re-enacts the provisions of sections 4F (8) and 4G (7) of the *Traffic Act 1909*.

Division 5 Sobriety assessments and related drug analysis

Clause 25 enables a police officer to require a person to submit to an assessment of his or her sobriety in accordance with the directions of the officer if the person has undergone a breath test in accordance with Division 3 and the result of the test does not permit the person to be required to submit to a breath analysis.

The proposed section substantially re-enacts the provisions of section 5AA (1) and (2) of the *Traffic Act 1909*.

Clause 26 enables a police officer to arrest and detain a person who refuses to submit to a sobriety assessment under the Division or whom a police officer, after the assessment has been made, reasonably believes is under the influence of a drug.

The proposed section substantially re-enacts the provisions of section 5AA (3) of the *Traffic Act 1909*.

Clause 27 enables a police officer to require a person arrested under proposed section 26 to submit to a blood or urine test. It also specifies the procedure to be followed in the analysis of samples of blood or urine taken for analysis under the Division.

The proposed section substantially re-enacts the provisions of section 5AA (4) and (6)–(10) of the *Traffic Act 1909*.

Clause 28 specifies the circumstances when sobriety assessment and the taking of samples under the Division are not permissible.

The proposed section substantially re-enacts the provisions of section 5AA (5) of the *Traffic Act 1909*.

Clause 29 provides for offences in respect of sobriety assessments and samples taken under the Division.

The proposed section makes it an offence for a person, when required by a police officer to submit to a sobriety assessment, to refuse or fail to submit to the assessment in accordance with the directions of the police officer. The maximum penalty for the offence will be 10 penalty units.

The proposed section also makes it an offence for a person to refuse or fail to submit to the taking of (or to provide) samples under the Division or to wilfully do anything to alter the amount of a drug in the person's blood or urine following a request for a sobriety assessment or sample. The maximum penalty for any such offence will be 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).

The proposed section makes it an offence for a medical practitioner who is informed by a police officer in accordance with the Division that a sample is required to be taken for the purposes of this Division to fail to take the sample or to comply with procedural safeguards concerning the sample. The maximum penalty will be 20 penalty units.

Finally, the proposed section makes it an offence for a person to hinder or obstruct a medical practitioner in attempting to take a sample of the blood or urine of any other person in accordance with the Division for which the maximum penalty will be 20 penalty units.

The proposed section substantially re-enacts the provisions of section 5AC (1) (4) and (6)–(8) of the *Traffic Act 1909*.

Division 6 Prevention of vehicle use by drivers under influence of alcohol or other drug

Clause 30 authorises a police officer who is of the opinion that a person driving (or about to drive) a motor vehicle is under the influence of alcohol or any other drug to prohibit the person from driving, to require the person to hand over the ignition keys and to take such other steps as are necessary in order to immobilise or detain the vehicle.

The proposed section also lays down a procedure for the return of the vehicle and ignition keys. It also makes it an offence for a person to contravene any prohibition or requirement made by a police officer or to attempt in any manner to obstruct a police officer in the exercise of any power conferred by the proposed section. The maximum penalty for any such offence will be 10 penalty units.

The proposed section substantially re-enacts the provisions of section 26A of the *Traffic Act 1909*.

Clause 31 enables a police officer to take charge of and remove any vehicle in respect of which an offence under Division 1 or 2 has been committed to any convenient place for safe keeping. It also enables the court adjudicating to order the costs, charges and expenses of it to be paid by the offender if it is of the opinion that there was reasonable cause for any such taking charge, removal and safe keeping of the vehicle.

The proposed section substantially re-enacts the provisions of section 5A of the *Traffic Act 1909*.

Division 7 Evidentiary and other procedural matters

Clause 32 facilitates the admission into evidence in proceedings for an offence under proposed section 9 of the alcohol concentration in the defendant's breath or blood if the breath or blood analysis was made within 2 hours after the event that occasioned the analysis unless the defendant proves that the concentration of alcohol at the time was less than a certain amount.

The proposed section substantially re-enacts the provisions of sections 4E (11) and 4G (8) of the *Traffic Act 1909*.

Clause 33 enables certificate evidence concerning the operation of a breath analysing instrument or procedures followed for a blood analysis to be used as evidence in proceedings for offences under proposed section 9.

The proposed section substantially re-enacts the provisions of sections 4E (12) and 4G (9)–(11A) of the *Traffic Act 1909*.

Clause 34 facilitates the admission into evidence in proceedings for an offence under proposed section 12 of the presence and concentration of a drug revealed by an analysis of the defendant's blood or urine if the analysis was made within 2 hours after the event that occasioned the analysis unless the defendant proves the contrary.

The proposed section substantially re-enacts the provisions of section 5AB (1) of the *Traffic Act 1909*.

Clause 35 enables certificate evidence concerning the procedures followed for a blood or urine analysis to be used as evidence in proceedings for offences under proposed section 12.

The proposed section substantially re-enacts the provisions of section 5AB (2)–(4A) of the *Traffic Act 1909*.

Clause 36 facilitates the admission into evidence in proceedings for an alcohol or drug offence of certificate evidence concerning the concentration of alcohol or another drug found in a person's blood or urine after a blood or urine analysis undertaken for the purposes of the proposed Act. In particular, it allows a certificate to specify that the concentration was not less than a specified minimum.

The proposed section substantially re-enacts the provisions of section 17C of the *Traffic Act 1909*.

Clause 37 limits the extent to which evidence of a breath test, breath analysis or blood or urine analysis under the Part and related facts is admissible in insurance cases to prove intoxication or drug use.

The proposed section substantially re-enacts the provisions of sections 4E (13), 4G (12) and (13) and 5AB (5) and (6) of the *Traffic Act 1909*.

Clause 38 prevents a person convicted of certain kinds of alcohol or drug related offences under the proposed Act from being liable to be convicted of certain other offences relating to alcohol and other drug use.

The proposed section substantially re-enacts the provisions of sections 4E (14) and (15), 4F (9) and (10) and 5AC (5) of the *Traffic Act 1909*.

Division 8 Personal liability of sample takers

Clause 39 protects medical practitioners and nurses against civil and criminal liability for certain actions purported to be taken under the Part in good faith in relation to the taking of samples.

The proposed section substantially re-enacts and consolidates the provisions of section 4F (11) and 5AC (9) of the *Traffic Act 1909*.

Part 3 Speeding and other dangerous driving

Division 1 Speeding and other dangerous driving offences

Clause 40 makes it an offence for a person to organise, promote or take part in certain races, speed record attempts, speed trials and competitive trials of vehicles

on roads or road related areas without the written approval of the Commissioner of Police. The maximum penalty for any such offence will be 20 penalty units.

The proposed section authorises the Commissioner of Police to grant (whether with or without conditions) or refuse such approval. A failure to comply with any condition imposed on any such approval will be an offence for which the maximum penalty will be 20 penalty units.

In addition to any monetary penalty, a person convicted of an offence under the proposed section will automatically be disqualified from holding a driver licence for 12 months, unless the court orders a shorter or longer period of disqualification.

The proposed section substantially re-enacts the provisions of section 4B of the *Traffic Act 1909*, except that appeals to the Local Court from approval decisions of the Commissioner will now be reviewable by the Administrative Decisions Tribunal under proposed section 48 (1) of the proposed *Road Transport (General) Act 1999*.

Clause 41 makes it an offence for a person to operate a motor vehicle in a manner that causes it to lose traction against the road surface or otherwise in connection with activities prescribed by the regulations, for example organised street and illegal drag racing.

The proposed section substantially re-enacts the provisions of section 4BA of the *Traffic Act 1909*.

Clause 42 makes it an offence for a person to drive a motor vehicle negligently on a road or road related area. The maximum penalties for such an offence will be:

- (a) if the driving occasions death—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), or
- (b) if the driving occasions grievous bodily harm—20 penalty units or imprisonment for 9 months or both (in the case of a first offence) or 30 penalty units or imprisonment for 12 months or both (in the case of a second or subsequent offence), or
- (c) if the driving does not occasion death or grievous bodily harm—10 penalty units.

The proposed section also makes it an offence for a person to drive a motor vehicle furiously, recklessly or at a speed or in a manner dangerous to the public, on a road or road related area. The maximum penalty for such an offence will be 20 penalty units or imprisonment for 9 months or both (in the case of a first offence) or 30

penalty units or imprisonment for 12 months or both (in the case of a second or subsequent offence).

The proposed section substantially re-enacts the provisions of section 4 of the *Traffic Act 1909*.

Clause 43 makes it an offence for a person to drive a motor vehicle on a road or road related area in a manner that menaces another person with the intention of menacing that other person. The maximum penalty for the offence will be 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).

The proposed section also makes it an offence for a person to drive a motor vehicle on a road or road related area in a manner that menaces another person where the person ought to have known that the other person might be menaced. The maximum penalty for that offence will be 20 penalty units or imprisonment for 12 months or both (in the case of a first offence) or 30 penalty units or imprisonment for 18 months or both (in the case of a second or subsequent offence).

The proposed section substantially re-enacts the provisions of section 4AA of the *Traffic Act 1909*.

Division 2 Speed measurement

Clause 44 defines the expression *approved speed measuring device* to mean a device of a type approved by the Governor by order published in the Gazette as being designed to measure the speed at which a vehicle is travelling.

The proposed section substantially re-enacts the provisions of section 4AB (3) of the *Traffic Act 1909*, together with the definition of *approved speed measuring device* in section 2 (1) of that Act.

Clause 45 defines the expression *approved camera recording device* to mean a device of a type approved by the Commissioner of Police by order published in the Gazette as being designed for attachment to an approved speed measuring device for the purpose of taking photographs of vehicles being driven in excess of speed limits and for recording on any such photograph:

- (a) the speed at which any such vehicle is travelling (as measured by the approved speed measuring device), and
- (b) the date on which the photograph is taken, and
- (c) the time and location at which the photograph is taken, and
- (d) the speed limit that, in accordance with the regulations, is applicable to the length of road or road related area at which the photograph is taken, and

- (e) the direction in which the vehicle is travelling (that is, towards or away from the device).

The proposed section substantially re-enacts the definition of *approved camera recording device* in section 2 (1) of the *Traffic Act 1909*.

Clause 46 enables certificate evidence concerning the accuracy of a particular approved speed measuring device to be given in proceedings for an offence in which evidence is given of the measurement of speed obtained by use of the device.

The proposed section substantially re-enacts the provisions of section 4AB (1) and (2) of the *Traffic Act 1909*.

Clause 47 facilitates the admission into evidence in proceedings for a speeding offence of the measurement of speed obtained by use of an approved speed measuring device and recorded by an approved camera recording device. It also enables certificate evidence to be given in respect of the operation of a particular approved camera recording device.

The proposed section substantially re-enacts the provisions of section 4AC of the *Traffic Act 1909*.

Clause 48 creates a number of offences in respect of prohibited speed measuring evasion articles. The Dictionary defines a *prohibited speed measuring evasion article* to mean any device or substance that is designed, or apparently designed, to be fitted or applied to, or to be carried in, a motor vehicle or trailer for the purpose of detecting, interfering with, or reducing the effectiveness of, an approved speed measuring device, including a radar detecting device and a radar jamming device.

In particular, the proposed section makes it an offence for a person:

- (a) to sell, offer for sale or purchase a prohibited speed measuring evasion article, or
- (b) to drive a vehicle (or cause it to stand) with such an article on a road or road related area.

The responsible person for a vehicle that is driven (or caused to stand) with such an article on a road or road related area is also guilty of an offence, subject to certain defences. The maximum penalty for each of these offences will be 20 penalty units.

The proposed section substantially re-enacts the provisions of section 4AD of the *Traffic Act 1909*, except that references to the owner of a vehicle are replaced with references to the responsible person for the vehicle.

Clause 49 enables police officers and officers authorised by the Authority to require a person in possession of a prohibited speed measuring evasion article or the

responsible person for the vehicle or trailer to which it is fitted or applied to remove or surrender it to the Commissioner of Police. A failure to do so will constitute an offence for which the maximum penalty is 20 penalty units. An article so surrendered is forfeited to the Crown and may be destroyed or otherwise disposed of at the direction of the Commissioner.

The proposed section substantially re-enacts the provisions of section 4AE of the *Traffic Act 1909*, except that references to the owner of a vehicle are replaced with references to the responsible person for the vehicle.

Part 4 Traffic control devices

Division 1 Installation, display and removal of prescribed traffic control devices

Clause 50 defines expressions that are used in the Division. For instance, a *prescribed traffic control device* is a sign, signal, marking, structure or other device to direct or warn traffic on a road or road related area (or part of a road or road related area) that is prescribed by the regulations. A *traffic control authority* is the Authority, the Commissioner of Police or any other person (or person belonging to a class or description of persons) prescribed by the regulations.

Clause 51 specifies the circumstances in which a person will, for the purposes of the Division, have appropriate authority to install or display (or to interfere with, alter or remove) a prescribed traffic control device.

Clause 52 makes it an offence for a person, without appropriate authority, to install or display a prescribed traffic control device on, above or near a road or road related area or to interfere with, alter or remove any prescribed traffic control device installed or displayed on, above or near a road or road related area. It also makes it an offence for a person to install or display on, above or near a road or road related area any sign, signal, marking, structure or other device that might reasonably be mistaken to be a prescribed traffic control device. The maximum penalty for each offence will be 20 penalty units.

Clause 53 authorises a traffic control authority (or a person authorised by any such authority) to direct a person who has installed or displayed a prescribed traffic control device without authority to remove it within a time specified by the authority when giving the direction. A failure to comply with the direction will be an offence for which the maximum penalty will be 20 penalty units. It also authorises a traffic control authority to remove, or cause to be removed, any such device itself.

Clause 54 enables a traffic control authority to recover as a debt in a court of competent jurisdiction the expenses it incurs in removing a device under proposed section 53 from the person who (without appropriate authority) installed or displayed it. It also enables a certificate issued on behalf of a traffic control authority by a person prescribed by the regulations that states that a specified amount represents the costs incurred by the authority to be used in court proceedings as evidence of the fact or facts so stated.

Clause 55 provides that, in proceedings for an offence against the proposed Act or the regulations (other than an offence against proposed section 52 (1)), a prescribed traffic control device that is installed or displayed on, above or near a road or road related area is conclusively presumed to have been lawfully installed or displayed there under the proposed Act.

Division 2 Monitoring of traffic light offences

Clause 56 defines the expression *approved camera detection device* for the purposes of the proposed Act. An approved camera detection device is a device of a type approved by the Commissioner of Police by order published in the Gazette as being designed to take a photograph of a vehicle that is driven in contravention of a traffic light signal displaying a red circle or a red arrow and to record on the photograph:

- (a) the date on which the photograph is taken, and
- (b) the time and location at which the photograph is taken, and
- (c) the direction and lane in which the vehicle activating the camera is travelling, and
- (d) the interval during which the red circle or red arrow has been continuously displayed immediately before the photograph is taken.

The proposed section substantially re-enacts the definition of *approved camera detection device* in section 2 (1) of the *Traffic Act 1909*.

Clause 57 facilitates the admission into evidence in proceedings for a traffic light offence of photographs taken by approved camera detection devices. It also enables certificate evidence to be given in respect of the operation of a particular approved camera detection device.

The proposed section substantially re-enacts the provisions of section 4DA of the *Traffic Act 1909*.

Part 5 Vehicle safety and accidents

Division 1 Offences relating to unsafe loads

Clause 58 creates offences relating to unsafe loads on motor vehicles and trailers. A person will be guilty of an offence if the person:

- (a) drives or stands, or causes or permits to be driven or stood, a motor vehicle or trailer on a road or road related area, where the person knows or reasonably ought to know that the vehicle or trailer is loaded unsafely and death or personal injury to a person, or damage to property, occurs because it is loaded unsafely, or
- (b) is the responsible person for a motor vehicle or trailer that is driven or stood on a road or road related area while loaded unsafely, where the person knows or reasonably ought to know that the motor vehicle or trailer is loaded unsafely and death or personal injury to a person, or damage to property, occurs because it is loaded unsafely, or
- (c) is a director of, or a person concerned in the management of, a corporation that is the responsible person for a motor vehicle or trailer that is driven or stood on a road or road related area while loaded unsafely, where the person knows or reasonably ought to know that the motor vehicle or trailer is loaded unsafely and death or personal injury to a person, or damage to property, occurs because it is loaded unsafely.

The maximum penalty for the offence will be 50 penalty units or imprisonment for 12 months, or both, in the case of an individual or 100 penalty units in the case of a corporation. It will be a defence to an offence under the proposed section if a person proves that the person was not in a position to prevent the motor vehicle or trailer from being driven or stood on a road or road related area while loaded unsafely.

The proposed section substantially re-enacts the provisions of section 8C of the *Traffic Act 1909*, except that references to the owner of a vehicle are replaced with references to the responsible person for the vehicle.

Division 2 Monitoring of heavy vehicles and vehicles carrying dangerous goods

The Division substantially re-enacts the provisions of Part 3A of the *Traffic Act 1909*, except that references to the owner of a vehicle are replaced with references to the responsible person for the vehicle.

Clause 59 defines expressions for the purposes of the Division. For instance, a *monitoring device* is a device that automatically produces particulars of time, speed and distance for inclusion in a vehicle movement record for a vehicle. A *vehicle movement record* is a record of each length of time for which a vehicle is driven and the speeds at which, and distances for which, it is driven, together with other particulars relating to the vehicle and the journey being made in it.

Clause 60 provides that the Division will apply to coaches and heavy motor vehicles of a kind prescribed by the regulations and also to vehicles carrying dangerous loads. The Division will apply to vehicles and drivers from other States and Territories as well as those from New South Wales.

Clause 61 requires monitoring devices in working order to be correctly fitted to vehicles to which the Division applies. Failure to observe this requirement is an offence by the responsible person for the vehicle for which the maximum penalty will be 50 penalty units.

Clause 62 requires the responsible person for the vehicle to preserve vehicle movement records. The records must be kept for at least 12 months. Failure to observe this requirement is an offence by the responsible person for the vehicle for which the maximum penalty will be 50 penalty units.

Clause 63 requires a vehicle movement record to be carried by the driver. The record has to show times, speeds, distances and other particulars of driving in New South Wales and elsewhere during the preceding 14 days. Failure to observe this requirement is an offence by both the driver and the responsible person for the vehicle for which the maximum penalty will be 50 penalty units.

Clause 64 enables roadside inspection of monitoring devices by police, and of journey records and log book records by authorised officers of the Authority and authorised inspectors under the *Dangerous Goods Act 1975*. Drivers of relevant vehicles may be stopped at random for the purpose of these inspections.

Clause 65 allows police to seize a monitoring device (and records contained in it) following a fatal accident involving a truck, bus or other vehicle required to be fitted with one, or if the mechanism appears to have been tampered with, or if the driver has committed a major traffic offence. In addition, police and officers of the Authority are authorised to seize records relating to the driving of the vehicle if the records appear to have been fraudulently compiled or to relate to another vehicle or to belong to another driver.

Clause 66 requires responsible persons for vehicles to produce vehicle movement records to the Authority on demand. Failure to do so is an offence for which the maximum penalty will be 50 penalty units.

Clause 67 makes it an offence to tamper with a monitoring device or vehicle movement record. The maximum penalty for either of these offences will be 50 penalty units. The proposed section also makes explicit the power of the Authority to cancel the driver licence of a person who commits either of these offences.

Clause 68 enables persons or vehicles to be exempted by the Authority from the operation of any of the provisions of the Division.

Clause 69 provides that a vehicle movement record is not admissible in any criminal proceedings except proceedings for an offence concerning tampering with a monitoring device or vehicle movement record or for a major offence.

Division 3 Duties of participants and others involved in road accidents

Clause 70 makes it an offence for a driver or rider who is involved in an accident that causes death or injury to another person knowingly to fail to stop and give assistance. The maximum penalty for the offence is 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).

The proposed section substantially re-enacts the provisions of section 8 (1) of the *Traffic Act 1909*.

Part 6 Miscellaneous

Clause 71 enables the Governor to make regulations for the purposes of the proposed Act.

In particular, it enables the regulations to apply, adopt or incorporate, whether wholly or in part or with or without modifications, publications of the National Road Transport Commission that have been approved (whether before or after the commencement of the proposed section) by the Australian Transport Council or any other publication (including any Act or regulation of the Commonwealth, a Territory or another State), either as published or as in force from time to time. Both the National Road Transport Commission and the Australian Transport Council are institutions that have functions under the *National Road Transport Commission Act 1991* of the Commonwealth (and under intergovernmental agreements scheduled to that Act) in relation to the development of uniform national road laws.

Clause 72 enables the regulations to exempt (or authorise the Authority to exempt) certain vehicles, persons or animals from the operation of the proposed Act or regulations (or specified provisions of the proposed Act or regulations).

Clause 73 authorises the use of blood samples provided in accordance with Division 4 of Part 2 (and any saliva samples obtained at the same time) for the purposes of research into road safety. The results of such research cannot be used as evidence of the presence of any drug in the blood or saliva of a person. It will also be an offence (punishable by a maximum penalty of 20 penalty units) for a researcher to carry out such research in a way that identifies the sample provider.

The proposed section substantially re-enacts the provisions of section 17B of the *Traffic Act 1909*, except that the maximum penalty for the offence has been increased from 5 penalty units to 20 penalty units.

Clause 74 enables a police officer to close a road or road related area to traffic during any temporary obstruction or danger to traffic or for any other temporary purpose. It also enables a police officer to prevent the traffic of any vehicles, persons or animals on any road or road related area closed under the proposed section or under the authority of another Act. It will be an offence for a person to fail (without reasonable excuse) to obey a direction given by a police officer under the proposed section for which the maximum penalty will be 20 penalty units.

The proposed section substantially re-enacts the provisions of section 23 of the *Traffic Act 1909*, subject to the following changes:

- (a) it makes clear that police officers may prevent the traffic of any vehicle, person or animal rather than only vehicles and horses,
- (b) the maximum penalty for the offence has been increased from 2 penalty units to 20 penalty units.

Clause 75 enables authorised officers to remove broken down vehicles and other obstructions such as spilt loads from roads and road related areas. It also allows the removal of building skips and other containers used for transporting materials or refuse. The expense of any such removal is recoverable as debt in a court of competent jurisdiction by the appropriate roads authority from the person responsible.

The proposed section substantially re-enacts the provisions of section 25 of the *Traffic Act 1909*.

Clause 76 enables authorised officers to remove illegally parked vehicles from places (or classes of places) prescribed by the regulations. The responsible person for the vehicle will be liable for the cost of the removal, which is to be set at an amount prescribed by the regulations (subject to certain exceptions). A failure to

pay the prescribed amount will be an offence punishable by a maximum penalty of 2 penalty units.

The proposed section re-enacts the provisions of section 26 of the *Traffic Act 1909*, subject to the following changes:

- (a) the proposed section extends to places (and classes of places) prescribed by the regulations rather than to clearways, transit lanes and other prescribed places,
- (b) the obligation to pay the cost of removal is placed on the responsible person for the vehicle rather than the owner.

Clause 77 enables the Authority to recover any unpaid fees or charges payable under the proposed Act or regulations as a debt due to the Authority in a court of competent jurisdiction.

Clause 78 gives effect to Schedule 2 containing savings, transitional and other provisions.

Clause 79 provides for a review of the operation of the proposed Act to be undertaken after 5 years from the date of assent to the proposed Act.

Schedules

Schedule 1 sets out examples of matters for or with respect to which the regulations may make provision under proposed section 71.

Schedule 2 contains savings and transitional provisions, including a power to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act and the proposed *Road Transport Legislation Amendment Act 1999*. However, proposed clause 2 of the Schedule makes it clear that detailed savings and transitional provisions relating to the proposed Act are centrally located in Schedule 2 to the proposed *Road Transport (General) Act 1999*.

Dictionary

The Dictionary contains definitions of words and expressions used in the proposed Act.