

# Road Transport (Safety and Traffic Management) Act 1999 No 20

[1999-20]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Private Health Facilities Act 2007 No 9](#) (not commenced)
  - [Road Transport Legislation Amendment \(Traffic Offence Detection\) Act 2009 No 50](#) (not commenced)
  - [Statute Law \(Miscellaneous Provisions\) Act 2009 No 56](#) (not commenced — to commence on 17.7.2009)

### Authorisation

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# Road Transport (Safety and Traffic Management) Act 1999 No 20



New South Wales

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# Road Transport (Safety and Traffic Management) Act 1999 No 20



New South Wales

An Act to facilitate the adoption of nationally consistent road rules in New South Wales; to make provision with respect to other matters concerning safety and traffic management on roads and road related areas; and for other purposes.

## Part 1 Preliminary

### Note—

This Act and the regulations made under it form part of the **road transport legislation** identified by section 5 of the *Road Transport (General) Act 1999*. Other road transport legislation includes the *Road Transport (General) Act 1999*, the *Road Transport (Driver Licensing) Act 1998*, the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*, the *Road Transport (Vehicle Registration) Act 1997* and the regulations made under those Acts. As part of the road transport legislation, this Act is subject to various provisions in the *Road Transport (General) Act 1999* concerning the administration and enforcement of the road transport legislation generally.

### 1 Name of Act

This Act is the *Road Transport (Safety and Traffic Management) Act 1999*.

### 2 Commencement

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

### 3 Objects of Act (cf Cth Act, s 4)

The objects of this Act are as follows:

- (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,

### Note—

The Agreements concerned were the *Heavy Vehicle Agreement* and the *Light Vehicle Agreement*. The Commonwealth Act referred to has been repealed and replaced by the *National Transport Commission Act 2003*. That Act does not have any Agreements scheduled to it but does make provision for an Agreement “entered into in relation to [that] Act”. That Agreement is the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*.

- (b) to re-enact with some modifications certain other provisions of the *Traffic Act 1909* (as



in force immediately before its repeal by the [Road Transport Legislation Amendment Act 1999](#)) relating to safety and traffic management,

- (c) to improve safety and efficiency of transport on roads and road related areas,
- (d) to reduce the costs of the administration of road transport.

**4 Definitions** (cf Cth Act, s 4; Traffic Act, s 2)

Expressions used in this Act (or in a particular provision of this Act) that are defined in the Dictionary at the end of the Act have the meanings set out in the Dictionary.

**5 Act to bind Crown** (cf Cth Act, s 3)

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

**6 Application of Commonwealth Acts Interpretation Act** (cf Cth Act, s 14)

- (1) The regulations may apply (whether with or without modifications) any or all of the provisions of the [Acts Interpretation Act 1901](#) of the Commonwealth to the interpretation of:
  - (a) this Act or the regulations (or to specified provisions of this Act or the regulations),  
or
  - (b) to any instrument made under this Act or the regulations (or to specified provisions of any such instrument).
- (2) This section does not prevent the [Interpretation Act 1987](#) from applying to any provision of this Act or the regulations (or of an instrument made under this Act or the regulations) to the extent that it can do so consistently with the application of the [Acts Interpretation Act 1901](#) of the Commonwealth to any such provision by a regulation referred to in subsection (1).

**7 Notes**

Notes included in this Act are explanatory notes and do not form part of this Act.

**Note—**

For the purposes of comparison, a number of provisions of this Act contain bracketed notes in headings drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of other Acts. Abbreviations in the notes include:

- Cth Act: [Road Transport Reform \(Vehicles and Traffic\) Act 1993](#) of the Commonwealth
- Traffic Act: [Traffic Act 1909](#) (as in force immediately before its repeal by the [Road Transport Legislation](#)

*Amendment Act 1999)*

## **Part 2 Alcohol and other drug use**

### **Division 1 Interpretation**

#### **8 General definitions** (cf Traffic Act, s 4E (1)–(1C))

(1) In this Part:

**driver licence** means the following:

- (a) a licence issued under a law in force in a State or internal Territory authorising the holder to drive one or more classes of motor vehicle on a road or road related area,
- (b) a driver licence receipt for a licence referred to in paragraph (a),
- (c) a foreign driver licence.

**learner licence** means the following:

- (a) a learner licence within the meaning of the *Road Transport (Driver Licensing) Act 1998* or a driver licence receipt for such a licence,
- (b) a foreign driver licence that has the same or similar effect as a licence referred to in paragraph (a).

**provisional licence** means the following:

- (a) a provisional P1 licence or a provisional P2 licence,
- (b) a licence issued under a law in force in a State or internal Territory, or a foreign driver licence, that has the same or similar effect as a licence referred to in paragraph (a) or is prescribed by the regulations as an equivalent licence for the purposes of this definition,
- (c) a driver licence receipt for a licence referred to in paragraph (a) or for a State or internal Territory licence referred to in paragraph (b).

(2) (Repealed)

(3) For the purposes of this Part, a person is a **special category driver** in respect of a motor vehicle:

- (a) if the person is the holder of a learner licence or a provisional licence for motor vehicles of a class that includes that motor vehicle, or
- (b) if the person is not authorised to drive that motor vehicle in New South Wales because the person, in New South Wales or elsewhere, has had his or her

application for a relevant driver licence or authority refused, has been disqualified from driving, has had a relevant driver licence or authority suspended or cancelled or has never obtained a relevant driver licence or authority, or

(c), (d) (Repealed)

(e) if that motor vehicle is being driven for hire or reward, or in the course of any trade or business, as a public passenger vehicle within the meaning of the *Passenger Transport Act 1990*, or

(f) if that motor vehicle is a coach or heavy motor vehicle, or

(g) if that motor vehicle (or any trailer being towed by the motor vehicle):

(i) is required, because it carries dangerous goods within the meaning of the *Dangerous Goods (Road and Rail Transport) Act 2008*, to have a sign exhibited on it by regulations under either Act, or under any code prescribed for the purposes of this paragraph by regulations under this Act, or

(ii) carries any radioactive substance within the meaning of the *Radiation Control Act 1990*.

(4) For the purposes of this Part, a person is a **special category supervisor** in respect of a motor vehicle if, were the person driving the motor vehicle, the person would be a special category driver in respect of the motor vehicle.

#### **8A Prescribed concentrations of alcohol**

In this Part:

- (a) **novice range prescribed concentration of alcohol** means a concentration of more than zero grammes, but less than 0.02 grammes, of alcohol in 210 litres of breath or 100 millilitres of blood, and
- (b) **special range prescribed concentration of alcohol** means a concentration of 0.02 grammes or more, but less than 0.05 grammes, of alcohol in 210 litres of breath or 100 millilitres of blood, and
- (c) **low range prescribed concentration of alcohol** means a concentration of 0.05 grammes or more, but less than 0.08 grammes, of alcohol in 210 litres of breath or 100 millilitres of blood, and
- (d) **middle range prescribed concentration of alcohol** means a concentration of 0.08 grammes or more, but less than 0.15 grammes, of alcohol in 210 litres of breath or 100 millilitres of blood, and
- (e) **high range prescribed concentration of alcohol** means a concentration of 0.15 grammes or more of alcohol in 210 litres of breath or 100 millilitres of blood.

## **8B Measurement of alcohol concentrations**

- (1) For the purposes of this Part, the concentration of alcohol present in a person's breath or blood may be expressed as follows:
  - (a) in the case of a sample of breath that is measured by a breath analysing instrument or other breath testing device that provides a reading or result by reference to alcohol present in the breath—the amount of alcohol in grammes in 210 litres of breath,
  - (b) in the case of a sample of breath that is measured by a breath analysing instrument or other breath testing device that provides a reading or result by reference to alcohol present in the blood—the amount of alcohol in grammes in 100 millilitres of blood,
  - (c) in the case of a sample of blood—the amount of alcohol in grammes in 100 millilitres of blood.
- (2) An amount of alcohol in grammes present in breath when measured by reference to 210 litres of breath is equivalent to the same amount of alcohol in grammes present in blood when measured by reference to 100 millilitres of blood.
- (3) Accordingly, any offence under this Part relating to the presence of a specified concentration of alcohol in a person's breath or blood at the time of the occurrence of a particular event is a single offence regardless of whether the concentration of alcohol concerned is measured by reference to the amount of alcohol present in breath or in blood (or both).

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

### **9 Presence of prescribed concentration of alcohol in person's breath or blood** (cf Traffic Act, s 4E (1D)-(1G))

- (1A) **Offence—novice range prescribed concentration of alcohol** If a person is the holder of a learner licence or a provisional licence in respect of a motor vehicle, the person must not, while there is present in his or her breath or blood the novice range prescribed concentration of alcohol:
- (a) drive the motor vehicle, or
  - (b) occupy the driving seat of the motor vehicle and attempt to put the motor vehicle in motion.

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

- (1) **Offence—special range prescribed concentration of alcohol** A person must not, while there is present in his or her breath or blood the special range prescribed

concentration of alcohol:

- (a) if the person is a special category driver in respect of a motor vehicle—drive the motor vehicle, or
- (b) if the person is a special category driver in respect of a motor vehicle—occupy the driving seat of a motor vehicle and attempt to put the motor vehicle in motion, or
- (c) if the person is a special category supervisor in respect of a motor vehicle and the holder of a driver licence (other than a provisional licence or a learner licence)—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) **Offence—low range prescribed concentration of alcohol** A person must not, while there is present in his or her breath or blood the low range prescribed concentration of alcohol:

- (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)—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).

- (3) **Offence—middle range prescribed concentration of alcohol** A person must not, while there is present in his or her breath or blood the middle range prescribed concentration of alcohol:

- (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)—occupy the seat in a motor vehicle next to a holder of a learner licence who is driving the vehicle.

Maximum penalty: 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).

- (4) **Offence—high range prescribed concentration of alcohol** A person must not, while there is present in his or her breath or blood the high range prescribed concentration of alcohol:
- (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)—occupy the seat in a motor vehicle next to a holder of a learner licence who is driving the vehicle.

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).

**Note—**

Division 3 of Part 3 of the *Road Transport (General) Act 1999* provides for the disqualification of persons from holding driver licences for certain offences (including offences under this section).

**10 Alternative verdicts for lesser offences** (cf Traffic Act, s 4E (1I)–(1JA))

- (1) **Alternative verdict for lesser offence in prosecution for middle range prescribed concentration of alcohol** If, on a prosecution of a person for an offence under section 9 (3), the court is satisfied that, at the time the person did the act referred to in section 9 (3) (a), (b) or (c), there was not present in the person's breath or blood the middle range prescribed concentration of alcohol but there was present in the person's breath or blood the low range prescribed concentration of alcohol, the court may convict the person of an offence under section 9 (2).
- (2) **Alternative verdict for lesser offence in prosecution for high range prescribed concentration of alcohol** If, on a prosecution of a person for an offence under section 9 (4), the court is satisfied that, at the time the person did the act referred to in section 9 (4) (a), (b) or (c), there was not present in the person's breath or blood the high range prescribed concentration of alcohol:
- (a) if the court is satisfied that the middle range prescribed concentration of alcohol was present in the person's breath or blood—the court may convict the person of an offence under section 9 (3), or
  - (b) if the court is satisfied that the low range prescribed concentration of alcohol was present in the person's breath or blood—the court may convict the person of an offence under section 9 (2).
- (3) **Alternative verdict for lesser offence in prosecution of special category drivers** If, on a prosecution of a person for an offence under section 9 (2), (3) or (4), relating to driving

a motor vehicle or to occupying the driving seat of a motor vehicle and attempting to put the motor vehicle in motion, the court is satisfied that, at the time the person drove the motor vehicle or occupied the driving seat and attempted to put the motor vehicle in motion:

- (a) the person was a special category driver in respect of the motor vehicle, and
- (b) there was not present in the person's breath or blood the high range prescribed concentration of alcohol, the middle range prescribed concentration of alcohol or the low range prescribed concentration of alcohol,

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

- (4) **Alternative verdict for lesser offence in prosecution of learner licence holders or provisional licence holders** If, on a prosecution of a person for an offence under section 9 (1), (2), (3) or (4), relating to driving a motor vehicle or to occupying the driving seat of a motor vehicle and attempting to put the motor vehicle in motion, the court is satisfied that, at the time the person drove the motor vehicle or occupied the driving seat and attempted to put the motor vehicle in motion:

- (a) the person was the holder of a learner licence or a provisional licence in respect of the motor vehicle, and
- (b) there was not present in the person's breath or blood the high range prescribed concentration of alcohol, the middle range prescribed concentration of alcohol, the low range prescribed concentration of alcohol or the special range prescribed concentration of alcohol,

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

**11 Presence of higher concentration of alcohol not defence** (cf Traffic Act, s 4E (1K))

- (1A) It is not a defence to a prosecution for an offence under section 9 (1A) if the defendant proves that, at the time he or she did the act referred to in section 9 (1A) (a) or (b), there was present in the defendant's breath or blood a concentration of alcohol of 0.02 grammes or more in 210 litres of breath or 100 millilitres of blood.
- (1) It is not a defence to a prosecution for an offence under section 9 (1) if the defendant proves that, at the time he or she did the act referred to in section 9 (1) (a), (b) or (c), there was present in the defendant's breath or blood a concentration of alcohol of 0.05 grammes or more in 210 litres of breath or 100 millilitres of blood.
- (2) It is not a defence to a prosecution for an offence under section 9 (2) if the defendant

proves that, at the time he or she did the act referred to in section 9 (2) (a), (b) or (c), there was present in the defendant's breath or blood a concentration of alcohol of 0.08 grammes or more in 210 litres of breath or 100 millilitres of blood.

- (3) It is not a defence to a prosecution for an offence under section 9 (3) if the defendant proves that, at the time he or she did the act referred to in section 9 (3) (a), (b) or (c), there was present in the defendant's breath or blood a concentration of alcohol of 0.15 grammes or more in 210 litres of breath or 100 millilitres of blood.

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

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

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

### **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)—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)—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.

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

### **12 Use or attempted use of a vehicle under the influence of alcohol or any other drug** (cf Traffic Act, s 5 (2) and (2A))

- (1) A person must not, while under the influence of alcohol or any other drug:
  - (a) drive a vehicle, or
  - (b) occupy the driving seat of a vehicle and attempt to put the vehicle in motion, or
  - (c) being the holder of a driver licence (other than a provisional licence or a learner licence), occupy the seat in or on a motor vehicle next to a holder of a learner licence who is driving the motor vehicle.

Maximum penalty:

- (a) in the case of a first offence to which paragraph (a) or (b) relates—20 penalty units or imprisonment for 9 months, or both, or
  - (b) in the case of a second or subsequent offence to which paragraph (a) or (b) relates—30 penalty units or imprisonment for 12 months, or both, or
  - (c) in the case of an offence to which paragraph (c) relates—20 penalty units.
- (2) If a person is charged with an offence under subsection (1):
    - (a) the information may allege the person was under the influence of more than one drug and is not liable to be dismissed on the ground of uncertainty or duplicity if each of those drugs is described in the information, and
    - (b) the offence is proved if the court is satisfied beyond reasonable doubt that the defendant was under the influence of:
      - (i) a drug described in the information, or
      - (ii) a combination of drugs any one or more of which was or were described in the information.

**Note—**

Division 3 of Part 3 of the *Road Transport (General) Act 1999* provides for the disqualification of persons from holding driver licences for certain offences (including offences under this section).

## **Division 3 Random breath testing and breath analysis**

### **13 Power to conduct random breath testing** (cf Traffic Act, s 4E (2A), (2B), (6) and (8))

- (1) A police officer may require a person to undergo a breath test 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 a breath test under subsection (1), refuse or fail to undergo the breath 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, at the time the defendant was required to do so, to undergo a breath test.

- (3A) Before requiring a person to undergo a breath test under subsection (1), and for the purpose of determining whether to conduct such a test, a police officer may conduct a preliminary assessment to determine if alcohol is present in the person's breath by requiring the person to talk into a device that indicates the presence of alcohol.

- (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.

### **14 Arrest following failed breath test** (cf Traffic Act, s 4E (3))

- (1) A police officer may exercise the powers referred to in subsection (2) in respect of a person if:
  - (a1) it appears to the officer from a breath test carried out under section 13 (1) by the

officer that the device by means of which the test was carried out indicates that there may be present in the person's breath or blood a concentration of alcohol of more than zero grammes in 210 litres of breath or 100 millilitres of blood and the officer has reasonable cause to believe the person is the holder of a learner licence or a provisional licence in respect of the motor vehicle concerned, or

- (a) it appears to the officer from a breath test carried out under section 13 (1) by the officer that the device by means of which the test was carried out indicates that there may be present in the person's breath or blood a concentration of alcohol of not less than 0.02 grammes in 210 litres of breath or 100 millilitres of blood and the officer has reasonable cause to believe the person is a special category driver in respect of the motor vehicle concerned, or
- (b) it appears to the officer from a breath test carried out under section 13 (1) by the officer that the device by means of which the test was carried out indicates that there may be present in the person's breath or blood a concentration of alcohol of not less than 0.05 grammes in 210 litres of breath or 100 millilitres of blood, or
- (c) the person refused to undergo a breath test required by a police officer under section 13 (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 some other place as the officer considers desirable, and
- (c) detain the person, or cause the person to be detained, at that police station or other place for the purposes of this Division.

**15 Breath analysis following arrest** (cf Traffic Act, s 4E (4), (7), (8) and (10))

- (1) A police officer may require a person who has been arrested under section 14 to submit to a breath analysis in accordance with the directions of the officer.
- (2) A breath analysis must be carried out by a police officer authorised to do so by the Commissioner of Police at or near a police station or such other place as that officer considers desirable.
- (3) As soon as practicable after a person has submitted to a breath analysis, the police officer operating the breath analysing instrument must deliver a written statement to that person signed by that officer specifying the following:
  - (a) the concentration of alcohol determined by the analysis to be present in that person's breath or blood and expressed in grammes of alcohol in 210 litres of

breath or 100 millilitres of blood,

(b) the day on and time of the day at which the breath analysis was completed.

- (4) A person who is required by a police officer under subsection (1) to submit to a breath analysis must not refuse or fail to submit to that analysis in accordance with the directions of the officer.

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).

- (5) 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, at the time the defendant was required to do so, to submit to a breath analysis.

**16 Offence—wilfully altering alcohol concentration following request for breath test or breath analysis** (cf Traffic Act, s 4E (7) and (8))

A person must not wilfully do anything to alter the concentration of alcohol in the person's breath or blood:

- (a) between the time of the event referred to in section 13 (1) (a), (b) or (c) in respect of which the person has been required by a police officer to undergo a breath test and the time when the person undergoes that test, or
- (b) if the person is required by a police officer to submit to a breath analysis—between the time of the event referred to in section 13 (1) (a), (b) or (c) in respect of which the person has been required by a police officer to undergo a breath test and the time when the person submits to the breath analysis.

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).

**17 When breath test or breath analysis not permitted** (cf Traffic Act, s 4E (5))

A police officer cannot require a person to undergo a breath test or to submit to a breath analysis:

- (a) if that person has been admitted to hospital for medical treatment, unless the medical practitioner in immediate charge of his or her 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 that person, or
- (b) if it appears to the officer that it would, by reason of injuries sustained by that person, be dangerous to that person's medical condition to undergo a breath test or submit to

a breath analysis, or

- (c) at any time after the expiration of 2 hours from the occurrence of the event by reason of which the officer was entitled under section 13 (1) to require that person to undergo a breath test, or
- (d) at that person's home.

**18 Procedure to be followed for breath analysis** (cf Traffic Act, s 4E (9))

- (1) A person who is required under section 15 (1) to submit to a breath analysis may request the police officer making the requisition to arrange for a medical practitioner to take, in the presence of a police officer, a sample of that person's blood, for analysis in accordance with this section at that person's own expense.
- (2) A request by a person under subsection (1), or the taking of a sample of that person's blood, does not absolve that person from the obligation imposed on the person to submit to a breath analysis in accordance with section 15 (1).
- (3) A medical practitioner by whom a sample of a person's blood is taken under an arrangement referred to in 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 blood, and
  - (e) as soon as reasonably practicable after the sample is taken, hand the sample to the police officer who was present at the time the sample was taken.
- (4) The police officer to whom a sample of blood is handed under subsection (3) must, as soon as reasonably practicable after the sample is handed to the officer, arrange for the sample to be submitted to a laboratory prescribed by the regulations for analysis by an analyst to determine the concentration of alcohol in the blood.
- (5) The person from whom the sample 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 the laboratory to which a sample of blood is submitted for analysis under this section may carry out an analysis of the sample, or of a portion of the sample, to determine the concentration of alcohol (and, where required, of other

drugs) in the blood.

- (7) An 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 blood 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.

## **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.

## **Division 4 Blood analysis of accident patients following accidents**

**19 Hospitals to which this Division applies** (cf Traffic Act, s 4F (12))

In this Division, a reference to a **hospital** includes a reference to any premises, institution or establishment prescribed by the regulations as a hospital for the purposes of this Division.

**20 Blood samples to be taken in hospitals from accident patients** (cf Traffic Act, s 4F (1)–(3))

- (1) In this section, **accident patient** means a person at least 15 years of age who attends at or is admitted into a hospital for examination or treatment in consequence of an accident on a road or road related area (whether in New South Wales or elsewhere) involving a motor vehicle or other vehicle or a horse.
- (2) Any medical practitioner by whom an accident patient is attended at a hospital is under a duty to take a sample of the patient's blood for analysis as soon as practicable.
- (3) The medical practitioner is under a duty to take the sample whether or not the accident patient consents to the taking of the sample.
- (4) If there is no medical practitioner present to attend the accident patient at the hospital, the blood sample is to be taken by a registered nurse who is attending the patient and who is accredited by a hospital as competent to perform the sampling procedures.
- (5) This section does not require the taking of a sample of blood from an accident patient unless, at the time of the accident concerned, the accident patient was:
  - (a) driving a motor vehicle involved in the accident, or
  - (b) occupying the driving seat of a motor vehicle involved in the accident and attempting to put the motor vehicle in motion, or
  - (c) a pedestrian involved in the accident, or
  - (d) driving or riding a vehicle (not being a motor vehicle) involved in the accident, or
  - (e) driving or riding a horse involved in the accident, or
  - (f) 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.
- (6) A medical practitioner or nurse is not required by this section to take a sample of an accident patient's blood:
  - (a) if a sample of the accident patient's blood has already been taken in accordance with this section by another medical practitioner or nurse, or

- (b) if the medical practitioner or nurse has been informed by a police officer (or has reasonable grounds to believe) that the sample is required to be taken for the purposes of Division 5.

**21 Offence—failure to take blood sample** (cf Traffic Act, s 4F (4) and (5))

- (1) A medical practitioner or nurse must not fail to take a person's blood sample as required under this Division.

Maximum penalty: 20 penalty units.

- (2) It is a defence to a prosecution for an offence under subsection (1) if the medical practitioner or nurse satisfies the court that:
  - (a) he or she believed on reasonable grounds that the taking of blood from the person from whom he or she was required by section 20 to take a sample of blood would be prejudicial to the proper care and treatment of the person, or
  - (b) he or she did not believe that the person was at least 15 years of age and it was reasonable for him or her not to have so believed, or
  - (c) he or she did not believe that the person had attended at or been admitted into the hospital in consequence of an accident on a road or road related area involving a vehicle or horse, or
  - (d) without limiting paragraph (c)—he or she did not believe that the person was a person from whom he or she was required by section 20 to take a sample of blood and it was reasonable for him or her not to have so believed, or
  - (e) the requirement that he or she take a sample of blood from the person arose after the expiration of 12 hours after the accident concerned occurred or he or she believed on reasonable grounds that the requirement so arose, or
  - (f) he or she did not know, and could not with reasonable diligence have ascertained, which of 2 or more persons involved in an accident on a road or road related area involving a vehicle or horse was or were a person or persons from whom he or she was required by section 20 to take a sample or samples of blood, or
  - (g) he or she was, by reason of the behaviour of the person, unable to take a sample of blood from the person at the time the person attended at or was admitted into the hospital or a reasonable time after so attending or being admitted, or
  - (h) there was reasonable cause for him or her not to take a sample of blood from the person in accordance with this Division.

**22 Offence—hindering or obstructing health professional taking blood sample** (cf Traffic Act,

s 4F (6)–(7B))

- (1) A person must not hinder or obstruct a medical practitioner or nurse in attempting to take a sample of the blood of any other person in accordance with this Division.

Maximum penalty: 20 penalty units.

- (2) A person (other than a secondary participant) must not:

- (a) by reason of the person's behaviour, prevent a medical practitioner or nurse from taking a sample of the person's blood in accordance with this Division, or
- (b) between the time of the accident concerned and the taking of a sample of the person's blood in accordance with this Division, 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).

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).

- (3) A secondary participant must not:

- (a) by reason of the person's behaviour, prevent a medical practitioner or nurse from taking a sample of the person's blood in accordance with this Division, or
- (b) between the time of the accident concerned and the taking of a sample of the person's blood in accordance with this Division, 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).

Maximum penalty: 30 penalty units.

- (4) It is a defence to a prosecution of a person for an offence under subsection (2) or (3) of wilfully doing anything to alter the concentration of alcohol in the person's blood if he or she satisfies the court that he or she did the thing after the expiration of 2 hours after the accident concerned occurred.

- (5) In this section:

**appropriate health professional** means a medical practitioner or nurse, or a person of a class or description prescribed by the regulations, for the proper care and treatment of the person.

**secondary participant** in relation to an accident, means a person involved in the accident who was:

- (a) a pedestrian, or



(b) driving or riding a vehicle (other than a motor vehicle or a horse).

**23 Analysis of samples of blood taken under this Division** (cf Traffic Act, s 4G (1)–(6))

(1) The medical practitioner or nurse by whom a sample of a person's 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.

Maximum penalty: 20 penalty units.

(2) The medical practitioner or nurse must, as soon as reasonably practicable after the sample is taken, arrange for the sample to be submitted to a laboratory prescribed by the regulations for analysis by an analyst to determine the concentration of alcohol in the blood.

Maximum penalty: 20 penalty units.

(3) The person from whom the sample 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.

(4) A medical practitioner who, in another State or Territory, takes a sample of blood:

- (a) from a person attended by the medical practitioner in consequence of an accident in New South Wales, and
- (b) in accordance with provisions of a law of that State or Territory that substantially correspond to the provisions of section 20,

may arrange for a portion of the sample to be submitted for an analysis by an analyst to determine the concentration of alcohol in the blood.

(5) A police officer may arrange for a sample of a person's blood taken in accordance with this Division to be submitted to a laboratory prescribed by the regulations for analysis to determine the concentration of alcohol, or of alcohol and other drugs, in the blood.

(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.

- (7) An analyst to whom a sample of blood, or a portion of a sample of blood (under subsection (4)), is submitted for analysis under this section may carry out an analysis of the sample, or of a portion of the sample, to determine the concentration of alcohol (and, where required, of other drugs) in the blood.
- (8) An analysis referred to in subsection (7) may be carried out, and any act, matter or thing in connection with the analysis (including the receipt of the sample of blood, or the portion of the sample of blood, to be analysed and the breaking of any seal securing the sample or portion) 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.

**24 Supervisee may perform functions of medical practitioner under this Division** (cf Traffic Act, ss 4F (8) and 4G (7))

- (1) Any duty of a medical practitioner under this Division and any relevant provisions of the regulations may be performed by a person acting under the supervision of the medical practitioner.
- (2) A duty performed by any such person is taken to have been performed by the medical practitioner.

**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.

## **Division 5 Sobriety assessments and related drug analysis**

### **25 Police officer may require sobriety assessment** (cf Traffic Act, s 5AA (1) and (2))

- (1) A police officer may require a person to submit to an assessment of his or her sobriety in accordance with the directions of the officer if:
- (a) the person has undergone a breath test in accordance with Division 3, and
  - (b) the result of the test does not permit the person to be required to submit to a breath analysis.
- (2) A person cannot be required to submit to a sobriety assessment unless:
- (a) a police officer has a reasonable belief that, by the way in which the person:
    - (i) is or was driving a motor vehicle on a road or road related area, or
    - (ii) is or was occupying the driving seat of a motor vehicle on a road or road related area and attempting to put the vehicle in motion,the person may be under the influence of a drug, and
  - (b) the assessment is carried out by a police officer at or near the place where the person underwent the breath test.

### **26 Arrest following failure to submit to (or pass) sobriety assessment** (cf Traffic Act, s 5AA (3))

If the person refuses to submit to a sobriety assessment under this Division or, after the assessment has been made, a police officer has a reasonable belief that the person is under the influence of a drug, the police officer may:

- (a) arrest that 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 a place prescribed by the regulations and there detain the person (or cause the person to be detained) for the purposes of this Division.

### **27 Procedure for taking samples following arrest** (cf Traffic Act, s 5AA (4) and (6)–(10))

- (1) Except as provided by section 28, a police officer may require a person who has been arrested under section 26 to provide samples of the person's blood and urine (whether or not the person consents to them 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.
- (2A) 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.

Maximum penalty: 20 penalty units.

- (2B) 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.

Maximum penalty: 20 penalty units.

- (2C) 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.
- (3) The medical practitioner, registered nurse or prescribed sample taker by whom or under whose directions a sample of urine is taken 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.
- (4) 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.

- (5) 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.
- (6) 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 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.
- (7) 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.

**28 When sobriety assessment and taking of samples not permitted** (cf Traffic Act, s 5AA (5))

A police officer cannot require a person to submit to a sobriety assessment or to provide a sample under this Division:

- (a) if the 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 requirement and the medical practitioner does not object on the grounds that compliance would be prejudicial to the proper care and treatment of the person, or
- (b) if it appears to that officer that it would, because of the person's injuries, be dangerous to the person's medical condition to submit to the assessment or provide the sample, or
- (c) at any time after the expiration of 4 hours from the occurrence of the event referred to in section 25 (2) (a) (i) or (ii) because of which the officer was entitled to require the person to submit to the assessment or provide the sample, or
- (d) at the person's home.

**29 Offences related to sobriety assessments and testing for drugs** (cf Traffic Act, s 5AC (1)-(4) and (6)-(8))

- (1) A person must not, when required by a police officer to submit to an assessment

under section 25, refuse or fail to submit to the assessment in accordance with the directions of the police officer.

Maximum penalty: 10 penalty units.

(2) A person must not:

(a) on being required under this Division by a police officer to provide samples of blood or 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) wilfully do anything to introduce, or alter the amount of, a drug in the person's blood or urine between the time of the event referred to in section 25 (2) (a) (i) or (ii) in respect of which the person has been required by a police officer to submit to an assessment and the time when the person undergoes that assessment, or

(c) wilfully do anything to introduce, or alter the amount of, a drug in the person's blood or urine between the time of the event referred to in section 25 (2) (a) (i) or (ii) in respect of which the person has been required by a police officer to submit to an assessment and the time when the person provides a sample that the person is required to provide under this Division.

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).

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

(4) It is a defence to a prosecution of a person for an offence under subsection (2) (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 event referred to in section 25 (2) (a) (i) or (ii).

(5) 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 27 (3) or (4) in relation to the sample.

Maximum penalty: 20 penalty units.

- (6) It is a defence to a prosecution for an offence under subsection (5) 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 did not believe that the person was of or above the age of 15 years and it was reasonable for the practitioner, nurse or prescribed sample taker not to have so believed, 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.
- (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 or urine of any other person in accordance with this Division.

Maximum penalty: 20 penalty units.

## **Division 6 Detention of vehicle for safe-keeping**

### **30 (Repealed)**

### **31 Detention of vehicle in certain cases** (cf Traffic Act, s 5A)

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

## **Division 7 Evidentiary and other procedural matters**

### **32 Evidence of alcohol concentration revealed by breath or blood analysis in proceedings for offence under section 9** (cf Traffic Act, ss 4E (11) and 4G (8))

- (1) In proceedings for an offence under section 9, evidence may be given of the concentration of alcohol present in the breath or blood of the person charged as

determined by:

(a) a breath analysing instrument operated by a police officer authorised to do so by the Commissioner of Police, or

(b) an analysis of the person's blood under this Part.

(2) In proceedings for an offence under section 9, the concentration of alcohol so determined 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 section 13 (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 concerned was:

(a1) in the case of an offence under section 9 (1A)—zero grammes of alcohol in 210 litres of breath or 100 millilitres of blood, or

(a) in the case of an offence under section 9 (1)—less than 0.02 grammes of alcohol in 210 litres of breath or 100 millilitres of blood, or

(b) in the case of an offence under section 9 (2)—less than 0.05 grammes of alcohol in 210 litres of breath or 100 millilitres of blood, or

(c) in the case of an offence under section 9 (3)—less than 0.08 grammes of alcohol in 210 litres of breath or 100 millilitres of blood, or

(d) in the case of an offence under section 9 (4)—less than 0.15 grammes of alcohol in 210 litres of breath or 100 millilitres of blood.

(3) Nothing in subsection (2) affects the operation of section 10.

**33 Certificate evidence about breath or blood analysis in proceedings for offences under section 9** (cf Traffic Act, ss 4E (12) and 4G (9)–(11A))

(1) In proceedings for an offence under section 9 a certificate purporting to be signed by a police officer certifying that:

(a) the officer is authorised by the Commissioner of Police to operate breath analysing instruments, and

(b) a person named in the certificate submitted to a breath analysis, and

(c) the apparatus used by the officer to make the breath analysis was a breath analysing instrument within the meaning of this Act, and

(d) the analysis was made on the day and completed at the time stated in the certificate, and

(e) a concentration of alcohol determined by that breath analysing instrument and

expressed in grammes of alcohol in 210 litres of breath or 100 millilitres of blood was present in the breath or blood of that person on the day and at the time stated in the certificate, and

- (f) a statement in writing required by section 15 (3) was delivered in accordance with that subsection,

is admissible and is prima facie evidence of the particulars certified in and by the certificate.

- (2) In proceedings for an offence under section 9 or Division 3 a certificate purporting to be signed by the Commissioner of Police that the police officer named in the certificate is authorised by the Commissioner of Police to operate breath analysing instruments is admissible and is prima facie evidence of the particulars certified in and by the certificate.
- (3) In proceedings for an offence under section 9 or Division 3, evidence of the condition of a breath analysing instrument, or of the manner in which it was operated, is not required unless evidence sufficient to raise doubt that the instrument was in proper condition and properly operated has been adduced.
- (4) In proceedings for an offence under section 9 a certificate purporting to be signed by a medical practitioner or nurse certifying any one or more of the following matters is admissible and is prima facie evidence of the particulars certified in and by the certificate:
- (a) that he or she was a medical practitioner or nurse who attended a specified person who attended at or was admitted into a hospital as referred to in section 20,
  - (b) that he or she took a sample of the person's blood in accordance with Division 4, 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 section 23 (1) and any relevant provisions of the regulations,
  - (d) that he or she used equipment of a specified description in so taking and dealing with the sample,
  - (e) that the container was sealed, and marked or labelled, in a specified manner.
- (5) In proceedings for an offence under section 9, a certificate purporting to be signed by a police officer certifying any one or more of the following matters is admissible and is prima facie evidence of the particulars certified in and by the certificate:
- (a) that the officer received a sample of a specified person's blood taken in

accordance with Division 4,

(b) that the officer arranged for the sample to be submitted for analysis by an analyst to determine the concentration of alcohol in the blood,

(c) that the container was sealed, and marked or labelled, in a specified manner.

(6) In proceedings for an offence under section 9, 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 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 concentration of alcohol in the sample,

(e) that the concentration of alcohol determined pursuant to the analysis and expressed in grammes of alcohol in 100 millilitres of blood was present in that sample,

(f) that the analyst was, at the time of the analysis, an analyst within the meaning of this Act,

is admissible and is prima facie evidence:

(g) of the particulars certified in and by the certificate, and

(h) that the sample was a sample of the blood of that specified person, and

(i) that the sample had not been tampered with before it was received by the analyst.

(7) In proceedings for an offence under section 9, a certificate purporting to be signed by a person who, in another State or Territory:

(a) took a blood sample, or

(b) analysed a blood sample,

in accordance with provisions of a law of that State or Territory that substantially correspond to the provisions of Division 4 is admissible and is prima facie evidence 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 Division 4.

### **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 admissible and is prima facie evidence 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 admissible and is prima facie evidence:

(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 admissible and is prima facie evidence 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 admissible and is prima facie evidence 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 admissible and is prima facie evidence 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 admissible and is prima facie evidence:

- (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 admissible and is prima facie evidence 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.

**34 Evidence of drugs revealed by blood or urine analysis in proceedings for offence under section 12** (cf Traffic Act s 5AB (1))

In proceedings for an offence under section 12 (1):

(a) evidence may be given of:

(i) the presence of a drug, or

(ii) the presence of a particular concentration of a drug,

in the blood or urine of the person charged, as determined pursuant to an analysis under Division 3A, 4, 4A or 5 of a sample of the person's blood or urine, and

(b) the drug the presence of which is so determined or the particular concentration of the drug the presence of which is so determined, as the case may be, is to be taken to have been present in the blood or urine of that person when the event referred to in section 12 (1) (a) or (b) (as the case may be) occurred,

if the sample was taken within 4 hours after the event, unless the defendant proves the absence of the drug, or the presence of the drug in a different concentration, when the event occurred.

**35 Certificate evidence about blood or urine analysis in proceedings for offences under section 12** (cf Traffic Act, s 5AB (2)-(4A))

(1) In proceedings for an offence under section 12 (1), a certificate purporting to be signed by a medical practitioner, nurse or prescribed sample taker certifying any one or more of the following matters is admissible and is prima facie evidence of the particulars certified in and by the certificate:

(a) that the medical practitioner, nurse or prescribed sample taker was a medical practitioner, 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 the medical practitioner, nurse or prescribed sample taker 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 the medical practitioner, nurse or prescribed sample taker 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 12 (1), a certificate purporting to be signed by a police officer certifying any one or more of the following matters is admissible and is prima facie evidence 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 12 (1), 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 Division 3A, 4, 4A or 5,

(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 whether any drug was present in the sample,

(e) that a specified drug ascertained pursuant to the analysis was present in that sample and, if so certified, was present in that sample in a specified concentration,

(f) that the analyst was, at the time of the analysis, an analyst within the meaning of this Act,

is admissible and is prima facie evidence:

(g) of the particulars certified in and by the certificate, and

- (h) that the sample was a sample of the blood or urine of that specified person, and
- (i) that the sample had not been tampered with before it was received by the analyst.

(4) Subsections (1)–(3):

- (a) do not apply to proceedings brought on a charge that, by the operation of section 38 (4), cannot be laid, and
- (b) do not enable evidence to be given of or in relation to:
  - (i) the presence of a drug other than alcohol, or
  - (ii) the presence of a particular concentration of a drug other than alcohol, in the blood of a person charged with an offence under section 12 (1), as determined by an analysis under Division 4, unless the court is satisfied that the analysis was not arranged in contravention of section 23 (6).

**36 Certificate evidence may specify minimum concentrations** (cf Traffic Act, s 17C)

If, in any proceedings in which evidence is permitted to be given of the results of an analysis, undertaken for the purposes of this Act, of a sample of a person's blood or urine, evidence is given by a certificate under this Act to the effect that alcohol or another specified drug was found by the analysis to be present in the sample in a concentration not less than a specified concentration:

- (a) the certificate is to be treated as though it stated that the concentration of alcohol or of the other drug concerned was determined by the analysis to be present in the specified minimum concentration, and
- (b) the evidence given by the certificate is not open to challenge on the basis that the analysis, merely because it purports to determine a concentration in terms of a minimum, does not meet the requirements of this Act.

**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** (cf Traffic Act, ss 4E (13), 4G (12) and (13) and 5AB (5) and (6))

- (1) For the purposes of any contract of insurance, any of the following facts are not admissible as evidence of the fact that a person was at any time under the influence of or in any way affected by intoxicating liquor or incapable of driving or of exercising effective control over a motor vehicle:
  - (a) the fact that a person has undergone a breath test or submitted to a breath analysis under Division 3,
  - (b) the result of a breath test or breath analysis,

- (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,
  - (c) the fact that a person has been convicted of an offence under section 9, 11B (1) or (3), 13 (2), 15 (4), 16, 18B (2), 18D (2), 18E (9) or 18G (1).
- (2) For the purposes of any contract of insurance, the results of any analysis of blood or urine under Division 3A, 4, 4A or 5 are not admissible as evidence of the fact that a person was at any time under the influence of or in any way affected by intoxicating liquor or other drug or incapable of driving or of exercising effective control over a vehicle or horse.
  - (3) Nothing in subsection (1) or (2) precludes the admission of any other evidence to show a fact referred in the subsection.
  - (4) The provisions of this section have effect despite anything contained in any contract of insurance.
  - (5) Any covenant, term, condition or provision in any contract of insurance is void:
    - (a) to the extent that the operation of this section is excluded, limited, modified or restricted, or
    - (b) to the extent that it purports to exclude or limit the liability of the insurer in the event of any person being convicted of an offence under section 9, 11B (1) or (3) or Division 3 or 3A.
  - (6) However, nothing in subsection (5) precludes the inclusion in a contract of insurance of any other covenant, term, condition or provision under which the liability of the insurer is excluded or limited.

**38 Double jeopardy in relation to alcohol and other drug offences** (cf Traffic Act, ss 4E (14) and (15), 4F (9) and (10) and 5AC (5))

- (1) If a person has been convicted of an offence under section 15 (4), 16, 18D (2), 18E (9), 18G (1), 22 (2), 24D (1) and (6) or 29 (2), 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.
- (2) 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 15 (4), 16, 18D (2), 18E (9), 18G (1), 22 (2), 24D (1) and (6) or 29 (2) if the offence for which the person has been convicted and the other offence arose directly or indirectly out of the same circumstances.
- (3) If, by reason of the occurrence of an event referred to in section 13 (1) (a), (b) or (c), a

person is required by a police officer to undergo a breath test and as a consequence of that test to submit to a breath analysis and the person submits to the breath analysis in accordance with the directions of a police officer, the person cannot be charged with an offence under section 12 (1) of:

- (a) driving a motor vehicle, at the time of that event, while the person was under the influence of intoxicating liquor, or
- (b) occupying the driving seat of a motor vehicle and attempting to put such motor vehicle in motion, at the time of that event, while the person was under the influence of intoxicating liquor.

(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.

(4) A person who has had a sample of blood taken in accordance with Division 4 because of an accident is not to be charged with an offence under section 12 (1) if it is alleged as a component of the offence that the person was under the influence of alcohol and the offence relates to the same accident.

## **Division 8 Personal liability of sample takers**

### **39 Personal liability for good faith taking of samples** (cf Traffic Act, ss 4F (11) and 5AC (9))

- (1) A medical practitioner, nurse or prescribed sample taker does not incur any civil or criminal liability in respect of anything properly and necessarily done by the practitioner, nurse or prescribed sample taker in the course of taking a sample of blood or urine from a person for the purpose of its being used by an analyst to detect the presence of any drug if the practitioner, nurse or prescribed sample taker:
  - (a) believed on reasonable grounds that he or she was required under this Act to take the sample of blood or urine from the person, or
  - (b) believed on reasonable grounds that the person was involved in an accident on a road or road related area (whether in New South Wales or elsewhere) involving a vehicle or horse and he or she did not know, and could not with reasonable diligence have ascertained, whether or not he or she was required to take the sample from the person under Division 4 or 4A, or
  - (c) was informed by a police officer that the person was a person from whom the

practitioner, nurse or prescribed sample taker was required under this Act to take the sample of blood or urine.

(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).

(3) This section applies despite section 243 of the *Road Transport (General) Act 2005*.

## **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.

## **Part 3 Speeding and other dangerous driving**

### **Division 1 Speeding and other dangerous driving offences**

#### **40 Races, attempts on speed records and other speed trials** (cf Traffic Act, s 4B)

- (1) A person must not organise, promote or take part in:
  - (a) any race between vehicles on a road or road related area, or
  - (b) any attempt to break any vehicle speed record on a road or road related area, or
  - (c) any trial of the speed of a vehicle on a road or road related area, or
  - (d) any competitive trial designed to test the skill of any vehicle driver or the reliability or mechanical condition of any vehicle on a road or road related area,unless the written approval of the Commissioner of Police to the holding or making of the race, attempt or trial has been obtained.

Maximum penalty: 30 penalty units (in the case of a first offence) or 30 penalty units or imprisonment for 9 months or both (in the case of a second or subsequent offence).
- (2) The Commissioner of Police may:
  - (a) grant or refuse approval to the holding or making of a race, attempt or trial referred to in subsection (1), and

- (b) impose any condition (whether of general or limited application) on the approval that the Commissioner considers necessary in the interests of public safety and convenience.

**Note—**

Section 241 of the *Road Transport (General) Act 2005* provides that a person aggrieved by a decision of the Commissioner of Police under this subsection may apply to the Administrative Decisions Tribunal for a review of the decision.

- (3) A person taking part in (or the organiser or promoter) of any race, attempt or trial referred to in subsection (1) must comply with any condition imposed on an approval granted under subsection (2) in respect of the race, attempt or trial.

Maximum penalty: 20 penalty units.

- (4) If a person is convicted by a court of an offence under this section in relation to a motor vehicle or trailer:
  - (a) except as provided by paragraph (b)—the person is disqualified from holding a driver licence by the conviction and without any specific order of a court for 12 months, or
  - (b) if the court at the time of the conviction thinks fit to order a shorter or a longer period of disqualification—the person is disqualified from holding a driver licence for the period specified in the order.

**Note—**

Section 189 of the *Road Transport (General) Act 2005* provides for the effect of a disqualification (whether or not by order of a court).

- (5) Any disqualification under this section is in addition to any penalty imposed for the offence.
- (6) This section does not apply to any test of the slow running of a vehicle.

**41 Conduct associated with road and drag racing and other activities** (cf Traffic Act, s 4BA)

- (1) A person must not, on a road or road related area, operate a motor vehicle in such a manner as to cause the vehicle to undergo sustained loss of traction by one or more of the driving wheels (or, in the case of a motor cycle, the driving wheel) of the vehicle.

Maximum penalty: 10 penalty units.

- (2) A person must not:
  - (a) operate a motor vehicle contrary to subsection (1) knowing that any petrol, oil, diesel fuel or other inflammable liquid has been placed on the surface of the road



or road related area beneath one or more tyres of the vehicle, or

- (b) do, or omit to do, any other thing that prolongs, sustains, intensifies or increases loss of traction as referred to in subsection (1), or
- (c) repeatedly operate a motor vehicle contrary to subsection (1), or
- (d) operate a motor vehicle contrary to subsection (1) at a time, or on a road or road related area in a place, knowing that there is an appreciable risk that operation of the vehicle in that manner at that time and place is likely to interfere with the amenity of the locality or the peaceful enjoyment of any person in the locality or make the place unsafe for any person in the locality, or
- (e) willingly participate in any group activity involving the operation of one or more vehicles contrary to subsection (1), or
- (f) organise, promote or urge any person to participate in, or view, any group activity involving the operation of one or more vehicles contrary to subsection (1), or
- (g) photograph or film a motor vehicle being operated contrary to subsection (1) for the purpose of organising or promoting the participation of persons in any such group activity.

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

- (3) In any proceedings for an offence under subsection (1) or (2), it is a defence if the person charged satisfies the court that the vehicle, although operated as referred to in subsection (1), was not so operated deliberately.
- (4) A person must not, on a road or road related area, engage in conduct prescribed by regulations made for the purposes of this section, being conduct associated with the operation of a motor vehicle for speed competitions or other activities specified or described in the regulations.

Maximum penalty: 5 penalty units.

- (5) Nothing in this section applies to the operation of a motor vehicle for the purposes of a race, attempt or trial undertaken in accordance with an approval given under section 40 by the Commissioner of Police.
- (6) In considering whether an offence has been committed under subsection (2) (d), the court is to have regard to all the circumstances of the case, including the following:
  - (a) the nature and use of the road or road related area in which the offence is alleged to have been committed,
  - (b) the nature and use of any premises in the locality of the road or road related area

in which the offence is alleged to have been committed.

- (7) A person who is convicted by a court of an offence under subsection (2) (a), (b), (c) or (d) in relation to a motor vehicle is disqualified from holding a driver licence by the conviction and without any specific order of the court for 12 months.
- (8) Any disqualification under this section is in addition to any penalty imposed for the offence.

**42 Negligent, furious or reckless driving** (cf Traffic Act, s 4)

- (1) A person must not drive a motor vehicle negligently on a road or road related area.

Maximum penalty:

- (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.

- (2) A person must not 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.

Maximum penalty: 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).

- (3) In considering whether an offence has been committed under this section, the court is to have regard to all the circumstances of the case, including the following:
  - (a) the nature, condition and use of the road or road related area on which the offence is alleged to have been committed,
  - (b) the amount of traffic that actually is at the time, or which might reasonably be expected to be, on the road or road related area.

- (4) In this section:

***grievous bodily harm*** includes any permanent or serious disfigurement.

**43 Menacing driving** (cf Traffic Act, s 4AA)

- (1) **Offence—intent to menace** A person must not 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.

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) **Offence—possibility of menace** A person must not drive a motor vehicle on a road or road related area in a manner that menaces another person if the person ought to have known that the other person might be menaced.

Maximum penalty: 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).

- (3) **Application of section** This section applies:

- (a) whether the other person is menaced by a threat of personal injury or by a threat of damage to property, and
- (b) whether or not that person or that property is on a road or road related area.

- (4) **Defence** A person is not guilty of an offence under this section if the person could not, in the circumstances, reasonably avoid menacing the other person.

- (5) **Double jeopardy** A person is not liable to be convicted of:

- (a) both an offence under subsection (1) and an offence under subsection (2), or
- (b) both an offence under this section and an offence under section 42, arising out of a single incident.

## Division 2 Speed measurement

### 44 Approved speed measuring devices (cf Traffic Act, ss 2 (1) and 4AB (3))

- (1) In this Act, an **approved speed measuring device** is 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.
- (2) The Minister is not to recommend the making of an order by the Governor for the purposes of subsection (1) except with the concurrence of the Attorney General.

#### **Editorial note—**

For orders under this section see Gazettes No 61 of 5.5.2006, p 2994; No 167 of 9.11.2007, p 8387; No 53 of 16.5.2008, p 3929 and No 152 of 28.11.2008, pp 11679, 11680.

### 45 Approved camera recording devices (cf Traffic Act, s 2 (1))

- (1) In this Act, an **approved camera recording device** is a device of a type approved

by the appropriate approval authority 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).
- (2) In this Act, **approved digital camera recording device** is an approved camera recording device that is capable of recording images in the form of digitalised, electronic or computer-generated images.
- (3) In this section, **appropriate approval authority**, in relation to the approval of a device as an approved camera recording device, means:
- (a) if the device is only capable of taking photographs that are not in the form of digitalised, electronic or computer-generated images—the Commissioner of Police, or
  - (b) if the device is capable of taking photographs in the form of digitalised, electronic or computer-generated images—the Governor.

**Editorial note—**

For orders under this section see Gazettes No 61 of 5.5.2006, p 2994 and No 152 of 28.11.2008, pp 11680, 11681.

**46 Certificates concerning use of approved speed measuring devices** (cf Traffic Act, s 4AB (1) and (2))

- (1) In proceedings for any offence against this Act in which evidence is given of a measurement of speed obtained by the use of an approved speed measuring device, a certificate purporting to be signed by an appropriate officer certifying that:
- (a) the device is an approved speed measuring device within the meaning of this Act, and
  - (b) on a day specified in the certificate (being within the time prescribed by the regulations before the alleged time of the offence) the device was tested in

accordance with the regulations and sealed by an appropriate officer, and

(c) on that day the device was accurate and operating properly,

is admissible and is prima facie evidence of the particulars certified in and by the certificate.

(2) If any such certificate is tendered in proceedings for an offence, evidence:

(a) of the accuracy or reliability of the approved speed measuring device, or

(b) as to whether or not the device operated properly or operates properly (generally or at a particular time or date or during a particular period),

is not required in those proceedings unless evidence sufficient to raise doubt that, at the time of the alleged offence, the device was accurate, reliable and operating properly is adduced.

(3) In this section:

**appropriate officer** means:

(a) in the case of an approved speed measuring device that is used in conjunction with, or forms part of, an approved digital camera recording device—a person (or person belonging to a class of persons) authorised by the Authority to install and inspect approved digital camera recording devices or approved speed measuring devices (or both), or

(b) in the case of any other kind of approved speed measuring device—a police officer, or a person authorised by the Commissioner of Police to test a device of that kind.

**Note—**

See also section 73A.

**47 Photographic evidence of speeding offences** (cf Traffic Act, s 4AC)

(1) In proceedings for an offence of driving at a speed in excess of a speed limit imposed by or under this Act or the regulations, evidence may be given of a measurement of speed obtained by the use of an approved speed measuring device and recorded by an approved camera recording device.

(2) In proceedings in which such evidence is given:

(a) the provisions of section 46 relating to the accuracy or reliability of the approved speed measuring device apply, and

(b) subsections (3)–(7) apply in relation to the approved camera recording device, and

- (c) evidence that a photograph taken by an approved digital camera recording device bears a security indicator of a kind prescribed by the regulations is prima facie evidence that the photograph has not been altered since it was taken.
- (3) A photograph tendered in evidence as a photograph taken by an approved camera recording device on a day and at a location specified on the photograph, and as bearing a security indicator of a kind prescribed by the regulations, is admissible and:
- (a) is to be presumed to have been so taken unless evidence sufficient to raise doubt that it was so taken is adduced, and
  - (b) is to be presumed to bear such a security indicator unless evidence that is sufficient to raise doubt that it does so is adduced, and
  - (c) is prima facie evidence of the matters shown or recorded on the photograph.
- (4) When the photograph taken by an approved camera recording device (other than an approved digital camera recording device) is tendered in evidence, a certificate purporting to be signed by a police officer and certifying the following particulars is also to be tendered in evidence and the certificate is admissible and is prima facie evidence of those particulars:
- (a) that the officer is authorised by the Commissioner of Police to install and inspect approved camera recording devices,
  - (b) that within 168 hours before the time and day recorded on the photograph as the time at which and the day on which the photograph was taken, the officer carried out the inspection specified in the certificate on the approved camera recording device that took the photograph,
  - (c) that on that inspection the approved camera recording device was found to be operating correctly.
- (5) When the photograph tendered in evidence is taken by an approved digital camera recording device, a certificate purporting to be signed by an authorised person and certifying the following particulars is also to be tendered in evidence and the certificate is admissible and is prima facie evidence of those particulars:
- (a) that the person is an authorised person,
  - (b) that within 30 days (or such other period as may be prescribed by the regulations) before the time and day recorded on the photograph as the time at which and the day on which the photograph was taken, the person carried out the inspection specified in the certificate on the approved digital camera recording device that took the photograph,
  - (c) that on that inspection the approved digital camera recording device was found to be operating correctly.

- (6) If a certificate under subsection (4) or (5) is tendered in proceedings for an offence, evidence:
- (a) of the accuracy or reliability of the camera recording device concerned, or
  - (b) as to whether or not the device operated correctly or operates correctly (generally or at a particular time or date or during a particular period),

is not required in those proceedings unless evidence sufficient to raise doubt that, at the time of the alleged offence, the device was accurate, reliable and operating correctly is adduced.

- (7) In this section, **authorised person** means a person (or person belonging to a class of persons) authorised by the Authority to install and inspect approved digital camera recording devices.

**Note—**

See also section 73A.

**48 Sale, purchase or use of prohibited speed measuring evasion articles** (cf Traffic Act, s 4AD)

- (1) A person must not sell or offer for sale, or purchase, a prohibited speed measuring evasion article.

Maximum penalty: 20 penalty units.

- (2) A person must not drive a motor vehicle, or cause a motor vehicle or trailer to stand, on a road or road related area if a prohibited speed measuring evasion article is fitted or applied to, or carried in, the vehicle or trailer.

Maximum penalty: 20 penalty units.

- (3) The responsible person for a motor vehicle or trailer which is driven or stands on a road or road related area in contravention of subsection (2) is guilty of an offence.

Maximum penalty: 20 penalty units.

- (4) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that the article concerned was not designed as a prohibited speed measuring evasion article but was designed for another purpose.

- (5) It is a defence to a prosecution for an offence under subsection (2) or (3) if the defendant satisfies the court that, at the time of the alleged offence:

- (a) the vehicle was in the course of a journey to a place appointed by a police officer, an officer of the Authority or a court, in order to surrender the article, or
- (b) the vehicle was the subject of a notice, issued in accordance with the regulations,

requiring the responsible person for the vehicle to remove the article from the vehicle within a specified time and that time had not expired, or

- (c) the defendant did not know, and in the circumstances could not reasonably be expected to have known, that the article concerned was fitted or applied to, or was being carried in, the vehicle or trailer.

**49 Surrender and forfeiture of prohibited speed measuring evasion articles** (cf Traffic Act, s 4AE)

(1) A police officer who reasonably believes that:

- (a) a prohibited speed measuring evasion article is being sold or offered for sale in contravention of section 48 (1), or
- (b) a motor vehicle or trailer is standing or being driven in contravention of section 48 (2) because of an article fitted or applied to, or carried in, the motor vehicle or trailer,

may require a person in possession of the article to surrender it immediately to the police officer or, in the case of an article fitted or applied to a motor vehicle or trailer and not immediately removable, may by notice in writing served on the responsible person for the vehicle or trailer require the responsible person to surrender the article within a specified time and in a specified manner to the Commissioner of Police.

(2) An officer of the Authority who is authorised in writing by the Authority for the purposes of this section and who finds a prohibited speed measuring evasion article fitted or applied to, or carried in, a motor vehicle or trailer may, by notice in writing served on the responsible person for the motor vehicle or trailer, require the person to do either or both of the following:

- (a) remove the article (if it is fitted to the motor vehicle or trailer),
- (b) surrender the article within a specified time and in a specified manner to the Commissioner of Police.

(3) A person must comply with a requirement under subsection (1) or (2), whether or not he or she is the owner of the article concerned.

Maximum penalty: 20 penalty units.

(4) A court that finds any person guilty of an offence under section 48 or under subsection (3) may order that the article concerned, if not already surrendered in compliance with a requirement under this section, be delivered to the Commissioner of Police within a time and in a manner specified by the court.

(5) An article surrendered as required under this section is forfeited to the Crown and may be destroyed or otherwise disposed of at the direction of the Commissioner of



Police.

- (6) No liability attaches to any person on account of the surrender by the person, in compliance with a requirement under this section, of a prohibited speed measuring evasion article of which that person is not the absolute owner.

## **Part 4 Traffic control devices**

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

#### **50 Interpretation**

In this Division:

**installation** of a prescribed traffic control device includes the painting or formation of any marks or structure that constitute, or form part of, the device.

**prescribed traffic control device** means 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 for the purposes of this definition.

**traffic control authority** means:

- (a) the Authority, or
- (b) the Commissioner of Police, or
- (c) any other person (or person belonging to a class or description of persons) prescribed by the regulations for the purposes of this definition.

#### **51 Appropriate authority for the purposes of this Division**

For the purposes of this Division, a person has appropriate authority to install or display (or to interfere with, alter or remove) a prescribed traffic control device if:

- (a) the person is a public authority that has been directed by the Authority under Division 1C of Part 6 of the *Transport Administration Act 1988* to install or display (or to interfere with, alter or remove) the device, or
- (b) the person is otherwise authorised in writing by the Authority to install or display (or to interfere with, alter or remove) the device.

**Note—**

Division 1C of Part 6 of the *Transport Administration Act 1988* enables the Authority to give certain public authorities directions in respect of safety and traffic management.

**52 Unauthorised prescribed traffic control devices** (cf Traffic Act, s 4D (6))

- (1) A person must not, without appropriate authority:
  - (a) install or display a prescribed traffic control device on, above or near a road or road related area, or
  - (b) interfere with, alter or remove any prescribed traffic control device installed or displayed on, above or near a road or road related area.

Maximum penalty: 20 penalty units.

- (2) A person must not 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.

Maximum penalty: 20 penalty units.

**53 Removal of unauthorised prescribed traffic control devices** (cf Traffic Act, s 4D (7) and (8))

- (1) A traffic control authority (or a person authorised by any such authority) may direct any person who contravenes section 52 to remove, within a time specified by the authority when giving the direction, the sign, signal, marking, structure or other device in respect of which the contravention took place.
- (2) A person to whom a direction is given under subsection (1) must comply with the direction.

Maximum penalty: 20 penalty units.

- (3) Without affecting any liability of any person under section 52 or subsection (2), a traffic control authority may remove, or cause to be removed, any sign, signal, marking, structure or other device installed or displayed in contravention of section 52.

**54 Cost of removal of prescribed traffic control device**

- (1) A traffic control authority may, by proceedings brought in a court of competent jurisdiction, recover the expenses that the authority has incurred in exercising the functions conferred by section 53 as a debt from the person who (without appropriate authority) installed or displayed the sign, signal, marking, structure or other device concerned.
- (2) A certificate that is issued on behalf of a traffic control authority by a person prescribed by the regulations (or by a person belonging to a class of persons so prescribed) and that states that a specified amount represents the costs incurred by the authority in carrying out specified work or in taking specified action for the purposes of section 53, is admissible in any such proceedings and is prima facie evidence of the fact or facts so stated.

**55 Prescribed traffic control devices presumed to be lawfully installed or displayed except for purposes of section 52** (cf Traffic Act, s 4D (9))

In proceedings for an offence against this Act or the regulations (other than an offence against 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 this Act.

**Division 2 Monitoring of traffic light offences**

**56 Approved camera detection device** (cf Traffic Act, s 2 (1))

In this Act, an **approved camera detection device** is a device of a type approved by the Authority 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.

**57 Photographic evidence of traffic light offences** (cf Traffic Act, s 4DA)

(1) In this section:

**traffic light offence** means an offence under the regulations of contravening a traffic light signal displaying a red circle or a red arrow.

(2) In proceedings for a traffic light offence:

- (a) a photograph tendered in evidence as a photograph taken by means of the operation, on a day specified on the photograph, of an approved camera detection device installed at a location specified on the photograph is admissible and is to be presumed to have been so taken unless evidence sufficient to raise doubt that it was so taken is adduced, and
- (b) any such photograph is prima facie evidence of the matters shown or recorded on the photograph.

(3) If a photograph referred to in subsection (2) is tendered in evidence in proceedings for a traffic light offence, a certificate purporting to be signed by a person certifying that:

- (a) the person is authorised by the Authority to install and inspect approved camera detection devices, and

- (b) on a day and at a time specified in the certificate (being within 168 hours before the time recorded on the photograph as the time at which the photograph was taken), the person carried out the inspection specified in the certificate on the approved camera detection device by means of which the photograph was taken, and
- (c) on that inspection, the approved camera detection device was found to be properly operating,

is to be tendered in evidence in those proceedings, is admissible and is prima facie evidence of the particulars certified in and by the certificate.

- (4) If a certificate under subsection (3) is tendered in proceedings for an offence, evidence:
  - (a) of the accuracy or reliability of the approved camera detection device, or
  - (b) as to whether or not the device operated properly or operates properly (generally or at a particular time or date or during a particular period),

is not required in those proceedings unless evidence sufficient to raise doubt that, at the time of the alleged offence, the device was accurate, reliable and operating properly is adduced.

**Note—**

See also section 73A.

### **Division 3 Monitoring of public transport lane offences**

#### **57A Approved traffic lane camera devices**

In this Act:

***approved traffic lane camera device*** means a device of a type approved by the Governor by order published in the Gazette as being designed to photograph a vehicle that is driven in a traffic lane on a road or a road related area and to record on any such 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 kind of traffic lane in which the vehicle activating the camera is travelling, and
- (e) such other information as may be prescribed by the regulations.

**Editorial note—**

For orders under this section see Gazette No 92 of 22.7.2005, p 3795.

### **57B Photographic evidence of public transport lane offences**

(1) In this section:

**authorised person** means a person (or a person belonging to a class of persons) authorised by the Authority to install and inspect approved traffic lane camera devices.

**public transport lane** means a traffic lane on a road or road related area that is dedicated by or under this Act (whether continuously or at particular times) primarily for the use of coaches regardless of whether certain other vehicles, such as emergency vehicles, are also permitted to use the lane.

**public transport lane offence** means:

- (a) an offence against clause 96B (1) of the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*, or
- (b) an offence against rule 154 (1) of the *Australian Road Rules* within the meaning of the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*, or
- (c) any other offence of driving a vehicle in a public transport lane in contravention of the regulations or rules that is prescribed by the regulations or rules for the purposes of this definition.

(2) In proceedings for a public transport lane offence:

- (a) one or more photographs tendered in evidence as photographs taken by means of the operation, on a day specified on the photographs, of an approved traffic lane camera device or devices installed at a location or locations specified on the photographs, and as each bearing a security indicator of a kind prescribed by the regulations, are admissible and are to be presumed:
  - (i) to have been so taken unless evidence sufficient to raise doubt that they were so taken is adduced, and
  - (ii) to bear such a security indicator unless evidence that is sufficient to raise doubt that they do so is adduced, and
- (b) evidence that a photograph tendered in evidence taken by an approved traffic lane camera device bears a security indicator of a kind prescribed by the regulations is prima facie evidence that the photograph has not been altered since it was taken, and
- (c) any such photograph is prima facie evidence of the matters shown or recorded on the photograph.

- (3) When a photograph tendered in evidence is taken by an approved traffic lane camera device, a certificate purporting to be signed by an authorised person and certifying the following particulars is also to be tendered in evidence, is admissible and is prima facie evidence of those particulars:
- (a) that the person is an authorised person,
  - (b) that within 30 days (or such other period as may be prescribed by the regulations) before the time and day recorded on the photograph as the time at which and the day on which the photograph was taken, the person carried out the inspection specified in the certificate on the approved traffic lane camera device that took the photograph,
  - (c) that on that inspection the approved traffic lane camera device was found to be operating correctly.
- (4) A single certificate may be tendered for the purposes of subsection (3) if more than one photograph taken by an approved traffic lane camera device is tendered in evidence, but only if:
- (a) each photograph is of the same vehicle, and
  - (b) each photograph is taken on the same day at approximately the same time and at approximately the same location.
- (5) If a certificate under subsection (3) is tendered in proceedings for an offence, evidence:
- (a) of the accuracy or reliability of the approved traffic lane camera device, or
  - (b) as to whether or not the device operated properly or operates properly (generally or at a particular time or date or during a particular period),
- is not required in those proceedings unless evidence sufficient to raise doubt that, at the time of the alleged offence, the device was accurate, reliable and operating properly is adduced.

**Note—**

See also section 73A.

## **Part 5 Vehicle safety and accidents**

### **Division 1 Offences relating to unsafe loads**

#### **58 Unsafe loads** (cf Traffic Act, s 8C)

- (1) A person is guilty of an offence if:

- (a) the person knows, or ought reasonably to know, that a motor vehicle or trailer is loaded unsafely, and
- (b) the person drives or causes or permits the motor vehicle or trailer to be driven or to stand on a road or road related area, and
- (c) death or personal injury to a person, or damage to property (other than the motor vehicle, trailer or load), occurs while the motor vehicle or trailer is being so driven or stood because it is loaded unsafely.

Maximum penalty: 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).

(2) The responsible person for a motor vehicle or trailer is guilty of an offence if:

- (a) the motor vehicle or trailer is loaded unsafely and is driven or stood on a road or road related area, and
- (b) the person knows, or ought reasonably to know, that the motor vehicle or trailer is loaded unsafely, and
- (c) death or personal injury to a person, or damage to property (other than the motor vehicle, trailer or load), occurs while the motor vehicle or trailer is being so driven or stood because it is loaded unsafely.

Maximum penalty: 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).

(3) A person is guilty of an offence if:

- (a) the person 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 loaded unsafely and is driven or stood on a road or road related area, and
- (b) the person knows, or ought reasonably to know, that the motor vehicle or trailer is loaded unsafely, and
- (c) death or personal injury to a person, or damage to property (other than the motor vehicle, trailer or load), occurs while the motor vehicle or trailer is being so driven or stood because it is loaded unsafely.

Maximum penalty: 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).

(4) It is a defence to a prosecution for an offence under this section if a person establishes 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.

- (5) For the purposes of this section, a motor vehicle or trailer is loaded unsafely if:
- (a) a load on the motor vehicle or trailer is placed in a way that makes the motor vehicle or trailer unstable or unsafe, or
  - (b) a load on the motor vehicle or trailer is not secured in such a way that it is unlikely to fall or be dislodged from the motor vehicle or trailer, or
  - (c) an appropriate method is not used to secure a load on the motor vehicle or trailer.
- (6) In proceedings for an offence under this section, it is sufficient to prove that a motor vehicle or trailer was loaded unsafely if the prosecution proves that the load on the vehicle or trailer was not placed, secured or restrained in a way that met the performance standards recommended in the *Load Restraint Guide: Guidelines and performance standards for the safe carriage of loads on road vehicles, Second Edition*, as published by the National Transport Commission in April 2004.
- (7) In this section:
- motor vehicle** includes a combination consisting of a motor vehicle connected to one or more vehicles.

## Division 2 Monitoring of heavy vehicles and vehicles carrying dangerous goods

### 59 Definitions (cf Traffic Act, s 10F)

- (1) In this Division:

**applicable motor vehicle** means a motor vehicle to which this Division applies.

**approved** means approved by the Authority.

**automatic data**, in relation to a journey made by a motor vehicle, means recordings (made by mechanical or electronic means, or by both of those means, in an approved form, and to an approved degree of accuracy) of:

- (a) the lengths of time for which the vehicle is driven, and for which it is standing, during the journey, and
- (b) the speeds at which the vehicle is driven (measured continuously or at approved intervals) during the journey, and
- (c) the distance travelled during each period when the vehicle is driven during the journey,

being recordings made by a monitoring device.

**manual data**, in relation to a journey made by a motor vehicle, means recordings



made by hand of:

- (a) the date, time and place of commencement, and of completion, of the journey, and
- (b) the times at which the vehicle is driven, and at which it is standing, during the journey, and
- (c) the name of each driver, and the times at which each driver was in charge of the vehicle, during the journey, and
- (d) the registration number of the vehicle, and
- (e) the name of each person making each of the those recordings.

**monitoring device** means a device which, when fitted to a motor vehicle, is capable of producing automatic data for a journey made by the vehicle.

**motor vehicle** includes a trailer.

**prescribed officer** means a person:

- (a) who is employed:
  - (i) by the Authority, or
  - (ii) as an inspector under the [Explosives Act 2003](#) or the [Occupational Health and Safety Act 2000](#), or
  - (iii) in some other capacity prescribed by the regulations, and
- (b) who is authorised for the purposes of this Division by the regulations.

**vehicle movement record**, in relation to a journey made by a vehicle, means a record, in durable and graphic form, consisting of:

- (a) manual data for the journey, and
- (b) either:
  - (i) corresponding automatic data for the journey produced by a monitoring device, except where subparagraph (ii) applies, or
  - (ii) where the automatic data is stored electronically in a monitoring device—a graphic representation, produced by an approved method, of that data.

- (2) The regulations may prescribe the manner in which the Authority may signify any approval for the purposes of this Division.

**60 Application of this Division** (cf Traffic Act, s 10G)

- (1) This Division applies to:
  - (a) any motor vehicle (being a coach or heavy motor vehicle) of a class or description prescribed by the regulations, except in such circumstances as may be so prescribed, and
  - (b) any motor vehicle which, because it carries dangerous goods within the meaning of the *Dangerous Goods (Road and Rail Transport) Act 2008* is required by regulations under either Act, or under any code prescribed for the purposes of this paragraph by regulations under this Act, to have a sign exhibited on it.
- (2) This Division applies to vehicles, drivers and responsible persons for vehicles whether or not:
  - (a) the vehicles are registered in New South Wales, or
  - (b) the drivers hold driver licences issued in New South Wales, or
  - (c) the responsible persons ordinarily reside (or, being corporations, are incorporated or have their principal places of business) in New South Wales.

**61 Vehicles to be fitted with monitoring devices in working order** (cf Traffic Act, s 10H)

- (1) An applicable motor vehicle is not to be used on any journey made wholly or partly on a road or road related area in New South Wales, unless:
  - (a) a monitoring device is fitted to the vehicle, and
  - (b) the device is producing automatic data for the journey.
- (2) If a vehicle is used in contravention of this section, the responsible person for the vehicle is guilty of an offence.

Maximum penalty: 50 penalty units.

**62 Vehicle movement record to be preserved** (cf Traffic Act, s 10I)

- (1) A vehicle movement record relating to each journey commenced, on or after the commencement of this section, by a vehicle to which this Division applies is to be preserved for a period of at least 12 months after the date of commencement of the journey.
- (2) If this section is not complied with, the responsible person for the vehicle is guilty of an offence.

Maximum penalty: 50 penalty units.

**63 Vehicle movement record to be carried by driver** (cf Traffic Act, s 10J)

- (1) An applicable motor vehicle must not be used for any journey made wholly or partly on a road or road related area or roads or road related areas unless a duly completed vehicle movement record is carried, in accordance with this section, by the driver of the vehicle at all times while the vehicle is in the State during the journey.
- (2) The record that must be carried on any day is to relate to any journey or part of a journey made by the vehicle, whether in or outside New South Wales, during the period of 14 days immediately preceding that day.
- (3) If a vehicle is used in contravention of this section, the responsible person for, and the driver of, the vehicle are each guilty of an offence and are each liable to a penalty not exceeding 50 penalty units.
- (4) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court:
  - (a) that the monitoring device fitted to the vehicle was of a type that stores automatic data electronically, and
  - (b) that the compilation of the vehicle movement record required to be carried by the driver on the date of the alleged offence would have required the production of a graphic representation of data which, on that date, were stored in the monitoring device, and
  - (c) that, in the circumstances of the case, the required record could not reasonably be expected to have been compiled by that date.
- (5) Nothing in this section requires the carriage of a vehicle movement record relating to the use, before the commencement of this section, of any vehicle.

**64 Inspection of monitoring devices and records carried on vehicles** (cf Traffic Act, s 10K)

- (1) A police officer may inspect any applicable motor vehicle in order to ascertain:
  - (a) whether a monitoring device is fitted to the vehicle, and
  - (b) whether any device so fitted appears to be operating correctly.
- (2) For the purposes of an inspection under subsection (1), a police officer may require the driver to operate the vehicle and to co-operate in any other manner reasonably necessary to facilitate the inspection.
- (3) A prescribed officer may:
  - (a) require the driver of an applicable motor vehicle to produce for inspection:
    - (i) his or her licence to drive the vehicle (whether issued in New South Wales or

elsewhere), and

(ii) any record required by this Division or the regulations to be carried by the driver of the vehicle during the journey, and

(iii) any record carried by the driver in connection with the business to which the journey relates, and

(b) make copies of, or take extracts from, any such record, and

(c) make reasonable inquiries of the driver concerning any entries in any such record that are made by the driver.

(4) For the purposes of this section:

(a) a police officer wearing a police uniform, or

(b) a prescribed officer identifying himself or herself in the manner required by the regulations,

may by any reasonably clear signal require the driver of any applicable motor vehicle to stop and park the vehicle.

(5) A police officer or a prescribed officer may require a vehicle and its driver to stay for such time as is reasonably necessary for the exercise of a power conferred on the officer by this section.

(6) A person must not:

(a) obstruct or hinder a police officer or a prescribed officer in the exercise of a power conferred by this section, or

(b) fail to comply with a requirement made under this section.

Maximum penalty: 50 penalty units.

#### **65 Seizure of monitoring devices and records** (cf Traffic Act, s 10L)

(1) A police officer may disconnect and take and retain possession of a monitoring device that is fitted to an applicable motor vehicle, together with any automatic data stored in the device if:

(a) the vehicle has been involved in an accident in which any person was killed, or

(b) the police officer reasonably believes that the monitoring device or any part of its mechanism has been improperly interfered with, or

(c) the police officer reasonably believes that the driver has committed a major offence involving the vehicle during the journey then being undertaken by the vehicle.

- (2) A police officer or a prescribed officer may take and retain possession of any record carried, pursuant to a requirement of this Division or the regulations, by the driver of an applicable motor vehicle if the officer reasonably believes that:
  - (a) false entries have been made in the record, or
  - (b) the record is unlawfully in the possession of the driver, or
  - (c) the record does not relate to the vehicle concerned.
- (3) A police officer or a prescribed officer may take and retain possession of any document which the driver of an applicable motor vehicle represents to be a record required by this Division or the regulations to be carried by the driver but which the officer reasonably believes is not such a record.
- (4) A person must not obstruct or hinder a police officer or a prescribed officer in the exercise of a power conferred by this section.

Maximum penalty: 50 penalty units.

**66 Production of records by responsible persons** (cf Traffic Act, s 10M)

- (1) The Authority may, by notice in writing served on any responsible person for an applicable motor vehicle, require the person to produce vehicle movement records to the Authority.
- (2) The notice may require the production of:
  - (a) all vehicle movement records relating to journeys undertaken in the vehicle during the 12 months preceding the date of service of the notice, or
  - (b) such of those records as the notice specifies.
- (3) The notice is not complied with if the records are not produced at a place, and within a time, specified by the notice.
- (4) The responsible person for a vehicle must comply with a notice under this section.

Maximum penalty: 50 penalty units.
- (5) Vehicle movement records produced to the Authority, whether in compliance with a notice under this section or otherwise, may be retained by the Authority for analysis, and while they are so retained, the responsible person for the vehicle is exempted from the requirements of any further notice under this section in relation to them.
- (6) A notice under this section does not require the production of a vehicle movement record being carried by the driver of a vehicle in accordance with a requirement of this Division.

**67 Tampering with monitoring devices or vehicle movement records** (cf Traffic Act, s 10N)

- (1) A person must not adjust any part of the mechanism of a monitoring device, fitted to an applicable motor vehicle, in such a manner that the accuracy of a vehicle movement record for the vehicle will be reduced.

Maximum penalty: 50 penalty units.

- (2) A person must not make any false entry in, or otherwise falsify, a vehicle movement record.

Maximum penalty: 50 penalty units.

- (3) Without limiting any power conferred on the Authority by or under this Act, the Authority may cancel the driver licence or licences of a person who commits an offence under this section.

**68 Exemptions** (cf Traffic Act, s 100)

- (1) The Authority may, in accordance with the regulations, exempt any person or vehicle or any class of persons or vehicles from the operation of all or any of the provisions of this Division.

- (2) An exemption:

- (a) may be absolute or subject to conditions, and  
(b) if subject to conditions, has effect only while the conditions are observed.

**69 Evidence of vehicle movement record** (cf Traffic Act, s 10P)

- (1) A vehicle movement record is not admissible in evidence in any criminal proceedings unless:

- (a) the proceedings are proceedings for:

- (i) an offence under section 67, or  
(ii) aiding, abetting, counselling or procuring the commission of an offence under that section, or  
(iii) a major offence, or

- (b) the record is adduced by the defendant.

- (2) Nothing in this section affects the admissibility in any civil proceedings of a vehicle movement record.

**Division 2A Speed limiting of heavy vehicles**

## 69A Definitions

In this Division:

**speed limiter compliant**, in relation to a vehicle, means that the speed at which the vehicle is capable of being driven is limited, in the manner prescribed by the regulations for the purposes of this Division, to not more than 100 km/h.

**speed limiter offence** means an offence against section 69C.

## 69B Application of Division

- (1) This Division applies to the vehicles prescribed by the regulations for the purposes of this Division.
- (2) This Division applies to vehicles and the drivers of, and responsible persons for, vehicles whether or not:
  - (a) the vehicles are registered in New South Wales, or
  - (b) the drivers hold driver licences issued in New South Wales, or
  - (c) the responsible persons ordinarily reside (or, being corporations, are incorporated or have their principal places of business) in New South Wales.

## 69C Vehicles to be speed limited

- (1) The responsible person for a vehicle to which this Division applies is guilty of an offence unless the vehicle is speed limiter compliant when the vehicle is being driven on a road or road related area.

Maximum penalty: 30 penalty units (in the case of an individual) or 150 penalty units (in the case of a corporation).
- (2) In proceedings for an offence under this section, proof that the vehicle concerned was driven on a road or road related area at a speed of more than 115 km/h is admissible and is prima facie evidence that the vehicle was not speed limiter compliant at the time that it was travelling at that speed.
- (3) It is a defence to a prosecution for an offence under this section if the defendant proves:
  - (a) that the vehicle was, at the time of the alleged offence, a stolen vehicle or a vehicle illegally taken or used, or
  - (b) that the vehicle is speed limiter compliant and that, at the time it was travelling at a speed of more than 115 km/h, the gradient of the length of road or road related area along which the vehicle was being driven at or immediately before that time, combined with the speed at which the vehicle was travelling on that length of road

or road related area, caused it to be driven at more than 100 km/h despite the vehicle being speed limiter compliant.

- (4) In proceedings for an offence under this section, it is no defence that the defendant had a mistaken but reasonable belief as to the facts that constituted the offence.

#### **69D Certificate evidence of speed limiter compliance**

- (1) In proceedings for a speed limiter offence, a certificate issued by an authorised person certifying that, at the time of certification, the manner of limiting the speed of the vehicle complied with the requirements prescribed by the regulations for the purposes of this Division is admissible and is prima facie evidence that the vehicle is speed limiter compliant.
- (2) In this section, **authorised person** means:
- (a) the manufacturer of a speed limiting mechanism fitted to the vehicle, or
  - (b) any other person (or person belonging to a class or description of persons) prescribed by the regulations.

#### **69E Photographic evidence of speed of vehicle**

- (1) Without limiting the evidence that may be given in proceedings for a speed limiter offence, in proceedings for such an offence evidence may be given of the measurement of speed obtained by the use of an approved speed measuring device and recorded by an approved camera recording device to prove the fact that a vehicle was driven on a road or road related area at a speed of more than 115 km/h.
- (2) Section 47 (2)–(7) apply to the proceedings in the same way as they apply to proceedings for an offence of driving at a speed in excess of a speed limit imposed by or under this Act or the regulations in which such evidence is given.

#### **Note—**

See also section 73A.

#### **69F Liability of offender for speed offence and giving of evidence of speed unaffected**

Nothing in this Division:

- (a) affects the liability of a person who commits an offence under this Act or the regulations involving the driving of a vehicle on a road or road related area at a speed of more than 115 km/h for that offence, or
- (b) prevents the giving of evidence of the measurement of speed obtained by the use of an approved speed measuring device and recorded by an approved camera recording device in proceedings both for that offence and for a speed limiter offence.



## **Division 3 Duties of participants and others involved in road accidents**

### **70 Offence of failing to stop and assist after impact causing injury**

(1) A person is guilty of an offence if:

- (a) a vehicle or horse being driven or ridden by the person on a road or road related area is involved in an impact occasioning the death of, or injury to, another person, and
- (b) the person knows, or ought reasonably to know, that the vehicle or horse has been involved in an impact occasioning injury to another person, and
- (c) the person fails to stop and give any assistance that may be necessary and that it is in his or her power to give.

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) For the purposes of this section, the circumstances in which a vehicle is involved in an impact occasioning the death of, or injury to, a person include if the death or injury is occasioned through any of the following:

- (a) the vehicle overturning or leaving a road or road related area while the person is being conveyed in or on that vehicle (whether as a passenger or otherwise),
- (b) an impact between any object and the vehicle while the person is being conveyed in or on that vehicle (whether as a passenger or otherwise),
- (c) an impact between the person and the vehicle,
- (d) the impact of the vehicle with another vehicle or an object in, on or near which the person is at the time of the impact,
- (e) an impact with anything on, or attached to, the vehicle,
- (f) an impact with anything that is in motion through falling from the vehicle,
- (g) the person falling from the vehicle, or being thrown or ejected from the vehicle, while being conveyed in or on the vehicle (whether as a passenger or otherwise),
- (h) an impact between any object (including the ground) and the person, as a consequence of the person (or any part of the person) being or protruding outside the vehicle, while the person is being conveyed in or on the vehicle (whether as a passenger or otherwise).

(3) For the purposes of this section, a vehicle is also involved in an impact occasioning the death of, or injury to, a person if:

- (a) the death or injury is occasioned through the vehicle causing an impact between other vehicles or between another vehicle and any object or person or causing another vehicle to overturn or leave a road or road related area, and
  - (b) the prosecution proves that the vehicle caused the impact.
- (4) In this section, **object** includes an animal, building, structure, earthwork, embankment, gutter, stormwater channel, drain, bridge, culvert, median strip, post or tree.

**Note—**

Similar obligations are imposed on a person by section 52AB of the [Crimes Act 1900](#) in relation to impacts causing death or grievous bodily harm.

## Part 6 Miscellaneous

### 71 Regulations (cf Cth Act, s 7; Traffic Act, s 3)

- (1) **General regulation-making power** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) **Examples of subject-matter for regulations** In particular, the regulations may make provision for or with respect to the matters set out in Schedule 1.
- (3) **Application, adoption or incorporation of certain documents** The regulations:
- (a) may apply, adopt or incorporate, whether wholly or in part or with or without modifications, publications of the National Transport Commission that have been approved (whether before or after the commencement of this 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, and
  - (b) may apply to any provision of the regulations, whether wholly or in part or with or without modifications, the provisions of the *Criminal Code* set out in the Schedule to the [Criminal Code Act 1995](#) of the Commonwealth.
- (4) **Ambit of power in subsection (3)** Subsection (3) (a) extends to documents approved by the Australian Transport Council that have been published in this State by the Authority on behalf of the National Transport Commission.
- (5) **Definitions in regulations** For the purposes of the regulations, the regulations may define an expression (or apply, adopt, or incorporate a definition of an expression in a publication referred to in subsection (3) (a)) that is defined by this Act:
- (a) in the same (or in substantially the same) way as it is defined by this Act, or

- (b) by reference to one or more classes of matter included in the expression as defined by this Act, or
  - (c) by reference to a combination of classes of matter included in the expression as defined by this Act and in any other expression defined by this Act (but not so as to exceed the power to make regulations in respect of those classes of matter), or
  - (d) for the purposes of applying, adopting or incorporating a publication of the National Transport Commission that has been approved by the Australian Transport Council—in the same way as it is defined in the publication despite anything contained in this Act or the other road transport legislation (within the meaning of the *Road Transport (General) Act 2005*).
- (6) **Evidence of publications of National Transport Commission** If a regulation applies, adopts or incorporates by way of reference any publication (or provision of a publication) referred to in subsection (3) (a) of the National Transport Commission that has been approved by the Australian Transport Council, evidence of the publication or provision may be given in any proceedings:
- (a) by the production of a document purporting to be a copy of it and purporting to be published by or on behalf of the National Transport Commission, or
  - (b) by the production of a document purporting to be a copy of it and purporting to be printed by the government printer or by the authority of the Government of the Commonwealth, a State or a Territory.
- (7) **Offences in regulations** The regulations may create offences punishable by a penalty not exceeding 30 penalty units (including defences for such offences and who bears the onus of proof in respect of such defences).
- (8) **Penalty of driver licence disqualification** In addition to a penalty referred to in subsection (7), the regulations may provide for a person who is convicted of an offence against this Act or the regulations:
- (a) to be automatically disqualified by virtue of the conviction from holding a driver licence for a period not exceeding 6 months, or
  - (b) to be disqualified by order of the court that convicts the person of the offence from holding a driver licence for such period as the court thinks fit (whether for a period that is shorter or longer than a period of automatic disqualification referred to in paragraph (a)).
- (9) **Alternative verdicts** The regulations may provide for a person who is prosecuted for an aggravated form of an offence under the regulations to be convicted by a court of a lesser offence if the court is not satisfied that the elements of the aggravated offence have been proven, but is satisfied that the elements of the lesser offence have been proven.

- (10) **Certificate evidence regarding speed limits** The regulations may provide for a document that is signed or purports to be signed by or on behalf of the Authority or other specified person in respect of a speed limit applying to a road or road related area that certifies any matter specified by the regulations concerning the speed limit (or the operation of any device by means of which the speed limit is imposed) to be admissible and prima facie evidence of that matter in proceedings before a court or tribunal.
- (11) **Fees** The regulations may impose a fee in respect of services provided by the Authority under this Act or the regulations despite the fact that the fee may also comprise a tax.

**72 Regulations may exclude vehicles, persons and animals from this Act and the regulations** (cf Cth Act, s 10)

- (1) The regulations may:
- (a) exempt a vehicle, person or animal (or a class of vehicles, persons or animals of a kind) identified in the regulations from the operation of this Act or the regulations (or specified provisions of this Act or the regulations), or
  - (b) authorise the Authority to exempt a vehicle, person or animal (or a class of vehicles, persons or animals of a kind) identified in the regulations from the operation of this Act or the regulations (or specified provisions of this Act or the regulations).
- (2) An exemption granted by or under a regulation referred to in subsection (1) may be given unconditionally or on specified conditions.
- (3) The regulations may provide for the Authority:
- (a) to suspend the operation of any regulation referred to in subsection (1) in such manner and in such circumstances as may be specified by the regulations, or
  - (b) to suspend the operation of an exemption given by it to any vehicle, person or animal in such manner and in such circumstances as may be specified by the regulations,
- or both.

**72A Rules**

- (1) The Governor may make rules, not inconsistent with this Act, for or with respect to any matter for or with respect to which the Governor may make regulations under this Act.
- (2) The rules may repeal or amend the regulations and the regulations may repeal or amend the rules.

- (3) A reference in this or any other Act or law to a matter prescribed by the regulations under this Act (however expressed) includes a reference to a matter prescribed by the rules.
- (4) The same legal rules and principles apply to the resolution of an inconsistency between a rule and a regulation as apply to the resolution of an inconsistency between regulations.

**73 Use of samples for accident research** (cf Traffic Act, s 17B)

- (1) If a sample of blood is provided in accordance with Division 4 of Part 2:
  - (a) the sample or any part of it, and
  - (b) any sample of saliva voluntarily provided at the same time,may be used in any research program that is related to safety and has been approved by the Minister.
- (2) The results of research carried out under this section with respect to the blood or saliva of a person are not admissible as evidence of the presence of any drug in the blood or saliva of the person.
- (3) A person who carries out research under this section with respect to blood or saliva must not carry out the research in such a way as identifies the person who provided the blood or saliva.

Maximum penalty: 20 penalty units.

**73A Rebuttal of evidence of matters of specialised knowledge**

- (1) This section applies to the determination of whether evidence is sufficient to rebut prima facie evidence or a presumption, or to raise doubt about a matter, as referred to in section 46, 47, 57, 57B or 69E and for the purposes of proceedings to which those sections apply.
- (2) An assertion that contradicts or challenges:
  - (a) the accuracy or reliability, or the correct or proper operation, of an approved device, or
  - (b) the accuracy or reliability of information (including a photograph) derived from such a device,

is capable of being sufficient, in proceedings to which this section applies, to rebut such evidence or such a presumption, or to raise such doubt, only if it is evidence adduced from a person who has relevant specialised knowledge (based wholly or substantially on the person's training, study or experience).

- (3) In this section, **approved device** means:
- (a) an approved camera detection device, or
  - (b) an approved camera recording device, or
  - (c) an approved speed measuring device, or
  - (d) an approved traffic lane camera device.

**74 (Repealed)**

**75 Removal of dangers and obstructions to traffic** (cf Traffic Act, s 25)

- (1) If a danger or obstruction to traffic on a road or road related area is caused by:
- (a) a vehicle that has been involved in an accident or has broken down, or
  - (b) any thing that has fallen, escaped or been removed from a vehicle, or
  - (c) any container used for transporting materials or refuse (including a building skip),
- an authorised officer may remove the vehicle, thing or container and take such other steps as may be necessary to protect the public and facilitate the free flow of traffic.

(1A), (1B) (Repealed)

- (2) The appropriate roads authority may, by proceedings brought in a court of competent jurisdiction, recover as a debt from the relevant person the expenses that that authority has incurred in exercising the functions conferred by this section.
- (3) A certificate that is issued on behalf of the appropriate roads authority by a person prescribed by the regulations, or by a person belonging to a class of persons so prescribed, being a certificate that states that:
- (a) a specified amount represents the costs incurred by the authority in carrying out specified work or in taking specified action for the purposes of this section, or
  - (b) a specified amount represents the costs incurred by the authority in relation to the exercise by an authorised officer of a function under this section,
- is admissible in any such proceedings and is prima facie evidence of the fact or facts so stated.

(3A) A person who, without reasonable excuse:

- (a) fails to comply with any direction given to the person by an authorised officer in exercising a function under subsection (1), or
- (b) (Repealed)

(c) obstructs a person who is authorised to remove a vehicle in accordance with this section,

is guilty of an offence.

Maximum penalty: 20 penalty units.

(4) In this section:

**appropriate roads authority** means:

- (a) in relation to any road or road related area within a local government area—the council of that area, and
- (b) in relation to a classified road (within the meaning of the [Roads Act 1993](#))—the Authority, and
- (c) in relation to that part of a road or road related area used for the passage of light rail vehicles or as an access to light rail vehicles—the Director-General of the Department of Transport and the operator of the light rail system.

**authorised officer** means:

- (a) an employee in the service of the appropriate roads authority authorised by that authority to exercise the powers conferred by this section, or
- (b) a police officer, or
- (c) a person of a class prescribed by the regulations who is authorised by the appropriate roads authority to exercise the functions of an authorised officer under this section.

**relevant person** means:

- (a) in relation to a vehicle—the person who had custody of the vehicle at the time of the accident or breakdown, or
- (b) in relation to any thing that has fallen, escaped or been removed from a vehicle—the person who had custody of the vehicle at the time of the fall, escape or removal, or
- (c) in relation to a container—the person who had custody of the container at the time it was placed in such a way as to cause danger or an obstruction to traffic.

**76 Removal of unattended motor vehicles or trailers from certain places** (cf Traffic Act, s 26)

- (1) An authorised officer may cause an unattended motor vehicle or trailer unlawfully standing on a prescribed place to be removed in accordance with this section if, in the opinion of the officer, the vehicle is causing, or unless removed is likely to cause, danger to the public or undue traffic congestion.

- (2) An authorised officer may cause an unattended motor vehicle or trailer unlawfully standing on any place to be removed in accordance with this section if, in the opinion of the officer, it is obstructing the passage of a light rail vehicle.
- (3) A motor vehicle or trailer is removed in accordance with this section if it is removed to a nearby place at which, in the opinion of the authorised officer concerned, the vehicle may lawfully stand without being likely to cause danger to the public or undue traffic congestion, or an obstruction to the passage of a light rail vehicle.
- (4) (Repealed)
- (5) If a motor vehicle or trailer:
  - (a) is removed in accordance with this section, or
  - (b) is attached to a tow truck for the purpose of being removed under this section,the Authority may require the responsible person for the vehicle or the person who left it unattended to pay to the Authority the prescribed tow-away charge within a time specified by the Authority.
- (6) The responsible person for a vehicle is not required to pay the prescribed tow-away charge if the responsible person:
  - (a) satisfies the Authority that the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used, or
  - (b) supplies by statutory declaration to the Authority the name and address of the person (not being the responsible person) who was in charge of the vehicle at all relevant times, or
  - (c) satisfies the Authority that he or she did not know and could not with reasonable diligence have ascertained such name and address.
- (7) A person must pay the prescribed tow-away charge within the time specified by the Authority.

Maximum penalty: 10 penalty units.
- (8) A statutory declaration under subsection (6) (b), if produced in any proceedings against the person named in the declaration and in respect of the offence of failure to pay the prescribed tow-away charge, is admissible and is prima facie evidence that the person left the vehicle unattended on the prescribed place.
- (8A) For the purposes of subsection (6) (a), the responsible person cannot rely on any police report stating that the vehicle was stolen or illegally taken or used at the relevant time unless the report indicates the time and date that it was made.
- (9) In this section:



**authorised officer** means:

- (a) an employee in the service of the Authority authorised by the Authority to exercise the powers conferred by this section, or
- (b) a police officer, or
- (c) a person, or a person of a class, who is authorised by the Director-General of the Department of Transport to exercise the functions of an authorised officer under this section, but only in respect of the removal of unattended vehicles obstructing the passage of light rail vehicles, or
- (d) a person of a class prescribed by the regulations who is authorised by the Authority to exercise the functions of an authorised officer under this section.

**prescribed place** means:

- (a) a road or road related area (or part of a road or road related area) prescribed by the regulations, or
- (b) a class of road or road related area (or part of a road or road related area) prescribed by the regulations, or
- (c) any road or road-related area that is within a special tow-away area referred to in subsection (10).

- (10) The Authority may establish special tow-away areas for the purposes of this section.
- (11) Any such area may be established by order published in the Gazette, or by the erection of signs in or about the area concerned, or both.
- (12) If the Authority establishes a special tow-away area, it is to cause a notice to be published in at least 2 newspapers circulating in the area to which the special tow-away area relates. The notice must describe or identify the special tow-away area, and specify the period for which the area concerned is to operate as a special tow-away area.

#### **76A Removal of vehicles—incidental provisions relating to towing**

- (1) If a motor vehicle or trailer is removed in accordance with section 75 or 76 by a tow truck, the person operating or driving the tow truck may take such action as is reasonable or necessary to facilitate the towing of the vehicle or trailer in a manner that does the least damage to the vehicle or trailer. In taking any such action, the person is not liable for any damage to the vehicle or trailer that the person causes.

**Note—**

For example, a tow truck driver may need to break into an unattended motor vehicle that is causing an obstruction in order to release the hand brake and avoid doing serious damage to the vehicle's transmission.

- (2) If a motor vehicle or trailer is removed in accordance with section 75 or 76 by a tow truck, the person or body that authorised or caused the removal is not vicariously liable for any damage caused to the vehicle or trailer by the person operating or driving the tow truck.

**77 Unpaid fees or charges** (cf Traffic Act, s 19)

An amount of any unpaid fees or charges payable under this Act or the regulations is a debt due to the Authority and may be recovered in a court of competent jurisdiction.

**78 Savings, transitional and other provisions**

Schedule 2 has effect.

**79 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**Schedule 1 Regulation-making powers**

(Section 71 (2))

**1 Regulations in respect of safety and traffic management**

The regulation or prohibition of traffic, persons and animals on roads and road related areas, including the following:

- (a) the places in which and the manner in which vehicles or animals may or may not be driven or ridden,
- (b) the use of roads and road related areas by people on foot and other persons and by animals,
- (c) speed limits for vehicles (including speed limits that may be varied electronically or otherwise),
- (d) approved speed measuring devices (including the testing of such devices),
- (e) signs and other devices to control, direct or warn traffic,
- (f) the marks that are to be used on the surface of roads and road related areas,

- (g) the control and reduction of:
  - (i) danger in vehicle operation, or
  - (ii) traffic congestion,
- (h) the conduct of events on roads and road related areas that may disrupt traffic,
- (i) the use of safety equipment by drivers, riders, passengers and other people,
- (j) standards of conduct for safety purposes,
- (k) complying with directions by police officers or other persons prescribed by the regulations,
- (l) the use of stalls or other means for the sale of goods, or carrying out of any other business or trade, on a road or road related area for the purpose of safety and traffic management.

**2 Parking** (cf Traffic Act, Pt 3B)

The regulation or prohibition of the parking of vehicles and parked or stopped vehicles on roads and road related areas (including pay parking), including the following:

- (a) the establishment and operation of schemes for pay parking by councils, other persons or bodies,
- (b) the fixing and collection of fees for parking by councils, other persons or bodies and the application of such fees by the collector of the fees and the payments to be made to the Authority,
- (c) the allocation of the costs in respect of schemes for pay parking,
- (d) the provision of pay parking by councils and other persons or bodies on a common payment basis,
- (e) the installation and operation of devices for use in connection with pay parking,
- (f) the issue of guidelines by the Authority in respect of pay parking schemes and the legal effect of such guidelines,
- (g) the granting of approvals by the Authority in respect of the establishment and operation of pay parking schemes,
- (h) the powers of police officers in respect of the removal of vehicles parked, standing or stopped in space provided for parking and in respect of the closing of spaces for parking,
- (i) the resolution of disputes between different councils, other persons and bodies in respect of pay parking.

### **3 Safe operation of vehicles**

- (1) The safe operation of vehicles on roads and road related areas, including the following:
  - (a) (Repealed)
  - (b) the loading and unloading and securing of loads,
  - (c) the regulation of vehicles whose size, mass or load exceeds limits set by the regulations,
  - (d) the keeping and production of records and other specified information in respect of vehicles used on roads or road related areas,
  - (e) the taking, storage, transmission and destruction of blood and urine samples for the purposes of Part 2 of this Act and other matter to which that Part relates.
- (2) (Repealed)

### **4 Towing fees** (cf Traffic Act, s 4BB (6))

- (1) The payment of a fee by the driver or responsible person for a vehicle in relation to the towing of the vehicle as a consequence of the exercise of functions under this Act or the regulations.
- (2) The recovery of any such fee by the Authority or any other person as a debt due to the Crown in any court of competent jurisdiction.
- (3) The issue of certificates as to the fact and cost of towing and their use as evidence of those matters in proceedings before a court.

### **5 Child safety** (cf Traffic Act, ss 4C and 6B)

- (1) The duties of parents and other persons responsible for children (not being older than 16 years and 9 months of age) in respect of the use of roads or road related areas (or vehicles on roads or road related areas).
- (2) The establishment and conduct of schemes to assist children to cross roads and road related areas safely, including the following:
  - (a) enabling the Authority to conduct, or authorise other persons to conduct, such schemes,
  - (b) enabling the Authority:
    - (i) to amend or replace such schemes, and
    - (ii) impose conditions on the authority to conduct schemes, and

- (iii) revoke an authority to conduct schemes,
- (c) signs to be displayed at crossings and the exhibition of such signs,
- (d) the placement of barriers across or partly across a road or road related area near a crossing,
- (e) conditions relating to the wearing or display of insignias, badges, belts or other articles of uniform by any persons taking part in crossing schemes,
- (f) providing that evidence that a sign was exhibited, as prescribed, by a person at or near a crossing, is admissible and is prima facie evidence in proceedings in any court that the exhibition of the sign by such person was authorised,
- (g) the prescription of any other matters necessary or convenient to be prescribed for the purpose of carrying out any such scheme.

**6 Duties of participants in, and witnesses to, road accidents** (cf Traffic Act, s 8 (3) and (4))

The duties of any driver of a vehicle or other person involved in or affected by an accident on a road or road related area, including in relation to the following matters:

- (a) the production of driver licences or other identification to any person by a participant in the accident,
- (b) the giving of particulars concerning:
  - (i) the vehicle, persons and property involved in or affected by the accident, or
  - (ii) any damage or injury caused by the accident, or
  - (iii) the identity and addresses of any witnesses to the accident.

**7 Records in respect of rented vehicles** (cf Traffic Act, s 3 (1) (q8))

The records to be kept by the owner of a vehicle rented to be driven by the hirer or his or her employee or agent and for the inspection of such records by any police officer.

**8 Police powers** (cf Traffic Act, s 3 (1) (q5) and (q10))

- (1) The marking of tyres of vehicles by means of crayon, chalk or any similar substance by police officers and special constables in the employ of the Commissioner of Police for any purpose connected with the enforcement of any of the provisions of any Act or statutory rule.
- (2) Provisions for:
  - (a) the seizure and for the taking charge of, removal or towing away of any vehicle that is a danger or unreasonable obstruction to traffic or has been abandoned on a road or road related area, or has been caused or permitted to stand, wait, stop or

to be parked contrary to law on any part of a road or road related area in which is conspicuously displayed a sign exhibiting or including the words “tow away area” or “vehicles impounded” or other words indicating that such a vehicle is subject to seizure, and

- (b) the keeping or impounding, at a place appointed or set apart by the Commissioner of Police for the purpose, of any vehicle so removed or towed away, and
- (c) the conditions to be observed before the release of any such vehicle, including a condition for payment of such amount as may, from time to time, be fixed by the Commissioner of Police in respect of the seizure, taking charge of, removal, towing away, keeping, impounding or releasing of any such vehicle, and for the disposal or destruction of any such vehicle if the owner fails within the time prescribed to claim the vehicle and to pay that amount, and
- (d) the fixing of different amounts by the Commissioner of Police as referred to in paragraph (c) in respect of different classes of vehicles or according to different circumstances, and
- (e) the conditions to be observed before a vehicle can be seized.

## 9 Fees

Fees, including the following:

- (a) the fixing of fees for services provided by the Authority under this Act or the regulations,
- (b) the collection and recovery of fees fixed under this Act or the regulations,
- (c) the refund, or partial refund, of fees fixed under this Act or the regulations,
- (d) the waiver or postponement of fees fixed under this Act or the regulations.

## 10 Updating references to outdated or incorrect references to [Australian Road Rules](#) or [Road Transport \(Safety and Traffic Management\) \(Road Rules\) Regulation 1999](#)

- (1) The repeal or amendment of any reference to the [Australian Road Rules](#) or the [Road Transport \(Safety and Traffic Management\) \(Road Rules\) Regulation 1999](#) (or a provision of those Rules or the Regulation) in any Act or statutory rule that is a reference that is (or will become) out of date or otherwise incorrect by reason of the repeal, amendment, renumbering, renaming or remaking of those Rules or the Regulation (or a provision of those Rules or the Regulation).
- (2) This clause expires on 1 September 2008.

### Note—

The [Australian Road Rules](#) were incorporated into the law of New South Wales by clause 6 of the [Road Transport](#)

*(Safety and Traffic Management) (Road Rules) Regulation 1999* on and from 1 December 1999. Clause 6 provided that, subject to that Regulation, the *Australian Road Rules* were to be read with, and as if they formed part of, that Regulation.

## Schedule 2 Savings, transitional and other provisions

(Section 78)

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Road Transport Legislation Amendment Act 1999*

*Tow Truck Industry Amendment Act 1999*

*Road Transport (Safety and Traffic Management) Amendment (Camera Devices) Act 1999*

*Road Transport (Safety and Traffic Management) Amendment (Blood Sampling) Act 2000*

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

*Road Transport Legislation Amendment (Public Transport Lanes) Act 2004*, but only in relation to the amendments made to this Act

*Road Transport Legislation Amendment (Drug Testing) Act 2006*

*Road Transport Legislation Amendment (Evidence) Act 2006*

*Road Transport (Safety and Traffic Management) Amendment (Novice Drivers) Act 2007*

*Road Transport Legislation (Breath Testing and Analysis) Act 2007*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its

publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of this Act and [Road Transport Legislation Amendment Act 1999](#)**

### **2 Act subject to savings and transitional provisions in Schedule 2 to [Road Transport \(General\) Act 1999](#)**

The provisions of this Act are subject to the provisions of Part 2 of Schedule 2 to the [Road Transport \(General\) Act 1999](#).

**Note—**

Part 2 of Schedule 2 to the [Road Transport \(General\) Act 1999](#) contains savings and transitional provisions consequent on the repeal of the [Traffic Act 1909](#) by the [Road Transport Legislation Amendment Act 1999](#) and the enactment of this Act and the [Road Transport \(General\) Act 1999](#).

## **Part 3 Provisions consequent on enactment of [Road Transport \(Safety and Traffic Management\) Amendment \(Camera Devices\) Act 1999](#)**

### **3 Definitions**

In this Part:

**amending Act** means the [Road Transport \(Safety and Traffic Management\) Amendment \(Camera Devices\) Act 1999](#).

### **4 Amendments not to apply to offences occurring before commencement of amendments**

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

## **Part 4 Provisions consequent on enactment of [Road Transport \(Safety and Traffic Management\) Amendment \(Alcohol\) Act 2004](#)**

### **5 Definitions**

In this Part:

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



## **6 Amendments not to apply to offences occurring before commencement of amendments**

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

## **7 Review of amending Act**

- (1) The Minister is to review the amending Act to determine whether the policy objectives of the amending Act remain valid and whether the terms of the amending Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 4 years from the date of assent to the amending Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 4 years.

## **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).

## **Part 6 Provisions consequent on enactment of Road Transport Legislation Amendment (Evidence) Act 2006**

### **9 Definition**

In this Part, **amending Act** means the *Road Transport Legislation Amendment (Evidence) Act 2006*.

### **10 Amendments not to apply to proceedings instituted before commencement of**

### **amendments**

- (1) An amendment made to this Act by the amending Act does not apply to proceedings for an offence that were instituted before the commencement of the amendment.
- (2) An amendment made to this Act by the amending Act applies to proceedings for an offence that are instituted on or after the commencement of the amendment even if the proceedings involve an offence that was committed before that commencement.

## **Part 7 Provisions consequent on enactment of Road Transport (Safety and Traffic Management) Amendment (Novice Drivers) Act 2007**

### **11 Definition**

In this Part:

**amending Act** means the *Road Transport (Safety and Traffic Management) Amendment (Novice Drivers) Act 2007*.

### **12 Amendments not to apply to offences occurring before commencement of amendments**

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

## **Part 8 Provisions consequent on enactment of Road Transport Legislation (Breath Testing and Analysis) Act 2007**

### **13 Definitions**

In this Part:

**amended legislation** means any Act or Regulation that is amended by the amending Act.

**amending Act** means the *Road Transport Legislation (Breath Testing and Analysis) Act 2007*.

### **14 Certificate evidence preserved**

Any certificate issued under any amended legislation before that legislation was amended by the amending Act that states the concentration of alcohol in a person's blood continues to be as effectual as it was before the legislation's amendment (including for the purposes of evidence in any proceedings).

## 15 Approval of certain breath measuring devices

- (1) Any instrument or other device that was a duly approved breath analysing instrument or breath testing device for the purposes of any amended legislation immediately before the legislation was amended by the amending Act continues to be a duly approved instrument or device for the purposes of the legislation as amended.
- (2) An instrument that measures the concentration of alcohol present in a person's breath by reference to grammes of alcohol in a volume of breath (instead of grammes of alcohol in a volume of blood) may be approved for the purposes of the definition of **breath analysing instrument** in clause 1 of the Dictionary during the pre-commencement period as if Schedule 1 [16] to the amending Act had commenced.
- (3) A device that measures the concentration of alcohol present in a person's breath by reference to grammes of alcohol in a volume of breath (instead of grammes of alcohol in a volume of blood) may be approved for the purposes of the definition of **breath test** in clause 1 of the Dictionary during the pre-commencement period as if Schedule 1 [16] to the amending Act had commenced.
- (4) Any approval given as provided by subclause (2) or (3) during the pre-commencement period is taken to have effect for the purposes of this Act on and from the commencement of Schedule 1 [16] to the amending Act as if it had been approved on that commencement.
- (5) In this clause:

**pre-commencement period** means the period commencing on the the date of assent to the amending Act and ending at the end of the day immediately before the day on which Schedule 1 [16] to that Act commences.

## Part 9 Provisions consequent on enactment of **Statute Law (Miscellaneous Provisions) Act (No 2) 2008**

### 16 Definition

In this Part, **amending Act** means the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2008](#).

### 17 Previously approved camera detection devices

A camera detection device that was a duly approved camera detection device immediately before the commencement of the amendments to this Act made by the amending Act continues to be a duly approved camera detection device for the purposes of this Act as amended.

### 18 Certificate evidence preserved

Any certificate issued under section 57 before the commencement of the amendments to

this Act made by the amending Act continues to be as effectual as it was before that commencement (including for the purposes of evidence in any proceedings).

## Dictionary

(Section 4)

### 1 Definitions

In this Act:

**analyst** means:

- (a) any person employed by the Government as an analyst, or
- (b) any person who is an analyst within the meaning of the *Poisons and Therapeutic Goods Act 1966*, or
- (c) a person (or a person of a class or description) prescribed by the regulations.

**approved camera detection device**—see section 56.

**approved camera recording device**—see section 45 (1).

**approved digital camera recording device**—see section 45 (2).

**approved oral fluid analysing instrument**—see section 18A.

**approved oral fluid testing device**—see section 18A.

**approved speed measuring device**—see section 44 (1).

**approved traffic lane camera device**—see section 57A.

**Australian Transport Council** means the Australian Transport Council referred to in section 4 of the *National Transport Commission Act 2003* of the Commonwealth or its successor.

**Authority** means the Roads and Traffic Authority.

**breath analysing instrument** means any instrument of a type approved by the Governor by order published in the Gazette as being designed to ascertain, by analysis of a person's breath, the concentration of alcohol present in that person's breath or blood.

**breath analysis** means a test carried out by a breath analysing instrument for the purpose of ascertaining, by analysis of a person's breath, the concentration of alcohol present in that person's breath or blood.

**breath test** means a test for the purpose of indicating the concentration of alcohol present in a person's breath or blood, carried out on that person's breath by means of a

device, not being a breath analysing instrument, of a type approved by the Governor by order published in the Gazette.

**coach** means a motor vehicle that is:

- (a) constructed principally to carry persons, and
- (b) equipped to seat more than 8 adult persons, and
- (c) used to convey passengers for hire or reward or in the course of trade or business.

**council** means a council within the meaning of the [Local Government Act 1993](#).

**court** means the court dealing with the matter concerned.

**drive** includes:

- (a) be in control of the steering, movement or propulsion of a vehicle, and
- (b) in relation to a trailer, draw or tow the trailer, and
- (c) ride a vehicle.

**driver** means any person driving a vehicle, and includes any person riding a cycle.

**driver licence**, except in Part 2, has the same meaning as it has in the [Road Transport \(Driver Licensing\) Act 1998](#).

**driver licence receipt** means a receipt that is issued:

- (a) following an application for a licence issued under a law in force in a State or internal Territory authorising the holder to drive a motor vehicle on a road or road related area, and
- (b) after payment of any applicable fee.

**drug** means:

- (a) alcohol, and
- (b) a prohibited drug within the meaning of the [Drug Misuse and Trafficking Act 1985](#), not being a substance specified in the regulations as being excepted from this definition, and
- (c) any other substance prescribed as a drug for the purposes of this definition.

**exercise** a function includes perform a duty.

**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.

**first offence**—see clause 2 (2).

**foreign driver licence** means a licence to drive a motor vehicle held by a person who is ordinarily resident in a foreign country and who is not a permanent resident of Australia, being a licence issued in that foreign country.

**function** includes a power, authority or duty.

**GCM (gross combination mass)** of a motor vehicle means the greatest possible sum of the maximum loaded mass of the motor vehicle and of any vehicles that may lawfully be towed by it at one time:

- (a) as specified by the motor vehicle's manufacturer, or
- (b) as specified by the Authority if:
  - (i) the manufacturer has not specified the sum of the maximum loaded mass, or
  - (ii) the manufacturer cannot be identified, or
  - (iii) the vehicle has been modified to the extent that the manufacturer's specification is no longer appropriate.

**GVM (gross vehicle mass)** of a vehicle means the maximum loaded mass of the vehicle:

- (a) as specified by the vehicle's manufacturer, or
- (b) as specified by the Authority if:
  - (i) the manufacturer has not specified a maximum loaded mass, or
  - (ii) the manufacturer cannot be identified, or
  - (iii) the vehicle has been modified to the extent that the manufacturer's specification is no longer appropriate.

**heavy motor vehicle** means:

- (a) a motor vehicle that has a GVM exceeding 13.9 tonnes, or
- (b) a motor vehicle and trailer combination that has a GCM exceeding 13.9 tonnes.

**horse** includes any animal used for the carriage of persons or goods.

**hospital** means:

- (a) any public hospital within the meaning of the [Health Services Act 1997](#) controlled by an area health service or the Crown, and
- (b) a statutory health corporation or affiliated health organisation within the meaning of

the *Health Services Act 1997*, and

(c) any private hospital within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988*.

**light rail vehicle** means:

- (a) a vehicle used on a light rail system within the meaning of the *Transport Administration Act 1988*, or
- (b) any other light rail system prescribed by the regulations.

**major offence** has the same meaning as it has in the *Road Transport (General) Act 2005*.

**motor vehicle** means a vehicle that is built to be propelled by a motor that forms part of the vehicle.

**National Transport Commission** means the National Transport Commission established under the *National Transport Commission Act 2003* of the Commonwealth.

**oral fluid analysis**—see section 18A.

**oral fluid test**—see section 18A.

**photograph** includes a digitalised, electronic or computer generated image in a form approved by the Authority.

**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.

**prohibited speed measuring evasion article** means 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, and includes a radar detecting device and a radar jamming device.

**provisional P1 licence** means:

(a) a provisional licence issued in accordance with clause 20 (1) of the *Road Transport (Driver Licensing) Regulation 2008*, or

(b) any class of licence prescribed by the regulations under this Act that replaces any such licence.

**provisional P2 licence** means:

(a) a provisional licence issued in accordance with clause 27 (1) of the *Road Transport (Driver Licensing) Regulation 2008*, or

(b) any class of licence prescribed by the regulations under this Act that replaces any such licence.

**radar detecting device** means a device designed or apparently designed to be fitted to or carried in a motor vehicle or trailer for the purpose of detecting electromagnetic radiations from an approved speed measuring device.

**radar jamming device** means a device designed or apparently designed to be fitted to or carried in a motor vehicle or trailer for the purpose of interfering with the receiving by an approved speed measuring device of reflected electromagnetic radiations.

**registered**, in relation to a vehicle, means registered under the *Road Transport (Vehicle Registration) Act 1997*.

**responsible person** for a vehicle—see section 6 of the *Road Transport (General) Act 2005*.

**road** means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles.

**road related area** means:

(a) an area that divides a road, or

(b) a footpath or nature strip adjacent to a road, or

(c) an area that is open to the public and is designated for use by cyclists or animals, or

(d) an area that is not a road and that is open to or used by the public for driving, riding or parking vehicles, or

(e) a shoulder of a road, or

(f) any other area that is open to or used by the public and that has been declared under section 15 of the *Road Transport (General) Act 2005* to be an area to which specified provisions of this Act or the regulations apply.

**second or subsequent offence**—see clause 2 (1).



**traffic** includes vehicular traffic and pedestrian traffic.

**trailer** means a vehicle that is built to be towed, or is towed, by a motor vehicle, but does not include a motor vehicle that is being towed.

**use** of a vehicle includes standing the vehicle on a road or road related area.

**vehicle** means:

- (a) any description of vehicle on wheels (including a light rail vehicle) but not including any other vehicle used on a railway or tramway, or
- (b) any other vehicle prescribed by the regulations.

## **2 First offences and second or subsequent offences**

- (1) An offence against a provision of this Act is a **second or subsequent offence** only if, within the period of 5 years immediately before a person is convicted of the offence, the person was convicted of another offence against the same provision or of a major offence.
- (2) An offence against a provision of this Act is a **first offence** if it is not a second or subsequent offence.

## **3 References to licences**

- (1) In this Act, a reference to a licence in respect of a motor vehicle, being a licence of any class, is a reference to a licence which authorises the holder to drive motor vehicles of a class that includes the motor vehicle (whether or not in combination with a trailer).
- (2) (Repealed)