

2010

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Transport)

Road Transport (Drink Driving) Legislation Amendment Bill 2010

Contents

	Page
Part 1	
Preliminary	
1 Name of Act	2
2 Commencement	2
Part 2	
Road Transport (Alcohol and Drugs) Act 1977	
3 Legislation amended—pt 2	4
4 Meaning of <i>special driver</i>	
Section 4B (1) (f) (iv)	4
5 Section 4B (1) (f)	4
6 Section 4B (3) to (5)	5

Contents

	Page
7 Section 4B (5), new definition of <i>public passenger vehicle</i>	6
8 Section 4C	6
9 Section 4D	7
10 Sections 5 and 6	9
11 Section 11	11
12 Breath analysis	
Section 12 (2)	12
13 Section 12 (3) (a)	13
14 Section 12 (3) (b)	13
15 Section 12 (4)	13
16 Section 12 (6)	13
17 Precautions for privacy	
Section 13	14
18 Restrictions on screening tests and breath analyses	
Section 14 (1)	14
19 Taking blood samples from people in custody	
Section 15 (1) (b)	14
20 Section 15 (7), (8) and (9)	14
21 Taking blood samples from people in hospital	
Section 15AA (2), (3) and (4)	15
22 Sections 15A and 15B	16
23 Section 16 (2)	18
24 Section 16 (7), (8) and (9)	18
25 Section 16A	19
26 Protection of police officers and medical staff	
Section 18 (3) (a)	21
27 Section 19	21
28 Defence if person did not intend to drive motor vehicle	
Section 21 (b)	22
29 New section 21A	22
30 Fines and imprisonment—s 19 offences	
Section 26	23
31 Table 26, column 2 heading	24
32 Sections 29 and 30	24

	Page
33 Automatic driver licence disqualification—first offenders, s 19 Section 32	24
34 Table 32, column 2 heading	24
35 Automatic driver licence disqualification—repeat offenders, s 19 Section 33	25
36 Table 33, column 2 heading	25
37 New section 35	25
38 Additional powers of court Section 38	26
39 Certificate of evidence Section 41 (1) (a) (i)	26
40 Section 41 (1) (a) (ii)	27
41 Section 41 (1) (a) (iv) and (ix)	27
42 Section 41 (1) (b) (i)	27
43 Section 41 (1) (b) (ii)	27
44 Section 41 (1) (b) (iv)	28
45 Section 41 (1) (c)	28
46 Section 41 (1) (d)	28
47 Section 41 (1) (f)	29
48 Section 41 (1) (h)	29
49 Effect of noncompliance—analysis of breath or blood Section 42 (1)	30
50 Section 42 (2)	30
51 Effect of noncompliance—analysis of body sample Section 42A (1)	30
52 Section 42A (2)	31
53 Effect of noncompliance—refusal to give sample of breath Section 42B (1)	31
54 Section 42B (2)	31
55 Rehabilitation programs Part 8	31
56 Power of arrest Section 45	32
57 Penalty for escaping from custody Section 46	32

Contents

	Page
58 New part 21	32
59 Dictionary, new definition of <i>analyst</i>	35
60 Dictionary, definitions of <i>approved analyst</i> and <i>approved breath analysis instrument</i>	35
61 Dictionary, definition of <i>approved laboratory</i>	35
62 Dictionary, definitions of <i>approved operator</i> and <i>approved screening device</i>	35
63 Dictionary, new definition of <i>authorised operator</i>	35
64 Dictionary, definition of <i>breath analysis</i>	35
65 Dictionary, new definition of <i>breath analysis instrument</i>	36
66 Dictionary, definition of <i>first offender</i>	36
67 Dictionary, new definition of <i>heavy vehicle</i>	36
68 Dictionary, definition of <i>level</i>	36
69 Dictionary, new definition of <i>medicine</i>	36
70 Dictionary, definition of <i>prescribed concentration</i>	37
71 Dictionary, definition of <i>repeat offender</i>	37
72 Dictionary, new definition of <i>screening device</i>	37
73 Dictionary, definition of <i>screening test</i>	37
74 Legislative instruments repealed	37
Part 3 Road Transport (Alcohol and Drugs) Regulation 2000	
75 Legislation amended—pt 3	38
76 New sections 2 and 3	38
77 Schedule 1 heading	39
78 Schedule 1, item 5	39
Part 4 Road Transport (Driver Licensing) Act 1999	
79 Legislation amended—pt 4	40
80 New section 28 (2) (s)	40
Part 5 Road Transport (Driver Licensing) Regulation 2000	
81 Legislation amended—pt 5	41

	Page
82 Section 45 (2), notes 1 and 2	41
83 Driver licence condition codes Table 10, item 8	42
84 Section 20 (6), note	42
85 Section 21 (1), new definition of <i>driving supervisor</i>	42
86 Section 21 (4)	42
87 Section 21 (5)	42
88 Section 21 (6), note	43
89 Section 36A (3), note 3	43
90 Section 37A (3), note 3	43
91 Section 49 (3), note	43
92 Section 49 (3), new note	43
93 Section 52 (3), new note	43
94 Section 54, note 2	43
95 Section 63 (3), note 2	44
96 New division 3.13	44
97 New section 87 (1) (p)	48
98 Dictionary, new definitions	48
 Part 6 Road Transport (General) Act 1999	
99 Legislation amended—pt 6	49
100 Sections 58 and 58A	49
101 Division 4.2 heading	52
102 Section 64	58
103 Effect of disqualification Section 66 (6) and (7)	59
104 Section 67	60
105 Dictionary, new definitions	63
 Part 7 Road Transport (General) Regulation 2000	
106 Legislation amended—pt 7	64
107 Schedule 1, part 1.1	64
108 Schedule 1, part 1.4, new item 19A	64

		Page
Part 8	Road Transport (Offences) Regulation 2005	
109	Legislation amended—pt 8	65
110	Schedule 1, part 1.3, items 10 to 12	65
111	Schedule 1, part 1.3, item 15	66
112	Schedule 1, part 1.6, items 11 and 12	67
113	Schedule 1, part 1.7, items 6 to 8	67
114	Schedule 1, part 1.7, new item 12A	69
115	Schedule 1, part 1.7, item 13	69

2010

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Transport)

Road Transport (Drink Driving) Legislation Amendment Bill 2010

A Bill for

An Act to amend legislation about driving under the influence of alcohol, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Road Transport (Drink Driving) Legislation Amendment Act 2010*.

2 Commencement

- (1) Section 3, section 4 and section 7 commence on the day after this Act's notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) The following provisions commence on a day fixed by the Minister by written notice:

- part 4
- section 92
- section 93
- section 96
- section 97
- section 98
- section 108.

- (3) However, if a provision mentioned in subsection (2) has not commenced within 12 months beginning on this Act's notification day, the provision automatically commences on the first day after that period.

- (4) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to the provisions mentioned in subsection (2).

1 (5) The remaining provisions commence on a day fixed by the Minister
2 by written notice.

3 *Note 1* A single day or time may be fixed, or different days or times may be
4 fixed, for the commencement of different provisions (see Legislation
5 Act, s 77 (1)).

6 *Note 2* If a provision, other than a provision mentioned in s (2), has not
7 commenced within 6 months beginning on the notification day, it
8 automatically commences on the first day after that period (see
9 Legislation Act, s 79).

Part 2 Road Transport (Alcohol and Drugs) Act 1977

3 Legislation amended—pt 2

This part amends the *Road Transport (Alcohol and Drugs) Act 1977*.

Note This part also repeals certain legislative instruments made under that Act (see s 74).

4 Meaning of *special driver* Section 4B (1) (f) (iv)

substitute

(iv) a public passenger vehicle.

5 Section 4B (1) (f)

substitute

(f) the person is the driver of—

(i) a vehicle on which a sign, marking or placard is required to be displayed under the *Dangerous Substances Act 2004* or the *Dangerous Goods (Road Transport) Act 2009*; or

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

(ii) a motor vehicle with a GVM of more than 15 t; or

(iii) a combination with a GCM of more than 15 t; or

(iv) a public passenger vehicle; or

(g) the person is learning to drive a heavy vehicle; or

- 1 (h) the person is a driving instructor who is with a driver for the
2 purposes of—
- 3 (i) driver instruction; or
- 4 (ii) driver assessment; or
- 5 (i) the person is a heavy vehicle driver assessor who is with a
6 driver for the purposes of driver assessment; or
- 7 (j) the person is a driving supervisor who is with a person who
8 holds a learner licence (a **learner driver**) while the learner
9 driver drives a motor vehicle that displays, or ought to display,
10 L-plates on a road or road related area.

11 **6 Section 4B (3) to (5)**

12 *substitute*

13 (3) In this section:

14 **driver assessment**—see the *Road Transport (Driver Licensing)*
15 *Regulation 2000*, dictionary.

16 **driver instruction**—see the *Road Transport (Driver Licensing)*
17 *Regulation 2000*, dictionary.

18 **driving instructor**—see the *Road Transport (Driver Licensing)*
19 *Regulation 2000*, dictionary.

20 **driving supervisor**—see the *Road Transport (Driver Licensing)*
21 *Regulation 2000*, section 21 (1).

22 **heavy vehicle driver assessor**—see the *Road Transport (Driver*
23 *Licensing) Regulation 2000*, dictionary.

24 **public passenger vehicle**—see the *Road Transport (Public*
25 *Passenger Services) Act 2001*, dictionary.

7 Section 4B (5), new definition of *public passenger vehicle*

insert

public passenger vehicle—see the *Road Transport (Public Passenger Services) Act 2001*, dictionary.

8 Section 4C

substitute

4C Meaning of *prescribed concentration* of alcohol

For this Act, the *prescribed concentration* of alcohol in a person's blood or breath is—

- (a) for a special driver—more than 0g of alcohol in 100mL of blood or 210L of breath; or
- (b) for any other person—0.05g or more of alcohol in 100mL of blood or 210L of breath.

4D How alcohol concentration may be expressed

- (1) For this Act, an analysis of a concentration of alcohol in a person's blood or breath may be expressed as follows:

- (a) the amount of alcohol, in grams, in 100mL of blood if the analysis is based on—
 - (i) a sample of blood; or
 - (ii) a sample of breath measured by a breath analysis instrument;
- (b) the amount of alcohol, in grams, in 210L of breath if the analysis is based on a sample of breath measured by a breath analysis instrument.

- (2) For this Act, an amount of alcohol measured in grams as part of 210L of breath is equivalent to the same amount of alcohol in grams as part of 100mL of blood.

4E Reference to *level* of alcohol concentration

For this Act, a reference to a concentration of alcohol at a *level* mentioned in an item in table 4E, column 2, is a reference to the concentration of alcohol mentioned in the item, column 3, in 100mL of blood or 210L of breath.

Table 4E

column 1 item	column 2 level	column 3 alcohol concentration range
1	level 1	less than 0.05g
2	level 2	0.05g or more but less than 0.08g
3	level 3	0.08g or more but less than 0.15g
4	level 4	0.15g or more

9 Section 4D

substitute

4F Meaning of *first offender* and *repeat offender*

- (1) A person who is convicted or found guilty of a disqualifying offence is a *first offender* in relation to the offence if the person is not a repeat offender in relation to the offence.
- (2) A person who is convicted or found guilty of a disqualifying offence is a *repeat offender* in relation to the offence if—
- (a) the person has been convicted or found guilty of a relevant offence committed at any time before the disqualifying offence was committed (whether or not the person had been convicted

- 1 or found guilty of the relevant offence when the person
2 committed the disqualifying offence); or
- 3 (b) the person is convicted or found guilty of 1 or more relevant
4 offences concurrently with being convicted or found guilty of
5 the disqualifying offence, and 1 or more of the relevant
6 offences were committed before the disqualifying offence.
- 7 (3) However, a person who is convicted or found guilty of a
8 disqualifying offence that was committed before the commencement
9 of the *Road Transport (Drink Driving) Legislation Amendment*
10 *Act 2010*, section 9, is a ***repeat offender*** in relation to the offence
11 only if:
- 12 (a) the person has been convicted or found guilty of a relevant
13 offence within 5 years before being convicted or found guilty
14 of the disqualifying offence; or
- 15 (b) the person is convicted or found guilty of 1 or more relevant
16 offences concurrently with being convicted or found guilty of
17 the disqualifying offence, and 1 or more of the relevant
18 offences were committed before the disqualifying offence.
- 19 (4) Subsection (3) and this subsection expire 5 years after the day this
20 section commences.
- 21 (5) In this section:
- 22 ***relevant offence*** means—
- 23 (a) a disqualifying offence; or
- 24 (b) a corresponding offence; or

(c) an offence against the *Crimes Act 1900*, section 29 (Culpable driving of motor vehicle), in which the person who committed the offence was incapable of having proper control of a vehicle involved in the offence because of the influence of alcohol or a drug on the person.

Note **Found guilty**, of an offence, includes having the offence taken into account under the *Crimes (Sentencing) Act 2005*, s 57 (Outstanding additional offences taken into account in sentencing), (see Legislation Act, dict, pt 1).

10 Sections 5 and 6

substitute

5 Meaning of *screening device*

In this Act:

screening device means a device prescribed by regulation that is designed to analyse a sample of a person's breath to indicate if the person's blood or breath contains the presence of alcohol.

Note A screening device is used to carry out a screening test (see pt 2).

5A Meaning of *breath analysis instrument*

In this Act:

breath analysis instrument means an instrument prescribed by regulation that is designed to analyse a sample of a person's breath to record the concentration of alcohol in the person's breath in either or both of the following:

- (a) in grams per 100mL of blood;
- (b) in grams per 210L of breath.

Note A breath analysis instrument is used to carry out breath analysis (see pt 2).

1 **5B Testing screening devices and breath analysis**
2 **instruments**

- 3 (1) A regulation may make provision in relation to the testing and
4 maintenance of screening devices and breath analysis instruments.
- 5 (2) Without limiting subsection (1), a regulation may make provision
6 for approval by the chief police officer of people to test and
7 maintain screening devices and breath analysis instruments.

8 **6 Authorisation of operators**

- 9 (1) The chief police officer may authorise a police officer to carry out
10 breath analysis for this Act.
- 11 (2) The chief police officer may authorise a police officer only if the
12 chief police officer considers that the police officer is suitably
13 qualified to carry out breath analysis.

14 **6A Register of authorised operators**

- 15 (1) The chief police officer must keep a register of police officers
16 authorised under section 6.
- 17 (2) The register—
- 18 (a) must include the service number of each police officer
19 authorised under section 6; and
- 20 (b) may include any other information the chief police officer
21 considers appropriate.
- 22 (3) The register may be kept in the form of, or as part of, 1 or more
23 computer databases or in any other form the chief police officer
24 considers appropriate.
- 25 (4) The chief police officer may correct any mistake, error or omission
26 in the register subject to any requirements prescribed by regulation.

1 (5) The chief police officer may change a detail included in the register
2 to keep the register up-to-date.

3 (6) The register must be available for public inspection, free of charge,
4 during normal business hours on any business day.

5 **7 Appointment of analysts**

6 The road transport authority may appoint a person as an analyst for
7 this Act.

8 *Note 1* For the making of appointments (including acting appointments), see
9 the Legislation Act, pt 19.3.

10 *Note 2* In particular, a person may be appointed for a particular provision of a
11 law (see Legislation Act, s 7 (3)) and an appointment may be made by
12 naming a person or nominating the occupant of a position (see
13 Legislation Act, s 207).

14 **7A Approval of laboratories**

15 The road transport authority may, in writing, approve a laboratory or
16 other entity as an approved laboratory for this Act.

17 **11 Section 11**

18 *substitute*

19 **11 Detention for breath analysis**

20 (1) This section applies if—

21 (a) a person undergoes a screening test under a requirement made
22 by a police officer under section 8, section 9 or section 10 and
23 the screening device used for the test indicates that the
24 concentration of alcohol in the person's blood or breath is the
25 prescribed concentration; or

1 (b) a person required by a police officer to undergo a screening
2 test under section 8, section 9 or section 10 fails or refuses to
3 undergo the test in accordance with the directions of the police
4 officer.

5 (2) The police officer may take the person into custody.

6 (3) If the police officer has reasonable cause to suspect that the person
7 is a special driver, the police officer may take the person into
8 custody if the concentration of alcohol in the person's blood or
9 breath is the prescribed concentration for a special driver.

10 (4) If a person is taken into custody under this section, a police officer
11 must take the person, as soon as practicable, to a police station or
12 other convenient place (for example, a police vehicle) for the person
13 to undergo breath analysis.

14 **Example—s (4)**

15 A person who is injured and is taken by a police officer to hospital for first aid
16 and then to a police station for breath analysis has been taken to a police station as
17 soon as practicable.

18 *Note* An example is part of the Act, is not exhaustive and may extend, but
19 does not limit, the meaning of the provision in which it appears (see
20 Legislation Act, s 126 and s 132).

21 **12 Breath analysis**
22 **Section 12 (2)**

23 *omit*

24 approved operator

25 *substitute*

26 authorised operator

1 **13 Section 12 (3) (a)**

2 *substitute*

3 (a) make provision for and in relation to the procedures to be
4 followed by an authorised operator immediately before
5 beginning a breath analysis, during the breath analysis and
6 immediately after the completion of the breath analysis; and

7 **14 Section 12 (3) (b)**

8 *omit*

9 approved operator

10 *substitute*

11 authorised operator

12 **15 Section 12 (4)**

13 *omit*

14 approved breath analysis instruments

15 *substitute*

16 breath analysis instruments

17 **16 Section 12 (6)**

18 *omit*

19 approved operator

20 *substitute*

21 authorised operator

- 1 **17** **Precautions for privacy**
2 **Section 13**
- 3 *omit*
- 4 approved operator
- 5 *substitute*
- 6 authorised operator
- 7 **18** **Restrictions on screening tests and breath analyses**
8 **Section 14 (1)**
- 9 *omit*
- 10 approved operator
- 11 *substitute*
- 12 authorised operator
- 13 **19** **Taking blood samples from people in custody**
14 **Section 15 (1) (b)**
- 15 *omit*
- 16 an approved breath analysis instrument
- 17 *substitute*
- 18 a breath analysis instrument
- 19 **20** **Section 15 (7), (8) and (9)**
- 20 *substitute*
- 21 (7) The doctor or nurse (the *sample taker*) taking a sample of blood
22 from a person (the *tested person*) must—
- 23 (a) take the sample in the presence of a police officer; and
- 24 (b) place the sample into a container; and

- 1 (c) attach a label to the container that includes the following
2 information:
- 3 (i) the sample taker's name;
- 4 (ii) the tested person's name;
- 5 (iii) the date and time the sample was taken; and
- 6 (d) ensure that the container is sealed with a tamper-evident seal
7 that has a unique identifying number marked on it; and
- 8 (e) put the sealed container into a one-way box.
- 9 (8) The chief police officer must, as soon as practicable, arrange for the
10 container to be collected from the one-way box by an analyst.

11 **21 Taking blood samples from people in hospital**
12 **Section 15AA (2), (3) and (4)**

- 13 *substitute*
- 14 (2) The person (the *sample taker*) taking a sample of blood from a
15 patient must—
- 16 (a) place the sample into a container; and
- 17 (b) attach a label to the container that includes the following
18 information:
- 19 (i) the sample taker's name;
- 20 (ii) the patient's name;
- 21 (iii) the date and time the sample was taken; and
- 22 (c) ensure that the container is sealed with a tamper-evident seal
23 that has a unique identifying number marked on it; and
- 24 (d) put the sealed container into a one-way box.
- 25 (3) The chief police officer must, as soon as practicable, arrange for the
26 container to be collected from the one-way box by an analyst.

22 Sections 15A and 15B*substitute***15A Analysis of blood samples**

- (1) This section applies if, under section 15 or section 15AA—
- (a) a sample of blood is taken from a person (the *tested person*) for analysis; and
 - (b) an analyst has collected the sealed container containing the sample from a one-way box.
- (2) The analyst must, as soon as practicable, arrange for the analysis of the sample of blood at an approved laboratory to work out the concentration of alcohol in the blood.
- (3) If a police officer has reasonable cause to suspect that the tested person has a medicine or drug other than alcohol in the person's body, or that the tested person's behaviour may be affected by the presence of a medicine or drug other than alcohol in the person's body, the police officer may ask the analyst to work out—
- (a) whether 1 or more medicines or drugs are present in the sample; and
 - (b) if a medicine or drug is present in the sample—the concentration, quantity or other measurement of the medicine or drug.
- (4) The analyst must, as far as practicable, comply with the police officer's request.
- (5) The analyst must take reasonable care to ensure that a part (the *preserved part*) of the sample sufficient for analysis to be carried out for the tested person is protected and preserved until—
- (a) if a request is made under subsection (6)—the preserved part is sent to the laboratory nominated by the tested person; or

- 1 (b) in any other case—
- 2 (i) 1 year has passed since the sample was taken from the
- 3 tested person; or
- 4 (ii) a later time requested by the DPP under section 16B
- 5 (Keeping of samples—request by DPP).
- 6 (6) Before the end of the period mentioned in subsection (5) (b), the
- 7 tested person may ask that the preserved part of the sample be sent,
- 8 at the tested person's expense, to a laboratory nominated by the
- 9 person.
- 10 (7) If a request is made under subsection (6), the analyst must ensure
- 11 that the preserved part of the sample is sent to the nominated
- 12 laboratory as soon as practicable.

13 **15B Blood analysis statement**

- 14 (1) As soon as practicable after an analysis of a sample of a person's
- 15 blood is carried out under section 15A, the chief police officer must
- 16 ensure the person is given a written statement that includes the
- 17 following information:
- 18 (a) the date and the time the blood sample was taken;
- 19 (b) the unique identifying number on the tamper-evident seal;
- 20 (c) the place where the blood sample was taken;
- 21 (d) the result of the analysis;
- 22 (e) the address where the preserved part of the blood sample is
- 23 being held;
- 24 (f) that the person will be notified, in writing, of a request (if any)
- 25 by the DPP under section 16B (Keeping of samples—request
- 26 by DPP);

- 1 (g) that the person may, before the end of the period mentioned in
2 section 15A (5) (b), ask the analyst to send the preserved part
3 of the blood sample to a laboratory nominated by the person, at
4 the person's expense.

- 5 (2) In this section:
6 *preserved part*—see section 15A (5).

7 **23 Section 16 (2)**

- 8 *before*
9 drug other than alcohol
10 *insert*
11 medicine or

12 **24 Section 16 (7), (8) and (9)**

- 13 *substitute*
14 (7) The person (the *sample taker*) taking a sample from a person
15 (the *tested person*) under this section must—
16 (a) place the sample into a container; and
17 (b) attach a label to the container that includes the following
18 information:
19 (i) the sample taker's name;
20 (ii) the patient's name;
21 (iii) the date and time the sample was taken; and
22 (c) ensure that the container is sealed with a tamper-evident seal
23 that has a unique identifying number marked on it; and
24 (d) put the sealed container into a one-way box.

- 1 (8) The chief police officer must, as soon as practicable, arrange for the
2 container to be collected from the one-way box by an analyst.

3 **25 Section 16A**

4 *substitute*

5 **16A Analysis of body samples**

- 6 (1) This section applies if, under section 16—
7 (a) a body sample is taken from a person (the *tested person*) for
8 analysis; and
9 (b) an analyst has collected the sealed container containing the
10 sample from a one-way box.
- 11 (2) The analyst must, as soon as practicable, arrange for the analysis of
12 the sample at an approved laboratory to work out, as far as
13 practicable—
14 (a) whether any medicine or drug other than alcohol was present in
15 the person's body when the sample was taken; and
16 (b) if the sample is of the person's blood—the concentration,
17 quantity or other measurement of a medicine or drug, other
18 than alcohol, in the blood.
- 19 (3) The analyst must take reasonable care to ensure that a part
20 (the *preserved part*) of the sample sufficient for analysis to be
21 carried out for the tested person is protected and preserved until—
22 (a) if a request is made under subsection (4)—the preserved part is
23 sent to the laboratory nominated by the tested person; or
24 (b) in any other case—
25 (i) 1 year has passed since the sample was taken from the
26 tested person; or

- 1 (ii) a later time requested by the DPP under section 16B
2 (Keeping of samples—request by DPP).
- 3 (4) Before the end of the period mentioned in subsection (3) (b), the
4 tested person may ask that the preserved part of the sample be sent,
5 at the tested person's expense, to a laboratory nominated by the
6 person.
- 7 (5) If a request is made under subsection (4), the analyst must ensure
8 that the preserved part of the sample is sent to the nominated
9 laboratory as soon as practicable.

10 **16B Keeping of samples—request by DPP**

- 11 (1) This section applies if—
- 12 (a) 1 year has passed since a sample of blood or a body sample
13 was taken from a person (the *tested person*) under this part;
14 and
- 15 (b) the preserved part of the sample has not been sent to a
16 nominated laboratory under section 15A (7) or section 16A (5);
17 and
- 18 (c) a proceeding against the tested person—
- 19 (i) has not yet begun; or
- 20 (ii) has begun and not yet been finally decided (including any
21 appeals).
- 22 (2) The DPP may ask the approved laboratory where the analysis was
23 carried out to keep the preserved part of the sample until the end of
24 the proceeding (including any appeals).
- 25 (3) In this section:
- 26 *preserved part*—see section 16A (3).

1 **16C Destruction of samples**

- 2 (1) This section applies to the part of a sample preserved under
3 section 15A (5) (Analysis of blood samples) or section 16A (3)
4 (Analysis of body samples).
- 5 (2) An analyst must arrange for the preserved part to be destroyed after
6 the end of the period for which the preserved part must be kept
7 under section 15A (5) (b) or section 16A (3) (b).

8 **26 Protection of police officers and medical staff**
9 **Section 18 (3) (a)**

10 *omit*

11 approved operator

12 *substitute*

13 authorised operator

14 **27 Section 19**

15 *substitute*

16 **19 Prescribed concentration of alcohol in blood or breath**

- 17 (1) A person commits an offence if the person—
- 18 (a) has been the driver of a motor vehicle on a public street or in a
19 public place; and
- 20 (b) has, within the relevant period, the prescribed concentration of
21 alcohol in the person's blood or breath.
- 22 (2) A person convicted of an offence under this section is punishable in
23 accordance with section 26.
- 24 (3) In a proceeding for an offence against subsection (1), evidence may
25 be given of the concentration of alcohol in the person's blood or
26 breath based on—

- 1 (a) for proof of the concentration of alcohol in the person's blood
2 or breath—an analysis of a sample of the person's breath
3 carried out in accordance with this Act; or
- 4 (b) for proof of the concentration of alcohol in the person's
5 blood—an analysis of a sample of the person's blood carried
6 out at an approved laboratory and certified accurate by an
7 analyst.
- 8 (4) In this section:
- 9 *relevant period* means the period beginning when the person ceased
10 to be the driver of the vehicle and ending at the latest time when—
- 11 (a) a breath analysis of the person could be carried out under this
12 Act; or
- 13 (b) if a sample of the person's blood was taken under section 15 or
14 section 15AA—a sample of the person's blood could be taken
15 under the section.

16 **28 Defence if person did not intend to drive motor vehicle**
17 **Section 21 (b)**

- 18 *substitute*
- 19 (b) the person did not intend to drive the motor vehicle until a time
20 when the concentration of alcohol in the person's blood or
21 breath was no longer the prescribed concentration for the
22 person.

23 **29 New section 21A**

24 *insert*

25 **21A Defence if special driver with lower concentration of**
26 **alcohol from allowable source**

- 27 (1) This section applies if—

- 1 (a) a person is a special driver charged with an offence against
2 section 19; and
- 3 (b) the concentration of alcohol in the person's blood or breath is
4 not more than 0.02g in 100mL of the person's blood or 210L
5 of the person's breath.
- 6 (2) It is a defence to a prosecution for the offence if the defendant
7 proves that the concentration of alcohol in the defendant's blood or
8 breath was caused by—
- 9 (a) the consumption of an alcoholic beverage that formed part of a
10 religious observance; or
- 11 (b) the consumption or use of a substance that was not, entirely or
12 partly, consumed or used for its alcohol content.
- 13 **Example—substance**
14 food or medicine that contains alcohol
- 15 *Note 1* A defendant has a legal burden in relation to the matters
16 mentioned in s (2) (see Criminal Code, s 59).
- 17 *Note 2* An example is part of the Act, is not exhaustive and may extend,
18 but does not limit, the meaning of the provision in which it
19 appears (see Legislation Act, s 126 and s 132).

20 **30 Fines and imprisonment—s 19 offences**
21 **Section 26**

22 *after*
23 person's blood
24 *insert*
25 or breath

1	31	Table 26, column 2 heading
2		<i>substitute</i>
3		column 2
4		alcohol
5		concentration level
6	32	Sections 29 and 30
7		<i>omit</i>
8	33	Automatic driver licence disqualification—first offenders,
9		s 19
10		Section 32
11		<i>after</i>
12		person's blood
13		<i>insert</i>
14		or breath
15	34	Table 32, column 2 heading
16		<i>substitute</i>
17		column 2
18		alcohol
19		concentration level

35 Automatic driver licence disqualification—repeat offenders, s 19
Section 33

after

person's blood

insert

or breath

36 Table 33, column 2 heading

substitute

column 2

**alcohol
concentration level**

37 New section 35

insert

35 Automatic driver licence disqualification—immediate suspension period

(1) This section applies to a person if the person—

(a) is given an immediate suspension notice; and

(b) is convicted or found guilty of the immediate suspension offence to which the notice relates; and

(c) is disqualified under this part from holding or obtaining a driver licence.

1 (2) The period for which the person is disqualified from holding or
2 obtaining a driver licence under this part (including any period of
3 minimum disqualification under section 32 or section 33) is reduced
4 by the period that the person's driver licence was suspended under
5 the *Road Transport (General) Act 1999*, section 61A.

6 (3) However, subsection (2) does not apply if, on hearing the charge for
7 the immediate suspension offence, a court is satisfied that the person
8 did not comply with the immediate suspension notice.

9 (4) In this section:

10 *immediate suspension notice*—see the *Road Transport (General)*
11 *Act 1999*, dictionary.

12 *immediate suspension offence*—see the *Road Transport (General)*
13 *Act 1999*, dictionary.

14 **38 Additional powers of court**
15 **Section 38**

16 *omit*

17 **39 Certificate of evidence**
18 **Section 41 (1) (a) (i)**

19 *omit*

20 approved operator

21 *substitute*

22 authorised operator

- 1 **40 Section 41 (1) (a) (ii)**
- 2 *omit*
- 3 an approved breath analysis instrument
- 4 *substitute*
- 5 a breath analysis instrument

- 6 **41 Section 41 (1) (a) (iv) and (ix)**
- 7 *omit*
- 8 approved breath analysis instrument
- 9 *substitute*
- 10 breath analysis instrument

- 11 **42 Section 41 (1) (b) (i)**
- 12 *omit*
- 13 approved operator
- 14 *substitute*
- 15 authorised operator

- 16 **43 Section 41 (1) (b) (ii)**
- 17 *omit*
- 18 an approved breath analysis instrument
- 19 *substitute*
- 20 a breath analysis instrument

1 **44 Section 41 (1) (b) (iv)**

2 *omit*

3 approved breath analysis instrument

4 *substitute*

5 breath analysis instrument

6 **45 Section 41 (1) (c)**

7 *omit*

8 an approved breath analysis instrument

9 *substitute*

10 a breath analysis instrument

11 **46 Section 41 (1) (d)**

12 *substitute*

13 (d) a certificate that appears to be signed by a person who is a
14 doctor or nurse and states the following is evidence of the
15 matter:

16 (i) that the person is a doctor or nurse;

17 (ii) that the person took a sample of blood or other body
18 sample from a person mentioned in the certificate
19 (the ***relevant person***) on a stated day, at a stated time, in
20 a stated place;

21 (iii) that the person placed the sample of blood or other body
22 sample into a container;

23 (iv) that the person attached a label to the container that
24 contained the following information:

25 (A) the person's name;

- 1 (B) the relevant person's name;
- 2 (C) the date and time the sample was taken;
- 3 (v) that the person sealed the container with a tamper-evident
- 4 seal that had a stated unique identifying number on it;
- 5 (vi) that the person placed the sealed container into a one-way
- 6 box;
- 7 (vii) if the sample was taken under section 15—that, when the
- 8 sample was taken, the person believed that the relevant
- 9 person was, at that time, because of the relevant person's
- 10 medical condition, incapable of giving or refusing
- 11 permission to take a sample of blood.

12 **47 Section 41 (1) (f)**

13 *omit*

14 **48 Section 41 (1) (h)**

15 *substitute*

- 16 (h) a certificate that appears to be signed by a person who is an
- 17 analyst and states the following is evidence of the matter:
- 18 (i) that the person is an analyst;
- 19 (ii) that a blood sample or body sample (the *analysed*
- 20 *sample*) was analysed at an approved laboratory;
- 21 (iii) that the analysed sample was in a container—
- 22 (A) labelled in accordance with section 15 (7) (Taking
- 23 blood samples from people in custody),
- 24 section 15AA (2) (Taking blood samples from
- 25 people in hospital) or section 16 (7) (Medical
- 26 examinations); and

- 1 (B) sealed with a tamper-evident seal marked with a
2 stated unique identifying number;
- 3 (iv) that the tamper-evident seal did not appear to have been
4 interfered with;
- 5 (v) the analysis to which the analysed sample was subjected;
- 6 (vi) the result of the analysis;
- 7 (vii) that the analysis was accurate.

8 **49 Effect of noncompliance—analysis of breath or blood**
9 **Section 42 (1)**

10 *after*
11 provision
12 *insert*
13 (a *testing provision*)

14 **50 Section 42 (2)**

15 *substitute*

16 (2) The court must dismiss the charge unless satisfied that despite the
17 failure to comply with a testing provision the result obtained in the
18 breath analysis, or the blood sample analysis, would have been the
19 prescribed concentration for the person.

20 **51 Effect of noncompliance—analysis of body sample**
21 **Section 42A (1)**

22 *after*
23 provision
24 *insert*
25 (a *testing provision*)

1 **52 Section 42A (2)**

2 *omit*

3 the provision of this Act mentioned in subsection (1)

4 *substitute*

5 the testing provision

6 **53 Effect of noncompliance—refusal to give sample of**
7 **breath**
8 **Section 42B (1)**

9 *after*

10 provision

11 *insert*

12 (*a testing provision*)

13 **54 Section 42B (2)**

14 *substitute*

15 (2) The court must dismiss the charge unless satisfied that despite the
16 failure to comply with a testing provision the result obtained in a
17 breath analysis, if it had taken place, would have been the prescribed
18 concentration for the person.

19 **55 Rehabilitation programs**
20 **Part 8**

21 *omit*

1	56	Power of arrest
2		Section 45
3		<i>omit</i>
4		an approved screening device
5		<i>substitute</i>
6		a screening device
7	57	Penalty for escaping from custody
8		Section 46
9		<i>omit</i>
10	58	New part 21
11		<i>insert</i>

12 **Part 21** **Transitional—Road Transport**
13 **(Drink Driving) Legislation**
14 **Amendment Act 2010**

- 15 **105** **Meaning of *commencement day*—pt 21**
- 16 (1) In this part:
- 17 *commencement day* means the day the *Road Transport (Drink*
18 *Driving) Legislation Amendment Act 2010*, section 10 commences.
- 19 (2) This section expires 6 months after the day it commences.
- 20 **106** **Approved operator—authorisation in force before**
21 **commencement day**
- 22 (1) This section applies if—

- 1 (a) before the commencement day, the chief police officer
2 authorised a police officer under section 6 (1) (Approval of
3 operators, analysts and laboratories) to carry out breath
4 analysis; and
- 5 (b) immediately before the commencement day the authorisation
6 was in force.
- 7 (2) The police officer is taken to be an authorised officer for this Act for
8 6 months starting on the commencement day unless the
9 authorisation is earlier ended.
- 10 (3) This section expires 6 months after the day it commences.

11 **107 Approved analyst—appointment in force before**
12 **commencement day**

- 13 (1) This section applies if—
- 14 (a) before the commencement day, the Minister appointed a
15 person as an approved analyst under section 6 (2) (Approval of
16 operators, analysts and laboratories); and
- 17 (b) immediately before the commencement day the appointment
18 was in force.
- 19 (2) The appointment is taken to be an appointment under
20 section 7 (Appointment of analysts) and continues in force for
21 6 months starting on the commencement day unless earlier ended.
- 22 (3) This section expires 6 months after the day it commences.

23 **108 Approved laboratory—approval in force before**
24 **commencement day**

- 25 (1) This section applies if—

- 1 (a) before the commencement day, the Minister approved a
2 laboratory or other entity (however described) under
3 section 6 (3) (Approval of operators, analysts and laboratories)
4 as an approved laboratory; and
- 5 (b) immediately before the commencement day the approval was
6 in force.
- 7 (2) The approval is taken to be an approval under section 7A (Approval
8 of laboratories) and continues in force for 6 months starting on the
9 commencement day unless earlier ended.
- 10 (3) This section expires 6 months after the day it commences.

11 **109 Transitional regulations**

- 12 (1) A regulation may prescribe transitional matters necessary or
13 convenient to be prescribed because of the enactment of the *Road*
14 *Transport (Drink Driving) Legislation Amendment Act 2010*.
- 15 (2) A regulation may modify this part (including in relation to another
16 territory law) to make provision in relation to anything that, in the
17 Executive's opinion, is not, or is not adequately or appropriately,
18 dealt with in this part.
- 19 (3) A regulation under subsection (2) has effect despite anything else in
20 this Act or another territory law.

21 **110 Expiry—pt 21**

- 22 (1) This part expires 2 years after the day it commences.
- 23 (2) This part is a law to which the Legislation Act, section 88 (repeal
24 does not end effect of transitional laws etc) applies.

- 1 **59 Dictionary, new definition of *analyst***
- 2 *insert*
- 3 *analyst* means a person appointed by the road transport authority
- 4 under section 7.
- 5 **60 Dictionary, definitions of *approved analyst* and *approved***
- 6 ***breath analysis instrument***
- 7 *omit*
- 8 **61 Dictionary, definition of *approved laboratory***
- 9 *substitute*
- 10 *approved laboratory* means a laboratory or other entity approved by
- 11 the road transport authority under section 7A.
- 12 **62 Dictionary, definitions of *approved operator* and**
- 13 ***approved screening device***
- 14 *omit*
- 15 **63 Dictionary, new definition of *authorised operator***
- 16 *insert*
- 17 *authorised operator* means a police officer whose service number is
- 18 included in the register kept under section 6A.
- 19 **64 Dictionary, definition of *breath analysis***
- 20 *omit*
- 21 means of an approved breath analysis instrument
- 22 *substitute*
- 23 a breath analysis instrument

- 1 **65 Dictionary, new definition of *breath analysis instrument***
2 *insert*
3 *breath analysis instrument*—see section 5A.
- 4 **66 Dictionary, definition of *first offender***
5 *omit*
6 section 4D
7 *substitute*
8 section 4F
- 9 **67 Dictionary, new definition of *heavy vehicle***
10 *insert*
11 *heavy vehicle*—see the *Road Transport (Vehicle Registration)*
12 *Act 1999*, dictionary.
- 13 **68 Dictionary, definition of *level***
14 *substitute*
15 *level*, for a concentration of alcohol in blood or breath—see
16 section 4E.
- 17 **69 Dictionary, new definition of *medicine***
18 *insert*
19 *medicine*—see the *Medicines, Poisons and Therapeutic Goods*
20 *Act 2008*, dictionary.

70 Dictionary, definition of *prescribed concentration**substitute**prescribed concentration* means—

- (a) for a special driver—see section 4C (a); and
- (b) for any other person—see section 4C (b).

71 Dictionary, definition of *repeat offender**omit*

section 4D

substitute

section 4F

72 Dictionary, new definition of *screening device**insert**screening device*—see section 5.**73 Dictionary, definition of *screening test****omit*

means of an approved screening device

substitute

a screening device

74 Legislative instruments repealed

All legislative instruments under the *Road Transport (Alcohol and Drugs) Act 1977*, section 6 are repealed.

1 **Part 3** **Road Transport (Alcohol and**
2 **Drugs) Regulation 2000**

3 **75** **Legislation amended—pt 3**

4 This part amends the *Road Transport (Alcohol and Drugs)*
5 *Regulation 2000*.

6 **76** **New sections 2 and 3**

7 *insert*

8 **2** **Screening device—Act, s 5, def *screening device***

9 The following devices are prescribed:

- 10 (a) Alcolizer LE;
11 (b) lion alcolmeter SD-400.

12 **3** **Breath analysis instrument—Act, s 5A, def *breath***
13 ***analysis instrument***

14 The Dräger Alcotest 7110 MKV is prescribed.

1 **77** **Schedule 1 heading**

2 *substitute*

3 **Schedule 1** **Particulars for breath analysis**
4 **carried out using a Dräger**
5 **Alcotest 7110 MKV**

6 **78** **Schedule 1, item 5**

7 *omit*

8 approved operator

9 *substitute*

10 authorised operator

1 **Part 4** **Road Transport (Driver**
2 **Licensing) Act 1999**

3 **79** **Legislation amended—pt 4**

4 This part amends the *Road Transport (Driver Licensing) Act 1999*.

5 **80** **New section 28 (2) (s)**

6 *insert*

7 (s) require a person convicted or found guilty of a disqualifying
8 offence against the *Road Transport (Alcohol and Drugs)*
9 *Act 1977* to complete a course approved by the road transport
10 authority about the effects of alcohol, including its effects on
11 driving and health.

Part 5 Road Transport (Driver Licensing) Regulation 2000

81 Legislation amended—pt 5

This part amends the *Road Transport (Driver Licensing) Regulation 2000*.

82 Section 45 (2), notes 1 and 2

substitute

Note 1 A person is not eligible to apply for a restricted licence if any of the following provisions of the *Road Transport (General) Act 1999* apply to the person:

- s 66A (which is about disqualification in another jurisdiction)
- s 67 (which is about disqualification of repeat offenders)
- s 67A (2) (which is about disqualification of a first offender, under the *Road Transport (Alcohol and Drugs) Act 1977*, who exceeds the prescribed concentration of alcohol for the person by 0.05g or more)
- s 67B (which is about disqualification until a court orders otherwise)
- s 67C (which is about disqualification while holding a restricted licence)
- s 88 (4) (which is about suspension or disqualification for default in payment of an outstanding fine).

Note 2 Under the *Road Transport (General) Act 1999*, s 67A (4) and (5), a person disqualified from holding a driver licence under an automatic disqualification provision (see *Road Transport (General) Act 1999*, s 61A), other than as a first offender under the *Road Transport (Alcohol and Drugs) Act 1977*, is not eligible to apply for a restricted licence during the minimum period of disqualification.

83 Driver licence condition codes
Table 10, item 8

substitute

8	The licence holder must not drive a motor vehicle if the holder has a concentration of alcohol of more than 0g in 100mL of blood or 210L of breath.	Z
---	---	---

84 Section 20 (6), note

omit

85 Section 21 (1), new definition of *driving supervisor*

insert

driving supervisor means a person, other than a driving instructor, who holds a full car licence, or a full licence of a higher class, and who is performing driver instruction.

86 Section 21 (4)

omit

person who holds a full car licence or a full licence of a higher class

substitute

driving supervisor

87 Section 21 (5)

omit

person

substitute

driving supervisor

1	88	Section 21 (6), note
2		<i>omit</i>
3	89	Section 36A (3), note 3
4		<i>omit</i>
5	90	Section 37A (3), note 3
6		<i>omit</i>
7	91	Section 49 (3), note
8		<i>omit</i>
9	92	Section 49 (3), new note
10		<i>insert</i>
11	<i>Note</i>	Under s 73E (2), the road transport authority must not issue a restricted
12		licence to a person required to complete an alcohol awareness course
13		unless the person has given the authority written evidence that the
14		person has completed the course.
15	93	Section 52 (3), new note
16		<i>insert</i>
17	<i>Note</i>	Under s 73D (3), the road transport authority must not issue a
18		probationary licence to a person whose driver licence has been
19		disqualified as a consequence of a conviction, or finding of guilt, for an
20		offence against the <i>Road Transport (Alcohol and Drugs) Act 1977</i> if the
21		person has not given the authority written evidence that the person has
22		completed an alcohol awareness course.
23	94	Section 54, note 2
24		<i>omit</i>

1 **95 Section 63 (3), note 2**

2 *omit*

3 **96 New division 3.13**

4 *insert*

5 **Division 3.13 Alcohol awareness courses**

6 **73A Application—div 3.13**

7 This part applies to a person who commits a disqualifying offence
8 on or after the day the Act, section 28 (2) (s) commences.

9 **73B Definitions—div 3.13**

10 In this division:

11 *alcohol awareness course* means a course approved under
12 section 73I (Alcohol awareness course—approval).

13 *disqualifying offence*—see the *Road Transport (Alcohol and*
14 *Drugs) Act 1977*, dictionary.

15 **73C Requirement to complete alcohol awareness course—**
16 **person not disqualified**

17 (1) This section applies to a person who—

- 18 (a) is found guilty of a disqualifying offence; and
19 (b) is not disqualified from holding or obtaining a driver licence;
20 and
21 (c) has not completed an alcohol awareness course within the
22 previous 12 months.

23 (2) The person must complete an alcohol awareness course within
24 6 months after being found guilty of the disqualifying offence.

1 (3) If the person does not complete an alcohol awareness course and
2 give the road transport authority written evidence to that effect
3 within the 6-month period, the authority must suspend the person's
4 driver licence.

5 (4) However, the road transport authority must end the suspension if the
6 authority receives written evidence that the person has completed an
7 alcohol awareness course.

8 **73D Requirement to complete alcohol awareness course—**
9 **person disqualified and not eligible for restricted licence**

- 10 (1) This section applies to a person who—
- 11 (a) is convicted or found guilty of a disqualifying offence; and
- 12 (b) is disqualified from holding or obtaining a driver licence; and
- 13 (c) is not eligible to apply for, or be issued with, a restricted
- 14 licence; and
- 15 (d) has not completed an alcohol awareness course within the
- 16 previous 12 months.
- 17 (2) The person must complete an alcohol awareness course before the
- 18 end of the period of disqualification.
- 19 (3) Despite section 52 (3) (When probationary licence must be issued),
- 20 if the person does not complete an alcohol awareness course and
- 21 give the road transport authority written evidence to that effect
- 22 before the end of the period of disqualification, the authority must
- 23 not issue a probationary licence to the person.
- 24 (4) However, the road transport authority must issue a probationary
- 25 licence to the person if the authority receives written evidence that
- 26 the person has completed an alcohol awareness course after the end
- 27 of the disqualification period.

- 1 **73E Requirement to complete alcohol awareness course—**
2 **person disqualified and eligible for restricted licence**
- 3 (1) This section applies to a person if—
- 4 (a) the person is convicted or found guilty of a disqualifying
5 offence; and
- 6 (b) the person is disqualified from holding or obtaining a driver
7 licence; and
- 8 (c) the Magistrates Court has made an order authorising the road
9 transport authority to issue a restricted licence to the person;
10 and
- 11 (d) the person has not completed an alcohol awareness course
12 within the previous 12 months.
- 13 (2) Despite section 49 (Issue of restricted licence by road transport
14 authority), the road transport authority must not issue a restricted
15 licence to the person unless the person has completed an alcohol
16 awareness course and given the road transport authority written
17 evidence to that effect.
- 18 **73F Requirement to complete alcohol awareness course—**
19 **person no longer disqualified and eligible for provisional**
20 **licence**
- 21 (1) This section applies to a person if—
- 22 (a) the person was convicted or found guilty of a disqualifying
23 offence; and
- 24 (b) the person was disqualified from holding or obtaining a driver
25 licence for the offence; and
- 26 (c) the Magistrates Court made an order authorising the road
27 transport authority to issue a restricted licence to the person for
28 the period of disqualification; and

- 1 (d) the person—
- 2 (i) did not apply for, or was not issued with, a restricted
- 3 licence; and
- 4 (ii) is eligible to apply for, or be issued with, a provisional
- 5 licence because the person is no longer disqualified from
- 6 holding or obtaining a provisional driver licence; and
- 7 (iii) has not completed an alcohol awareness course within the
- 8 previous 12 months.
- 9 (2) Despite section 52 (3) (When probationary licence must be issued),
- 10 the road transport authority must not issue a probationary licence to
- 11 the person unless the person has completed an alcohol awareness
- 12 course and given the road transport authority written evidence to
- 13 that effect.

14 **73G Exemption from alcohol awareness course—application**

- 15 (1) The road transport authority may, on application, grant a person an
- 16 exemption from the requirement to complete an alcohol awareness
- 17 course because of exceptional circumstances.
- 18 (2) The road transport authority may, in writing, require the applicant to
- 19 give the authority additional information or documents that the
- 20 authority reasonably needs to decide the application.
- 21 (3) If the applicant does not comply with a requirement under
- 22 subsection (2), the road transport authority may refuse to consider
- 23 the application.

24 **73H Exemption from alcohol awareness course—decision on**

25 **application**

- 26 (1) On an application by a person for an exemption from the
- 27 requirement to attend an alcohol awareness course, the road
- 28 transport authority must—

- 1 (a) grant the exemption; or
- 2 (b) refuse to grant the exemption.
- 3 (2) The road transport authority must refuse to grant the exemption if
- 4 satisfied on reasonable grounds that exceptional circumstances do
- 5 not exist for granting the exemption.

6 **73I Alcohol awareness course—approval**

- 7 (1) The road transport authority may approve a course (an *alcohol*
- 8 *awareness course*) about the effects of alcohol, including its effects
- 9 on driving and health.
- 10 (2) An approval is a notifiable instrument.

11 *Note* A notifiable instrument must be notified under the Legislation Act.

12 **97 New section 87 (1) (p)**

13 *before the note, insert*

- 14 (p) the person has failed to complete an alcohol awareness course
- 15 as required under section 73C (Requirement to complete
- 16 alcohol awareness course—person not disqualified).

17 **98 Dictionary, new definitions**

18 *insert*

19 *alcohol awareness course*, for division 3.13 (Alcohol awareness

20 courses)—see section 73B.

21 *disqualifying offence*, for division 3.13 (Alcohol awareness

22 courses)—see section 73B.

1 **Part 6** **Road Transport (General) Act**
2 **1999**

3 **99** **Legislation amended—pt 6**

4 This part amends the *Road Transport (General) Act 1999*.

5 **100** **Sections 58 and 58A**

6 *substitute*

7 **58** **Police officer or authorised person may require name,**
8 **date of birth, address and driver licence—driver or rider**

9 (1) A police officer or authorised person may, in the execution of any of
10 his or her functions under the road transport legislation, require the
11 driver of a vehicle, or the rider of an animal, to do any or all of the
12 following:

13 (a) for the driver of a motor vehicle—produce the person's
14 Australian driver licence or external driver licence;

15 (b) state the person's name;

16 (c) state the person's date of birth;

17 (d) state the person's home address.

18 (2) A person commits an offence if the person fails to comply with a
19 request made by a police officer or authorised person under
20 subsection (1).

21 Maximum penalty: 20 penalty units.

22 *Note* It is an offence to produce false or misleading documents (see Criminal
23 Code, s 339).

24 (3) It is a defence to a prosecution for an offence against
25 subsection (1) (a) if the defendant—

- 1 (a) is not the driver of a heavy vehicle, or heavy combination,
2 when required to produce the licence; and
- 3 (b) has a reasonable excuse for failing to produce the licence when
4 required to do so; and
- 5 (c) within 3 days after being required to produce the licence,
6 produces the licence at a place prescribed by regulation or as
7 directed by the police officer or authorised person.

8 *Note* A defendant has a legal burden in relation to the matters mentioned in
9 s (3) (see Criminal Code, s 59).

10 **58A Police officer or authorised person may require name,
11 date of birth, address and driver licence—supervisor,
12 instructor or assessor**

- 13 (1) This section applies if—
- 14 (a) a driving supervisor or driving instructor is with the holder of a
15 learner car licence (a *learner driver*) for the purposes of driver
16 instruction from the supervisor or instructor while the learner
17 driver drives a motor vehicle that displays, or ought to display,
18 L-plates on a road or road related area; or
- 19 (b) a driving instructor or heavy vehicle driver assessor is with a
20 driver for the purposes of driver assessment from the instructor
21 or assessor.
- 22 (2) A police officer or authorised person may require the driving
23 supervisor, driving instructor or heavy vehicle driver assessor to do
24 any or all of the following:
- 25 (a) produce the person's Australian driver licence;
- 26 (b) state the person's name;
- 27 (c) state the person's date of birth;
- 28 (d) state the person's home address.

- 1 (3) A person commits an offence if the person fails to comply with a
2 request made by a police officer or authorised person under
3 subsection (2).

4 Maximum penalty: 20 penalty units.

5 *Note* It is an offence to produce false or misleading documents (see Criminal
6 Code, s 339).

- 7 (4) It is a defence to a prosecution for an offence against
8 subsection (2) (a) if the defendant—

9 (a) is a driving supervisor, driving instructor or heavy vehicle
10 driver assessor when required to produce the licence; and

11 (b) has a reasonable excuse for failing to produce the licence when
12 required to do so; and

13 (c) within 3 days after being required to produce the licence,
14 produces the licence at a place prescribed by regulation or as
15 directed by the police officer or authorised person.

16 *Note* A defendant has a legal burden in relation to the matters mentioned in
17 s (4) (see Criminal Code, s 59).

- 18 (5) In this section:

19 ***driver assessment***—see the *Road Transport (Driver Licensing)*
20 *Regulation 2000*, dictionary.

21 ***driver instruction***—see the *Road Transport (Driver Licensing)*
22 *Regulation 2000*, dictionary.

23 ***driving instructor***—see the *Road Transport (Driver Licensing)*
24 *Regulation 2000*, dictionary.

25 ***driving supervisor***—see the *Road Transport (Driver Licensing)*
26 *Regulation 2000*, section 21 (1).

27 ***heavy vehicle driver assessor***—see the *Road Transport (Driver*
28 *Licensing) Regulation 2000*, dictionary.

101 Division 4.2 heading*substitute***Division 4.2 Licence suspension, disqualification
and related matters****61A Definitions—div 4.2**

In this division:

automatic disqualification provision means any of the following provisions:

- (a) section 62 (Automatic disqualification for culpable driving);
- (b) section 63 (Automatic disqualification for certain other driving offences);
- (c) *Road Transport (Alcohol and Drugs) Act 1977*, section 32 (which is about automatic disqualification of first offender drivers for exceeding the prescribed blood alcohol concentration);
- (d) *Road Transport (Alcohol and Drugs) Act 1977*, section 33 (which is about automatic disqualification of repeat offender drivers for exceeding the prescribed blood alcohol concentration);
- (e) *Road Transport (Alcohol and Drugs) Act 1977*, section 34 (which is about automatic disqualification for other offences against that Act);
- (f) *Road Transport (Driver Licensing) Act 1999*, section 31 (3) (which is about automatic disqualification for repeat offenders for driving while not holding (and never having held) an Australian driver licence);

1 (g) *Road Transport (Driver Licensing) Act 1999*, section 32 (5)
2 (which is about automatic disqualification for an offence of
3 driving or fraudulently applying for a driver licence while
4 disqualified, or after licence suspension, cancellation or
5 refusal).

6 ***immediate suspension notice*** (or ***suspension notice***) means a notice
7 under section 61B given to a person for an immediate suspension
8 offence.

9 ***immediate suspension offence*** (or ***suspension offence***) means an
10 offence against any of the following provisions of the *Road*
11 *Transport (Alcohol and Drugs) Act 1977* in the circumstances (if
12 any) mentioned for the provision:

13 (a) section 19 (Prescribed concentration of alcohol in blood or
14 breath), if the person to whom the offence relates is—

15 (i) a special driver with a concentration of alcohol in the
16 person's blood or breath that is 0.05g or more per 100mL
17 of blood or 210L of breath; or

18 (ii) a driver, other than a special driver, with a concentration
19 of alcohol in the person's blood or breath that is 0.1g or
20 more per 100mL of blood or 210L of breath;

21 (b) section 22 (Refusing to provide breath sample);

22 (c) section 23 (Refusing blood test etc);

23 (d) section 24 (Driving under the influence of intoxicating liquor
24 or a drug);

25 (e) an offence prescribed for paragraph (e) of the definition of
26 ***disqualifying offence*** in the *Road Transport (Alcohol and*
27 *Drugs) Act 1977*, dictionary, by regulation under that Act.

1 *special driver*—see the *Road Transport (Alcohol and Drugs)*
2 *Act 1977*, dictionary.

3 *suspension notice*—see *immediate suspension notice*.

4 *suspension offence*—see *immediate suspension offence*.

5 **61B Immediate suspension of licence**

6 (1) If a police officer believes on reasonable grounds that a person has
7 committed an immediate suspension offence, the police officer must
8 give the person an immediate suspension notice for the offence.

9 (2) A suspension notice must include the following information:

10 (a) a unique identifying number;

11 (b) the date and time the notice is given;

12 (c) the full name, or surname and initials, and home address of the
13 person;

14 (d) particulars of the suspension offence to which the notice relates
15 and, if the offence is against the *Road Transport (Alcohol and*
16 *Drugs) Act 1977*, section 19 (Prescribed concentration of
17 alcohol in blood or breath), the quantity of alcohol alleged to
18 be present in the person's blood or breath;

19 (e) the service number of the police officer who gave the
20 suspension notice;

21 (f) a statement telling the person that while the notice is in
22 effect—

23 (i) the notice suspends the person's driver licence; and

24 (ii) the person's driver licence must be surrendered to a
25 police officer in accordance with the requirements of the
26 notice; and

27 (iii) the person must not drive a vehicle in the ACT; and

- 1 (iv) the person is not eligible to apply for a driver licence; and
- 2 (v) the person has a right to apply to the Magistrates Court
- 3 for a stay of the suspension notice;
- 4 (g) a statement telling the person that the notice ceases to have
- 5 effect if any of the circumstances mentioned in subsection (5)
- 6 apply;
- 7 (h) anything else prescribed by regulation.
- 8 (3) A suspension notice takes effect as soon as it is served on the
- 9 person.
- 10 (4) The following provisions apply if a person is served with a
- 11 suspension notice:
- 12 (a) the person's driver licence is suspended;
- 13 (b) the person must surrender to a police officer the person's driver
- 14 licence or, if the person is unable to do so at the time, the
- 15 person must surrender the licence as soon as practicable in
- 16 accordance with the terms of the suspension notice;
- 17 (c) the person must not drive a vehicle in the ACT;
- 18 (d) the person is not entitled to apply for, or be issued with, a
- 19 restricted licence during the suspension period.
- 20 (5) A suspension notice ceases to have effect if—
- 21 (a) the Magistrates Court orders a stay of the notice; or
- 22 (b) the proceeding for the offence is withdrawn or discontinued; or
- 23 (c) the suspension offence for which the suspension notice was
- 24 issued is found proved, dismissed or taken into account by a
- 25 court.

1 **61C Failure to surrender suspended licence**

2 (1) A person commits an offence if the person fails to surrender the
3 person's driver licence when required to do so under
4 section 61B (4) (b).

5 Maximum penalty: 20 penalty units.

6 (2) An offence against this section is a strict liability offence.

7 **61D Surrendered licences**

8 (1) This section applies if a driver licence is surrendered to a police
9 officer under section 61B.

10 (2) The police officer must give the licence to the road transport
11 authority as soon as practicable (but within 14 days) after the licence
12 is surrendered to the police officer.

13 **61E Application for stay of suspension notice**

14 (1) A person may apply to the Magistrates Court for a stay of the
15 operation of a suspension notice.

16 (2) The application may be made by filing the following documents not
17 later than 28 days after the day the applicant was served with the
18 suspension notice:

19 (a) a notice setting out the grounds of the application;

20 (b) an affidavit in support of the application.

21 (3) The registrar must, as soon as practicable after the application is
22 filed, set a hearing date for the application.

23 (4) The chief police officer must file a summary of the prosecution case
24 including a brief summary of the evidence against the applicant not
25 later than 10 days after the day the chief police officer was given the
26 documents mentioned in subsection (2).

- 1 (5) The registrar must, as soon as practicable after the chief police
2 officer has filed any documents under subsection (4), give—
- 3 (a) the applicant a copy of the documents filed by the chief police
4 officer under subsection (4); and
- 5 (b) the applicant and the chief police officer notice in writing of
6 the time and place of the hearing of the application.
- 7 (6) Despite any error in a notice under subsection (5) or a failure to give
8 notice under that subsection, the court may hear and decide the
9 application if it is satisfied that the parties—
- 10 (a) knew about the time and place of the hearing; and
11 (b) were not prejudiced by the error or failure.

12 **61F Deciding application**

- 13 (1) The Magistrates Court may hear and decide an application under
14 section 61E and may make an order—
- 15 (a) confirming the decision to give the applicant an immediate
16 suspension notice; or
- 17 (b) staying the operation of the suspension notice; or
- 18 (c) any other order the court considers appropriate.
- 19 (2) However, in deciding an application under section 61E, the court
20 must not make an order staying the operation of a suspension notice
21 unless the court is satisfied that exceptional circumstances justify
22 making the order.
- 23 (3) The court must take into account the following matters when
24 deciding if exceptional circumstances justify making an order under
25 subsection (1) (b):
- 26 (a) the risk to the safety of other road users;
- 27 (b) the applicant's need for a licence;

- 1 (c) the strength of the prosecution case against the applicant;
2 (d) any other matter the court considers relevant.
- 3 (4) However, when deciding a person's application under section 61E
4 the court must not decide—
- 5 (a) the guilt or innocence of the person for the offence to which
6 the suspension notice relates; or
7 (b) the imposition or level of a penalty for the offence.

8 **102 Section 64**

9 *substitute*

10 **64 Court may order disqualification for other offences**

- 11 (1) A court that convicts a person, or finds a person guilty, of an offence
12 against the road transport legislation may disqualify the person from
13 holding or obtaining a driver licence for the period the court
14 considers appropriate.
- 15 (2) However, if the offence is an offence against an automatic
16 disqualification provision, any order under subsection (1) is subject
17 to the automatic disqualification period for the offence.
- 18 (3) If the court disqualifies the person, the person is disqualified from
19 holding or obtaining a driver licence for the period ordered by the
20 court.
- 21 (4) A disqualification under this section is in addition to any penalty
22 imposed for the offence.

23 *Note* A court may also order that a driver is disqualified from obtaining or
24 holding an Australian driver licence under the *Road Transport (Mass,*
25 *Dimensions and Loading) Act 2009*, s 204.

**103 Effect of disqualification
Section 66 (6) and (7)**

substitute

- (6) Subject to any other provision of this division, a person who is disqualified from holding or obtaining a driver licence is not eligible to apply for, or be issued with, another driver licence, other than a restricted licence, during the period of disqualification.

Note 1 Sections 66A to 67C affect the eligibility of a person to apply for or be issued with a restricted licence.

Note 2 The following provisions of the road transport legislation also contain limitations on the issue of restricted licences:

- s 45 (3) (which is about suspension for nonpayment of an infringement notice)
- s 88 (4) (which is about suspension or disqualification for default in payment of an outstanding fine)
- the *Road Transport (Driver Licensing) Act 1999*, s 18 (4), s 19 (7), s 20 (3) and s 21 (7) (which are about suspension or licence ineligibility under the demerit points system)
- the *Road Transport (Driver Licensing) Act 1999*, s 33 (5) (which is about cancellation of a restricted licence because of contravention of its conditions)
- the *Road Transport (Driver Licensing) Regulation 2000*.

**66A Person disqualified in another jurisdiction not eligible for
restricted licence**

- (1) This section applies to a person if the person is disqualified from holding or obtaining an Australian driver licence in another jurisdiction.
- (2) The person is not eligible to apply for, or be issued with, a restricted licence during the period of disqualification.

104 Section 67*substitute***67 Disqualified repeat offender not eligible for restricted licence—automatic disqualification provisions**

- (1) This section applies to a person if the person is—
- (a) disqualified from holding or obtaining a driver licence under an automatic disqualification provision; and
 - (b) a repeat offender for the offence to which the disqualification relates.
- (2) The person is not eligible to apply for, or be issued with, a restricted driver licence during the period of disqualification.

67A Eligibility of disqualified first offender for restricted licence—automatic disqualification provisions

- (1) This section applies to a person if the person is—
- (a) disqualified from holding or obtaining a driver licence under an automatic disqualification provision; and
 - (b) a first offender for the offence to which the disqualification relates.
- (2) Subsection (3) applies to the person if—
- (a) the person is disqualified from holding or obtaining a driver licence under the *Road Transport (Alcohol and Drugs) Act 1977*, section 32 (Automatic driver licence disqualification—first offenders, s 19) because the person was convicted or found guilty of an offence against that Act, section 19; and

- 1 (b) when the person committed the offence the person was
2 either—
- 3 (i) a special driver with a concentration of alcohol of 0.05g
4 or more in 100mL of the person's blood or 210L of the
5 person's breath; or
- 6 (ii) a driver other than a special driver with a concentration
7 of alcohol of 0.1 g or more in 100mL of the person's
8 blood or 210L of the person's breath when the person
9 committed the offence.
- 10 (3) The person is not eligible to apply for, or be issued with, a restricted
11 licence during the period of disqualification.
- 12 (4) Subsection (5) applies to the person if the person is disqualified
13 from holding or obtaining a driver licence under an automatic
14 disqualification provision, other than the *Road Transport (Alcohol
15 and Drugs) Act 1977*, section 32.
- 16 (5) The person is not eligible to apply for, or be issued with, a restricted
17 licence until the end of the minimum period of disqualification
18 applying to the person under the automatic disqualification
19 provision in relation to the offence (whether or not the period is
20 expressed to be such a minimum period).
- 21 **Examples—minimum periods of disqualification**
- 22 1 For s 62, the minimum period of disqualification is 6 months
23 (see s 62 (1) (a)).
- 24 2 For the *Road Transport (Alcohol and Drugs) Act 1977*, s 34, the minimum
25 period of disqualification is 6 months (see that Act, s 34 (1) (b)).

- 1 3 For the *Road Transport (Driver Licensing) Act 1999*, s 32 (1), (2) or (3), the
2 minimum period of disqualification is 12 months (see that Act, s 32 (5) (a)).
- 3 *Note 1* The *Road Transport (Alcohol and Drugs) Act 1977*, s 32 applies to first
4 offenders and only applies for this section if the offender has a limited
5 concentration of alcohol in his or her blood or breath. That Act, s 33,
6 applies to repeat offenders.
- 7 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
8 does not limit, the meaning of the provision in which it appears (see
9 Legislation Act, s 126 and s 132).
- 10 (6) In this section:
- 11 *special driver*—see the *Road Transport (Alcohol and Drugs)*
12 *Act 1977*, dictionary.
- 13 **67B Person disqualified until court order not eligible for**
14 **restricted licence**
- 15 (1) This section applies to a person if the person is disqualified from
16 holding or obtaining a driver licence under section 65
17 (Disqualification until court order).
- 18 (2) The person is not eligible to apply for, or be issued with, a restricted
19 licence during the period of disqualification.
- 20 **67C Disqualification while holder of restricted licence**
- 21 (1) This section applies to a person who is the holder of a restricted
22 licence and is disqualified (whether or not by court order) from
23 holding or obtaining a driver licence because of being convicted or
24 found guilty by a court in Australia of an offence against the law of
25 any jurisdiction.
- 26 (2) The person is not eligible to apply for, or be issued with, another
27 restricted licence for the remainder of the period for which the
28 person was originally disqualified from holding or obtaining a driver
29 licence.

1	105	Dictionary, new definitions
2		<i>insert</i>
3		<i>automatic disqualification provision</i> , for division 4.2 (Licence
4		suspension, disqualification and related matters)—see section 61A.
5		<i>immediate suspension notice</i> (or <i>suspension notice</i>), for
6		division 4.2 (Licence suspension, disqualification and related
7		matters)—see section 61A.
8		<i>immediate suspension offence</i> (or <i>suspension offence</i>), for
9		division 4.2 (Licence suspension, disqualification and related
10		matters)—see section 61A.
11		<i>special driver</i> , for division 4.2 (Licence suspension, disqualification
12		and related matters)—see section 61A.
13		<i>suspension notice</i> —see <i>immediate suspension notice</i> .
14		<i>suspension offence</i> —see <i>immediate suspension offence</i> .

1 **Part 7** **Road Transport (General)**
2 **Regulation 2000**

3 **106** **Legislation amended—pt 7**

4 This part amends the *Road Transport (General) Regulation 2000*.

5 **107** **Schedule 1, part 1.1**

6 *omit*

7 **108** **Schedule 1, part 1.4, new item 19A**

8 *insert*

19A	73H (1) (b)	road transport authority—refuse to grant exemption from requirement to attend alcohol awareness course
-----	-------------	--

Part 8 Road Transport (Offences) Regulation 2005

109 Legislation amended—pt 8

This part amends the *Road Transport (Offences) Regulation 2005*.

110 Schedule 1, part 1.3, items 10 to 12

substitute

10	23 (2)				
10.1	<ul style="list-style-type: none">first offender	behave in manner so impossible/impractical for blood sample to be taken—first offender	30 pu/6 months prison/both		
10.2	<ul style="list-style-type: none">repeat offender	behave in manner so impossible/impractical for blood sample to be taken—repeat offender	30 pu/12 months prison/both		

11	23 (3) (a)				
11.1	• first offender	fail/refuse to submit to medical examination—first offender	30 pu/6 months prison/both		
11.2	• repeat offender	fail/refuse to submit to medical examination—repeat offender	30 pu/12 months prison/both		
12	23 (3) (b)				
12.1	• first offender	fail/refuse to give/permit taking of body sample—first offender	30 pu/6 months prison/both		
12.2	• repeat offender	fail/refuse to give/permit taking of body sample —repeat offender	30 pu/12 months prison/both		

1 **111 Schedule 1, part 1.3, item 15**

2 *omit*

112 Schedule 1, part 1.6, items 11 and 12

substitute

11	21 (5) (a)	driving supervisor not supervise learner driver	20	99	
12	21 (5) (b)	driving supervisor not take precautions to prevent contravention by learner driver	20	99	

113 Schedule 1, part 1.7, items 6 to 8

substitute

6	58 (2)				
6.1	• requirement under 58 (1) (a)	driver/rider not produce licence	20	99	
6.2	• requirement under 58 (1) (b)	driver/rider not state name	20		
6.3	• requirement under 58 (1) (c)	driver/rider not state date of birth	20		

6.4	<ul style="list-style-type: none"> requirement under 58 (1) (d) 	driver/rider not state home address	20		
7	58A (3)				
7.1	<ul style="list-style-type: none"> requirement under 58A (2) (a) 	supervisor/instructor/assessor not produce licence	20	99	
7.2	<ul style="list-style-type: none"> requirement under 58A (2) (b) 	supervisor/instructor/assessor not state name	20		
7.3	<ul style="list-style-type: none"> requirement under 58A (2) (c) 	supervisor/instructor/assessor not state date of birth	20		
7.4	<ul style="list-style-type: none"> requirement under 58A (2) (d) 	supervisor/instructor/assessor not state home address	20		

1 **114 Schedule 1, part 1.7, new item 12A**

2 *insert*

12A	61B (4) (b)	not surrender suspended licence	20		
-----	-------------	---------------------------------	----	--	--

3 **115 Schedule 1, part 1.7, item 13**

4 *substitute*

13	66 (4)	not surrender licence when disqualified	20		
----	--------	---	----	--	--

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2010.

2 Notification

Notified under the Legislation Act on 2010.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

© Australian Capital Territory 2010