Road Transport (Alcohol and Drugs) Legislation Amendment Act 2011
A2011-15

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Road Transport (Alcohol and Drugs) Legislation Amendment Act 2011

A2011-15

An Act to amend legislation about driving under the influence of alcohol and drugs, 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 (Alcohol and Drugs) Legislation Amendment Act 2011*.

#### 2 Commencement

This Act commences on the day after its notification day.

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

#### 3 Legislation amended

This Act amends the following legislation:

- *Crimes Act 1900*
- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Driver Licensing) Regulation 2000*
- *Road Transport (General) Act 1999*
- *Road Transport (Offences) Regulation 2005*
- *Spent Convictions Act 2000.*
Part 2 Crimes Act 1900

4 Power to enter premises to arrest offender
Section 220 (4), definition of relevant offence, paragraph (b) (iv)

omit

Driving with prescribed drug in oral fluid or blood

substitute

Prescribed drug in oral fluid or blood—driver or driver trainer
Part 3

Road Transport (Alcohol and Drugs) Act 1977

5 Meaning of public place
Section 4A

omit

6 Meaning of special driver
Section 4B (1) (a)

substitute

(a) the person is not the holder of an Australian driver licence, an external territory driver licence or a foreign driver licence from a recognised country; or

(aa) the person holds a foreign driver licence that—

(i) is not issued under the law of a recognised country; or

(ii) if the licence is issued under the law of a recognised country—is a licence that corresponds to a licence mentioned in paragraph (d); or

7 Section 4B (3), new definitions

insert

Austroads—see the Road Transport (Driver Licensing) Regulation 2000, dictionary.

recognised country—see the Road Transport (Driver Licensing) Regulation 2000, section 141.
8 New section 4BA

insert

4BA Meaning of driver trainer

For this Act, driver trainer means a person mentioned in section 4B (1) (h), (i) or (j).

9 Section 8

substitute

8 Power to require alcohol screening test if vehicle not involved in accident—driver and driver trainer

(1) A police officer may require a person to undergo an alcohol screening test in accordance with the directions of that officer if—

(a) the person is—

(i) the driver of a motor vehicle on a road or road related area; or

(ii) the driver trainer in a motor vehicle on a road or road related area; or

(b) the police officer has reasonable cause to suspect that, shortly before the requirement is made, the person was—

(i) the driver of a motor vehicle on a road or road related area; or

(ii) the driver trainer in a motor vehicle on a road or road related area.

(2) Nothing in this section prevents a police officer from requiring both the driver and driver trainer to undergo an alcohol screening test.
10 Section 9 heading

substitute

9 Power to require alcohol screening test if vehicle involved in accident—driver

11 New section 9A

insert

9A Power to require alcohol screening test if vehicle involved in accident—driver trainer

If a motor vehicle is involved in an accident on a road or road related area, a police officer may require a person to undergo an alcohol screening test in accordance with the directions of that officer—

(a) if the police officer has reasonable cause to suspect that the person was the driver trainer in the motor vehicle at the time of the accident; or

(b) if—

(i) the police officer does not know or has doubt as to who was the driver trainer in the motor vehicle at the time of the accident; and

(ii) the police officer has reasonable cause to suspect that the person was in the vehicle at the time of the accident.
### Section 12

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**Power to require alcohol screening test for culpable driving—driver and driver trainer**

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(2) A police officer who has reasonable cause to suspect that a person was the driver trainer in a motor vehicle involved in an offence of culpable driving may require the person to undergo an alcohol screening test in accordance with the directions of that officer.

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Example—written statement

A print-out from the breath analysis instrument

Note: An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).
16 Section 13A

substitute

13A Power to require drug screening test if vehicle not involved in accident—driver and driver trainer

(1) A police officer may require a person to undergo 1 or more drug screening tests in accordance with the directions of the officer if—

(a) the person is—

(i) the driver of a motor vehicle on a road or road related area; or

(ii) the driver trainer in a motor vehicle on a road or road related area; or

(b) the police officer has reasonable cause to suspect that, shortly before the requirement is made, the person was—

(i) the driver of a motor vehicle on a road or road related area; or

(ii) the driver trainer in a motor vehicle on a road or road related area.

(2) The person must remain at the place where the drug screening test is being carried out until the test is completed in accordance with the police officer’s directions.

(3) Nothing in this section prevents a police officer from requiring both the driver and driver trainer to undergo a drug screening test.
17 Section 13B heading

substitute

13B Power to require drug screening test if vehicle involved in accident—driver

18 New section 13BA

insert

13BA Power to require drug screening test if vehicle involved in accident—driver trainer

(1) If a motor vehicle is involved in an accident on a road or road related area, a police officer may require a person to undergo 1 or more drug screening tests in accordance with the directions of the officer—

(a) if the police officer has reasonable cause to suspect that the person was the driver trainer in the motor vehicle at the time of the accident; or

(b) if—

(i) the police officer does not know or has doubt as to who was the driver trainer in the motor vehicle at the time of the accident; and

(ii) the police officer has reasonable cause to suspect that the person was in the vehicle at the time of the accident.

(2) The person must remain at the place where the drug screening test is being carried out until the test is completed in accordance with the police officer’s directions.
19 Section 13C heading  

substitute

13C Power to require drug screening test for culpable driving—driver and driver trainer

20 New section 13C (1A)  

insert

(1A) A police officer who has reasonable cause to suspect that a person was the driver trainer in a motor vehicle involved in an offence of culpable driving may require the person to undergo 1 or more drug screening tests in accordance with the directions of that officer.

21 Detention for oral fluid analysis  

Section 13D (1) (a) and (b)  

after

section 13B  

insert

, section 13BA

22 Oral fluid—preliminary analysis  

Section 13E (6), new example  

insert

Example—written statement

a print-out from the oral fluid analysis instrument

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).
23 Oral fluid—confirmatory analysis
Section 13G (3)

substitute

(3) An analyst at the approved laboratory to which the sample is taken under subsection (2) must, as soon as practicable, arrange for the analysis of the sample at the laboratory or another approved laboratory to work out whether a prescribed drug is present in the sample.

24 Section 13G (4)

omit

The analyst

substitute

An analyst responsible for testing the sample

25 New section 13H

in division 2.5, insert

13H Oral fluid analysis statement

(1) As soon as practicable after an analysis of a sample of a person’s oral fluid is carried out under section 13G, the chief police officer must ensure the person is given a written statement that includes the following information:

(a) the date and the time the oral fluid sample was taken;
(b) the unique identifying number on the tamper-evident seal;
(c) the result of the analysis;
(d) the address where the preserved part of the oral fluid sample is being held;
Part 3
Road Transport (Alcohol and Drugs) Act 1977

Section 26

(e) that the person will be notified, in writing, of a request (if any) by the DPP under section 16C (Keeping of samples—request by DPP);

(f) that the person may, before the end of the period mentioned in section 13G (4) (b), ask the analyst to send the preserved part of the oral fluid sample to a laboratory nominated by the person, at the person’s expense.

(2) In this section:

*preserved part*—see section 13G (4).

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<td>, and a police officer must not begin or continue an analysis under section 12 or section 13E</td>
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<td><em>after</em> vehicle</td>
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<td><em>insert</em> or the driver trainer in the motor vehicle</td>
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<td><em>substitute</em> (i) unless the person was, or the officer has reasonable cause to suspect that the person was, the driver of or driver trainer in a motor vehicle when it was involved in an accident on a road or road related area; or</td>
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(ii) unless the officer has reasonable cause to suspect that the person has committed, or was the driver trainer during the commission of, an offence of culpable driving; or

(iii) unless the requirement is made immediately after a motor vehicle driven by the person, or in which the person was a driver trainer, has stopped at or near the place where the person usually lives and the officer making the requirement has followed the motor vehicle while it was being driven on the road.

29 Taking blood samples from people in custody

Section 15 (1)

after
a hospital
insert
or sampling facility

30 Section 15 (4)

after 1st mention of
hospital
insert
or at the sampling facility

31 Section 15 (4)

after last mention of
hospital
insert
or at the facility
taking blood samples from people in hospital

section 15aa (1) (c) (i)  

after

driver

insert

or driver trainer

Medical examination—offence against s 24 or culpable driving

section 16 (1)

substitute

(1) This section applies to a person who has been—

(a) required to undergo—

(i) an alcohol screening test, or to provide a sample of the person’s breath for analysis under section 12 (breath analysis); or

(ii) if it is practicable to do so—a drug screening test, or to provide a sample of the person’s oral fluid for analysis under section 13e (oral fluid—preliminary analysis); and

Examples—impracticability

1 drug screening device not readily available

2 drug screening test or oral fluid analysis cannot be conducted before time limits for testing the person expire

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see legislation act, s 126 and s 132).
(b) arrested on reasonable suspicion of having committed an
offence against section 24 (Driving under the influence of
intoxicating liquor or a drug) or an offence of culpable driving.

Examples—reasonable suspicion
1 the way the person was driving
2 the way the person is behaving
3 a breath analysis the person was required to undergo indicates that a
prescribed concentration of alcohol is present in the person’s breath

34 Section 16 (2)

*omit*

(other than a prescribed drug)

*insert*

, including a prescribed drug

35 Section 16 (3)

*after*

a hospital

*insert*

or sampling facility

36 Section 16 (4) to (6)

*after*

hospital

*insert*

or the sampling facility
37 Analysis of body samples
Section 16A (2) (a) and (b)

*omit*
(other than a prescribed drug)

*insert*
, including a prescribed drug

38 Keeping of samples—request by DPP
Section 16C (1) (a)

*omit*
a blood or a body sample

*substitute*
a blood, an oral fluid or other body sample

39 Section 16C (1) (b) (ii)

*after*
under

*insert*
section 13G (6) (Oral fluid—confirmatory analysis),

40 Section 16C (4), definition of *preserved part*, new paragraph (aa)

*before paragraph (a), insert*

(aa) in relation to an oral fluid sample— see section 13G (4); or
Section 16C (4), definition of preserved part, paragraph (b)

substitute

(b) in relation to a body sample (other than an oral fluid sample)—see section 16A (3).

Destruction of samples
Section 16D (1)

after
under
insert

section 13G (4) (Oral fluid—confirmatory analysis),

Section 16D (2)

after
under
insert

section 13G (4) (b),
44 New division 2.8

after section 18B, insert

Division 2.8 Search and seizure

18C Power to search person in custody

(1) A police officer may search a person who is taken into custody under the following sections and may take possession of anything found in the person’s possession:

(a) section 11 (Detention for breath analysis);
(b) section 13D (Detention for oral fluid analysis);
(c) section 15 (Taking blood samples from people in custody).

(2) For the purposes of the search, the officer may request the assistance of another police officer of the same sex as the person being searched.

(3) A person is entitled to the return of anything taken from the person under subsection (1) when the person ceases to be in custody, other than—

(a) a seizable item; or
(b) an item that may otherwise be seized or retained under another territory law.
(4) In this section:

**search** means a search of a person or of anything in the person’s possession, and may include—

(a) requiring the person to remove only the person’s overcoat, coat, jacket or a similar article of clothing and any footwear, gloves or headwear; and

(b) an examination of them.

**seizable item** means a seizable item under the *Crimes Act 1900*, part 10.

*Note* A seizable item means anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody (see *Crimes Act 1900*, pt 10).

### 45 Prescribed concentration of alcohol in blood or breath

**Section 19 (1) (a)**

*substitute*

(a) has been—

(i) the driver of a motor vehicle on a road or road related area; or

(ii) the driver trainer in a motor vehicle on a road or road related area; and

### 46 Section 19 (5), definition of relevant period

*after*

vehicle

*insert*

or the driver trainer in the vehicle
### Section 47

**Defence if person did not intend to drive motor vehicle**

**Section 19A**

*omit*

public street in a public place

*substitute*

road or road related area

### Section 19B (1) (b)

*omit*

not more than

*substitute*

less than

### Section 20 heading

*substitute*

20 Prescribed drug in oral fluid or blood—driver or driver trainer
50 Section 20 (1)

substitute

(1) A person commits an offence if the person—

(a) has been—

(i) the driver of a motor vehicle on a road or road related area; or

(ii) the driver trainer in a motor vehicle on a road or road related area; and

(b) has, within the relevant period, a prescribed drug in the person’s oral fluid or blood.

Maximum penalty:

(a) for an offence by a first offender—10 penalty units; and

(b) for an offence by a repeat offender—

(i) if the offender is the driver—25 penalty units, imprisonment for 3 months or both; and

(ii) if the offender is the driver trainer—20 penalty units.

51 Section 20 (4), definition of relevant period

after

vehicle

insert

or the driver trainer in the vehicle
### 52 Refusing to provide breath sample

**Section 22 (a)**

*substitute*

(a) has been—

(i) the driver of a motor vehicle on a road or road related area; or

(ii) the driver trainer in a motor vehicle on a road or road related area; and

### 53 Refusing to provide oral fluid sample

**Section 22A (1) (a)**

*substitute*

(a) has been—

(i) the driver of a motor vehicle on a road or road related area; or

(ii) the driver trainer in a motor vehicle on a road or road related area; and

### 54 Failing to stay for drug screening test

**Section 22B (1), note 1**

*after*

13B

*insert*

, s 13BA
55 Refusing blood test etc
Section 23 (1) (a)

Substitute

(a) has been—

(i) the driver of a motor vehicle on a road or road related area; or

(ii) the driver trainer in a motor vehicle on a road or road related area; and

56 Driver etc intoxicated
Section 24A (1)

Omit

Public street

Substitute

Road

57 Fines and imprisonment—s 19 offences
New section 26 (3)

Insert

(3) However, if the special driver convicted of an offence against section 19 (1) is a driver trainer, the person is not punishable by a penalty of imprisonment.
## Part 3
Road Transport (Alcohol and Drugs) Act 1977

### Section 58

<table>
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61 Evidentiary certificates—drug-related tests
Section 41AA (4) (a)

   after
   nurse
   insert
   practitioner

62 Evidentiary certificate—blood sample not taken
Section 41AC (b)

   after
   hospital
   insert
   or sampling facility

63 Evidence for insurance purposes
Section 41A (1) (i)

   substitute
   (i) evidence that a statement was given to the person under section 13H (Oral fluid analysis statement), section 15B (Blood analysis statement) or section 16B (Body sample statement);

64 Section 41A (1) (j)

   substitute
   (j) evidence of the contents of a statement given under section 13H, section 15B, or section 16B;
65  **Section 41A (2)**

before

section 15B

insert

section 13H,

66  **Section 41A (5), definition of relevant offence, paragraph (b)**

omit

Driving with prescribed drug in oral fluid or blood

substitute

Prescribed drug in oral fluid or blood—driver or driver trainer

67  **When police officer may move person’s motor vehicle**

**Section 48 (1) (b)**

after

section 11,

insert

section 13D,
68 Regulation-making power
New section 51 (2)

after the note, insert

(2) The Executive may also make regulations under this Act, prescribing other areas that are road related areas for the purposes of this Act.

69 Dictionary, note 3

insert

• road
• road related area

70 Dictionary, definition of disqualifying offence, paragraph (b)

omit

Driving with prescribed drug in oral fluid or blood

substitute

Prescribed drug in oral fluid or blood—driver or driver trainer

71 Dictionary, new definitions

insert

driver trainer—see section 4BA.

external territory driver licence—see the Road Transport (Driver Licensing) Act 1999, dictionary.

72 Dictionary, definitions of public place and public street

omit
73 Dictionary, new definition of sampling facility

*insert*

*Sampling facility* means a facility prescribed by regulation to which a person may be taken for the purpose of having a blood sample taken by a doctor or nurse for analysis under part 2 (Examination of people for alcohol or drugs).

*Examples—sampling facility*

1. a police station
2. a police vehicle equipped for the purpose of taking blood samples

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

74 Further amendments, mentions of public street or in a public place

*omit*

public street or in a public place

*substitute*

road or road related area

*in*

- section 9
- section 13B
- section 18A, definition of *accident*
- section 24
- dictionary, definition of *accident*
### Part 4  Road Transport (Driver Licensing) Regulation 2000

**Section 75**  
**Meaning of required medical standards**  
Section 15 (1)  
*omit*  
Incorporated

**Section 28 (3) (c) except note**  
*substitute*  
(c) a foreign driver licence issued under the law of a recognised country that corresponds to that class or a higher class.

**Section 29 (3) (c)**  
*substitute*  
(c) a foreign driver licence issued under the law of a recognised country corresponding to a full motorcycle licence.

**Section 30 (3) (c)**  
*substitute*  
(c) a foreign driver licence issued under the law of a recognised country corresponding to an Australian driver licence of the class applied for or a higher class.
79 Working out period a class or kind of licence has been held
Section 68

omit external driver licence
substitute external territory driver licence or a foreign driver licence issued under the law of a recognised country

80 New section 141

insert

141 Meaning of recognised country

(1) For this regulation, a recognised country, in relation to a foreign driver licence, means a country listed as a recognised country by Austroads and published on its website from time to time.

Note The list of recognised countries is available at www.austroads.com.au/overseas.html

(2) The Legislation Act, section 47 (6) does not apply to the list of recognised countries.

81 Dictionary, new definitions

insert

Austroads means Austroads Ltd ABN 16 245 787 323.

recognised country, in relation to a foreign driver licence—see section 141.
Part 5  Road Transport (General) Act 1999

82  Definitions—div 4.2
Section 61A, new definition of *driver trainer*

*insert*

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

83  Section 61A, definition of *immediate suspension offence* (or *suspension offence*), paragraph (a) (i)

*after*

driver

*insert*

*, other than a driver trainer,*

84  Dictionary, new definition of *driver trainer*

*insert*

*driver trainer*, for division 4.2 (Licence suspension, disqualification and related matters)—see section 61A.
Part 6  
Road Transport (Offences) Regulation 2005

85 Schedule 1 heading

substitute

Schedule 1  
Short descriptions, penalties and demerit points

(see ss 5, 6, 8, 17 and 18)

86 Schedule 1, part 1.3, items 3 and 4, column 3

after
doctor

insert

/authorised nurse practitioner
### Schedule 1, part 1.3, items 6 to 19

**substitute**

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<td>special driver, level 1, first offender</td>
<td>special driver drive motor vehicle on road/related area with level 1 or more alcohol in blood—first offender</td>
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<tr>
<td>6.2</td>
<td>special driver, level 1, repeat offender</td>
<td>special driver drive motor vehicle on road/related area with level 1 or more alcohol in blood—repeat offender</td>
</tr>
<tr>
<td>6.3</td>
<td>special driver, level 2, first offender</td>
<td>special driver drive/driver trainer in motor vehicle on road/related area with level 2 or more alcohol in blood—first offender</td>
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<tr>
<td>6.4</td>
<td>special driver, level 2, repeat offender</td>
<td>special driver drive/driver trainer in motor vehicle on road/related area with level 2 or more alcohol in blood—repeat offender</td>
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### Part 6  
**Road Transport (Offences) Regulation 2005**

**Section 87**

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<td>• special driver, level 3, repeat offender—driver</td>
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<td>• special driver, level 4, first offender—driver</td>
<td>special driver drive motor vehicle on road/related area with level 4 or more alcohol in blood—first offender</td>
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<td>special driver, level 4, repeat offender—driver</td>
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<td>person other than special driver, level 1, first offender</td>
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<td>6.16</td>
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<td>drive motor vehicle on road/related area with level 2 or more alcohol in blood—repeat offender</td>
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Section 87

| 6.17 | • person other than special driver, level 3, first offender | drive motor vehicle on road/related area with level 3 or more alcohol in blood—first offender | 10 pu/6 months prison/both |
| 6.18 | • person other than special driver, level 3, repeat offender | drive motor vehicle on road/related area with level 3 or more alcohol in blood—repeat offender | 10 pu/6 months prison/both |
| 6.19 | • person other than special driver, level 4, first offender | drive motor vehicle on road/related area with level 4 or more alcohol in blood—first offender | 15 pu/9 months prison/both |
| 6.20 | • person other than special driver, level 4, repeat offender | drive motor vehicle on road/related area with level 4 or more alcohol in blood—repeat offender | 20 pu/12 months prison/both |
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<td>driver of motor vehicle on road/related area with prescribed drug in oral fluid or blood—repeat offender</td>
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<td>driver trainer in motor vehicle on road/related area with prescribed drug in oral fluid or blood—repeat offender</td>
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Road Transport (Offences) Regulation 2005

#### Section 87

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<th>Repeat Offender—Driver Trainer</th>
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#### Section 87

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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au
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<td>first offender—driver</td>
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<td>30 pu/6 months prison/both</td>
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<td>first offender—driver trainer</td>
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### Part 6  
Road Transport (Offences) Regulation 2005

#### Section 87

<table>
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<tr>
<th>17</th>
<th>24 (1)</th>
<th>drive vehicle on road/related area under influence of intoxicating liquor/drug incapable of proper control of vehicle—</th>
<th>30 pu/6 months prison/both</th>
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<td>17.1</td>
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<td>drive vehicle on road/related area under influence of intoxicating liquor/drug incapable of proper control of vehicle—first offender</td>
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<td>drive vehicle on road/related area under influence of intoxicating liquor/drug incapable of proper control of vehicle—repeat offender</td>
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<td>18</td>
<td>24A</td>
<td>drive/ride/be in charge of vehicle/animal on road under influence of alcohol</td>
<td>50 pu/6 months prison/both</td>
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<td>19</td>
<td>47B</td>
<td>fail to comply with police officer’s direction not to drive</td>
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</tbody>
</table>
Part 7  
Spent Convictions Act 2000

88 How are traffic offences to be dealt with?  
Section 14 (1), new definition of *driver trainer*  

*insert*  

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

89  
Section 14 (4) (c)  

*after*  

*drivers*  

*insert*  

and driver trainers

90  
Section 14 (4) (c)  

*after first mention of*  

*driving*  

*insert*  

or driver training

91  
Section 14 (4) (c)  

*omit*  

*or driving*  

*insert*  

and driving or driver training
Endnotes

1 Presentation speech
Presentation speech made in the Legislative Assembly on 31 March 2011.

2 Notification
Notified under the Legislation Act on 12 May 2011.

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

I certify that the above is a true copy of the Road Transport (Alcohol and Drugs) Legislation Amendment Bill 2011, which was passed by the Legislative Assembly on 3 May 2011.

Clerk of the Legislative Assembly

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