



Australian Capital Territory

# **Motor Traffic (Alcohol and Drugs) Act 1977**

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## **About this republication**

### **The republished law**

This is a republication of the *Motor Traffic (Alcohol and Drugs) Act 1977* effective from 5 April 1993 to 31 August 1993.

### **Kinds of republications**

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.



Australian Capital Territory

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## **MOTOR TRAFFIC (ALCOHOL AND DRUGS) ACT 1977**

*As at 5 April 1993*

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**SCHEDULE 1  
DRUGS**





Australian Capital Territory

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## **MOTOR TRAFFIC (ALCOHOL AND DRUGS) ACT 1977**

An Act to Provide for the Detection of Persons who drive Motor Vehicles after consuming Alcohol or Drugs, for Offences by Those Persons, and to Provide Measures for the Treatment and Rehabilitation of Those Persons

### **PART I—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Motor Traffic (Alcohol and Drugs) Act 1977*.<sup>1</sup>

#### **Commencement**

2. This Act shall come into operation on a date to be fixed by the Minister by notice published in the *Gazette*.<sup>1</sup>

#### **Incorporation of the Motor Traffic Act**

3. The *Motor Traffic Act 1936* is incorporated, and shall be read as one, with this Act.

#### **Interpretation**

4. (1) In this Act, unless the contrary intention appears—

“approved analyst” means a person appointed by the Minister under section 6;

“approved breath analysis instrument” means an instrument of a type approved, or deemed to have been approved, under subsection 5 (1);

“approved operator” means a police officer authorized by the Commissioner of Police under section 6;

“approved screening device” means a device of a type approved by the Minister under section 5;

“breath analysis”, in relation to a person, means an analysis of a sample of the person’s breath carried out for the purposes of this Act by means of an approved breath analysis instrument;

“Court” means—

- (a) in relation to proceedings in or a matter before, or in relation to proceedings or matters that may be brought in or before, the Supreme Court—the Supreme Court; and
- (b) in relation to proceedings in or a matter before, or in relation to proceedings or matters that may be brought in or before, the Magistrates Court—the Magistrates Court;

“dangerous goods vehicle” means a vehicle on which a sign or marking is or is required to be exhibited pursuant to a provision of, or under any code prescribed by, the Dangerous Goods Regulation, 1978 of the State of New South Wales in its application in the Territory by virtue of the *Dangerous Goods Act 1984*;

“drive a motor vehicle” includes—

- (a) start or attempt to start the engine of a motor vehicle;
- (b) put or attempt to put in motion a motor vehicle; or
- (c) be in, and in charge of, a motor vehicle,

and the expressions “driver of a motor vehicle” and “person who drives a motor vehicle” have corresponding meanings;

“drug” means—

- (a) a substance specified in Schedule 1;
- (b) a substance that is specified in Schedule 1 or 2 to the *Drugs of Dependence Act 1989*; or

- (c) any other substance that, on its own or in combination with alcohol, may influence the driving of the person who has taken the drug;

“experienced driver” means a person who has held a licence granted under section 10 of the *Motor Traffic Act 1936* or under a corresponding law of a State or another Territory for a period of, or periods totalling, not less than 3 years;

“heavy motor vehicle” means—

- (a) a motor vehicle that has a manufacturer’s gross vehicle mass (within the meaning of the *Motor Vehicles (Dimensions and Mass) Act 1990*) exceeding 15 tonnes; or
- (b) a motor vehicle and trailer combination, or a combination of semi-trailer coupled to a motor vehicle, that has a manufacturer’s gross combination mass (within the meaning of that Act) exceeding 15 tonnes;

“medical practitioner” means a person who is a registered medical practitioner within the meaning of the *Medical Practitioners Registration Act 1930*, or a person who is an approved qualified person within the meaning of section 38A of that Act;

“offence involving alcohol or drugs” means—

- (a) an offence against Part III;
- (b) an offence against section 34, 38 or 40;
- (c) an offence of culpable driving arising out of the driving of a motor vehicle by a person under the influence of alcohol committed after the commencement of this Act;
- (d) an offence of culpable driving arising out of the driving of a motor vehicle by a person under the influence of alcohol committed before the commencement of this Act;
- (e) an offence against subsection 13A (5) or against Part VIIIA of the *Motor Traffic Act 1936* as amended and in force at any time before the commencement of this Act; or
- (f) an offence against subsection 193A (4) or (5) of the *Motor Traffic Act 1936* as amended and in force before the commencement of this Act, being an offence by a person

whose driving licence was suspended or cancelled, or who has been disqualified from holding a driving licence, on conviction for an offence referred to in paragraph (d) or (e);

“one-way box” means a locked box, with a hole capable of receiving containers of blood samples, from which the containers cannot be removed unless the box is unlocked with a key kept by an approved analyst;

“prescribed concentration” means—

- (a) in the case of a person under the age of 25 years who is not an experienced driver—.02 grams of alcohol per 100 millilitres of blood;
- (b) in the case of the driver of a heavy motor vehicle, a dangerous goods vehicle or a public motor vehicle—.02 grams of alcohol per 100 millilitres of blood; or
- (c) in any other case—.05 grams of alcohol per 100 millilitres of blood;

“public place” means—

- (a) an off-street parking area;
- (b) an area available for the parking of motor vehicles on, or in the vicinity of licensed premises within the meaning of the *Liquor Act 1975*;
- (c) an area available for the parking of motor vehicles by persons attending a drive-in theatre or other open air theatre;
- (d) a loading area;
- (e) a wharf, pier or jetty;
- (f) the foreshores, as defined in the *Lakes Act 1976*, of a lake as defined in that Act; or
- (g) any part of a park, reserve, recreational or sporting ground, race course or other open place, to which the public has access whether with or without payment for admission or which is used by the public;

“public street” means a street, road, lane or footpath (including a street, road, lane or footpath on or forming part of a bridge) that is open to or used by the public and includes an entrance driveway leading to a parcel of land;

“screening test” in relation to a person, means a test of sample of the breath of the person carried out for the purposes of this Act by means of an approved screening device.

(2) A reference in this Act to a public place shall be read as including a reference—

- (a) to the entrances to, the exits from, and the passages and driveways in, a public place; and
- (b) to the passageways and driveways on a parcel of land on which licensed premises within the meaning of the *Liquor Act 1975* are erected.

#### **Approval of instruments etc.**

5. (1) Where the Minister is of the opinion that a particular type of instrument—

- (a) is designed and constructed to ascertain the concentration of alcohol present in a sample of a person’s breath and is capable of recording that concentration in grams per 100 millilitres of blood; and
- (b) is suitable for use in analyses under Part II;

the Minister may, by notice in the *Gazette*, approve that type of instrument for the purposes of this Act.

(2) The Minister may, by notice in the *Gazette*, approve devices of a type described in the notice to be approved screening devices for the purposes of this Act if he or she is of opinion that—

- (a) devices of that type have been designed and made for the purpose of indicating, when a sample of the breath of a person is exhaled into the device, whether alcohol is present in the blood of the person and, if so, of giving an indication of the concentration of alcohol in the blood of the person; and
- (b) devices of that type are suitable devices for use in tests under Part II of this Act.

**Approval of operators and analysts**

**6. (1)** The Commissioner of Police may, by notice in writing, authorize a police officer to carry out breath analyses if the officer has—

- (a) before or after the commencement of this Act, undergone a course approved, before or after that commencement, by the Minister as a course for the instruction of police officers in the carrying out of breath analyses; and
- (b) completed the course to the satisfaction of the Commissioner of Police.

**(3)** The Minister may, by notice in writing, appoint such analysts as he or she considers necessary for the purposes of this Act.

**Notices to be published in the *Gazette***

**7.** A copy of each notice under subsection 5 (2) and section 6 shall be published in the *Gazette*.

**PART II—EXAMINATION OF PERSONS FOR ALCOHOL OR DRUGS****Power to require screening test where a vehicle not involved in an accident**

**8.** A police officer may require a person to undergo a screening test in accordance with the directions of that officer where—

- (a) the person is the driver of a motor vehicle on a public street or in a public place; or
- (b) the police officer has reasonable cause to suspect that—
  - (i) the person was shortly before the requirement is made the driver of a motor vehicle on a public street or in a public place.

**Power to require screening test where motor vehicle involved in accident**

**9.** Where a motor vehicle is involved in an accident on a public street or in a public place, a police officer may require a person to undergo a screening test in accordance with the directions of that officer—

- (a) where the police officer has reasonable cause to suspect that the person was the driver of the motor vehicle at the time of the accident; or
- (b) where—
  - (i) the police officer does not know or has doubt as to who was the driver of 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.

**Power to require screening test in case of culpable driving**

**10.** A police officer who has reasonable cause to suspect that a person has committed an offence of culpable driving may require the person to undergo a screening test in accordance with the directions of that officer.

**Written statement relating to screening test**

**10A. (1)** As soon as possible after a person has undergone a screening test in pursuance of a requirement made by a police officer under section 8, 9 or 10 and in accordance with the directions of the officer, the officer shall, if the screening test indicates to the police officer that the concentration of alcohol in the blood of the person is equal to or more than the prescribed concentration, give to the person a written statement, signed by the officer containing details of—

- (a) the date and time when the test was carried out;
- (b) the place where the test was carried out;
- (c) the results of the test; and
- (d) the name, rank and identification number of the police officer who carried out the test.

**(2)** As soon as possible after a person has refused or failed to undergo a screening test in pursuance of a requirement made by a police officer under section 8, 9 or 10 and in accordance with the directions of the officer, the officer shall give to the person a written statement, signed by the officer, stating that the person has so refused or failed to undergo a screening test and containing details of—

- (a) the date and time when the requirement was made;
- (b) the place where the requirement was made; and

- (c) the name, rank and identification number of the police officer who made the requirement.

### **Detention for the purpose of breath analysis**

#### **11. (1) Where—**

- (a) a person undergoes a screening test in pursuance of a requirement made by a police officer under section 8, 9 or 10 and the approved screening device used in the screening test indicates to the police officer that the concentration of alcohol in the blood of the person is equal to or more than the prescribed concentration;
- (b) a person who has been required by a police officer under section 8, 9 or 10 to undergo a screening test refuses to undergo the screening test; or
- (c) a person who has been required by a police officer under section 8, 9 or 10 to undergo a screening test fails to undergo the screening test in accordance with the direction of the police officer,

the police officer may take the person into custody and, if so, the officer shall take the person or shall place the person in the custody of another police officer who shall take the person, as soon as practicable to a Police Station or some other convenient place for the purpose of having a breath analysis of the person carried out.

#### **(2) Where—**

- (a) pursuant to paragraph (1) (a) the approved screening device used in the screening test indicates to the police officer that the concentration of alcohol in the blood of the person is equal to or more than .02 grams of alcohol per 100 millilitres of blood; and
- (b) the police officer has reasonable grounds to believe that the person is a person referred to in paragraph (a) or (b) of the definition of “prescribed concentration” in section 4;

subsection (1) applies in relation to that person accordingly.

### **Breath analysis**

**12. (1)** Subject to section 14, a person who has been taken into custody in pursuance of section 11 shall, when required to do so by a police officer, provide, in accordance with the reasonable directions of that officer, a sample of his or her breath for breath analysis.

- (2) A breath analysis shall be carried out by an approved operator.
- (3) The regulations may—
- (a) make provisions for and in relation to the procedures to be followed by an approved operator immediately before commencing a breath analysis by means of an approved breath analysis instrument, during the breath analysis and immediately after the completion of the breath analysis;
  - (b) make provision that, unless specified conditions exist when carrying out, and specified results are obtained from the procedures to be followed before commencing, a breath analysis by means of the instrument to be used in the breath analysis, the approved operator shall not use that instrument in carrying out the breath analysis; and
  - (c) make provision that, unless specified results are obtained from the procedures to be followed immediately after the completion of the breath analysis, the analysis of the sample of breath is to be disregarded for the purposes of this Act.

(3A) Regulations made for the purposes of subsection (3) may prescribe different procedures in respect of different types of approved breath analysis instruments.

(4) Where, by reason of regulations made for the purposes of paragraph (3) (c), an analysis of the sample of the breath of a person is to be disregarded for the purposes of this Act, the police officer referred to in subsection (1) may, if another breath analysis instrument is available at the Police Station or other place at which the requirement under subsection (1) is made, require the person to provide in accordance with the reasonable directions of that officer, a sample of his or her breath for breath analysis by means of that other instrument.

(5) As soon as practicable after the breath analysis has been carried out, the approved operator who carried out the breath analysis shall give to the person a written statement, signed by the approved operator, containing the particulars required by the regulations to be included in such a statement.

### **Precautions for privacy**

**13. (1)** The approved operator carrying out a breath analysis shall take all steps that are reasonably practicable to ensure that it is not readily

apparent to members of the public that the breath analysis is being carried out.

(2) Subsection (1) does not apply where the breath analysis is carried out at a police station.

### **Restrictions on screening tests and breath analyses**

**14. (1)** A police officer shall not require a person to undergo a screening test under section 8, 9 or 10 or require a person to provide a sample of his or her breath for breath analysis under section 12, and an approved operator shall not commence or continue the breath analysis of a person under section 12—

- (a) in the case of an accident—
  - (i) where the person is taken to hospital—if more than 2 hours have elapsed since his or her arrival at the hospital; or
  - (ii) in any other case—if more than 2 hours have elapsed since the accident occurred; or
- (c) in any other case—if more than 2 hours have elapsed since the person ceased to be the driver of the motor vehicle.

**(1A)** Where subparagraph (1) (a) (ii) applies and—

- (a) a police officer attending the scene of the accident has doubt as to the time at which the accident occurred;
- (b) the relevant person is found at or near the scene of the accident; and
- (c) the police officer has reasonable cause to suspect that the person was in the vehicle at the time of the accident;

subsection (1) applies in relation to that person if more than 2 hours have elapsed since the person was found.

(2) A police officer shall not require a person to undergo a screening test under section 8, 9 or 10 or to provide a sample of his or her breath for breath analysis under section 12—

- (a) if it appears to the police officer that it may be, by reason of injury suffered by the person or otherwise, dangerous or not practicable for that person to undergo a screening test or to submit his or her breath for analysis;

- (b) if the person is in hospital and the medical practitioner attending the person, after being informed by the police officer of his or her intention to make the requirement, certifies in writing his or her opinion that compliance with the requirement would be detrimental to the person's medical condition; or
- (c) in the case of a person who is at his or her place of abode—
  - (i) unless the person was, or the police officer has reasonable cause to suspect that the person was, the driver of a motor vehicle at the time when it was involved in an accident on a public street or in a public place;
  - (ii) unless the police officer has reasonable cause to suspect that the person has committed an offence of culpable driving; or
  - (iii) unless the requirement is made immediately after a motor vehicle driven by the person has stopped at or near the person's place of abode and the police officer making the requirement has followed the motor vehicle while it was being driven on the public street.

### **Taking blood samples**

#### **15. (1) Where—**

- (a) a police officer does not, by reason of paragraph 14 (2) (a) or (b) require a person to undergo a screening test or to provide a sample of his or her breath for breath analysis; or
- (b) because the breath analysis instrument available is not in working order or an approved breath analysis instrument is not available, it is not practicable to carry out the breath analysis,

the police officer may require the person to permit a sample of his or her blood to be taken by a medical practitioner for analysis and, if the person is not in hospital, may take the person into custody and take the person, or place the person in the custody of another police officer who shall take the person, as soon as practicable to a hospital for that purpose.

(2) A requirement shall not be made under subsection (1) after the expiration of whichever of the periods specified in subsection 14 (1) or (1A) is applicable in relation to the person.

(3) A sample of a person's blood shall be taken as soon as practicable after the arrival of the person at hospital and shall not be taken more than 2 hours after the arrival of the person at hospital.

(4) A medical practitioner may, if he or she is of the opinion that a person is, by reason of his or her medical condition, incapable of giving or refusing his or her permission to the taking of a sample of his or her blood, take a sample of the person's blood when requested by a police officer to do so.

(4A) A police officer shall not make a request under subsection (4) after the end of whichever of the periods specified in subsection 14 (1) or (1A) is applicable in relation to the person.

(5) The medical practitioner taking a sample of a person's blood under this section shall—

- (a) take a sample of that person's blood in the presence of a police officer;
- (b) place approximately equal quantities of the sample blood into 2 containers and, on a label affixed to each container, sign his or her name and write the name of the person from whom the sample was taken and the date on which and time at which the sample was taken; and
- (c) ensure that each container is sealed.

(6) The medical practitioner shall—

- (a) if he or she is of the opinion that the person was, at the time the blood sample was taken, incapable of giving or refusing his or her permission to take a sample of his or her blood—put both sealed containers in a one-way box; and
- (b) in any other case—give 1 sealed container to the person and put the other sealed container in a one-way box.

(7) The police officer shall arrange for the container or containers to be collected from the one-way box by an approved analyst as soon as practicable.

(8) The police officer shall give the person a written statement within a reasonable time, having regard to the person's medical condition, after the analysis under section 15A is carried out.

(9) The statement shall specify—

- (a) the date on which and the time at which the blood sample was taken;
- (b) the place where the blood sample was taken;
- (c) the result of the analysis carried out under section 15A; and
- (d) the address at which the blood sample is being held.

**(10)** If both sealed containers were put in the one-way box for collection by an approved analyst, the statement shall also inform the person to the effect that an unanalysed sample of the person's blood may be obtained from the analyst, within 6 months after the blood sample was taken, on the request of the person or of another person authorised in writing by the first-mentioned person to collect the blood sample.

#### **Analysis of blood samples**

**15A. (1)** If only 1 sealed container of a particular person's blood has been put in a one-way box for collection by an approved analyst, the analyst shall analyse the blood to ascertain the concentration of alcohol in the blood.

**(2)** If 2 sealed containers of a particular person's blood have been put in a one-way box for collection by an approved analyst, the analyst shall—

- (a) analyse the blood in 1 of the containers to ascertain the concentration of alcohol in the blood; and
- (b) keep the other container sealed and under refrigeration until—
  - (i) the person, or another person authorised in writing by the first-mentioned person to collect the unanalysed blood sample, requests the analyst to give him or her that sample; or
  - (ii) the period of 6 months after the blood was taken from the person ends;

whichever happens first.

#### **Medical examinations**

**16. (1)** This section applies to a person who—

- (a) has been required to undergo a screening test or to provide a sample of his or her breath for analysis; and

(b) has been arrested on reasonable suspicion of having committed an offence against section 24 or an offence of culpable driving.

(2) Where a police officer has reasonable cause to suspect—

(a) that a person to whom this section applies has in his or her body a drug other than alcohol; or

(b) that the behaviour of the person does not arise, or does not wholly arise, from the presence of alcohol in his or her body,

the police officer may require that person to submit to a medical examination in accordance with this section for the purpose of ascertaining whether the condition of the person is caused, or contributed to, by the presence in his or her body of a drug other than alcohol.

(3) If the person is not in hospital, the police officer may take the person into custody and take the person, or place him or her in the custody of another police officer who shall take the person, as soon as practicable to a hospital for the purposes of the medical examination.

(4) A medical practitioner requested by a police officer to carry out a medical examination of a person under this section may—

(a) carry out the medical examination; and

(b) require the person to give, or permit the taking of, samples from the body of the person,

for the purpose of ascertaining whether the condition of the person is caused by, or contributed to by, the presence in his or her body of a drug other than alcohol.

(5) A medical practitioner who takes, or to whom is given, a sample from the body of the person shall—

(a) place approximately equal quantities of the sample into 2 containers and, on a label affixed to each container, sign his or her name and endorse the name of the person from whom the sample was taken and the date on which and the time when the sample was taken;

(b) ensure that each container is sealed; and

(c) give one of the containers to the person and the other container to the police officer who made the requirement.

(6) The police officer shall arrange for the sample in the container given to him or her to be analysed by an approved analyst.

**Circumstances in which a medical practitioner may refuse to take a blood sample or carry out a medical examination**

17. A medical practitioner shall not take a sample of a person's blood under section 15 or carry out a medical examination or take, or require the taking of, a sample from the body of a person under section 16—

- (a) if the practitioner is of the opinion that to do so would be detrimental to that person's medical condition;
- (b) after the expiration of the period of 2 hours after the arrival of the person at hospital; or
- (c) if the person required to submit to the medical examination, to give or to permit the taking of the sample of blood or other body sample objects to doing so and persists in objecting after the medical practitioner or a police officer has informed the person that, unless the objection is based on religious or other conscientious grounds or on medical grounds, the refusal may constitute an offence punishable as provided by this Act.

**Rights and protection of police officers and medical practitioners**

18. (1) A police officer to whom this section applies who, in the exercise or intended exercise of a power conferred by this Act, takes a person into custody and takes the person to a place for the purpose of this Act, is not liable, by reason only of the taking into custody of the person and the holding of the person in custody, in an action arising out of the taking into custody of the person and holding of the person in custody.

(2) Subsection (1) applies to—

- (a) a police officer who believes on reasonable grounds that a person who has been taken into custody is liable to be taken into custody; and
- (b) where such a police officer has taken a person into custody and has placed the person in the custody of another police officer, that other police officer.

(3) A person who is taken into custody in relation to an offence against this Act shall not be held in custody after—

- (a) where a sample of the breath of the person has been analysed—the time when the approved operator gives to the person the written statement referred to in subsection 12 (5);
- (b) where the person is required to permit the taking of a sample of his or her blood or to submit to a medical examination—the sample of the blood of the person has been taken or the medical examination is completed; or
- (c) the expiration of whichever of the periods referred to in subsection 14 (1) is applicable in relation to the person.

(4) Nothing in section 15 or 16 shall be construed as requiring a medical practitioner to take a sample of the blood of a person or to carry out a medical examination of a person.

(5) The Territory shall indemnify and keep indemnified a medical practitioner—

- (a) who takes, for the purposes of a blood test, a sample of the blood of a person in accordance with section 15;
- (b) who carries out a medical examination of a person under section 16; or
- (c) who takes or requires the taking of a body sample under section 16,

in respect of any damages that the practitioner becomes liable to pay as a result of the taking of the sample or the carrying out of the medical examination.

(6) Subsection (5) applies whether the person was or was not capable, by reason of his or her mental condition, of giving or refusing consent to the taking of a sample of blood or to the medical examination.

### **PART III—OFFENCES**

#### **Prescribed blood alcohol concentration exceeded**

**19. (1)** A person who—

- (a) has been the driver of a motor vehicle on a public street or in a public place; and
- (b) has, within the relevant period, a concentration of alcohol in his or her blood equal to or more than the prescribed concentration;

is guilty of an offence.

(2) In proceedings for an offence against subsection (1), evidence may be given of the concentration of alcohol in the person's blood as determined by—

- (a) an analysis of a sample of the person's breath or blood carried out in accordance with this Act; or
- (b) any other analysis.

(3) In paragraph (1) (b)—

“relevant period” means the period commencing when the person ceased to be the driver of the vehicle and ending at the latest time at which—

- (a) a breath analysis of the person may be carried out in accordance with this Act; or
- (b) where section 15 applies—a sample of the person's blood may be taken in accordance with that section.

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

21. Where a person charged with an offence against section 19 was the driver of the motor vehicle only for the reason that he or she was in, and in charge of, a motor vehicle on a public street in a public place, it is a defence if the person charged establishes that—

- (a) he or she had not started, or attempted to start, the motor vehicle and had not put, or attempted to put, the motor vehicle in motion; and
- (b) he or she did not intend to drive the motor vehicle until a time when the concentration of alcohol in his or her blood would be less than a concentration equal to the prescribed concentration.

### **Refusal to provide sample of breath for analysis**

22. A person who—

- (a) has been the driver of a motor vehicle on a public street or in a public place; and
- (b) has, in accordance with the provisions specified in this Act, been required to provide a sample of breath for breath analysis,

is guilty of an offence if—

- (c) he or she refuses to provide a sample of breath for analysis; or
- (d) he or she fails or refuses to provide a sample of breath in accordance with the reasonable directions of the police officer who made the requirement.

### **Refusal to submit to blood test or medical examination**

**23. (1)** A person who—

- (a) has been the driver of a motor vehicle on a public street or in a public place; and
- (b) has, in accordance with the provisions specified in this Act, been required to permit a sample of blood to be taken for analysis,

is guilty of an offence if he or she fails or refuses to permit the sample to be taken for that purpose.

**(2)** A person who is required under section 16 to undergo a medical examination is guilty of an offence if—

- (a) he or she fails or refuses to submit to the medical examination; or
- (b) he or she fails or refuses, when required by the medical practitioner conducting the examination, to give or permit the taking of a sample from his or her body for analysis.

**(3)** It is a defence to a prosecution for an offence against subsection (1) or (2) if the person charged establishes that the failure or refusal was based on religious or other conscientious grounds or on medical grounds.

### **Driving under the influence of intoxicating liquor or a drug**

**24. (1)** A person who drives a motor vehicle on a public street or in a public place while under the influence of intoxicating liquor or of a drug to such an extent as to be incapable of having proper control of the motor vehicle is guilty of an offence.

**(2)** A charge for an offence against subsection (1) is not open to objection on the ground only that it alleges that the person charged was under the influence of intoxicating liquor or of a drug and on the hearing of such a charge—

- (a) evidence that the person was under the influence of intoxicating liquor or of a drug or of intoxicating liquor and a drug is admissible; and
  - (b) if the evidence establishes that the person was under the influence either of intoxicating liquor, of a drug or both intoxicating liquor and a drug, the person may be convicted of the offence.
- (3)** Where—
- (a) a person is charged with an offence against subsection (1); and
  - (b) the charge is made only for the reason that the person was in, and in charge of, the motor vehicle on a public street or in a public place,

it is a defence if the person charged establishes that—

- (c) he or she had not started, or attempted to start, the engine of the motor vehicle and had not put, or attempted to put, the motor vehicle in motion; and
- (d) he or she did not intend to drive the motor vehicle while under the influence of intoxicating liquor, of the drug or both.

## **PART IV—PENALTIES**

### **Interpretation**

**25. (1)** In this Part—

“corresponding offence” means an offence against a law of a State or Territory, whether in force before or after the commencement of this Act, arising out of the driving of a motor vehicle by a person who is or may be affected by the consumption of alcohol or a drug or both;

“first offender” means—

- (a) a person who is not a previous offender; or
- (b) a person who, having been a previous offender, has, by reason of subsection (4) or (5), ceased to be a previous offender;

“previous offender” means a person who is convicted of an offence against this Act and has previously been convicted of an offence against this Act or of a corresponding offence;

“traffic infringer” means a person on whom a traffic infringement notice has been served in respect of an offence against section 19 where—

- (a) the penalty referred to in paragraph 26A (f) has been paid; or
- (b) that penalty has not been paid and—
  - (i) that notice has not been withdrawn under subsection 180A (4) of the *Motor Traffic Act 1936*; and
  - (ii) the Court has not dismissed an information laid in respect of the offence to which that notice relates.

(2) For the purposes of this Part, a person shall be regarded as having previously been convicted of an offence against this Act, or of a corresponding offence if it is proved that the offence was committed at a time or on a date earlier than the time or date at or on which an offence against this Act is proved to have been committed by the person.

(3) Where it is proved that, on the hearing of proceedings against a person for an offence against this Act or for a corresponding offence, the court before which the proceedings were heard found that the offence had been proved but, without proceeding to a conviction, discharged the person, that person shall, for the purposes of this Part, be deemed to have been convicted of that offence.

(4) For the purposes of this Part, a person, who has been dealt with by the Supreme Court under section 90A of the *Magistrates Court Act 1930* upon committal in accordance with that section for an offence of culpable driving, shall be deemed to have been convicted of that offence.

(5) Where, on the occasion on which a person was previously convicted of an offence against this Act or of a corresponding offence, his or her licence to drive a motor vehicle was suspended or cancelled or the person was disqualified from driving a motor vehicle, the person shall be taken to have ceased to be a previous offender if and only if—

- (a) the person has again become the holder of a licence to drive a motor vehicle;
- (b) the period that commenced on the date on which he or she again became the holder of the licence referred to in paragraph (a) and

ended on the date on which he or she is convicted of the offence against this Act is not less than 5 years; and

- (c) the person has, throughout the period referred to in paragraph (b), been the holder of a licence to drive a motor vehicle.

(6) Where, on the occasion on which a person was previously convicted of an offence against this Act or of a corresponding offence, his or her licence to drive a motor vehicle was not suspended or cancelled or the person was not disqualified from driving a motor vehicle, the person shall be taken to have ceased to be a previous offender if and only if the person has been the holder of a licence for a period of not less than 5 years after the date on which he or she was previously convicted.

(7) In subsections (5) and (6), a reference to a licence to drive a motor vehicle shall not be read as including a special licence to drive a motor vehicle granted under section 13A of the *Motor Traffic Act 1936* or of that Act as amended and in force immediately before the commencement of this Act, under a corresponding provision of a law of a State or Territory or a special licence granted under section 36 of this Act or under a corresponding provision of a law of a State or Territory.

### **Penalties for offences by first offenders**

26. The penalty for an offence by a first offender against section 19, 22, 23 or 24 is a fine not exceeding \$1,000.

### **First offenders—traffic infringement notice**

26A. Where a police officer has reason to believe that—

- (a) a person has committed an offence against section 19;
- (b) that person is not a traffic infringer;
- (c) that person is a person to whom the prescribed concentration of .05 grams of alcohol per 100 millilitres of blood applies; and
- (d) the prescribed concentration has not been exceeded by more than .03 grams of alcohol per 100 millilitres of blood;

section 180A of the *Motor Traffic Act 1936* applies to that offence as if—

- (e) that offence were a prescribed offence for the purposes of that section; and
- (f) the prescribed penalty for the purposes of that section were \$500 for that offence.

**Penalties for offences by previous offenders**

27. The penalty for an offence by a previous offender against section 19, 22, 23 or 24 is a fine not exceeding \$2,000.

**Circumstances in which Court may impose sentence of imprisonment**

28. (1) Where—

- (a) a person is convicted of an offence against section 19, 22, 23 or 24; and
- (b) the Court considers that, in all the circumstances and having regard to the antecedents of the person (including convictions for offences against this Act, against the *Motor Traffic Act 1936* or against a law of a State or Territory that makes corresponding provisions), that it is appropriate to do so,

the Court may, in addition to, or in substitution of, a pecuniary penalty, sentence the person to a term of imprisonment not exceeding—

- (c) in the case of an offence by a first offender—6 months; or
- (d) in the case of an offence by a previous offender—12 months.

(2) Where—

- (a) a person to whom the prescribed concentration of .05 grams of alcohol per 100 millilitres of blood applies is convicted of an offence against section 19; and
- (b) the prescribed concentration has not been exceeded by more than .03 grams of alcohol per 100 millilitres of blood;

subsection (1) does not apply.

**Conditional release of offenders after conviction**

29. (1) Where a person is convicted of an offence against this Act, the Court, on an application by the convicted person, may, instead of ordering the convicted person to pay a pecuniary penalty or sentencing him or her to a term of imprisonment, order that the person be discharged upon giving security, with or without sureties, by recognizance or otherwise, to the satisfaction of the Court that—

- (c) he or she will be of good behaviour for such period, not exceeding 2 years, as the Court thinks fit;

- (d) he or she will, during the period so specified or such shorter period as the Court specifies in the order, submit to treatment at a referral centre established under Part VIII in accordance with the reasonable requirements of the person in charge of the centre;
- (e) he or she will, during the period so specified, comply with such conditions (which conditions may include conditions relating to the attendance at the referral centre specified in the order) as the Court thinks fit to specify in the order; and
- (f) he or she will pay to the Territory any amount, not exceeding the amount of the pecuniary penalty that might have been imposed on the conviction by specified instalments as provided in the order.

**(2)** Where—

- (a) a person is discharged upon giving security as required by subsection (1); and
- (b) an information is laid before a Magistrate or the Registrar of the Court that the person has failed to comply with any of the conditions specified in the order,

the Magistrate or Registrar may issue a summons requiring the person to appear before the Court and to show cause why he or she should not be dealt with by the Court under this section or, if the information is laid on oath, the Magistrate or Registrar may issue a warrant for the arrest of the person and for the person to be brought before the Court to be dealt with under subsection (3).

**(3)** Where a person appears before the Court on a summons or warrant issued under subsection (2), the Court may, if satisfied that the person has failed to comply with the conditions specified in the order, impose on the person any penalty which the Court would, if the person had then and there been convicted of the offence originally charged, be empowered to impose or make any order (including a further order under subsection (1)) which the Court would then be empowered to make.

**(4)** The Court may, when making an order in pursuance of subsection (3), also order that any recognizance given by the person or by a surety for him or her be forfeited and that any other security given by or in respect of him or her be enforced.

**Power of the Court to mitigate total amount to be paid by convicted person**

**30. (1)** Where the Court makes an order under subsection 29 (1), the Court may include in the order a direction that, if the convicted person has, during a specified period, complied with the conditions specified in the order, the person should have liberty to apply for an order under this section.

**(2)** On an application under this section, the Court may, after giving notice of the application to such person or persons as it thinks fit and upon hearing the applicant and the person or persons to whom notice of the application has been given, order that the applicant be no longer required to pay any further instalments and may make such other order in relation to the conditions as it thinks fit.

**(3)** Where an order is made under subsection (2) that a person is no longer required to pay any further instalments, the person and any surety each cease to be liable for the payment of any further instalments.

**Suspension or cancellation of licence or disqualification—first offenders**

**31. (1)** Where a first offender is convicted by a Court of an offence referred to in paragraph (a), (b) or (c) of the definition of “offence involving alcohol or drugs” in subsection 4 (1), the Court shall—

- (a) if the first offender is the holder of a driving licence—suspend the driving licence for such a period, being a period of not less than 3 months, as the Court directs or, if the Court considers the circumstances warrant it doing so, cancel the licence and direct that the person be disqualified from holding a driving licence unless and until such time as the Court otherwise orders;
- (b) if the first offender is a person deemed to be licensed to drive a motor vehicle under section 107 or 108 of the *Motor Traffic Act 1936*—disqualify him or her from holding a driving licence for such a period, being a period of not less than 3 months, as the Court directs or, if the Court considers the circumstances warrant it doing so, disqualify him or her from holding a driving licence unless and until the Court otherwise orders; or
- (c) if the first offender does not hold a driving licence and is not a person referred to in paragraph (b)—disqualify him or her from holding a driving licence for such a period, being a period of not

less than 3 months, as the Court directs or, if the Court considers the circumstances warrant it so doing, disqualify him or her from holding a driving licence unless and until the Court otherwise orders.

(2) Where—

- (a) a person to whom the prescribed concentration of .05 grams of alcohol per 100 millilitres of blood applies is convicted of an offence against section 19; and
- (b) the prescribed concentration has not been exceeded by more than .03 grams of alcohol per 100 millilitres of blood;

subsection (1) does not apply.

**Cancellation and disqualification—previous offenders**

**32.** (1) Where a previous offender is convicted by a Court of an offence referred to in paragraph (a), (b) or (c) of the definition of “offence involving alcohol or drugs” in subsection 4 (1), the Court shall—

- (a) if the previous offender is the holder of a driving licence—cancel the licence and direct that he or she be disqualified from holding a driving licence unless and until the Court otherwise orders; or
- (b) if the previous offender is not the holder of a driving licence or is a person deemed to be licensed under section 107 or 108 of the *Motor Traffic Act 1936*—disqualify him or her from holding a driving licence unless and until the Court otherwise orders.

(2) The powers conferred on a Court by this section are in addition to any other powers of the Court.

(3) Where the Magistrates Court, in pursuance of section 92A of the *Magistrates Court Act 1930*, commits a person to the Supreme Court for sentence, subsections (1) and (2) apply as if the person had been convicted by the Supreme Court.

(4) Where a Court makes an order under this section, the Court shall cause particulars of the order to be forwarded to the Registrar of Motor Vehicles.

(5) Where—

- (a) a previous offender to whom the prescribed concentration of .05 grams of alcohol per 100 millilitres of blood applies is convicted of an offence against section 19; and
- (b) the prescribed concentration has not been exceeded by more than .03 grams of alcohol per 100 millilitres of blood;

subsection (1) does not apply.

**(6)** Where—

- (a) a traffic infringer to whom the prescribed concentration of .05 grams of alcohol per 100 millilitres of blood applies is convicted of an offence against section 19; and
- (b) the prescribed concentration has not been exceeded by more than .03 grams of alcohol per 100 millilitres of blood;

the Court shall—

- (c) if the traffic infringer is the holder of a driving licence—suspend the driving licence for such a period, being a period of not more than 6 months, as the Court directs or, if the Court considers the circumstances warrant it doing so, cancel the licence and direct that the person be disqualified from holding a driving licence unless, or until such time as, the Court otherwise orders;
- (d) if the traffic infringer is a person deemed to be licensed to drive a motor vehicle under section 107 or 108 of the *Motor Traffic Act 1936*—disqualify him or her from holding a driving licence for such a period, being a period of not more than 6 months, as the Court directs or, if the Court considers the circumstances warrant it doing so, disqualify him or her from holding a driving licence unless, or until such time as, the Court otherwise orders; or
- (e) if the traffic infringer does not hold a driving licence and is not a person referred to in paragraph (b)—disqualify him or her from holding a driving licence for such a period, being a period of not more than 6 months, as the Court directs or, if the Court considers the circumstances warrant it so doing, disqualify him or her from holding a driving licence unless, or until such time as, the Court otherwise orders.

**Effect of suspension or cancellation of a licence**

**33. (1)** Where a driving licence is suspended for a period under this Act, the holder of the licence shall, from the date of the suspension, cease to be licensed to drive a motor vehicle and shall, subject to Part V, be disqualified from holding a driving licence for the period of the suspension.

**(2)** Where a licence to drive a motor vehicle is cancelled under this Act, the holder of the licence shall, from and including the date of the cancellation, cease to be the holder of a licence to drive a motor vehicle and shall be disqualified from holding a licence to drive a motor vehicle unless and until the Court otherwise orders.

**Driving while licence suspended or cancelled**

**34. (1)** Where a person's driving licence has been suspended for a period, or a person has been disqualified from holding a licence for a period, on conviction for an offence involving alcohol or drugs, the person is guilty of an offence if during that period—

- (a) he or she obtains a driving licence other than a special licence under Part V; or
- (b) he or she drives a motor vehicle except in pursuance of such a special licence.

**(2)** Where a person's driving licence has been cancelled, or the person has been disqualified from holding a driving licence unless and until the Court otherwise orders, on conviction for an offence involving alcohol or drugs, the person is guilty of an offence if—

- (a) he or she obtains a driving licence otherwise than in pursuance of an order of the Court under Part VI; or
- (b) he or she, not having been granted a licence in pursuance of an order of the Court under Part VI, drives a motor vehicle.

**(3)** The penalty for an offence against subsection (1) or (2) is a fine not exceeding \$2,000 or a term of imprisonment for a period not exceeding 12 months or both a fine not exceeding that amount and a term of imprisonment not exceeding that period.

**Requirements to be complied with where licence suspended or cancelled**

**35. (1)** Where the driving licence of a person is suspended or cancelled, the person shall forthwith after the conviction return the licence to the Registrar.

**(2)** A suspended driving licence shall, unless subsequently cancelled or the period of the licence has expired, be returned after the expiration of the period of suspension by the Registrar to the person to whom it was granted.

**(3)** A person whose driving licence has been suspended or cancelled is not entitled to a refund of fees for the remaining period for which the licence was granted.

**(4)** The Court shall cause particulars of all convictions, cancellations and suspensions of driving licences and disqualifications from holding a driving licence and orders of the Court to be forwarded to the Registrar.

**PART V—SPECIAL LICENCES TO DRIVE MOTOR VEHICLES****Applications for special licences to drive**

**36. (1)** Where, on the conviction of a person for an offence involving alcohol or drugs, the Court—

- (a) suspends the person's driving licence for a period under this Act; or
- (b) disqualifies a person from holding a driving licence for a period under this Act,

the person may apply orally to the Court, at the time the Court orders the suspension or disqualification, for an order directing the Registrar of Motor Vehicles to grant to the person a special licence to drive a motor vehicle.

**(2)** Where, on the conviction for an offence involving alcohol or drugs, the Court has—

- (a) suspended a person's driving licence for a period under this Act or under the *Motor Traffic Act 1936* as amended and in force from time to time; or
- (b) disqualified a person from holding a driving licence for a period under this Act or under the *Motor Traffic Act 1936* as amended and in force from time to time,

the person at any time during that period may, by written application, apply to the Court for an order directing the Registrar of Motor Vehicles to grant to the person a special licence to drive a motor vehicle.

(3) Where an application is made orally to the Court, the Court may, if it thinks fit, adjourn the application to enable the Registrar of Motor Vehicles to give a certificate or notice in writing referred to in subsection (5).

(4) Where an application in writing is made to the Court, the Court shall cause notice of the application and of the time fixed for the hearing of the application to be given to the Registrar of Motor Vehicles.

(5) The Registrar of Motor Vehicles may before the adjourned hearing or the hearing of an application, as the case requires—

- (a) by instrument in writing lodged with the Court, certify that there is no ground under section 10, 11 or 12 of the *Motor Traffic Act 1936* for refusing to grant a driving licence to the applicant; or
- (b) if there is a ground under section 10, 11 or 12 of that Act for refusing to grant to the applicant a driving licence, give, by instrument in writing lodged with the Court, notice that he or she intends, on the hearing of the application, to oppose the application on the grounds specified in the notice.

(6) In the application, for the purposes of subsection 11 (5) of the *Motor Traffic Act 1936*, a reference in that last-mentioned section to the conviction of a person shall not be read as extending the conviction of that person referred to in subsection (1) or (2).

(7) The Registrar shall cause a copy of a certificate referred to in paragraph (5) (a) or a copy of the notice referred to in paragraph (5) (b), as the case requires, to be served on the applicant for the special licence.

(8) Where the Registrar has given notice that he or she intends to oppose an application for a special licence, the Registrar is entitled to be represented on the hearing of the application.

### **Grant of special licences**

**37. (1)** If, on the hearing of an application under this Part, the Court is satisfied that, by reason of the applicant's employment, of matters associated with his or her employment or of exceptional circumstances, it is a proper case to do so, the Court shall order the Registrar of Motor Vehicles to grant to the applicant a special licence entitling the applicant to

drive a motor vehicle of such a class, on such days in the period during which the applicant's licence to drive a motor vehicle is suspended or during which he or she has been disqualified from holding a driving licence, between such hours on those days and on such other conditions (if any), as the Court thinks reasonable and orders to be specified in the special licence, but, if not so satisfied, the Court shall refuse the application.

(2) Without limiting the generality of the powers conferred on it by subsection (1), the Court may direct that the person to whom the special licence is granted shall not consume intoxicating liquor between such hours as are specified in the special licence.

(3) The Registrar of Motor Vehicles shall, upon payment of the fee prescribed under the *Motor Traffic Act 1936*, comply with the order of the Court.

#### **Offences by holders of special licences**

**38. (1)** In this section, “special licence” means—

- (a) a special licence granted under section 37; or
- (b) a special licence granted under section 13A of the *Motor Traffic Act 1936*.

(2) Where a special licence orders that the person to whom it has been granted shall not consume alcoholic liquor during hours specified in the special licence, the person to whom the special licence has been granted is guilty of an offence if he or she consumes alcoholic liquor during the hours so specified.

(3) A person to whom a special licence has been granted is guilty of an offence if he or she fails to comply with the conditions specified in the special licence.

(4) The penalty for an offence against subsection (2) or (3) is a fine not exceeding \$200 or imprisonment for a term not exceeding 6 months or both a fine not exceeding that amount and a term of imprisonment not exceeding that period.

(5) Where a person is convicted of an offence against this section, his or her special licence to drive a motor vehicle and his suspended driving licence shall, by force of this section, be cancelled.

#### **Supreme Court may remit application to Magistrates Court**

**39.** Where an application is made under subsection 36 (2) to the Supreme Court for an order directing the grant of a special licence, the Supreme Court may, if it thinks fit, remit the application to the Magistrates Court for hearing and determination.

## **PART VI—RESTORATION OF CANCELLED DRIVING LICENCES**

### **Restoration of cancelled licences**

**40. (1)** A person whose driving licence has been cancelled, or who has been disqualified from holding a driving licence unless and until the Court otherwise orders, on conviction for an offence involving alcohol or drugs may apply to the Court for an order that he or she be granted a driving licence.

**(2)** The Court shall cause notice of the application to be given to the Commissioner of Police and to the Registrar.

**(3)** On the hearing of an application under this section—

- (a)** the Commissioner of Police, the Registrar and the applicant are entitled to be heard and to call evidence, including evidence by a medical practitioner; and
- (b)** the Court shall have regard to—
  - (i)** the period during which the applicant has been disqualified from holding a driving licence;
  - (ii)** the conduct of the applicant (especially in relation to the consumption of alcohol or drugs) during that period;
  - (iii)** the physical and mental condition of the applicant;
  - (iv)** any evidence of medical or other treatment (including rehabilitation programs) undergone by the applicant; and
  - (v)** the effect that the making of an order for the grant of a driving licence may have with regard to the safety of the applicant and other persons.

**(4)** The Court may—

- (a)** make an order directing that the Registrar of Motor Vehicles grant a driving licence to the applicant if it is, having regard to matters

referred to in paragraph 3 (b), satisfied that it is appropriate to do so; or

(b) dismiss the application if it is not so satisfied.

(5) The Court may, in an order under this section, direct that the driving licence be granted on such terms and conditions, and for such period, as it thinks fit.

(6) Where the Court directs that a driving licence be granted on terms and conditions, the person to whom the licence is granted is guilty of an offence if he or she fails to comply with the terms or conditions subject to which the licence was granted.

(7) The penalty for an offence against subsection (6) is a fine not exceeding \$200 or imprisonment for a term not exceeding 6 months or both a fine not exceeding that amount and imprisonment for a period not exceeding that term.

(8) Where a person is convicted of an offence against subsection (6), the driving licence granted in pursuance of this section shall, by force of the conviction, be cancelled.

## **PART VII—EVIDENCE**

### **Certificate evidence**

**41. (1)** In any proceedings in a Court—

- (a) a certificate purporting to be signed by a police officer and stating—
  - (i) that he or she was on a specified date a police officer and authorized by the Commissioner of Police to carry out breath analyses;
  - (ii) that, at a place and at a time and on a date specified in the certificate a person named in the certificate was required by a specified officer to provide a sample of his or her breath for breath analysis by an approved breath analysis instrument;
  - (iii) the instrument used in the analysis, by reference to its model number, patent number and serial number;
  - (iv) that the approved breath analysis instrument was in proper working order;

- (v) the procedures followed and precautions taken immediately before the breath analysis, during the breath analysis and immediately after the completion of the breath analysis;
- (vi) that the person named in the certificate provided a sample of his or her breath for analysis in accordance with the directions of the police officer who made the requirement;
- (via) the steps that were taken to ensure that it was not readily apparent to members of the public that the breath analysis was being carried out;
- (vii) that, in following such of those procedures in respect of which the regulations make provision that specified results are to be obtained, the results specified in the certificate were obtained;
- (viii) that the figure recorded or shown by the approved breath analysis instrument as the result of the analysis was a specified figure or was not less than a specified figure and not more than another specified figure, as the case requires; and
- (ix) that, as soon as practicable after the breath analysis was carried out, he or she signed and delivered to the person referred to in subparagraph (a) (ii) a statement as required by section 12 (5),

is evidence of the matters stated in the certificate;

- (b) a certificate purporting to be signed by a police officer and stating—
  - (i) that he or she was on a specified date a police officer and authorized by the Commissioner of Police to carry out breath analyses;
  - (ii) that, at a place and time and on a date specified in the certificate, a person named in the certificate was required by a specified police officer to provide a sample of his or her breath for breath analysis by an approved breath analysis instrument;

- (iii) the instrument available for the purpose of the analysis, by reference to its model number, patent number and serial number;
- (iv) that the approved breath analysis instrument was in proper working order;
- (v) the procedures followed immediately before the person was required to provide a sample of his or her breath for the breath analysis and the results obtained in following those procedures; and
- (vi) that the person referred to refused or failed to provide a sample of his or her breath for analysis,

is evidence of the matters stated in the certificate;

- (ba) a written statement referred to in subsection 12 (5), being a print-out from an approved breath analysis instrument, is evidence of the matters stated in the statement;
- (c) a certificate purporting to be signed by a medical practitioner stating that—
  - (i) he or she is a medical practitioner;
  - (ii) at a specified place and on a date and at a time specified, he or she took a sample of blood or other body sample of a person named in the certificate;
  - (iii) he or she placed approximately equal quantities of the sample of blood or other body sample into 2 containers;
  - (iv) on a label affixed to each container, he or she signed his or her name and wrote the name of the person from whom the sample was taken and the date on which and the time at which the sample was taken;
  - (v) each container was sealed; and
  - (vi) he or she gave one of the containers to the person named on the label and the other container to a specified police officer;

is evidence of the matters stated in the certificate;

- (ca) a certificate purporting to be signed by a medical practitioner stating that—
- (i) he or she is a medical practitioner;
  - (ii) at a specified hospital and on a date and at a time specified, he or she was attending the person named in the certificate;
  - (iii) he or she was informed by a police officer of the officer's intention to require a person to undergo a screening test under section 8, 9 or 10 or to provide a sample of the person's breath for breath analysis under section 12; and
  - (iv) he or she was of the opinion at the time he or she was so informed that—
    - (A) compliance with the requirement would be detrimental to the person's medical condition; or
    - (B) compliance with the requirement would not be detrimental to the person's medical condition,
- is evidence of the matters stated in the certificate;
- (cb) a certificate purporting to be signed by a medical practitioner stating that—
- (i) he or she is a medical practitioner;
  - (ii) at a specified place and on a date and at a time specified, he or she took a sample of blood from the person named in the certificate;
  - (iii) he or she placed approximately equal quantities of the sample of blood into 2 containers;
  - (iv) on a label affixed to each container, the medical practitioner signed his or her name and wrote the name of the person from whom the sample was taken and the date on which and the time at which the sample was taken;
  - (v) each container was sealed;
  - (vi) he or she—
    - (A) gave 1 container to the person named in the certificate and put the other container in a one-way box; or

- (B) put both containers in a one-way box; and
- (vii) he or she held the opinion at the time when the sample was taken that the person was at that time, because of the person's medical condition, incapable of giving or refusing permission to take a sample of blood;
- is evidence of the matters stated in the certificate;
- (d) a certificate purporting to be signed by an approved analyst and stating—
- (i) that he or she is an approved analyst;
  - (ii) that he or she analysed a sample from a sealed container to which was affixed a label purporting to be signed by a medical practitioner named in the certificate and bearing the name of a person specified in the certificate as the person from whom the sample was taken and the date and time when the sample was taken;
  - (iii) the analysis to which the sample was subjected; and
  - (iv) the result of the analysis,
- is evidence of the matters stated in the certificate; and
- (e) a certificate expressed to be given for the purposes of this paragraph, purporting to be signed by a person specified or described in the regulations and containing statements in relation to matters permitted by the regulations to be stated in such a certificate is evidence of matters stated in the certificate.

(2) A certificate expressed to be given for the purposes of a paragraph of this section is not inadmissible by reason only of the fact that the certificate relates to one, or some only, of the matters referred to in that paragraph.

### **Evidence for insurance purposes**

**41A. (1)** Notwithstanding section 41, evidence—

- (a) that a sample of blood was taken from a person pursuant to subsection 15 (4);
- (b) that a medical practitioner dealt with containers holding blood samples in accordance with subsection 15 (6);

- (c) that a statement was given pursuant to subsection 15 (8);
- (d) of the content of a statement issued pursuant to subsection 15 (8);
- (e) that the person was found guilty of a relevant offence;
- (f) that, in consequence of the person's being found guilty or being convicted of a relevant offence, an order was made in relation to the person;
- (g) that the person was charged with a relevant offence and, pursuant to section 556A of the *Crimes Act 1900*, the charge was dismissed, or an order was made in respect of the person; or
- (h) pursuant to section 448 of the *Crimes Act 1900*, a relevant offence was taken into account in passing sentence upon the person;

is not, in any proceedings in relation to an insurance contract, admissible as evidence that the person was, at any time, under the influence of or in any way affected by alcohol, or was under the influence of or affected by alcohol or a drug to such an extent as to be incapable or of exercising effective control over a motor vehicle.

(2) A statement given to a person pursuant to subsection 15 (8) is not, in any proceedings in relation to an insurance contract, admissible as evidence that the person was, at any time, under the influence of or in any way affected by alcohol, or was under the influence of or affected by alcohol or a drug to such an extent as to be incapable of driving or of exercising effective control over a motor vehicle.

(3) A covenant, term, condition or provision of an insurance contract is void to the extent that it purports to exclude, limit, modify or restrict the liability of the insurer if the owner or the driver of a motor vehicle is convicted of an offence against this Act.

(4) A covenant, term, condition or provision of an insurance contract is void to the extent that it purports to exclude limit, modify or restrict the operation of this section.

(5) Nothing in this section shall be taken as precluding the inclusion in an insurance contract of a covenant, term, condition or provision that excludes, limits, modifies or restricts the liability of the insurer otherwise than by a covenant, term, condition or provision of a kind referred to in subsection (2) or (3).

(6) In subsection (1)—

“relevant offence” means an offence against section 19 in respect of a sample of blood taken from a person under subsection 15 (4).

**Effect of non-compliance: analysis of breath or blood**

**42. (1)** This section applies where the Court hearing a charge for an offence against this Act arising out of the carrying out of a breath analysis or the taking and analysis of a sample of the blood of a person is not satisfied that there has been compliance with every provision of this Act or the regulations relating to the carrying out of the breath analysis or the taking and analysis of the sample of blood.

**(2)** Unless the Court is satisfied that the failure to comply with the provisions of this Act or the regulations referred to in subsection (1) was such that, had the failure not occurred, the result obtained in—

- (a) the breath analysis would have been, or exceeded, the prescribed concentration; or
- (b) the analysis of the sample of blood would have been equal to, or exceeded, the prescribed concentration,

as the case requires, the Court shall dismiss the charge.

**Effect of non-compliance: analysis of body sample**

**42A. (1)** This section applies where the Court hearing a charge for an offence against this Act arising out of the giving or taking, as the case requires, and the analysis, of a sample from the body of a person is not satisfied that there has been compliance with every provision of this Act or the regulations relating to the giving or taking, and the analysis, of the sample from the body of a person.

**(2)** Unless the Court is satisfied that the failure to comply with the provision of this Act or the regulations referred to in subsection (1) would not have affected the result obtained in the analysis, the Court shall dismiss the charge.

**Effect of non-compliance: refusal to give sample of breath**

**42B. (1)** This section applies where the Court hearing a charge for an offence against section 22 is not satisfied that there has been compliance with every provision of this Act and the regulations relating to that part of the carrying out of a breath analysis that is required to be carried out before the sample of breath is supplied.

(2) Unless the Court is satisfied that the failure to comply with the provisions of this Act or the regulations referred to in subsection (1) was such that, had the failure not occurred and the breath analysis taken place, the result obtained in the analysis would have been, or exceeded, the prescribed concentration, the Court shall dismiss the charge.

**Person charged may require evidence to be given orally**

43. (1) A person who has been charged with an offence against this Act or an offence of culpable driving may give notice in writing to the Commissioner of Police that he or she will require the attendance, for the purpose of giving evidence orally, at court on the hearing of the charge of each or any person by whom a certificate referred to in section 41 is given.

(2) Notice under subsection (1) may be given by leaving it at, or posting it to, the Commissioner of Police at Police Headquarters, Canberra, not less than 7 days before the date fixed for the hearing of the proceedings against the person charged or within such shorter period as the Court allows.

(3) Notwithstanding that a notice has been given under subsection (2) and that the persons referred to in the notice give evidence relating to the matters stated in the certificates, the certificates referred to in section 41—

- (a) are admissible in evidence;
- (b) are evidence of the matters stated in the certificates and of the facts upon which they are based; and
- (c) have such probative value as the Court determines consistently with the other evidence before the Court.

**PART VIII—REFERRAL CENTRES**

**Establishment of referral centres**

44. (1) In this section—

“prescribed services” means medical and other services and facilities for or in relation to the treatment and rehabilitation of persons suffering from alcohol dependence or drug dependence.

(2) The Minister may, by instrument in writing, establish at a place, or at places, specified in the instrument, a referral centre or referral centres for the provision of prescribed services.

(3) A copy of an instrument under subsection (2) shall be published in the *Gazette*.

(4) The Minister shall arrange for the provision, without charge, of prescribed services at a referral centre established under this section for persons who submit themselves for treatment at a referral centre as a condition of a recognizance entered into under section 29.

## **PART IX—MISCELLANEOUS**

### **Power of arrest**

#### **45.**

(2) Notwithstanding subsection 352 (2) of the *Crimes Act 1900*, a police officer who has an approved screening device immediately available for use is not entitled to arrest without a warrant a person whom he or she suspects is guilty of an offence against section 24 (1) unless and until he or she has required that person to undergo a screening test and the person has undergone, or refused to undergo, the screening test.

### **Penalty for escaping from custody**

46. (1) A person who, having been taken into custody by a police officer in pursuance of section 11, 15 or 16 of this Act, escapes from the custody of that police officer or from the custody of another police officer in whose custody he or she has been placed is guilty of an offence.

(2) The penalty for an offence against subsection (1) is—

- (a) in the case of a person who is a first offender within the meaning of Part IV—a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months or both a fine not exceeding that amount and a term of imprisonment not exceeding that period; or
- (b) in the case of a person who is a previous offender within the meaning of Part IV—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both a fine not exceeding that amount and a term of imprisonment not exceeding that period.

### **Right of arrested person to medical examination**

47. (1) A police officer who arrests a person for an offence against this Act (other than an offence against section 34, section 46, Part V or Part VI) shall inform the arrested person or another person acting on behalf of

the arrested person that the arrested person is entitled to be medically examined by a medical practitioner to be nominated by the arrested person or by the other person.

(2) Where the arrested person or the other person on his or her behalf requests the police officer to arrange such a medical examination, the police officer shall, as far as it is practicable and as soon as it is practicable to do so, arrange for the medical examination of the arrested person.

### **Charges for a number of offences**

**48. (1)** A person may be charged with—

- (a) two or more offences against this Act; and
- (b) an offence of culpable driving and an offence or two or more offences against this Act,

arising from the fact that he or she was on a particular occasion the driver of a motor vehicle, but a person who is convicted of one such offence shall not, except as provided by subsection (2), be convicted of the other offence or of any of those other offences.

(2) Where a person is charged with—

- (a) an offence against section 34, Part V or Part VI; and
- (b) an offence, or two or more offences, referred to in subsection (1),

he or she may be convicted of the offence against section 34, Part V or VI and the other offence or one of the other offences referred to in paragraph (b).

### **Default term of imprisonment**

**49.** Where the Court orders a pecuniary penalty to be paid by a person convicted of an offence against this Act, the Court shall specify in the order the period of imprisonment to be served by the person convicted in default of payment of the penalty, being a period not exceeding the period of imprisonment for which the person may be sentenced by the Court for the offence of which the person is convicted.

### **Offences to be dealt with summarily**

**50.** Offences against this Act are punishable on summary conviction.

### **Notices may be given before date fixed under section 2**

**51.** At any time after the making of this Act and before the date fixed under section 2, the Minister may give a notice in writing referred to in subsection 5 (1), 5 (2) or 6 (3) and the Commissioner of Police may give a notice in writing referred to in subsection 6 (1), but a notice so given does not have effect until the date fixed under section 2.

### **Regulations**

**52. (1)** The Executive may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted to be prescribed by this Act.

**(2)** Regulations may be made under subregulation (1) at any time after the notification of the making of this Act is published in the *Gazette* and before the date fixed under section 2, but regulations so made do not have effect until the date so fixed.

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**SCHEDULE 1**

Section 3

Drugs

Amitriptyline and other tricyclic antidepressants  
Antihistamines, and all tertiary nitrogenous organic bases which possess pharmacological properties characteristic of antihistamine substances  
Barbituric acid and its derivatives  
Carbromal  
Chloral hydrate and its derivatives  
Chlor diazepoxide and other substances structurally derived from benzodiazepine with ataractic properties  
Chlormezanone  
Chlorpromazine and other substances structurally derived from phenothiazine with ataractic properties  
Chlorprotixene and other thioxanthines  
Ethchlorvynol  
Ethinamate  
Glutehimide  
Haloperidol and other substances structurally derived from butyrophenone with ataractic properties  
Meprobamate  
Mianserin and other tetracyclic antidepressants  
Paraldehyde  
Phenelzine and other monoamine oxidase inhibitors with ataractic properties.

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**NOTE**

1. The *Motor Traffic (Alcohol and Drugs) Act 1977* as shown in this reprint comprises Act No. 17, 1977 amended as indicated in the Tables below.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

Table 1

**Table of Ordinances**

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Motor Traffic (Alcohol and Drugs) Ordinance 1977</i>	17, 1977	21 June 1977	1 Dec 1977 (see <i>Gazette</i> 1977, No. S242)	—
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance 1977</i>	52, 1977	27 Sept 1977	27 Sept 1977	—
<i>Ordinances Revision Ordinance 1978</i>	46, 1978	28 Dec 1978	28 Dec 1978	—
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance 1980</i>	37, 1980	14 Oct 1980	14 Oct 1980	—
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance 1981</i>	16, 1981	30 June 1981	30 June 1981	—
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance (No. 2) 1981</i>	29, 1981	24 Sept 1981	24 Sept 1981	—
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance 1982</i>	94, 1982	17 Dec 1982	17 Dec 1982	—
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance 1984</i>	63, 1984	2 Nov 1984	2 Nov 1984	—
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance 1985</i>	51, 1985	19 Sept 1985	19 Sept 1985	—
<i>Magistrates Court Ordinance 1985</i>	67, 1985	19 Dec 1985	1 Feb 1986 (see <i>Gazette</i> 1986, No. G3, p. 265)	—
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance 1987</i>	9, 1987	2 Apr 1987	2 Apr 1987	—
<i>Drug Laws (Consequential Amendments) Ordinance 1989</i>	14, 1989	15 Mar 1989	1 Apr 1989 (see <i>Gazette</i> 1989, No. S109)	—

**NOTE**—continued

**Table of Ordinances**—continued

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Self-Government (Consequential Amendments) Ordinance 1989</i>	38, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164)	—

**Self-Government day 11 May 1989**

Table 2

**Table of Acts**

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Acts Revision (Arrest Without Warrant) Act 1989</i>	23, 1989	1 Dec 1989	1 Dec 1989	—
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Act 1989</i>	24, 1989	7 Dec 1989	7 Dec 1989	—
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Act 1990</i>	64, 1990	24 Dec 1990	1 Jan 1991	—
<i>Magistrates and Coroner's Courts (Registrar) Act 1991</i>	44, 1991	20 Sept 1991	Ss. 1 and 2: 20 Sept 1991 Remainder: 25 Sept 1991 (see <i>Gazette</i> 1991, No. S103, p. 2)	—
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Act 1992</i>	63, 1992	30 Oct 1992	30 Oct 1992	S. 10
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Act 1993</i>	22, 1993	5 Apr 1993	5 Apr 1993	—

**NOTE—continued****Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 4	am. No. 37, 1980; No. 29, 1981; Nos. 51 and 67, 1985; No. 14, 1989; Act No. 24, 1989; No. 64, 1990; No. 63, 1992
S. 5	am. No. 37, 1980; No. 51, 1985; Act No. 63, 1992
S. 6	am. No. 51, 1985; Act No. 24, 1989; No. 63, 1992
S. 7	am. No. 46, 1978; No. 16, 1981
S. 8	am. No. 94, 1982; No. 51, 1985; Act No. 24, 1989
Ss. 9, 10	am. No. 51, 1985; Act No. 24, 1989
S. 10A	ad. No. 94, 1982 am. No. 51, 1985; Act No. 24, 1989; No. 64, 1990
S. 11	am. No. 52, 1977; No. 51, 1985; Act No. 64, 1990; No. 63, 1992
S. 12	am. No. 94, 1982; No. 51, 1985; Act No. 24, 1989; No. 63, 1992
S. 13	am. Act No. 63, 1992
S. 14	am. No. 94, 1982; No. 51, 1985; Act No. 24, 1989
S. 15	am. No. 51, 1985; Act No. 24, 1989; No. 63, 1992
S. 15A	ad. Act No. 24, 1989
Ss. 16, 17	am. No. 51, 1985; Act No. 63, 1992
S. 18	am. No. 51, 1985; No. 38, 1989; Act No. 23, 1989; No. 63, 1992
S. 19	am. Act No. 64, 1990; No. 63, 1992 rs. No. 22, 1993
S. 20	am. Act No. 24, 1989 rep. No. 22, 1993
S. 21	am. Act No. 63, 1992; No. 22, 1993
S. 22	am. No. 51, 1985; Act No. 63, 1992
Ss. 23, 24	am. Act No. 63, 1992
S. 25	am. No. 52, 1977; No. 67, 1985; Act No. 64, 1990; No. 63, 1992; No. 22, 1993
S. 26	am. Act No. 22, 1993
S. 26A	ad. Act No. 64, 1990 am. No. 22, 1993
S. 27	am. Act No. 22, 1993
S. 28	am. Act No. 64, 1990; No. 63, 1992; No. 22, 1993
S. 29	am. No. 63, 1984; No. 38, 1989; Act No. 44, 1991; No. 63, 1992
S. 31	am. Act No. 64, 1990; No. 63, 1992; No. 22, 1993
S. 32	am. No. 67, 1985; Act No. 64, 1990; No. 63, 1992; No. 22, 1993
S. 34	am. Act No. 63, 1992
Ss. 36-38	am. Act No. 63, 1992
S. 39	am. No. 67, 1985
S. 40	am. Act No. 63, 1992
S. 41	am. No. 37, 1980; No. 51, 1985; Act No. 24, 1989; No. 63, 1992
S. 41A	ad. Act No. 24, 1989 am. No. 22, 1993
S. 42	rs. No. 51, 1985 am. Act No. 64, 1990

**NOTE**—continued

**Table of Amendments**—continued

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 42A .....	ad. No. 51, 1985
S. 42B .....	ad. No. 51, 1985
	am. Act No. 64, 1990
S. 43 .....	am. Act No. 63, 1992
S. 44 .....	am. No. 38, 1989
S. 45 .....	am. No. 51, 1985; Act No. 23, 1989; No. 63, 1992
S. 46 .....	am. No. 51, 1985; Act No. 63, 1992
S. 47 .....	am. No. 51, 1985; No. 9, 1987; Act No. 63, 1992
Ss. 48, 49.....	am. Act No. 63, 1992
S. 52 .....	am. No. 38, 1989
Schedule .....	ad. No. 37, 1980
Schedule 1.....	ad. No. 51, 1985
Heading to Schedule .....	rep. No. 51, 1985
Heading to Schedule 2 .....	ad. No. 51, 1985
Schedule 2.....	am. No. 38, 1989
	rep. Act No. 63, 1992

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