



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 14 April 1999 to 29 February 2000.

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Australian Capital Territory

MOTOR TRAFFIC (ALCOHOL AND DRUGS) ACT 1977

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Updated as at 14 April 1999

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**SCHEDULE 1
DRUGS**



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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

1. Short title

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

2. Commencement

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

3. Incorporation of the Motor Traffic Act

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

4. Interpretation

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

“accident” means an accident on a public street or in a public place, whether within or outside the Territory, that involves a motor vehicle;

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“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 authorised by the Commissioner of Police under section 6;

“approved rehabilitation program”—

- (a) in relation to alcohol dependence—means a program approved under section 44; and
- (b) in relation to drug dependence within the meaning of the *Drugs of Dependence Act 1989*—means treatment at an approved treatment centre under that Act;

“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;

“Commonwealth vehicle” means a motor vehicle that is owned by the Commonwealth and—

- (a) bears a label attached to the windscreen that displays the letter ‘C’ followed by a 7-pointed star, both in white against a blue background, and the word ‘COMCAR’ in blue against a white background; or
- (b) is, or is within a class of motor vehicles that is, declared by the Minister, by instrument published in the *Gazette*, to be a Commonwealth vehicle for the purposes of this Act;

“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

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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;

“driver involved in an accident” means a driver of a motor vehicle that is involved in an accident who—

- (a) appears to have attained the age of 15 years; and
- (b) attends, or is admitted to, a hospital for the purpose of examination or treatment as a consequence of the accident;

“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 Regulations; 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, other than a learner licence, granted under 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 GVM (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 GCM (within the meaning of that Act) exceeding 15 tonnes;

“level”, in relation to a concentration of alcohol in blood, has the meaning given by subsection (3);

“medical practitioner” means a person who is a registered medical practitioner within the meaning of the *Medical Practitioners*

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Registration Act 1930, or a person who is an approved qualified person within the meaning of section 38A of that Act;

“nurse” means a person who is a registered nurse within the meaning of the *Nurses Act 1988*;

“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”—

- (a) in relation to a special driver—means .02 grams of alcohol per 100 millilitres of blood; and
- (b) in relation to any other person—means .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;

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“special driver” means—

- (a) a person who is not licensed to drive a motor vehicle;
- (b) the holder of a learner licence, provisional licence, probationary licence or special licence; or
- (c) the driver of—
 - (i) a heavy motor vehicle;
 - (ii) a dangerous goods vehicle;
 - (iii) a Commonwealth vehicle;
 - (iv) a public motor vehicle;
 - (v) a private hire car; or
 - (vi) a restricted hire vehicle.

(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.

(3) A reference in this Act to a concentration of alcohol in blood at a level that is specified in the second column of the following table shall be read as a reference to a concentration of alcohol in 100 millilitres of blood that is specified in the third column of the table opposite that level:

Item	Level	Blood alcohol concentration
1	Level 1	02 grams or more but less than .05 grams
2	Level 2	05 grams or more but less than .08 grams
3	Level 3	08 grams or more but less than .15 grams
4	Level 4	15 grams or more

(4) For the purposes of this Act, a person is not licensed to drive a motor vehicle of a particular kind if—

- (a) the person’s driving licence for such a vehicle is suspended under a law of the Territory;
- (b) the person is disqualified by force of, or under, a law of the Territory from holding any driving licence or a driving licence for such a vehicle; or

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- (c) for any other reason, the person is—
 - (i) not the holder of a driving licence for such a vehicle; and
 - (ii) not entitled under section 107, 107A or 108 of the *Motor Traffic Act 1936* to drive such a vehicle.

5. Approval of instruments etc.

(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.

6. Approval of operators and analysts

(1) The Commissioner of Police may, by notice in writing, authorise 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.

7. Notices to be published in the *Gazette*

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

8. Power to require screening test where a vehicle not involved in an accident

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.

9. Power to require screening test where motor vehicle involved in accident

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.

10. Power to require screening test in case of culpable driving

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.

11. Detention for breath analysis

- (1) Where—

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- (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 special driver;

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

12. Breath analysis

(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;

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- (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.

13. Precautions for privacy

(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.

14. Restrictions on screening tests and breath analyses

(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—

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- (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.

15. Taking blood samples from persons in custody

(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 or a nurse 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.

(2A) A reference in this section to the taking of a blood sample shall be read as a reference to the taking of a blood sample pursuant to a requirement under subsection (1).

(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 or nurse shall not refuse to take a sample of a person's blood for analysis—

- (a) if permitted to do so by the person under subsection (1); or
- (b) if the practitioner or nurse is of the opinion that the person is, because of his or her medical condition, incapable of giving or refusing permission to the taking of such a sample—if requested to do so by a police officer under this section.

Penalty: 10 penalty units.

(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.

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(5) The medical practitioner or nurse 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 or nurse 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.

15AA. Taking blood samples from persons in hospital

(1) A medical practitioner or a nurse who, in a hospital, attends to a person whom the medical practitioner or nurse believes on reasonable grounds to be a driver involved in an accident, shall, within 2 hours of the person's arrival at the hospital, take from that person a sample of the person's blood for analysis.

Penalty: 10 penalty units.

(2) A person taking a sample of blood under this section shall—

- (a) place approximately equal quantities of the sample into 2 containers;
- (b) mark or label each container for future identification; and
- (c) ensure that each container is sealed.

(3) A person who has taken a sample of blood under this section shall—

- (a) if satisfied that the person from whom the sample has been taken is incapable of understanding the procedures that have been applied to him or her—put both sealed containers in a one-way box; or
- (b) in any other case—give 1 sealed container to the person and put the other sealed container in a one-way box.

(4) A 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.

15A. Analysis of blood samples

(1) If only 1 sealed container of a particular person's blood that has been taken under section 15 or 15AA and 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.

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

- (a) a person whose blood is referred to in this section has in his or her body a drug other than alcohol; or
- (b) 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 request an analyst to analyse the sample to ascertain the concentration in the blood of any drug other than alcohol.

(4) An analyst shall comply with a request under subsection (3).

15B. Statements to be provided

(1) A police officer shall arrange for a person from whom a blood sample has been taken under section 15 or 15AA to be given a written statement within a reasonable time, having regard to the person's medical condition, after an analysis under section 15A is carried out.

(2) 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; and
- (d) the address at which the blood sample is being held.

(3) If both sealed containers were put in a 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 him or her to collect the blood sample.

16. Medical examinations

(1) This section applies to—

- (a) a person who—
 - (i) has been required to undergo a screening test or to provide a sample of his or her breath for analysis; and
 - (ii) has been arrested on reasonable suspicion of having committed an offence against section 24 or an offence of culpable driving; and
- (b) a driver involved in an accident.

(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 and to give, or permit the taking of, body samples 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) In the case of a person referred to in paragraph (1) (a), 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 to whom this section applies for the purpose referred to in subsection (2) shall carry out the medical examination within 2 hours of the person's arrival at hospital.

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Penalty: 10 penalty units.

(5) A medical practitioner requested by a police officer to take a sample from the body of a person to whom this section applies for the purpose referred to in subsection (2) shall, within 2 hours of the person's arrival at hospital—

- (a) take the sample; or
- (b) request a nurse to take the sample.

Penalty: 10 penalty units.

(6) A nurse requested by a medical practitioner or a police officer to take a sample from the body of a person to whom this section applies shall take the sample within 2 hours of the person's arrival at hospital.

Penalty: 10 penalty units.

(7) A person taking a sample under this section shall—

- (a) place approximately equal quantities of the sample into 2 containers;
- (b) mark or label each container for future identification; and
- (c) ensure that each container is sealed.

(8) A person who has taken a sample under this section shall—

- (a) if satisfied that the person from whom the sample has been taken is incapable of understanding the procedures that have been applied to him or her—put both sealed containers in a one-way box; or
- (b) in any other case—give 1 sealed container to the person and put the other sealed container in a one-way box.

(9) A 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.

16A. Analysis of body samples

(1) Where only 1 sealed container of a particular person's body sample has been put in a one-way box under subsection 16 (8), the analyst by whom it is collected shall analyse it to ascertain—

- (a) whether any drug other than alcohol was present in the person's body when the sample was taken;
- (b) if any such drug is found to have been present—the concentration, quantity or other measurement of that drug; and
- (c) where the sample is of the person's blood—the concentration of alcohol in the blood.

(2) Where 2 sealed containers of a particular person's body samples have been put in a one-way box under subsection 16 (8), the analyst by whom they have been collected shall—

- (a) analyse the sample in one of the containers in accordance with subsection (1); and
- (b) keep the other container sealed and under refrigeration until—
 - (i) the person, or another person authorised by the first-mentioned person, requests the analyst to give him or her the sample; or
 - (ii) 6 months have elapsed since the sample was taken from the person.

17. Exemptions from requirements to take blood samples or carry out examinations

(1) In this section—

“specified procedure” means—

- (a) the taking of a sample—
 - (i) of a person's blood under this Act; or
 - (ii) from the body of a person under section 16; or
- (b) the carrying out of a medical examination under section 16.

(2) A medical practitioner or nurse is not required to carry out a specified procedure on a person—

- (a) if he or she is of the opinion that to do so would be detrimental to the person's medical condition;
- (b) in the case of a procedure under section 15 or 16—if the person objects to the carrying out of the procedure and persists in so objecting after a medical practitioner, nurse or 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; or
- (c) in the case of a procedure under section 15AA—the medical practitioner or nurse believes on reasonable grounds that a sample of the blood of the person—
 - (i) has already been taken under this Act; or
 - (ii) will be taken under section 15.

(3) It is a defence to a prosecution for a breach of subsection 15 (4), 15AA (1) or 16 (4), (5) or (6) if the defendant satisfies the court that—

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- (a) by reason of the behaviour of the person in relation to whom the relevant specified procedure was to be carried out, the defendant was unable to comply with the subsection; or
- (b) there was other reasonable cause for the failure to comply with the subsection.

18. Protection of police officers and medical staff

(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.

(5) The Territory shall indemnify and keep indemnified a medical practitioner or nurse who carries out a specified procedure when required to do so by this Act in respect of any damages that he or she becomes liable to pay as a result of carrying out the procedure.

(5A) In subsection (5)—

“specified procedure” has the same meaning as in section 17.

(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

19. Prescribed blood alcohol concentration exceeded

- (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 punishable, on conviction, by a penalty ascertained in accordance with section 26.

- (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 or 15AA applies—a sample of the person's blood may be taken in accordance with that section.

21. Defence if person did not intend to drive motor vehicle

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

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- (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.

22. Refusing to provide breath sample

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 punishable, on conviction, by a fine not exceeding 30 penalty units 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.

23. Refusing blood test etc.

(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 punishable, on conviction, by a fine not exceeding 30 penalty units if he or she fails or refuses to permit the sample to be taken for that purpose.

(1A) A person from whom a blood sample is required to be taken under subsection 15AA (1) shall not behave in such a manner as to make it impossible or impractical for the sample to be taken.

Penalty: 30 penalty units.

(2) A person who is required under section 16 to undergo a medical examination is guilty of an offence punishable, on conviction, by a fine not exceeding 30 penalty units if—

- (a) he or she fails or refuses to submit to the medical examination; or

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- (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), (1A) or (2) if the person charged establishes that the failure, refusal or behaviour (as the case requires) was based on religious or other conscientious grounds or on medical grounds.

24. Driving under the influence of intoxicating liquor or a drug

(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 punishable, on conviction, by a fine not exceeding 30 penalty units.

(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

25. Interpretation

(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;

“disqualifying offence” has the meaning given by subsection (2);

“driving licence” includes a learner licence receipt;

“first offender”, in relation to an offence, means a person convicted of the offence other than a repeat offender;

“repeat offender” has the meaning given by subsection (3).

(2) For the purposes of this Part, an offence against any of the following provisions of this Act is a disqualifying offence:

- (a) section 19 (prescribed blood alcohol concentration exceeded);
- (b) section 22 (refusing to provide breath sample);
- (c) section 23 (refusing blood test etc.);
- (d) section 24 (driving under the influence of intoxicating liquor or a drug);
- (e) an offence against any other provision of this Act that is prescribed by the regulations.

(3) For the purposes of this Part, a person convicted of a disqualifying offence is a repeat offender in relation to that offence if, during the 5 years ending on the date of the conviction, the person has been convicted of another offence specified in subsection (4).

(4) For the purposes of subsection (3), each of the following offences is specified:

- (a) a disqualifying offence;
- (b) a corresponding offence;
- (c) an offence against any of the following provisions of the *Motor Traffic Act 1936*:
 - (i) section 11D (contravening conditions on special licence);
 - (ii) subsection 129 (1) or section 147A (dangerous driving etc.);

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- (iii) subsection 129 (1A) (negligent driving);
- (iv) section 191P (driving etc. while suspended or disqualified); or
- (d) an offence of culpable driving.

26. Fines and imprisonment—s. 19 offences

(1) Where a special driver is convicted of an offence against subsection 19 (1) and the convicting Court finds that the concentration of alcohol in the person's blood was at a level specified in the second column of the table at the end of this section, the person is punishable—

- (a) in the case of a first offender—by the penalty specified in the third column of the table opposite that level; and
- (b) in the case of a repeat offender—by the penalty specified in the fourth column of the table opposite that level.

(2) Where a person other than a special driver is convicted of an offence against subsection 19 (1) and the convicting Court finds that the concentration of alcohol in the person's blood was at level 2, 3 or 4, the person is punishable—

- (a) in the case of a first offender—by the penalty specified in the third column of the table at the end of this section opposite the relevant level; and
- (b) in the case of a repeat offender—by the penalty specified in the fourth column of the table opposite the relevant level.

Item	Blood alcohol concentration level	Penalty—first offender	Penalty—repeat offender
1	Level 1	Fine not exceeding 5 penalty units	Fine not exceeding 10 penalty units
2	Level 2	Fine not exceeding 5 penalty units	Fine not exceeding 10 penalty units
3	Level 3	Fine not exceeding 10 penalty units or imprisonment for a period not exceeding 6 months, or both	Fine not exceeding 10 penalty units or imprisonment for a period not exceeding 6 months, or both
4	Level 4	Fine not exceeding 15 penalty units or imprisonment for a period not exceeding 9 months, or both	Fine not exceeding 20 penalty units or imprisonment for a period not exceeding 12 months, or both

27. Imprisonment—ss. 22, 23 and 24 offences

Where—

- (a) a person is convicted of an offence against section 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 for corresponding offences), 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 repeat offender—12 months.

29. Conditional release of convicted person

(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, undertake an approved rehabilitation program in accordance with the reasonable requirements of the person in charge of the program;
- (e) he or she will, during the period so specified, comply with such conditions (including conditions concerning the undertaking of the approved rehabilitation program) as the Court specifies 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.

(1A) The Court shall only make an order under subsection (1)—

- (a) with the convicted person's consent; and
- (b) if satisfied that the person in charge of the rehabilitation program has agreed to the convicted person undertaking the program.

(2) Where—

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- (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.

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

(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.

31. Cancellation of driving licence

- (1) Where the holder of a driving licence is convicted of a disqualifying offence, the Court may cancel the person's driving licence.
- (2) The cancellation takes effect in accordance with subsection 35 (1).

32. Driving licence disqualification—first offenders, s. 19

- (1) This section applies only to first offenders.
- (2) Where a Court convicts a special driver of an offence against subsection 19 (1) and finds that the concentration of alcohol in the person's blood was at a level specified in the second column of the table at the end of this section, the Court may disqualify the person from holding a driving licence for a period not exceeding the period specified in the third column of the table opposite that level.
- (3) Where a Court convicts a person other than a special driver of an offence against subsection 19 (1) and finds that the concentration of alcohol in the person's blood was at level 2, 3 or 4, the Court may disqualify the person from holding a driving licence for a period not exceeding the period specified in the third column of the table opposite that level.

Item	Blood alcohol concentration level	Maximum disqualification
1	Level 1	3 months
2	Level 2	6 months
3	Level 3	12 months
4	Level 4	3 years

33. Driving licence disqualification—repeat offenders, s. 19

- (1) This section applies only to repeat offenders.
- (2) Where a Court convicts a special driver of an offence against subsection 19 (1) and finds that the concentration of alcohol in the person's blood was at a level specified in the second column of the table at the end of this section, the Court may disqualify the person from holding a driving licence for a period not exceeding the period specified in the third column of the table opposite that level.
- (3) Where a Court convicts a person other than a special driver of an offence against subsection 19 (1) and finds that the concentration of alcohol in the person's blood was at level 2, 3 or 4, the Court may disqualify the person from holding a driving licence for a period not exceeding the period specified in the third column of the table opposite that level.

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Item	Blood alcohol concentration level	Maximum disqualification
1	Level 1	12 months
2	Level 2	12 months
3	Level 3	3 years
4	Level 4	5 years

34. Driving licence disqualification—offences other than s. 19

(1) Where a Court convicts a first offender of a disqualifying offence, other than an offence against subsection 19 (1), the Court may disqualify the person from holding a driving licence for a period not exceeding 3 years.

(2) Where a Court convicts a repeat offender of a disqualifying offence, other than an offence against subsection 19 (1), the Court may disqualify the person from holding a driving licence for a period not exceeding 5 years.

35. Timing of licence cancellation and disqualification

(1) Where a driving licence is cancelled under section 31 and the former licensee is disqualified from holding a driving licence under section 32, 33, 34 or 37, the cancellation and disqualification take effect—

- (a) on the relevant conviction by the Court; or
- (b) if the Court specifies a later date of effect—on the date specified.

(2) Where a person who is not the holder of a driving licence is disqualified from holding a driving licence under section 32, 33 or 34, the disqualification takes effect on the relevant conviction by the Court.

36. Disqualification subject to grant of special licence

Where a person, other than a special licensee, is disqualified from holding a driving licence under section 32, 33 or 34, the disqualification has effect subject to the grant of a special licence.

37. Disqualification etc.—further special licence

(1) Where a person's special licence is cancelled by force of section 31, then, under this subsection—

- (a) any suspended licence granted to the person is cancelled together with the special licence; and
- (b) the person is disqualified from holding another special licence during the remainder of the period for which the person was originally disqualified.

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(2) A disqualification by force of subsection (1) is in addition to any other disqualification from holding a driving licence imposed on the person under section 32, 33 or 34 or any other law of the Territory.

(3) For the purposes of subsection (1), the period for which a person was originally disqualified is the period during which the person was disqualified from holding a driving licence, disregarding the period for which the special licence was granted.

38. Additional powers of Court

The powers of a Court under this Part are in addition to any other powers of the Court.

39. Notice to Registrar

The Registrar of a Court shall give to the Registrar of Motor Vehicles particulars of—

- (a) each conviction by the Court of a person of a disqualifying offence; and
- (b) each period of disqualification specified by the Court in relation to such a conviction.

PART VII—EVIDENCE

41. Certificate of evidence

(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 authorised 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;

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- (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 authorised 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

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(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;
- (bb) a certificate purporting to be signed by the Registrar and stating that a person is not licensed, or otherwise entitled, to drive any motor vehicle or a motor vehicle of a particular kind is evidence of the matters stated in the certificate;
- (c) a certificate purporting to be signed by a medical practitioner or a nurse stating that—
 - (i) he or she is a medical practitioner or a nurse, as the case requires;
 - (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;
 - (vi) he or she—
 - (A) gave 1 container to the person from whom the sample had been taken and put the other container in a one-way box; or
 - (B) put both containers in a one-way box;

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

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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 or a nurse stating that—

- (i) he or she is a medical practitioner or a nurse, as the case requires;
- (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 or a nurse, as the case requires 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) where the sample of blood was taken under section 15—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;

- (cc) a certificate that appears to be a certificate referred to in subsection 4G (9), (10) or (11) of the *Traffic Act 1909* of the State of New South Wales is evidence of the matters stated in the certificate;

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- (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 or nurse 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 1, or some only, of the matters referred to in that paragraph.

41A. Evidence for insurance purposes

- (1) Notwithstanding section 41, evidence—
 - (a) that a sample of blood was taken from a person pursuant to subsection 15 (4) or 15AA (1);
 - (b) that a medical practitioner or nurse dealt with a container holding a sample of blood in accordance with subsection 15 (6) or 15AA (3);
 - (c) that a statement was given pursuant to section 15B;
 - (d) of the content of a statement issued pursuant to section 15B;
 - (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

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- (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 section 15B 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 (3) or (4).

(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) or 15AA (1).

42. Effect of non-compliance: analysis of breath or blood

(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.

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(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.

42A. Effect of non-compliance: analysis of body sample

(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.

42B. Effect of non-compliance: refusal to give sample of breath

(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.

43. Oral evidence concerning s. 41 certificate

(1) A person who has been charged with an offence against this Act 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—REHABILITATION PROGRAMS

44. Approval of programs

(1) For the purposes of this Act, the Minister may approve a program of therapy or education which the Minister believes on reasonable grounds would assist in the rehabilitation of persons suffering from alcohol dependence.

(2) An approval shall be given by notice in the *Gazette*.

44A. Conditions

(1) An approval under section 44 shall specify any condition to which it is subject.

(2) Without limiting the generality of subsection (1), a condition of an approval may require the person in charge of the program to report to the Registrar of the Court about the progress of persons whom the Court has ordered to undertake the program.

44B. Review by Administrative Appeals Tribunal

Application may be made to the Administrative Appeals Tribunal for a review of any of the following decisions of the Minister under section 44:

- (a) refusing to approve a program;
- (b) approving a program subject to a condition;
- (c) varying or revoking—
 - (i) the approval of a program; or
 - (ii) a condition to which such an approval is subject;
- (d) refusing to revoke a condition to which an approval of a program is subject.

PART IX—MISCELLANEOUS

45. Power of arrest

(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.

46. Penalty for escaping from custody

(1) A person who, having been taken into custody by a police officer in pursuance of section 11, 15 or 16, 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.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

47. Right of arrested person to medical examination

(1) A police officer who arrests a person for an offence against this Act 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.

49. Default term of imprisonment

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.

50. Offences to be dealt with summarily

Offences against this Act are punishable on summary conviction.

51. Notices may be given before date fixed under section 2

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.

52. Regulations

(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.

Motor Traffic (Alcohol and Drugs) Act 1977

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.

Motor Traffic (Alcohol and Drugs) Act 1977

NOTES

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.

2. The *Legislation (Republication) Act 1996* (No. 51, 1996) authorises the Parliamentary Counsel in preparing a law for republication, to make certain editorial and other formal amendments in accordance with current legislative drafting practice. Those amendments make no change in the law. Amendments made pursuant to that Act do not appear in the Table of Amendments but details may be obtained on request from the Parliamentary Counsel's Office.

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)	—

Motor Traffic (Alcohol and Drugs) Act 1977

NOTES—continued

Table of Acts

<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)	—
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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	—
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Act (No. 2) 1993</i>	50, 1993	27 Aug 1993	Ss. 1-3: 27 Aug 1993 Remainder: 1 Sept 1993 (see <i>Gazette</i> 1993, No. S177, p. 2)	—
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Act (No. 3) 1993</i>	58, 1993	6 Sept 1993	Ss. 1 and 2: 6 Sept 1993 Remainder: 27 Sept 1993 (see s. 2 (2) and <i>Gazette</i> 1993, No. S201, p. 3)	—
<i>Statute Law Revision Act 1994</i>	26, 1994	31 May 1994	31 May 1994	—

Motor Traffic (Alcohol and Drugs) Act 1977

NOTES—continued

Table of Acts—continued

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Statute Law Revision (Penalties) Act 1994</i>	81, 1994	29 Nov 1994	Ss. 1 and 2: 29 Nov 1994 Remainder: 29 Nov 1994 (see <i>Gazette</i> 1994, No. S269, p. 2)	—
(Reprinted as at 28 February 1995)				
<i>Motor Traffic (Consequential Provisions) Act 1996</i>	7, 1996	10 Apr 1996	Ss. 1-3: 10 Apr 1996 Remainder: 12 Sept 1996 (see s. 2 (2))	—
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Act 1996</i>	48, 1996	19 Sept 1996	19 Sept 1996	—
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Act 1997</i>	51, 1997	19 Sept 1997	Ss. 1-3: 19 Sept 1997 Remainder: 2 Mar 1998 (see <i>Gazette</i> 1997, No. S427)	Part III (ss. 16-20)
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Act (No. 2) 1997</i>	53, 1997	19 Sept 1997	Ss. 1-3: 19 Sept 1997 Remainder: 2 Mar 1998 (see <i>Gazette</i> 1997, No. S428)	—
(Reprinted as at 2 March 1998)				
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Act 1999</i>	11, 1999	23 Mar 1999	23 Mar 1999	—
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Act (No. 2) 1999</i>	18, 1999	14 Apr 1999	14 Apr 1999	—

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; No. 58, 1993; No. 26, 1994; Nos. 7 and 48, 1996; Nos. 51 and 53, 1997
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

Motor Traffic (Alcohol and Drugs) Act 1977

NOTES—continued

Table of Amendments—continued

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

Provision	How affected
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 rep. No. 11, 1999
S. 11.....	am. No. 52, 1977; No. 51, 1985; Act No. 64, 1990; No. 63, 1992; No. 51, 1997
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; No. 53, 1997
S. 15AA.....	ad. Act No. 53, 1997
S. 15A.....	ad. Act No. 24, 1989 am. No. 53, 1997
S. 15B.....	ad. Act No. 53, 1997
S. 16.....	am. No. 51, 1985; Act No. 63, 1992; No. 53, 1997
S. 16A.....	ad. Act No. 53, 1997
S. 17.....	am. No. 51, 1985; Act No. 63, 1992 rs. No. 53, 1997
S. 18.....	am. No. 51, 1985; No. 38, 1989; Act No. 23, 1989; No. 63, 1992; No. 53, 1997
S. 19.....	am. Act No. 64, 1990; No. 63, 1992 rs. No. 22, 1993 am. No. 81, 1994; Nos. 51 and 53, 1997
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; No. 81, 1994
S. 23.....	am. Act No. 63, 1992; No. 81, 1994; No. 53, 1997
S. 24.....	am. Act No. 63, 1992; No. 81, 1994
S. 25.....	am. No. 52, 1977; No. 67, 1985; Act No. 64, 1990; No. 63, 1992; No. 22, 1993; No. 51, 1997
S. 26.....	am. Act No. 22, 1993 rep. No. 81, 1994 ad. No. 51, 1997
S. 26A.....	ad. Act No. 64, 1990 am. No. 22, 1993; No. 50, 1993; No. 58, 1993 rep. No. 51, 1997
S. 27.....	am. Act No. 22, 1993 rep. No. 81, 1994 ad. No. 18, 1999
S. 28.....	am. Act No. 64, 1990; No. 63, 1992; No. 22, 1993 rep. No. 51, 1997
S. 29.....	am. No. 63, 1984; No. 38, 1989; Act No. 44, 1991; No. 63, 1992; No. 51, 1997
S. 31.....	am. Act No. 64, 1990; No. 63, 1992; No. 22, 1993

Motor Traffic (Alcohol and Drugs) Act 1977

NOTES—continued

Table of Amendments—continued

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

Provision	How affected
	rs. No. 51, 1997
S. 32	am. No. 67, 1985; Act No. 64, 1990; No. 63, 1992; No. 22, 1993; No. 58, 1993
	rs. No. 51, 1997
S. 33	rs. No. 51, 1997
S. 34	am. Act No. 63, 1992; No. 81, 1994
	rs. No. 51, 1997
S. 35	am. Act No. 58, 1993
	rs. No. 51, 1997
Part V (ss. 36-39).....	rep. Act No. 51, 1997
Ss. 36, 37.....	am. Act No. 63, 1992
	rs. No. 51, 1997
S. 38	am. Act No. 63, 1992; No. 81, 1994
	rs. No. 51, 1997
S. 39	am. No. 67, 1985
	rs. Act No. 51, 1997
Part VI (s. 40).....	rep. Act No. 51, 1997
S. 40	am. Act No. 63, 1992; No. 58, 1993; No. 81, 1994
	rep. No. 51, 1997
S. 41	am. No. 37, 1980; No. 51, 1985; Act No. 24, 1989; No. 63, 1992; Nos. 51 and 53, 1997
S. 41A.....	ad. Act No. 24, 1989
	am. No. 22, 1993; No. 53, 1997
S. 42	rs. No. 51, 1985
	am. Act No. 64, 1990
S. 42A.....	ad. No. 51, 1985
S. 42B.....	ad. No. 51, 1985
	am. Act No. 64, 1990
S. 43	am. Act No. 63, 1992; No. 51, 1997
Part VIII (s. 44).....	rep. Act No. 51, 1997
Part VIII (ss. 44, 44A, 44B)	ad. Act No. 51, 1997
S. 44	am. No. 38, 1989
	rs. Act No. 51, 1997
Ss. 44A, 44B.....	ad. Act No. 51, 1997
S. 45	am. No. 51, 1985; Act No. 23, 1989; No. 63, 1992
S. 46	am. No. 51, 1985; Act No. 63, 1992; No. 81, 1994
S. 47	am. No. 51, 1985; No. 9, 1987; Act No. 63, 1992; No. 51, 1997
S. 48	am. Act No. 63, 1992
	rep. No. 51, 1997
S. 49	am. Act No. 63, 1992
S. 52	am. No. 38, 1989
Schedule.....	ad. No. 37, 1980
Schedule 1.....	ad. No. 51, 1985

Motor Traffic (Alcohol and Drugs) Act 1977

NOTES—continued

Table of Amendments—continued

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

Provision	How affected
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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