



Australian Capital Territory

Road Transport (Alcohol and Drugs) Act 1977

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About this republication

The republished law

This is a republication of the *Road Transport (Alcohol and Drugs) Act 1977* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 3 March 2010. It also includes any amendment, repeal or expiry affecting the republished law to 3 March 2010.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

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

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

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

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Australian Capital Territory

Road Transport (Alcohol and Drugs) Act 1977

An Act to provide for the detection of people who drive motor vehicles after consuming alcohol or drugs, for offences by those people, and to provide measures for the treatment and rehabilitation of those people

Part 1 Preliminary

1 Name of Act

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

Note 1 This Act is part of the road transport legislation. See the *Road Transport (General) Act 1999* for various provisions about the administration and enforcement of the road transport legislation generally.

Note 2 Other road transport legislation includes the following:

- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (General) Act 1999*
- *Road Transport (Mass, Dimensions and Loading) Act 2009*
- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Third-Party Insurance) Act 2008*
- *Road Transport (Vehicle Registration) Act 1999*.

Note 3 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary defines certain terms, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act or elsewhere in the road transport legislation.

For example, the signpost definition '*driver licence*—see the *Road Transport (Driver Licensing) Act 1999*, dictionary' means the term 'driver licence' is defined in that dictionary and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 Notes

A note in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

4 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to the following offence against this Act (see Code, pt 2.1):

- s 15AA (1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

4A Meaning of *public place*

(1) For this Act—

public place means:

- (a) an off-street parking area; or
- (b) an area for the parking of motor vehicles on, or in the vicinity of, licensed premises; or
- (c) an area for the parking of motor vehicles by people attending a drive-in or other open-air theatre or cinema; or
- (d) a loading area; or
- (e) a wharf, pier or jetty; or
- (f) the foreshores of a lake; or
- (g) a park, reserve, recreational or sporting ground, racecourse or other open place, that is used by the public or to which the public has access, whether with or without payment for admission; or
- (h) the entrances to and the exits from, and the passages and driveways in, an area or place mentioned in paragraphs (a) to (g).

(2) In this section:

foreshores, of a lake—see the *Lakes Act 1976*, dictionary.

lake—see the *Lakes Act 1976*, dictionary.

licensed premises—see the *Liquor Act 1975*, dictionary.

loading area means any part of the area, other than an area on which a building is erected, bounded by the public streets known as—

- (a) Petrie Street, Alinga Street, East Row and London Circuit; or
- (b) Petrie Street, Bunda Street, Garema Place and Alinga Street; or

- (c) East Row, Alinga Street, Northbourne Avenue and London Circuit; or
- (d) Northbourne Avenue, Alinga Street, West Row and London Circuit.

off-street parking area means an area available for use by the public, whether with or without the payment of money, for the parking of motor vehicles, and includes an area—

- (a) situated between the entrances to and exits from the area and a public street; and
- (b) used for access to the area.

4B Meaning of *special driver*

- (1) For this Act, a person is a special driver if—
 - (a) the person is not the holder of an Australian driver licence or external driver licence; or
 - (b) the person's Australian driver licence or external driver licence is suspended; or
 - (c) the person is disqualified from holding or obtaining an Australian driver licence by a court in Australia or under the law of any jurisdiction; or
 - (d) the person holds a learner licence, provisional licence, probationary licence or restricted licence within the meaning given by the *Road Transport (Driver Licensing) Act 1999*, dictionary; or
 - (e) the person is the holder of an Australian driver licence and is driving a motor vehicle of a kind that the person is not authorised to drive by the licence; or
 - (f) the person is the driver of—
 - (i) a Commonwealth vehicle; or

- (ii) a vehicle on which a sign or marking is required to be displayed under the *Dangerous Substances Act 2004*; or
 - (iii) a heavy vehicle; or
 - (iv) a public vehicle within the meaning of the *Road Transport (General) Act 1999*, section 158.
- (2) However, subsection (1) (a) does not apply to a person who is exempted from holding a driver licence under the *Road Transport (Driver Licensing) Act 1999*.
- (3) The Minister may declare a motor vehicle to be a Commonwealth vehicle.
- (4) A declaration is a notifiable instrument.

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

- (5) In this section:

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 on a blue background, and the word ‘COMCAR’ in blue on a white background; or
- (b) is declared under subsection (3) to be a Commonwealth vehicle.

heavy motor vehicle means—

- (a) a motor vehicle that has a GVM over 15t; or
- (b) a motor vehicle and trailer combination, or a combination of semitrailer coupled to a motor vehicle, that has a GCM over 15t.

Note ‘t’ is the symbol for tonne(s).

4C Meaning of level of alcohol concentration

A reference in this Act to a concentration of alcohol in blood at a level mentioned in column 2 of an item of table 4C is a reference to a concentration of alcohol in 100mL of blood mentioned in column 3 of that item:

Table 4C

column 1 item	column 2 level	column 3 blood alcohol concentration
1	level 1	0.02g or more but less than 0.05g
2	level 2	0.05g or more but less than 0.08g
3	level 3	0.08g or more but less than 0.15g
4	level 4	0.15g or more

Note 1 'mL' is the symbol for millilitre(s).

Note 2 'g' is the symbol for gram(s).

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

- (1) A person who is convicted of a disqualifying offence is a ***repeat offender*** in relation to the offence if the person has been convicted, or found guilty, of a relevant offence within 5 years before being convicted of the disqualifying offence.
- (2) A person who is convicted of a disqualifying offence is a ***first offender*** in relation to the offence if the person is not a repeat offender in relation to the offence.
- (3) In this section:

relevant offence means—

 - (a) a disqualifying offence; or
 - (b) a corresponding offence; or
 - (c) an offence of culpable driving; or

- (d) an offence against the *Road Transport (Safety and Traffic Management) Act 1999*, section 6 (1) (which is about negligent driving) that occasions death or grievous bodily harm (within the meaning of that subsection); or
- (e) an offence against any of the following provisions of the *Road Transport (Safety and Traffic Management) Act 1999*:
 - (i) section 7 (1) (which is about furious, reckless or dangerous driving);
 - (ii) section 8 (1) or (2) (which are about menacing driving); or
- (f) an offence against any of the following provisions of the *Road Transport (Driver Licensing) Act 1999*:
 - (i) section 32 (1), (2) or (3) (which are about driving or fraudulently applying for a driver licence while disqualified or after licence suspension, cancellation or refusal);
 - (ii) section 33 (1) (which is about contravention of conditions of a restricted licence).

5 Approval of instruments etc

- (1) If 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 100mL of blood; and
 - (b) is suitable for use in analyses under part 2;the Minister may approve that type of instrument for this Act.

- (2) The Minister may, in writing, approve devices of a type described in the notice to be approved screening devices for this Act if the Minister 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 2.
- (3) An approval under this section is a notifiable instrument.

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

6 Approval of operators, analysts and laboratories

- (1) The chief police officer may authorise a police officer to carry out breath analyses if the officer has—
- (a) undergone a course approved 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 chief police officer.
- (2) The Minister may appoint the analysts that the Minister considers necessary for this Act.
- (3) The Minister may approve a laboratory or other entity (however described) as an approved laboratory for this Act.
- (4) An authorisation, appointment or approval under this section is a notifiable instrument.

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

Part 2 Examination of people for alcohol or drugs

8 Power to require screening test if vehicle not involved in accident

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

- (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, shortly before the requirement is made, the person was the driver of a motor vehicle on a public street or in a public place.

9 Power to require screening test if motor vehicle involved in accident

If 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) if 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) if—
 - (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 for 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) If—

- (a) a person undergoes a screening test under a requirement made by a police officer under section 8, section 9 or section 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; or
- (b) a person who has been required by a police officer under section 8, section 9 or section 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, section 9 or section 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) If—

- (a) under subsection (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 0.02g of alcohol per 100mL 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 under 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) A regulation may—
 - (a) make provision for and in relation to the procedures to be followed by an approved operator immediately before beginning a breath analysis by means of an approved breath analysis instrument, during the breath analysis and immediately after the completion of the breath analysis; and
 - (b) make provision that, unless specified conditions exist when carrying out, and specified results are obtained from the procedures to be followed before beginning, 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 this Act.
- (4) A regulation made for subsection (3) may prescribe different procedures in relation to different types of approved breath analysis instruments.

- (5) If, because of a regulation made for subsection (3) (c), an analysis of the sample of the breath of a person is to be disregarded for this Act, the police officer mentioned in subsection (1) may, if another breath analysis instrument is available at the police station or other place where 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.
- (6) 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 the 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 if 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, section 9 or section 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 begin or continue the breath analysis of a person under section 12—
 - (a) for an accident—
 - (i) if 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.
- (2) If subsection (1) (a) (ii) applies and—
 - (a) a police officer attending the scene of the accident has doubt as to the time when the accident occurred; and
 - (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.
- (3) A police officer shall not require a person to undergo a screening test under section 8, section 9 or section 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, because 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; or
 - (b) if the person is in hospital and the doctor or authorised nurse practitioner attending the person certifies in writing that, in his or her opinion, complying with the requirement would be detrimental to the person's medical condition; or
 - (c) for a person who is at the place where the person usually lives—
 - (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; or

- (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 place where the person usually lives and the police officer making the requirement has followed the motor vehicle while it was being driven on the public street.
- (4) If the person is in hospital, the police officer must, before making the requirement, tell the doctor or authorised nurse practitioner attending the person of the officer's intention to make the requirement.

15 Taking blood samples from people in custody

- (1) If—
- (a) a police officer does not, because of section 14 (3) (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 doctor 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 end of whichever of the periods specified in section 14 (1) or (2) applies in relation to the person.

- (3) A reference in this section to the taking of a blood sample is a reference to the taking of a blood sample under a requirement under subsection (1).
- (4) 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.
- (5) A doctor 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 doctor 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.

Maximum penalty: 10 penalty units.

- (6) A police officer shall not make a request under subsection (5) after the end of whichever of the periods specified in section 14 (1) or (2) applies in relation to the person.
- (7) The doctor 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; and
 - (b) place approximately equal quantities of the sample blood into 2 containers and, on a label attached to each container, sign his or her name and write the name of the person from whom the sample was taken and the date and time when the sample was taken; and
 - (c) ensure that each container is sealed.

- (8) The doctor 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.
- (9) 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 people in hospital

- (1) A person commits an offence if—
- (a) the person is a doctor or nurse; and
 - (b) the person attends to a person (the *patient*) in hospital; and
 - (c) the person believes, on reasonable grounds, that—
 - (i) the patient was a driver involved in an accident; and
 - (ii) the accident happened not longer than 6 hours before the patient arrived at the hospital; and
 - (d) the person does not take a sample of the patient's blood for analysis within 2 hours after the time the patient arrives at the hospital.

Maximum penalty: 10 penalty units.

Note Section 17 contains defences to a prosecution for a breach of this section.

- (2) A person taking a sample of blood under this section shall—
- (a) place approximately equal quantities of the sample into 2 containers; and

- (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 section 15AA and has been put in a one-way box for collection by an approved analyst, the analyst must arrange for the analysis of the blood at an approved laboratory to work out 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 must—
 - (a) arrange the analysis of the blood in 1 of the containers at an approved laboratory to work out 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 firstmentioned person to collect the unanalysed blood sample, requests the analyst to give him or her that sample; or

- (ii) 6 months after the blood was taken from the person ends; whichever happens first.
- (3) If 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 ask an analyst to arrange for the analysis of the sample to work out 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 section 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 and the time when the blood sample was taken; and
 - (b) the place where the blood sample was taken; and
 - (c) the result of the analysis; and
 - (d) the address where 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) If 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) For a person mentioned in subsection (1) (a), if the person is not in hospital, the police officer 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 the purposes of the medical examination.

- (4) A doctor or authorised nurse practitioner requested by a police officer to carry out a medical examination of a person to whom this section applies for the purpose mentioned in subsection (2) shall carry out the medical examination within 2 hours of the person's arrival at hospital.

Maximum penalty: 10 penalty units.

- (5) A doctor or authorised nurse practitioner requested by a police officer to take a sample from the body of a person to whom this section applies for the purpose mentioned 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.

Maximum penalty: 10 penalty units.

- (6) A nurse requested by a doctor, authorised nurse practitioner or 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.

Maximum 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; and
- (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 the person—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) If only 1 sealed container of a particular person's body sample has been put in a one-way box under section 16 (8), the analyst by whom it is collected must arrange for analysis of the sample at an approved laboratory to ascertain—
- (a) whether any drug other than alcohol was present in the person's body when the sample was taken; and
 - (b) if any such drug is found to have been present—the concentration, quantity or other measurement of that drug; and
 - (c) if the sample is of the person's blood—the concentration of alcohol in the blood.
- (2) If 2 sealed containers of a particular person's body samples have been put in a one-way box under section 16 (8), the analyst by whom they have been collected shall—
- (a) arrange for analysis of the sample in 1 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 firstmentioned 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 doctor 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; or
 - (b) for a procedure under section 15 (Taking blood samples from persons in custody), section 15AA (Taking blood samples from people in hospital) or section 16 (Medical examinations)—if the person objects to the carrying out of the procedure and persists in so objecting after a doctor, 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) for a procedure under section 15AA—the doctor 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 section 15 (5), section 15AA (1) or section 16 (4), (5) or (6) if the defendant satisfies the court that—

- (a) because 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 given by this Act, takes a person into custody and takes the person to a place for the purpose of this Act, is not liable, only because 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) if 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) if a sample of the breath of the person has been analysed—the time when the approved operator gives to the person the written statement mentioned in section 12 (6); or
 - (b) if 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 end of whichever of the periods mentioned in section 14 (1) applies in relation to the person.
- (4) The Territory shall indemnify and keep indemnified a doctor or nurse who carries out a specified procedure when required to do so by this Act in relation to any damages that the doctor or nurse becomes liable to pay as a result of carrying out the procedure.
- (5) In subsection (4):
specified procedure—see section 17.
- (6) Subsection (4) applies whether the person was or was not capable, because of the person's mental condition, of giving or refusing consent to the taking of a sample of blood or to the medical examination.

18A Taking blood samples from people involved in accidents

- (1) In this section:

accident means an accident on a public street or in a public place, whether within or outside the ACT.

animal means a horse, cattle or sheep.

bicycle includes a tricycle and any vehicle of a similar nature, but does not include a toy carriage.

person involved in an accident is a person who appears to be at least 15 years old and attends, or is admitted to, a hospital for examination or treatment because of an accident—

- (a) involving a vehicle the person was driving or attempting to drive; or
- (b) involving an animal the person was riding or driving or attempting to ride or drive; or
- (c) in which the person was involved as a pedestrian.

vehicle means—

- (a) a bicycle; or
 - (b) an animal-drawn vehicle.
- (2) Sections 15AA, 15A, 15B, 16, 16A, 17, 23 and 41A apply in relation to a person involved in an accident, or a sample taken from the body of such a person, as if the person were a driver involved in an accident.

Part 3 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;

commits 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 carried out in accordance with this Act; or
 - (b) an analysis of a sample of the person's blood carried out at an approved laboratory and certified accurate by an approved analyst; or
 - (c) any other analysis.
- (3) In subsection (1) (b):

relevant period means the period beginning when the person ceased to be the driver of the vehicle and ending at the latest time when—

- (a) a breath analysis of the person may be carried out in accordance with this Act; or
- (b) if section 15 or section 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

If a person charged with an offence against section 19 was the driver of the motor vehicle only for the reason that the person 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) the person 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) the person 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;

commits an offence punishable, on conviction, by a maximum fine of 30 penalty units if—

- (c) the person refuses to provide a sample of breath for analysis; or
- (d) the person 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;

commits an offence punishable, on conviction, by a maximum fine of 30 penalty units if the person fails or refuses to permit the sample to be taken for that purpose.

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

Maximum penalty: 30 penalty units.

- (3) A person who is required under section 16 to undergo a medical examination commits an offence punishable, on conviction, by a maximum fine of 30 penalty units if—
- (a) the person fails or refuses to submit to the medical examination; or
 - (b) the person fails or refuses, when required by the doctor or authorised nurse practitioner conducting the examination, to give or permit the taking of a sample from his or her body for analysis.
- (4) It is a defence to a prosecution for an offence against subsection (1), (2) or (3) 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 commits an offence.

Maximum penalty: 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) If—

- (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) the person 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) the person did not intend to drive the motor vehicle while under the influence of intoxicating liquor, of the drug or both.

24A Driver etc intoxicated

- (1) A person must not drive or ride a vehicle or animal on a public street, or be in charge of a vehicle or animal on a public street, while under the influence of alcohol.

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

- (2) A person arrested for an offence against this section is entitled to be examined by a doctor or authorised nurse practitioner if the person asks to be examined.
- (3) If a request for examination is made, the person making the arrest must provide reasonable facilities for the examination.
- (4) In this section:

animal means a horse, cattle or sheep.

bicycle includes a tricycle and any vehicle of a similar nature, but does not include a toy carriage.

vehicle means—

- (a) a bicycle; or
- (b) an animal-drawn vehicle.

Part 4 Penalties

26 Fines and imprisonment—s 19 offences

- (1) If a special driver is convicted of an offence against section 19 (1) and the convicting court finds that the concentration of alcohol in the person's blood was at a level specified in column 2 of an item of table 26, the person is punishable—
 - (a) for a first offender—by the maximum penalty specified in column 3 of that item; and
 - (b) for a repeat offender—by the maximum penalty specified in column 4 of that item.
- (2) If a person other than a special driver is convicted of an offence against section 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) for a first offender—by the maximum penalty specified in table 26, column 3 opposite the relevant level; and
 - (b) for a repeat offender—by the maximum penalty specified in table 26, column 4 opposite the relevant level.

Table 26

column 1 item	column 2 blood alcohol concentration level	column 3 maximum penalty— first offender	column 4 maximum penalty— repeat offender
1	level 1	5 penalty units	10 penalty units
2	level 2	5 penalty units	10 penalty units
3	level 3	10 penalty units, imprisonment for 6 months or both	10 penalty units, imprisonment for 6 months or both

column 1 item	column 2 blood alcohol concentration level	column 3 maximum penalty— first offender	column 4 maximum penalty— repeat offender
4	level 4	15 penalty units, imprisonment for 9 months or both	20 penalty units, imprisonment for 12 months or both

27 Imprisonment—s 22, s 23 and s 24 offences

If—

- (a) a person is convicted of an offence against section 22, section 23 or section 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 the road transport legislation, 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) for an offence by a first offender—6 months; or
- (d) for an offence by a repeat offender—12 months.

29 Conditional release of convicted person

If 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 fine or sentencing the person to imprisonment, make a rehabilitation program order within the meaning of the *Crimes (Sentencing) Act 2005*, section 13 (7) (Good behaviour orders).

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

- (1) If the court makes an order under section 29, 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 any person or people that it considers appropriate and on hearing the applicant and the person or people 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 any other order in relation to the conditions that it considers appropriate.
- (3) If 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.

32 Automatic driver licence disqualification—first offenders, s 19

- (1) This section applies only to first offenders.
- (2) If a court convicts a special driver of an offence against section 19 (1) and finds that the concentration of alcohol in the person's blood was at a level mentioned in column 2 of an item of table 32, the person is automatically disqualified from holding or obtaining a driver licence for—
 - (a) the period mentioned in column 4 of that item; or
 - (b) if the court orders a shorter period of disqualification that is not less than the period mentioned in column 3 of that item—the shorter period.

- (3) If a court convicts a person other than a special driver of an offence against section 19 (1) and finds that the concentration of alcohol in the person's blood was at level 2, 3 or 4, the person is automatically disqualified from holding or obtaining a driver licence for—
- (a) the period mentioned in the item applying to that level in table 32, column 4; or
 - (b) if the court orders a shorter period of disqualification that is not less than the period mentioned in that item, column 3—the shorter period.

Table 32

column 1 item	column 2 blood alcohol concentration level	column 3 minimum disqualification	column 4 default disqualification
1	level 1	1 month	3 months
2	level 2	2 months	6 months
3	level 3	3 months	12 months
4	level 4	6 months	3 years

Note The effect of disqualification is set out in the *Road Transport (General) Act 1999*, s 66.

33 Automatic driver licence disqualification—repeat offenders, s 19

- (1) This section applies only to repeat offenders.
- (2) If a court convicts a special driver of an offence against section 19 (1) and finds that the concentration of alcohol in the person's blood was at a level mentioned in an item of column 2 of an item of table 33, the person is automatically disqualified from holding and obtaining a driver licence for—
 - (a) the period mentioned in column 4 of that item; or

- (b) if the court orders a shorter period of disqualification that is not less than the period mentioned in column 3 of that item—the shorter period.
- (3) If a court convicts a person other than a special driver of an offence against section 19 (1) and finds that the concentration of alcohol in the person’s blood was at level 2, 3 or 4, the person is automatically disqualified from holding or obtaining a driver licence for—
 - (a) the period mentioned in the item applying to that level in table 33, column 4; or
 - (b) if the court orders a shorter period of disqualification that is not less than the period mentioned in column 3 of that item—the shorter period.

Table 33

column 1 item	column 2 blood alcohol concentration level	column 3 minimum disqualification	column 4 default disqualification
1	level 1	3 months	12 months
2	level 2	3 months	12 months
3	level 3	6 months	3 years
4	level 4	12 months	5 years

Note The effect of disqualification is set out in the *Road Transport (General) Act 1999*, s 66.

34 Automatic driver licence disqualification—offences other than s 19

- (1) If a court convicts a first offender of a disqualifying offence, other than an offence against section 19 (1), the person is automatically disqualified from holding or obtaining a driver licence for—
 - (a) 3 years; or

- (b) if the court orders a shorter period of disqualification that is at least 6 months—the shorter period.
- (2) If a court convicts a repeat offender of a disqualifying offence, other than an offence against section 19 (1), the person is automatically disqualified from holding or obtaining a driver licence for—
- (a) 5 years; or
 - (b) if the court orders a shorter period of disqualification that is at least 12 months—the shorter period.

Note The effect of disqualification is set out in the *Road Transport (General) Act 1999*, s 66.

38 Additional powers of court

The powers of a court under this part are in addition to any other powers of the court.

Part 7 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 an approved operator; and
 - (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; and
 - (iii) the instrument used in the analysis, by reference to its model number, patent number and serial number; and
 - (iv) that the approved breath analysis instrument was in proper working order; and
 - (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; and
 - (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; and
 - (vii) 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; and

- (viii) that, in following such of those procedures in relation to which the regulations make provision that specified results are to be obtained, the results specified in the certificate were obtained; and
 - (ix) 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
 - (x) that, as soon as practicable after the breath analysis was carried out, he or she signed and gave to the person referred to in paragraph (a) (ii) a statement as required by section 12 (6);
- is evidence of the matters stated in the certificate; and
- (b) a certificate purporting to be signed by a police officer and stating—
 - (i) that he or she was on a specified date an approved operator; and
 - (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; and
 - (iii) the instrument available for the purpose of the analysis, by reference to its model number, patent number and serial number; and
 - (iv) that the approved breath analysis instrument was in proper working order; and
 - (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; and

is evidence of the matters stated in the certificate; and

- (c) a written statement referred to in section 12 (6), being a print-out from an approved breath analysis instrument, is evidence of the matters stated in the statement; and

- (d) a certificate purporting to be signed by a doctor or a nurse stating that—

- (i) he or she is a doctor or a nurse; and

- (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; and

- (iii) he or she placed approximately equal quantities of the sample of blood or other body sample into 2 containers; and

- (iv) on a label attached 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 and time when the sample was taken; and

- (v) 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;

- (e) a certificate purporting to be signed by a doctor or authorised nurse practitioner stating all of the following is evidence of the matters stated in the certificate:
- (i) that he or she is a doctor or authorised nurse practitioner;
 - (ii) that at a stated hospital, on a stated date and at a stated time, he or she was attending the person named in the certificate;
 - (iii) that he or she was told by a police officer of the officer's intention to require a person to undergo a screening test under section 8 (Power to require screening test if vehicle not involved in accident), section 9 (Power to require screening test if motor vehicle involved in accident) or section 10 (Power to require screening test for culpable driving) or to provide a sample of the person's breath for breath analysis under section 12 (Breath analysis);
 - (iv) that he or she was of the opinion at the time he or she was told that—
 - (A) complying with the requirement would be detrimental to the person's medical condition; or
 - (B) complying with the requirement would not be detrimental to the person's medical condition; and
- (f) a certificate purporting to be signed by a doctor or a nurse stating that—
- (i) he or she is a doctor or a nurse; and
 - (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; and
 - (iii) he or she placed approximately equal quantities of the sample of blood into 2 containers; and

- (iv) on a label attached to each container, the doctor or a nurse, signed his or her name and wrote the name of the person from whom the sample was taken and the date and time when the sample was taken; and
- (v) each container was sealed; and
- (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) if 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;
- (g) a certificate that appears to be a certificate mentioned in the *Road Transport (Safety and Traffic Management) Act 1999* (NSW), section 33 (4), (5) or (6) is evidence of the matters stated in the certificate; and
- (h) a certificate purporting to be signed by an approved analyst and stating—
 - (i) that he or she is an approved analyst; and
 - (ii) that a sample from a sealed container to which was attached a label purporting to be signed by a doctor or nurse named in the certificate, and bearing the name of a person stated in the certificate as the person from whom the sample was taken and the date and time when the sample was taken, was analysed at an approved laboratory; and

- (iii) the analysis to which the sample was subjected; and
 - (iv) the result of the analysis; and
 - (v) the analysis was accurate;
- is evidence of the matters stated in the certificate; and
- (i) a certificate expressed to be given for 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 a paragraph of this section is not inadmissible only because of the fact that the certificate relates to 1, or some only, of the matters mentioned in that paragraph.

41A Evidence for insurance purposes

- (1) Despite section 41, evidence—
- (a) that a sample of blood was taken from a person under section 15 (5) or section 15AA (1); or
 - (b) that a doctor or nurse dealt with a container holding a sample of blood in accordance with section 15 (8) or section 15AA (3); or
 - (c) that a statement was given under section 15B; or
 - (d) of the content of a statement issued under section 15B; or
 - (e) that the person was found guilty of a relevant offence; or
 - (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; or
 - (g) that the person was charged with a relevant offence and, under the *Crimes Act 1900*, section 402, the charge was dismissed, or an order was made in relation to the person; or

- (h) under the *Crimes Act 1900*, section 357, a relevant offence was taken into account in passing sentence on the person;
- (i) that a non-conviction order was made under the *Crimes (Sentencing) Act 2005*, section 17 (2) (a) (Non-conviction orders—general); or
- (j) that an offence was taken into account by a court under the *Crimes (Sentencing) Act 2005*, part 4.4 (Taking additional offences into account);

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 under 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 an owner, a registered operator or the driver of a motor vehicle is convicted or found guilty 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) This section does not preclude 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 mentioned in subsection (3) or (4).

- (6) In subsection (1):

relevant offence means an offence against section 19 in relation to a sample of blood taken from a person under section 15 (5) or section 15AA (1).

42 Effect of noncompliance—analysis of breath or blood

- (1) This section applies if 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 relating to the carrying out of the breath analysis or the taking and analysis of the sample of blood.

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

- (2) Unless the court is satisfied that the failure to comply with the provisions of this Act mentioned 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 noncompliance—analysis of body sample

- (1) This section applies if the court hearing a charge for an offence against this Act arising out of the giving or taking, 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 relating to the giving or taking, and the analysis, of the sample from the body of a person.

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

- (2) Unless the court is satisfied that the failure to comply with the provision of this Act mentioned in subsection (1) would not have affected the result obtained in the analysis, the court shall dismiss the charge.

42B Effect of noncompliance—refusal to give sample of breath

- (1) This section applies if 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 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.

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

- (2) Unless the court is satisfied that the failure to comply with the provisions of this Act mentioned 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 about s 41 certificate

- (1) A person who has been charged with an offence against this Act may give written notice to the chief police officer that the person 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 mentioned in section 41 is given.
- (2) Notice under subsection (1) may be given by leaving it at, or posting it to, the chief police officer at his or her office, not less than 7 days before the date fixed for the hearing of the proceedings against the person charged or within any shorter period the court allows.
- (3) Notwithstanding that a notice has been given under subsection (2) and that the people mentioned in the notice give evidence relating to the matters stated in the certificates, the certificates mentioned in section 41—
 - (a) are admissible in evidence; and
 - (b) are evidence of the matters stated in the certificates and of the facts on which they are based; and
 - (c) have the probative value that the court determines consistently with the other evidence before the court.

Part 8 Rehabilitation programs

44 Approval of programs

- (1) For this Act, the Minister may approve a program of therapy or education that the Minister believes, on reasonable grounds, would assist in the rehabilitation of people suffering from alcohol dependence.
- (2) An approval may be given subject to the conditions (if any) stated in the approval.
- (3) 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 people the court has ordered to undertake the program.
- (4) Subsection (3) does not limit the conditions that may be imposed on an approval.
- (5) An approval is a notifiable instrument.

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

Part 9 Miscellaneous

45 Power of arrest

A police officer who has an approved screening device immediately available for use is not entitled to arrest without a warrant a person whom the officer suspects is guilty of an offence against section 24 (1) unless and until the officer 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

A person who, having been taken into custody by a police officer under section 11, section 15 or section 16, escapes from the custody of that police officer or from the custody of another police officer in whose custody the person has been placed commits an offence.

Maximum penalty: 50 penalty units, 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 must tell the arrested person, or someone else acting on behalf of the arrested person, that the arrested person is entitled to be examined by a doctor or authorised nurse practitioner nominated by the arrested person or other person.
- (2) If 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 must, 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.

48 When police officer may move person's motor vehicle

- (1) This section applies to a motor vehicle driven by a person—
 - (a) arrested for an offence against this Act; or
 - (b) taken into custody under section 11, section 15 or section 16.
- (2) A police officer may take charge of, enter and drive the vehicle to a retention area.
- (3) As soon as practicable after moving the vehicle to a retention area, the police officer must report the action to the police officer in charge of the closest police station and ask that the responsible person for the vehicle (or someone else entitled to possession of the vehicle), and the person who was driving the vehicle before being arrested or taken into custody, be told where it has been moved to.
- (4) A vehicle moved to a retention area is taken to be uncollected goods under the *Uncollected Goods Act 1996* and—
 - (a) the road transport authority is taken to be the possessor of the vehicle under that Act; and
 - (b) the responsible person for the vehicle is taken to be the owner of the vehicle; and
 - (c) the road transport authority may dispose of the vehicle in accordance with that Act, part 3; and
 - (d) reasonable costs of the possessor in complying with that Act are taken to include the cost of moving the vehicle to the retention area.
- (5) The possessor is not required to release the vehicle from the retention area in accordance with the *Uncollected Goods Act 1996*—
 - (a) to the person who has been arrested or taken into custody, unless satisfied, on reasonable grounds, that the person can drive the vehicle without committing an offence against this Act; or

- (b) to a person who appears to be authorised for the purpose by the responsible person or the person arrested or in custody, unless satisfied, on reasonable grounds, that the person appears to understand the nature of the authority.
- (6) However, the responsible person for the vehicle is not required to pay costs under the *Uncollected Goods Act 1996*, section 26 (2) (a) or (b) if the responsible person satisfies the road transport authority that the vehicle was stolen or illegally taken or used at the relevant time.

Note The *Uncollected Goods Act 1996*, s 26 (2) (a) and (b) require the owner to pay the reasonable costs incurred by the possessor in complying with that Act and the possessor's reasonable costs in storing and maintaining the goods before they are collected.

49 Default term of imprisonment

If 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 References to Motor Traffic (Alcohol and Drugs) Act etc

In any Act or document—

- (a) a reference to the *Motor Traffic (Alcohol and Drugs) Act 1977* is, in relation to anything to which this Act applies after the commencement of this section, a reference to this Act; and

(b) a reference to the *Motor Traffic (Alcohol and Drugs) Regulations* is a reference to the *Road Transport (Alcohol and Drugs) Regulation 2000*.

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

51 Regulation-making power

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Schedule 1 Drugs

(see dict, def of *drug*)

- 1 Amitriptyline and other tricyclic antidepressants
- 2 Antihistamines, and all tertiary nitrogenous organic bases that possess pharmacological properties characteristic of antihistamine substances
- 3 Barbituric acid and its derivatives
- 4 Carbromal
- 5 Chloral hydrate and its derivatives
- 6 Chlor diazepoxide and other substances structurally derived from benzodiazepine with ataractic properties
- 7 Chlormezanone
- 8 Chlorpromazine and other substances structurally derived from phenothiazine with ataractic properties
- 9 Chlorprotixene and other thioxanthines
- 10 Ethchlorvynol
- 11 Ethinamate
- 12 Glutethimide
- 13 Haloperidol and other substances structurally derived from butyrophenone with ataractic properties
- 14 Meprobamate
- 15 Mianserin and other tetracyclic antidepressants
- 16 Paraldehyde
- 17 Phenelzine and other monoamine oxidase inhibitors with ataractic properties.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- doctor
- exercise
- fail
- function
- nurse
- nurse practitioner.

accident means an accident on a public street or in a public place, whether within or outside the ACT, that involves a motor vehicle.

another jurisdiction means a jurisdiction other than the ACT.

approved analyst means a person who is appointed by the Minister under section 6 (2).

approved breath analysis instrument means an instrument of a type that is approved by the Minister under section 5 (1).

approved laboratory means a laboratory or other entity (however described) approved by the Minister under section 6 (3) as an approved laboratory.

approved operator means a police officer who is authorised by the chief police officer under section 6 (1).

approved screening device means a device of a type that is approved by the Minister under section 5 (2).

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

authorised nurse practitioner means a nurse practitioner who is the occupant of a nurse practitioner position acting within the scope of practice for the position.

breath analysis, in relation to a person, means an analysis of a sample of the person's breath carried out for this Act by means of an approved breath analysis instrument.

corresponding offence means an offence against a law of another jurisdiction that corresponds to a disqualifying offence, and includes any offence against the law of another jurisdiction arising out of the driving of a motor vehicle by a person who is or may be affected by alcohol, a drug or both.

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.

disqualifying offence means an offence against—

- (a) section 19 (Prescribed blood alcohol concentration exceeded); or
- (b) section 22 (Refusing to provide breath sample); or
- (c) section 23 (Refusing blood test etc); or
- (d) section 24 (Driving under the influence of intoxicating liquor or a drug); or
- (e) another provision of this Act prescribed by regulation.

drive a motor vehicle includes—

- (a) start or attempt to start the engine of the vehicle; and
- (b) put or attempt to put the vehicle in motion; and

- (c) be in, and in charge of, the vehicle; and
- (d) be in control of the steering, movement or propulsion of the vehicle; and
- (e) if the vehicle can be ridden—ride the vehicle.

driver, of a motor vehicle, means the person who is driving the vehicle.

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

- (a) appears to be at least 15 years old; and
- (b) attends, or is admitted to, a hospital for the purpose of examination or treatment as a consequence of the accident.

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

drug means—

- (a) a substance specified in schedule 1; or
- (b) a controlled drug within the meaning of the Criminal Code, chapter 6 (Serious drug offences); 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.

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

Note An external driver licence is a foreign driver licence or an external territory driver licence.

first offender—see section 4D.

GCM—see the *Road Transport (Vehicle Registration) Act 1999*, dictionary.

GVM—see the *Road Transport (Vehicle Registration) Act 1999*, dictionary.

jurisdiction means a State, the Commonwealth or an internal territory, including the ACT.

level, for a concentration of alcohol in blood—see section 4C.

medical examination means an examination by a doctor or authorised nurse practitioner.

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

nurse practitioner position—see the *Health Act 1993*, section 195 (2).

offence of culpable driving, for a person, means—

- (a) an offence against the *Crimes Act 1900*, section 29 (Culpable driving); or
- (b) any other offence against the *Crimes Act 1900* if a necessary fact to constitute the offence is that someone dies or is injured because of, or as a result of, the way a person drove a motor vehicle.

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 relation to a special driver—0.02g of alcohol per 100mL of blood; and
- (b) in relation to any other person—0.05g of alcohol per 100mL of blood.

public place—see section 4A.

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.

registered operator—see the *Road Transport (Vehicle Registration) Act 1999*, dictionary.

repeat offender—see section 4D.

responsible person, for a vehicle—see the *Road Transport (General) Act 1999*, section 10.

restricted licence—see the *Road Transport (Driver Licensing) Act 1999*, dictionary.

road transport authority (or **authority**) means the Australian Capital Territory Road Transport Authority.

Note The chief executive of the department responsible for the *Road Transport (General) Act 1999* is the road transport authority (see *Road Transport (General) Act 1999*, s 16).

road transport legislation—see the *Road Transport (General) Act 1999*, section 6.

scope of practice—see the *Health Act 1993*, section 195 (2).

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

special driver—see section 4B.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

This Act was originally a Commonwealth ordinance—the *Motor Traffic (Alcohol and Drugs) Ordinance 1977* No 17 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

It was renamed as the *Road Transport (Alcohol and Drugs) Act 1977* by the *Road Transport Legislation Amendment Act 1999* (see sch 3).

Before 11 May 1989, ordinances commenced on notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 25).

Legislation before becoming Territory enactment

Road Transport (Alcohol and Drugs) Act 1977 No 17

notified 21 June 1977 (Cwlth Gaz 1977 No S111)

commenced 1 December 1977 (s 2 and Cwlth Gaz 1977 No S242)

as amended by

Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance 1977 Ord1977-52

notified 27 September 1977 (Cwlth Gaz 1977 No S206)

commenced 27 September 1977

Ordinances Revision Ordinance 1978 Ord1978-46

notified 28 December 1978 (Cwlth Gaz 1978 No S292)

commenced 28 December 1978

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance
1980 Ord1980-37**

notified 14 October 1980 (Cwlth Gaz 1980 No S231)
commenced 14 October 1980

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance
1981 Ord1981-16**

notified 30 June 1981 (Cwlth Gaz 1981 No S128)
commenced 30 June 1981

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance (No 2)
1981 Ord1981-29**

notified 24 September 1981 (Cwlth Gaz 1981 No S200)
commenced 24 September 1981

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance
1982 Ord1982-94**

notified 17 December 1982 (Cwlth Gaz 1982 No S263)
commenced 17 December 1982 (s 2)

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance
1984 Ord1984-63**

notified 2 November 1984 (Cwlth Gaz 1984 No S464)
commenced 2 November 1984

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance
1985 Ord1985-51**

notified 19 September 1985 (Cwlth Gaz 1985 No S380)
commenced 19 September 1985

Magistrates Court Ordinance 1985 Ord1985-67 sch pt 1

notified 19 December 1985 (Cwlth Gaz 1985 No S542)
commenced 1 February 1986 (s 2 and Cwlth Gaz 1986 No G3)

**Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance
1987 Ord1987-9**

notified 2 April 1987 (Cwlth Gaz 1987 No S59)
commenced 2 April 1987

**Drug Laws (Consequential Amendments) Ordinance 1989 Ord1989-14
s 4**

notified 15 March 1989 (Cwlth Gaz 1989 No S109)
commenced 1 April 1989 (s 2 and Cwlth Gaz 1989 No S109)

Endnotes

3 Legislation history

Self-Government (Consequential Amendments) Ordinance 1989 Ord1989-38 sch 1

notified 10 May 1989 (Cwlth Gaz 1989 No S160)
s 1, s 2 commenced 10 May 1989 (s 2 (1))
sch 1 commenced 11 May 1989 (s 2 and see Cwlth Gaz 1989
No S164)

Legislation after becoming Territory enactment

Acts Revision (Arrest Without Warrant) Act 1989 A1989-23 s 10

notified 1 December 1989 (Gaz 1989 No S38)
commenced 1 December 1989

Motor Traffic (Alcohol and Drugs) (Amendment) Act 1989 A1989-24

notified 7 December 1989 (Gaz 1989 No S40)
commenced 7 December 1989

Motor Traffic (Alcohol and Drugs) (Amendment) Act 1990 A1990-64

notified 24 December 1990 (Gaz 1990 No S98)
commenced 1 January 1991 (s 2)

Magistrates and Coroner's Courts (Registrar) Act 1991 A1991-44 s 7

notified 20 September 1991 (Gaz 1990 No S95)
s 1, s 2 commenced 20 September 1991 (s 2 (1))
s 7 commenced 25 September 1991 (s 2 (2) and Gaz 1991 No S103)

Motor Traffic (Alcohol and Drugs) (Amendment) Act 1992 A1992-63

notified 30 October 1992 (Gaz 1992 No S183)
commenced 30 October 1992

Motor Traffic (Alcohol and Drugs) (Amendment) Act 1993 A1993-22

notified 5 April 1993 (Gaz 1993 No S47)
commenced 5 April 1993

Motor Traffic (Alcohol and Drugs) (Amendment) Act (No 2) 1993 A1993-50

notified 27 August 1993 (Gaz 1993 No S165)
ss 1-3 commenced 27 August 1993 (s 2 (1))
remainder commenced 1 September 1993 (s 2 (2) and Gaz 1993
No S177)

**Motor Traffic (Alcohol and Drugs) (Amendment) Act (No 3)
1993 A1993-58**

notified 6 September 1993 (Gaz 1993 No S172)
s 1, s 2 commenced 6 September 1993 (s 2 (1))
remainder commenced 27 September 1993 (s 2 (2) and Gaz 1993
No S201)

Statute Law Revision Act 1994 A1994-26 sch

notified 31 May 1994 (Gaz 1994 No S93)
commenced 31 May 1994 (s 2)

Statute Law Revision (Penalties) Act 1994 A1994-81 sch

notified 29 November 1994 (Gaz 1994 No S269)
s 1, s 2 commenced 29 November 1994 (s 2 (1))
sch commenced 29 November 1994 (s 2 and Gaz 1994 No S269)

Motor Traffic (Consequential Provisions) Act 1996 A1996-7 s 10

notified 10 April 1996 (Gaz 1996 No S59)
ss 1-3 commenced 10 April 1996 (s 2 (1))
s 10 commenced 12 September 1996 (s 2 (2))

Motor Traffic (Alcohol and Drugs) (Amendment) Act 1996 A1996-48

notified 19 September 1996 (Gaz 1996 No S234)
commenced 19 September 1996 (s 2)

Motor Traffic (Alcohol and Drugs) (Amendment) Act 1997 A1997-51

notified 19 September 1997 (Gaz 1997 No S264)
ss 1-3 commenced 19 September 1997 (s 2 (1))
remainder commenced 2 March 1998 (s 2 (2) and Gaz 1997 No S427)

**Motor Traffic (Alcohol and Drugs) (Amendment) Act (No 2)
1997 A1997-53**

notified 19 September 1997 (Gaz 1997 No S264)
ss 1-3 commenced 19 September 1997 (s 2 (1))
remainder commenced 2 March 1998 (s 2 (2) and Gaz 1997 No S428)

Motor Traffic (Alcohol and Drugs) (Amendment) Act 1999 A1999-11

notified 23 March 1999 (Gaz 1999 No S14)
commenced 23 March 1999 (s 2)

Endnotes

3 Legislation history

Motor Traffic (Alcohol and Drugs) (Amendment) Act (No 2) 1999 A1999-18

notified 14 April 1999 (Gaz 1999 No S16)
commenced 14 April 1999 (s 2)

Road Transport Legislation Amendment Act 1999 A1999-79 sch 3

notified 23 December 1999 (Gaz 1999 No S65)
commenced 1 March 2000 (s 2 and see Gaz 2000 No S5)

Road Transport Legislation Amendment Act 2001 A2001-27 sch 3

notified 24 May 2001 (Gaz 2001 No 21)
s 1, s 2 commenced 24 May 2001 (IA s 10B)
sch 3 commenced 24 May 2001 (s 2)

Legislation (Consequential Amendments) Act 2001 A2001-44 pt 334

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 334 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Statute Law Amendment Act 2001 (No 2) 2001 A2001-56 pt 3.45

notified 5 September 2001 (Gaz 2001 No S65)
s 1, s 2 commenced 5 September 2001 (LA s 75)
pt 3.45 commenced 12 September 2001 (amdt 3.474)

Road Transport (Public Passenger Services) Act 2001 A2001-62 pt 1.2

notified 10 September 2001 (Gaz 2001 No S66)
s 1, s 2 commenced 10 September 2001 (IA s 10B)
pt 1.2 commenced 1 December 2001 (s 2 and CN2001 No 2)

Statute Law Amendment Act 2002 A2002-30 pt 3.63

notified LR 16 September 2002
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))
pt 3.63 commenced 17 September 2002 (s 2 (1))

Statute Law Amendment Act 2002 (No 2) A2002-49 pt 3.20

notified LR 20 December 2002
s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))
pt 3.20 commenced 17 January 2003 (s 2 (1))

Dangerous Substances Act 2004 A2004-7 sch 1 pt 1.7

notified LR 19 March 2004
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))
sch 1 pt 1.7 commenced 5 April 2004 (s 2 and CN2004-6)

Nurse Practitioners Legislation Amendment Act 2004 A2004-10 pt 11

notified LR 19 March 2004
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))
pt 11 commenced 27 May 2004 (s 2 and CN2004-9)

**Justice and Community Safety Legislation Amendment Act 2005
A2005-5 pt 10**

notified LR 23 February 2005
s 1, s 2 commenced 23 February 2005 (LA s 75 (1))
pt 10 commenced 6 March 2005 (s 2 (1) and see Criminal Code
(Serious Drug Offences) Amendment Act 2004 A2004-56, s 2 and LA
s 79)

Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.53

notified LR 12 May 2005
s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))
sch 3 pt 3.53 commenced 2 June 2005 (s 2 (1))

Road Transport (Alcohol and Drugs) Amendment Act 2006 A2006-12

notified LR 5 April 2006
s 1, s 2 commenced 5 April 2006 (LA s 75 (1))
remainder commenced 6 April 2006 (s 2)

Sentencing Legislation Amendment Act 2006 A2006-23 sch 1 pt 1.30

notified LR 18 May 2006
s 1, s 2 commenced 18 May 2006 (LA s 75 (1))
amdt 1.276 commenced 2 June 2007 (s 2 (2))
sch 1 pt 1.30 remainder commenced 2 June 2006 (s 2 (1) and see
Crimes (Sentence Administration) Act 2005 A2005-59 s 2, Crimes
(Sentencing) Act 2005 A2005-58, s 2 and LA s 79)

Health Legislation Amendment Act 2006 A2006-27 sch 2 pt 2.8

notified LR 14 June 2006
s 1, s 2 commenced 14 June 2006 (LA s 75 (1))
sch 2 pt 2.8 commenced 14 December 2006 (s 2 and LA s 79)

Endnotes

4 Amendment history

Road Transport (Third-Party Insurance) Act 2008 A2008-1 sch 1 pt 1.3 (as am by A2008-39 s 4)

notified LR 26 February 2008

s 1, s 2 commenced 26 February 2008 (LA s 75 (1))

sch 1 pt 1.3 commenced 1 October 2008 (s 2 as am by A2008-39 s 4)

Road Transport (Third-Party Insurance) Amendment Act 2008 A2008-39

notified LR 22 August 2008

s 1, s 2 commenced 22 August 2008 (LA s 75 (1))

remainder commenced 23 August 2008 (s 2)

Note This Act only amends the Road Transport (Third-Party Insurance) Act 2008 A2008-1.

Road Transport (Mass, Dimensions and Loading) Act 2009 A2009-22 sch 1 pt 1.2

notified LR 3 September 2009

s 1, s 2 commenced 3 September 2009 (LA s 75 (1))

sch 1 pt 1.2 commenced 3 March 2010 (s 2 and LA s 79)

4 Amendment history

Preliminary

pt 1 hdg note am A2001-44 amdt 1.3669; A2001-62 amdt 1.4
om A2005-20 amdt 3.343

Name of Act

s 1 sub A1999-79 sch 3
am A2005-20 amdt 3.344; A2008-1 amdt 1.12; A2009-22
amdt 1.2

Dictionary

s 2 hdg (prev s 3 hdg) sub A2005-20 amdt 3.345
s 2 orig s 2 om A2001-27 amdt 3.2
(prev s 3) sub A1999-79 sch 3
renum as s 2 A2006-12 s 4

Notes

s 3 orig s 3 renum as s 2
(prev s 4) am A1997-51 s 4 (d)
defs reloc (in pt) to dict A1999-79 sch 3
om (in pt) A1999-79 sch 3
sub A1999-79 sch 3
renum as s 3 A2006-12 s 4

- def **approved analyst** om A1999-79 sch 3
- def **approved breath analysing instrument** am Ord1980-37 s 3
om A1992-63 s 3
- def **approved breath analysis instrument** ins A1992-63 s 3
om A1992-63 s 3
- def **approved operator** am Ord1985-51 sch
om A1999-79 sch 3
- def **approved rehabilitation program** ins A1997-51 s 4 (c)
om A1992-63 s 3
- def **approved screening device** om A1999-79 sch 3
- def **Commonwealth vehicle** ins A1993-58 s 4 (c)
sub A1996-48 s 4
om A1992-63 s 3
- def **dangerous goods vehicle** ins A1990-64 s 4 (b)
om A1992-63 s 3
- def **drive a motor vehicle** om A1999-79 sch 3
- def **experienced driver** ins A1990-64 s 4 (b)
am A1993-58 s 4 (a)
om A1992-63 s 3
- def **heavy motor vehicle** ins A1990-64 s 4 (b)
am A1996-7 s 10
om A1992-63 s 3
- def **level** ins A1997-51 s 4 (c)
om A1992-63 s 3
- def **medical practitioner** am A1989-24 s 3 (a)
om A1999-79 sch 3
- def **offence involving alcohol or drugs** am Ord1981-29 s 2;
A1992-63 sch
om A1997-51 s 4 (b)
- def **public place** om A1999-79 sch 3
- def **special driver** ins A1997-51 s 4 (c)
om A1999-79 sch 3

Offences against Act—application of Criminal Code etc

- s 4 orig s 4 renum as s 3
ins A2006-12 s 5

Meaning of public place

- s 4A ins A1999-79 sch 3
am A2002-49 amdt 3.223

Meaning of special driver

- s 4B ins A1999-79 sch 3
am A2001-44 amdts 1.3670-1.3672; A2001-62 amdt 1.5;
A2004-7 amdt 1.12, amdt 1.13

Endnotes

4 Amendment history

Meaning of level of alcohol concentration

s 4C ins A1999-79 sch 3
table renum R12 LA

Meaning of *repeat offender* and *first offender*

s 4D ins A1999-79 sch 3
am A2001-27 amdt 3.3, amdt 3.4
def **relevant offence** am A2001-27 amdt 3.5
par (g) exp 1 March 2005 (s 52)

Approval of instruments etc

s 5 am Ord1980-37 s 4; Ord1985-51 s 4; A1992-63 s 4, s 8 (2);
A1999-79 sch 3; A2001-44 amdt 1.3673, amdt 1.3674

Approval of operators, analysts and laboratories

s 6 am Ord1985-51 s 5, sch; A1989-24 sch; A1992-63 s 8 (2);
A1999-79 sch 3; A2001-44 amdt 1.3675, amdt 1.3676
sub A2006-12 s 6

Notices to be published in the Gazette

s 7 am Ord1978-46; Ord1981-16
sub A1999-79 sch 3
om A2001-44 amdt 1.3677

Power to require screening test if vehicle not involved in accident

s 8 am Ord1982-94; Ord1985-51 sch; A1989-24 sch; A1999-79
sch 3

Power to require screening test if motor vehicle involved in accident

s 9 am Ord1985-51 sch; A1989-24 sch

Power to require screening test for culpable driving

s 10 am Ord1985-51 sch; A1989-24 sch

Written statement relating to screening test

s 10A ins Ord1982-94
am Ord1985-51 sch; A1989-24 sch; A1990-64 s 5
om A1999-11 s 4

Detention for breath analysis

s 11 am Ord1977-52; Ord1985-51 sch; A1990-64 s 6; A1992-63
s 5; A1997-51 s 5

Breath analysis

s 12 am Ord1982-94; Ord1985-51 s 6, sch; A1989-24 sch;
A1992-63 s 8 (1); ss renum R9 LA

Precautions for privacy

s 13 am A1992-63 s 6

Restrictions on screening tests and breath analyses

s 14 am Ord1982-94 s 4; Ord1985-51 sch; A1989-24 s 4; A1999-79 sch 3; ss renum R9 LA; A2004-10 s 40, s 41

Taking blood samples from people in custody

s 15 am Ord1985-51; A1989-24 s 5; A1992-63 s 8 (1); A1997-53 s 5; A1999-79 sch 3; ss renum R9 LA

Taking blood samples from people in hospital

s 15AA hdg sub A2006-12 s 7
s 15AA ins A1997-53 s 6
am A1999-79 sch 3; A2006-12 s 8

Analysis of blood samples

s 15A ins A1989-24 s 6
am A1997-53 s 7; A2006-12 ss 9-11

Statements to be provided

s 15B ins A1997-53 s 8

Medical examinations

s 16 am Ord1985-51 sch; A1992-63 s 8 (3), (4); A1997-53 s 9; A1999-79 sch 3; A2004-10 s 42, s 43

Analysis of body samples

s 16A ins A1997-53 s 10
am A2006-12 s 12, s 13

Exemptions from requirements to take blood samples or carry out examinations

s 17 am Ord1985-51 sch; A1992-63 sch
sub A1997-53 s 10
am A1999-79 sch 3; A2006-12 s 14

Protection of police officers and medical staff

s 18 am Ord1985-51 sch; Ord1989-38 sch 1; Ord1989-23 s 10 (1); A1992-63 s 8 (3), sch; A1997-53 s 11; A1999-79 sch 3; ss renum R9 LA

Taking blood samples from people involved in accidents

s 18A ins A1999-79 sch 3

Prescribed blood alcohol concentration exceeded

s 19 am A1990-64 s 7; A1992-63 s 8 (1), (3)
sub A1993-22 s 3
am A1994-81 sch; A1997-51 s 6; A1997-53 s 12; A2006-12 s 15

Offence where blood alcohol concentration exceeds prescribed concentration

s 20 am A1989-24 s 7
om A1993-22 s 3

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4 Amendment history

Defence if person did not intend to drive motor vehicle

s 21 am A1992-63 s 8 (2), (3); A1993-22 s 5 (1)

Refusing to provide breath sample

s 22 hdg sub A1997-51 note

s 22 am Ord1985-51 sch; A1992-63 sch; A1994-81 sch

Refusing blood test etc

s 23 hdg sub A1997-51 note

s 23 am A1992-63 sch; A1994-81 sch; A1997-53 s 13; A1999-79 sch 3; A2004-10 s 44; ss renum R12 LA (see A2004-10 s 45)

Driving under the influence of intoxicating liquor or a drug

s 24 am A1992-63 s 8 (2), sch; A1994-81 sch

Driver etc intoxicated

s 24A ins A1999-79 sch 3

am A2004-10 s 46

Interpretation

s 25 am Ord1977-52 s 4; Ord1985-67 sch pt 1; A1992-63 s 8 (3), sch; A1997-51 s 7 (d)

om A1999-79 sch 3

def **disqualifying offence** ins A1997-51 s 7 (c)

def **driving licence** ins A1997-51 s 7 (c)

def **first offender** sub A1997-51 s 7 (a)

def **previous offender** om A1997-51 s 7 (b)

def **repeat offender** ins A1997-51 s 7 (c)

def **traffic infringer** ins A1990-64 s 8

am A1993-22 s 5 (1)

om A1997-51 s 7 (b)

Fines and imprisonment—s 19 offences

s 26 am A1993-22 s 5 (2)

om A1994-81 sch

ins A1997-51 s 8

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First offenders—traffic infringement notice

s 26A ins A1990-64 s 9

am A1993-22 s 5 (1); A1993-50 s 4; A1993-58 s 5

om A1997-51 s 8

Imprisonment—s 22, s 23 and s 24 offences

s 27 am A1993-22 s 5 (2)

om A1994-81 sch

ins A1999-18 s 4

am A1999-79 sch 3

Circumstances in which court may impose sentence of imprisonment

s 28 am A1990-64 s 10; A1992-63 sch; A1993-22 s 5
om A1997-51 s 8

Conditional release of convicted person

s 29 am Ord1984-63; Ord1989-38 sch 1; A1991-44 sch 1;
A1992-63 s 8 (4), sch; A1997-51 s 9; A1999-79 sch 3;
ss renum R9 LA
sub A2006-23 amdt 1.276

Cancellation of driving licence

s 31 am A1990-64 s 11; A1992-63 s 8 (4); A1993-22 s 5 (1)
sub A1997-51 s 10
om A1999-79 sch 3

Automatic driver licence disqualification—first offenders, s 19

s 32 am Ord1985-67 sch pt 1; A1990-64 s 12; A1992-63 s 8 (2),
(4); A1993-22 s 5 (1); A1993-58 s 6
sub A1997-51 s 10; A1999-79 sch 3
am A2001-27 amdt 3.6, amdt 3.7
table renum R12 LA

Automatic driver licence disqualification—repeat offenders, s 19

s 33 sub A1997-51 s 10; A1999-79 sch 3
am A2001-27 amdt 3.8, amdt 3.9
table renum R12 LA

Automatic driver licence disqualification—offences other than s 19

s 34 am A1992-63 sch; A1994-81 sch
sub A1997-51 s 10; A1999-79 sch 3
am A2001-27 amdt 3.10, amdt 3.11

Timing of licence cancellation and disqualification

s 35 am A1993-58 s 7
sub A1997-51 s 10
om A1999-79 sch 3

Special licences to drive motor vehicles

pt 5 hdg om A1997-51

Disqualification subject to grant of special licence

s 36 am A1992-63 s 8 (2), sch
sub A1997-51 s 10
om A1999-79 sch 3

Disqualification etc—further special licence

s 37 am A1992-63 sch
sub A1997-51 s 10
om A1999-79 sch 3

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Additional powers of court

s 38 am A1992-63 s 8 (3); A1994-81 sch
sub A1997-51 s 10

Notice to registrar

s 39 am Ord1985-67 sch pt 1
sub A1997-51 s 10
om A1999-79 sch 3

Restoration of cancelled driving licences

pt 6 hdg om A1997-51

Restoration of cancelled licences

s 40 am A1992-63 s 8 (2), sch; A1993-58 s 8; A1994-81 sch
om A1997-51

Certificate of evidence

s 41 am Ord1980-37 s 5; Ord1985-51 s 7, sch; A1989-24 s 8;
A1992-63 s 7, s 8 (1); A1997-51 s 11; A1997-53 s 14;
A1999-79 sch 3; pars renum R9 LA; A2004-10 s 47; pars
renum R12 LA (see A2004-10 s 48); A2006-12 s 16, s 17

Evidence for insurance purposes

s 41A ins A1989-24 s 9
am A1993-22 s 4; A1997-53 s 14; A1999-79 sch 3; A2005-20
amdt 3.346; A2006-23 amdt 1.277

Effect of noncompliance—analysis of breath or blood

s 42 sub Ord1985-51 s 8
am A1990-64 s 13; A2001-44 amdt 1.3678, amdt 1.3679

Effect of noncompliance—analysis of body sample

s 42A ins Ord1985-51 s 8
am A2001-44 amdt 1.3680, amdt 1.3681

Effect of noncompliance—refusal to give sample of breath

s 42B ins Ord1985-51 s 8
am A1990-64 s 14; A2001-44 amdt 1.3682-1.3684

Oral evidence about s 41 certificate

s 43 am A1992-63; A1997-51 s 12; A1999-79 sch 3

Rehabilitation programs

pt 8 hdg sub A1997-51 s 13

Approval of programs

s 44 am Ord1989-38 sch
sub A1997-51 s 13
am A1999-79 sch 3; A2001-44 amdt 1.3685, amdt 1.3686

Conditions

s 44A ins A1997-51 s 13
om A2001-44 amdt 1.3687

Review of administrative appeals tribunal

s 44B ins A1997-51 s 13
om A1999-79 sch 3

Power of arrest

s 45 am Ord1985-51 sch; Ord1989-23 s 10 (2); A1992-63 sch;
A2006-23 amdt 1.278

Penalty for escaping from custody

s 46 am Ord1985-51 sch; A1992-63 s 8 (2); A1994-81 sch

Right of arrested person to medical examination

s 47 am Ord1985-51 sch; Ord1987-9; A1992-63 s 8 (3); A1997-51
s 14; A1999-79 sch 3; A2004-10 s 49

When police officer may move person's motor vehicle

s 48 am A1992-63 s 8 (2)
om A1997-51 s 15
ins A1999-79 sch 3

Default term of imprisonment

s 49 am A1992-63 sch

References to Motor Traffic (Alcohol and Drugs) Act etc

s 50 sub A1999-79 sch 3
am A2001-44 amdt 1.3688, amdt 1.3689

Regulation-making power

s 51 sub A1999-79 sch 3
am A2001-44 amdt 1.3690

Transitional

pt 10 hdg ins A1999-79 sch 3
om R13 LA

Expiry of s 4D (3), def *relevant offence*, par (g)

s 52 am Ord1989-38 sch
sub A1999-79 sch 3
am A2001-27 amdt 3.12
exp 1 March 2005 (s 52)

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s 53 ins A1999-79 sch 3
am A2001-27 amdt 3.13
exp 1 March 2002 (s 53 (2))

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4 Amendment history

Transitional—Road Transport (Alcohol and Drugs) Amendment Act 2006

pt 20 hdg ins A2006-12 s 18
exp 6 April 2009 (s 103)

Meaning of *relevant commencement* for pt 20

s 100 ins A2006-12 s 18
exp 6 April 2009 (s 103)

Transitional—sample taken before relevant commencement

s 101 ins A2006-12 s 18
exp 6 April 2009 (s 103 (LA s 88 declaration applies))

Transitional—analyst certificates

s 102 ins A2006-12 s 18
exp 6 April 2009 (s 103 (LA s 88 declaration applies))

Expiry—pt 20

s 103 ins A2006-12 s 18
exp 6 April 2009 (s 103)

Drugs

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renum as sch 1 A2001-27 amdt 3.14

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am Ord1989-38 sch
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amdt 3.692; A2004-10 s 50
def **accident** ins A1997-53 s 4
reloc from s 4 A1999-79 sch 3
def **another jurisdiction** ins A1999-79 sch 3
def **approved analyst** ins A1999-79 sch 3
def **approved breath analysis instrument** ins A1999-79
sch 3
def **approved laboratory** ins A2006-12 s 19
def **approved operator** ins A1999-79 sch 3
def **approved screening device** ins A1999-79 sch 3
def **Australian driver licence** ins A1999-79 sch 3
def **authorised nurse practitioner** ins A2004-10 s 51
def **breath analysis** am A1992-63 s 8 (1)
reloc from s 4 A1999-79 sch 3
def **corresponding offence** ins A1999-79 sch 3

- def **court** am Ord1985-67 sch pt 1
reloc from s 4 A1999-79 sch 3
- def **disqualifying offence** ins A1999-79 sch 3
- def **doctor** ins A1999-79 sch 3
sub A2001-56 amdt 3.474
om A2002-30 amdt 3.693
- def **drive** ins A1999-79 sch 3
- def **driver** ins A1999-79 sch 3
- def **driver involved in an accident** ins A1997-53 s 4
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- def **driver licence** ins A1999-79 sch 3
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- def **external driver licence** ins A1999-79 sch 3
- def **first offender** ins A1999-79 sch 3
- def **GCM** ins A1999-79 sch 3
- def **GVM** ins A1999-79 sch 3
- def **jurisdiction** ins A1999-79 sch 3
- def **level** ins A1999-79 sch 3
- def **medical examination** ins A2004-10 s 51
- def **motor vehicle** ins A1999-79 sch 3
- def **nurse** ins A1997-53 s 4
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- def **nurse practitioner position** ins A2004-10 s 51
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- def **offence of culpable driving** ins A1999-79 sch 3
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- def **registered operator** ins A1999-79 sch 3
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- def **responsible person** ins A1999-79 sch 3
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- def **road transport authority** ins A1999-79 sch 3
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- def **scope of practice** ins A2004-7 s 53
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- def **screening test** ins A2004-10 s 51
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Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 30 Sept 1991	25 Sept 1991– 29 Oct 1992	A1991-44	initial republication since self-government
R1 (RI) 30 Jan 2008	25 Sept 1991– 29 Oct 1992	A1991-44	reissue of printed version
R1A 30 Jan 2008	30 Oct 1992– 4 Apr 1993	A1992-63	amendments by A1992-63
R1B 30 Jan 2008	5 Apr 1993– 31 Aug 1993	A1993-22	amendments by A1993-22
R1C 30 Jan 2008	1 Sept 1993– 26 Sept 1993	A1993-50	amendments by A1993-50
R2 30 Sept 1993	27 Sept 1993– 30 May 1994	A1993-58	amendments by A1993-58
R2 (RI) 30 Jan 2008	27 Sept 1993– 30 May 1994	A1993-58	reissue of printed version
R2A 30 Jan 2008	31 May 1994– 28 Nov 1994	A1994-26	amendments by A1994-26
R3 28 Feb 1995	29 Nov 1994– 11 Sept 1996	A1994-81	amendments by A1994-81
R3 (RI) 30 Jan 2008	29 Nov 1994– 11 Sept 1996	A1994-81	reissue of printed version
R3A 30 Jan 2008	12 Sept 1996– 18 Sept 1996	A1996-7	amendments by A1996-7

Republication No and date	Effective	Last amendment made by	Republication for
R3B 30 Jan 2008	19 Sept 1996– 1 Mar 1998	A1996-48	amendments by A1996-48
R4 2 Mar 1998	2 Mar 1998– 22 Mar 1999	A1997-53	amendments by A1997-51 and A1997-53
R4 (RI) 6 Feb 2008	2 Mar 1998– 22 Mar 1999	A1997-53	reissue of printed version
R4A 30 Jan 2008	23 Mar 1999– 13 Apr 1999	A1999-11	amendments by A1999-11
R4B 30 Jan 2008	14 Apr 1999– 29 Feb 2000	A1999-18	amendments by A1999-18
R5 1 Mar 2000	1 Mar 2000– 23 May 2001	A1999-79	renaming and other amendments by A1999-79
R5 (RI) 30 Jan 2008	1 Mar 2000– 23 May 2001	A1999-79	reissue of printed version
R6 12 Sept 2001	24 May 2001– 30 Nov 2001	A2001-56	amendments by A2001-27, A2001-44 and A2001-56
R7 3 Dec 2001	1 Dec 2001– 1 Mar 2002	A2001-62	amendments by A2001-62
R8 6 June 2002	2 Mar 2002– 16 Sept 2002	A2001-62	commenced expiry
R9 25 Sept 2002	17 Sept 2002– 16 Jan 2003	A2002-30	amendments by A2002-30
R10 17 Jan 2003	17 Jan 2003– 4 Apr 2004	A2002-49	amendments by A2002-49
R11 5 Apr 2004	5 Apr 2004– 26 May 2004	A2004-7	amendments by A2004-7
R12 27 May 2004	27 May 2004– 1 Mar 2005	A2004-10	amendments by A2004-10

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5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R13 2 Mar 2005	2 Mar 2005– 5 Mar 2005	A2004-10	commenced expiry
R14 6 Mar 2005	6 Mar 2005– 1 June 2005	A2005-5	amendments by A2005-5
R15 2 June 2005	2 June 2005– 5 Apr 2006	A2005-20	amendments by A2005-20
R16* 6 Apr 2006	6 Apr 2006– 1 June 2006	A2006-12	amendments by A2006-12
R17 2 June 2006	2 June 2006– 13 Dec 2006	A2006-23	amendments by A2006-23
R18 14 Dec 2006	14 Dec 2006– 1 June 2007	A2006-27	amendments by A2006-27
R19 2 June 2007	2 June 2007– 30 Sept 2008	A2006-27	amendments by A2006-23
R20* 1 Oct 2008	1 Oct 2008– 6 Apr 2009	A2008-39	amendments by A2008-1 as amended by A2008-39
R21 7 Apr 2009	7 Apr 2009– 2 Mar 2010	A2008-39	commenced expiry

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