

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Road Transport (Drug Driving) Bill 2010

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Road Transport (Drug Driving) Bill 2010

A Bill for

An Act to provide for the detection of people who drive motor vehicles while affected by drugs, and for deterring people from driving motor vehicles while affected by drugs, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Road Transport (Drug Driving) Act 2010*.

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 (Alcohol and Drugs) Act 1977*
- *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 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

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

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

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- (2) If this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.
- (3) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Dictionary

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

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*medicine*—see the *Medicines, Poisons and Therapeutic Goods Act 2008*, dictionary.’ means that the term ‘medicine’ 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)).

4 Notes

A note included 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.

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5 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 all offences against this Act (see Code, pt 2.1).

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.

Part 2 Important concepts

6 **Meaning of *drug screening device***

In this Act:

drug screening device means a device prescribed by regulation that is designed and made to indicate whether an oral fluid-detectable controlled drug is present in a person's oral fluid when a sample of the person's oral fluid is collected in the device by the person chewing or sucking on it (or a particular part of it).

7 **Meaning of *oral fluid analysis instrument***

In this Act:

oral fluid analysis instrument means an instrument prescribed by regulation that is designed and made to ascertain the presence of an oral fluid-detectable controlled drug in a sample of a person's oral fluid.

8 **Authorisation of operators**

The chief police officer may authorise a police officer to carry out oral fluid analysis for this Act.

9 **Register of authorised operators**

- (1) The chief police officer must keep a register of authorised operators.
- (2) The register—
 - (a) must include the name of each police officer authorised under section 8; and

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- (b) may include any other information the chief police officer considers appropriate.
- (3) The register may be kept in the form of, or as part of, 1 or more computer databases or in any other form the chief police officer considers appropriate.
- (4) The chief police officer may correct any mistake, error or omission in the register subject to any requirements prescribed by regulation.
- (5) The chief police officer may change a detail included in the register to keep the register up-to-date.
- (6) The register must be available for public inspection at reasonable times.

10 Appointment of analysts

The road transport authority may, in writing, appoint a person as an analyst for this Act.

Note 1 For the making of appointments generally, see the Legislation Act, pt 19.3.

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

11 Approval of laboratories

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

Part 3 Testing for presence of drugs

Division 3.1 Purpose—pt 3

12 Purpose—pt 3

The main purpose of this part is to allow for drug screening tests and blood tests to be done to detect people committing offences under section 28 (Driving while controlled drug in oral fluid or blood) or section 31 (Driving while impaired by medicine).

Division 3.2 Power to require drug screening tests

13 Drug screening test—vehicle not involved in accident

- (1) This section applies to a person if—
 - (a) the person is the driver of a motor vehicle on a public street or in a public place; or
 - (b) a police officer believes on reasonable grounds that the person was the driver of a motor vehicle on a public street or in a public place within the previous 4 hours.
- (2) The police officer may require the person to undergo a drug screening test in accordance with the officer's directions.

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14 Drug screening test—vehicle involved in accident

- (1) This section applies to a person if—
 - (a) a motor vehicle is involved in an accident on a public street or in a public place; and
 - (b) either—
 - (i) a police officer believes on reasonable grounds that the person was the driver of the vehicle at the time of the accident; or
 - (ii) a police officer believes on reasonable grounds that the person was in the vehicle at the time of the accident but does not know or has doubt about who was the driver of the vehicle at the time of the accident; and
 - (c) not more than 4 hours have passed since the accident.
- (2) The police officer may require the person to undergo a drug screening test in accordance with the officer's directions.

15 Drug screening test—culpable driving

- (1) This section applies to a person if a police officer believes on reasonable grounds that the person has committed an offence of culpable driving within the previous 4 hours.
- (2) The police officer may require the person to undergo a drug screening test in accordance with the officer's directions.

Division 3.3 Analysis of blood and oral fluid samples

16 Detention for giving sample of oral fluid

- (1) This section applies if—
 - (a) a person undergoes a drug screening test under a requirement made by a police officer under division 3.2 (Power to require drug screening tests) and the drug screening device used for the test indicates to the police officer that an oral fluid-detectable controlled drug is present in the person's oral fluid; or
 - (b) a person required by a police officer under division 3.2 to undergo a drug screening test fails to undergo the test in accordance with the directions of the police officer.
- (2) The police officer may take the person into custody.
- (3) If the person is taken into custody, a police officer must take the person, as soon as practicable, to a police station or another convenient place (for example, a police vehicle) for the person to give a sample of oral fluid for analysis.

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

17 Analysis of oral fluid by authorised operator

- (1) A person taken into custody under section 16 must give, in accordance with the reasonable directions of a police officer, a sample of the person's oral fluid (the *sample*) for analysis.

- (2) However, a police officer must not require the person to give a sample of oral fluid if more than 4 hours have passed since the person was, or is likely to have been, a person to whom section 13, section 14 or section 15 applies.
- (3) An analysis of part of the sample must be carried out by an authorised operator using an oral fluid analysis instrument to work out whether an oral fluid-detectable controlled drug is present in the sample.
- (4) If the result of the analysis shows that an oral fluid-detectable controlled drug is present in the sample, the authorised operator must ensure that the part of the sample not analysed under subsection (3) is—
 - (a) stored and sealed in a container; and
 - (b) taken to an approved laboratory for confirmation of the result.
- (5) A regulation may make provision about the procedures to be followed by an authorised operator in relation to—
 - (a) the taking of an oral fluid sample; and
 - (b) the storage, sealing and taking of the sample to an approved laboratory under subsection (4).
- (6) As soon as practicable after an oral fluid analysis has been carried out under subsection (3), the authorised operator who carried out the analysis must give the person a statement, signed by the operator, containing the particulars required by regulation.

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18 Analysis of oral fluid at approved laboratory

- (1) This section applies if an approved laboratory receives a sample of oral fluid under section 17 (4) (b).
- (2) An analyst must carry out an analysis of the sample to confirm whether an oral fluid-detectable controlled drug is present in the sample.
- (3) The analyst must take reasonable care to ensure that a part of the sample sufficient for analysis to be carried out by or for the person who gave the sample (the *tested person*) is protected and preserved until—
 - (a) if a request is made under subsection (4)—the tested person receives the part of the sample; or
 - (b) in any other case—6 months have passed since the tested person gave the sample.
- (4) Within 6 months after the sample is given, the tested person, or another person authorised by the tested person, may request that a part of the sample sufficient for analysis be made available to the tested person as soon as practicable.
- (5) If a request is made under subsection (4), the analyst must—
 - (a) ensure that a part of the sample sufficient for analysis is made available to the tested person as soon as practicable; and
 - (b) give reasonable assistance to the tested person to ensure that the sample is protected and preserved until it is analysed.

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19 Detention for taking of blood sample

- (1) This section applies if—
- (a) a person is required to—
 - (i) undergo a drug screening test under division 3.2 (Power to require drug screening tests); or
 - (ii) give a sample of oral fluid for analysis under section 17 (Analysis of oral fluid by authorised operator); and
 - (b) either—
 - (i) the person is unable to produce enough oral fluid for the screening test or analysis; or
 - (ii) the result of the test or analysis is negative for an oral fluid-detectable controlled drug but a police officer believes on reasonable grounds that the person may be affected by a medicine or controlled drug (other than an oral fluid-detectable controlled drug).
- (2) This section also applies if—
- (a) section 13, section 14 or section 15 applies to a person but the person has not been required to undergo a drug screening test; and
 - (b) a police officer believes on reasonable grounds that the person may be affected by a medicine or controlled drug (other than an oral fluid-detectable controlled drug).

Examples—reasonable grounds

- the way the person is driving

- the way the person is behaving

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

(3) A police officer—

- (a) may require the person to allow a sample of the person's blood to be taken for analysis; and
- (b) may take the person into custody for that purpose.

Note A person commits an offence if the person refuses to allow a sample of blood to be taken for analysis when required to do so under this Act (see s 30 (1)).

(4) If the person is taken into custody, a police officer must—

- (a) take the person, as soon as practicable, to a sampling facility for the purpose of having a blood sample taken for analysis; and
- (b) as soon as practicable after arriving at the sampling facility, ask a sample taker to take a sample of the person's blood for analysis.

(5) However, the police officer must not ask a sample taker to take a sample of the person's blood if more than 4 hours have passed since the person was, or is likely to have been, a person to whom section 13, section 14 or section 15 applies.

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20 Taking of blood sample from detained person

- (1) A person taken into custody under section 19 must allow, in accordance with the reasonable directions of a sample taker, a sample of the person's blood to be taken for a blood analysis.
- (2) A regulation may make provision about the procedures to be followed by a sample taker immediately before, during and immediately after taking a blood sample.
- (3) A person must not be held in custody under section 19 if more than 4 hours have passed since the person was, or is likely to have been, a person to whom section 13, section 14 or section 15 applies.

21 Taking of blood sample from person involved in accident

Explanatory note

This section is based on the *Road Transport (Alcohol and Drugs) Act 1977*, s 15AA (Taking blood samples from people in hospital) and s 18A (Taking blood samples from people involved in accidents). Your comments are sought on whether this section is needed in this Bill.

- (1) This section applies if—
 - (a) a sample taker attends to a person (the *patient*) in a hospital; and
 - (b) the patient appears to be at least 15 years old; and
 - (c) the sample taker believes on reasonable grounds that—
 - (i) the patient was involved in an accident and is in the hospital for examination or treatment because of the accident; and
 - (ii) the accident happened not longer than 6 hours before the patient arrived at the hospital.

- (2) The sample taker must take a sample of the patient's blood for analysis within 2 hours after the patient arrives at the hospital.

Maximum penalty: 10 penalty units.

- (3) Subsection (2) does not apply if—
- (a) the sample taker believes on reasonable grounds that taking a sample of blood from the patient would be detrimental to the patient's health; or
 - (b) the patient refuses to allow a sample of blood to be taken, despite a sample taker or police officer telling the patient that, unless the patient's refusal is based on religious or other conscientious grounds or on medical grounds, the refusal may be an offence; or
 - (c) the sample taker believes on reasonable grounds that a sample of blood has already been taken from the patient since the accident under section 20 or this section.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

- (4) It is a defence to a prosecution for an offence against this section if the defendant proves that, because of the patient's behaviour, the defendant was unable to—
- (a) take a sample of blood from the patient; or
 - (b) take a sample of blood from the patient within the time required under subsection (2).

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

- (5) A regulation may make provision about the procedures to be followed by a sample taker immediately before, during and immediately after taking a blood sample.

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(6) 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—

- (a) includes a tricycle and any vehicle of a similar nature; but
- (b) does not include a toy carriage.

involved in an accident—a person was **involved in an accident** if the person was—

- (a) the driver of a motor vehicle involved in the accident; or
- (b) driving or attempting to drive a bicycle or animal-drawn vehicle involved in the accident; or
- (c) riding or driving or attempting to ride or drive an animal involved in the accident; or
- (d) a pedestrian involved in the accident.

22 Analysis of blood sample for medicine or controlled drug

- (1) This section applies if a sample of blood is taken from a person (the **tested person**) under section 20 or section 21 for a blood analysis.
- (2) The blood analysis must be carried out by an analyst at an approved laboratory to work out whether a medicine or controlled drug is present in the sample.
- (3) A police officer may ask the analyst to work out—
 - (a) whether 1 or more stated controlled drugs are present in the sample; or

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- (b) whether 1 or more stated medicines are present in the sample;
or
 - (c) if a stated medicine is present in the sample—the concentration of the stated medicine.
- (4) The analyst must comply with the police officer’s request.
- (5) The analyst must take reasonable care to ensure that a part of the sample sufficient for blood analysis to be carried out by or for the tested person is protected and preserved in accordance with the procedures prescribed by regulation until—
- (a) if a request is made under subsection (6)—the tested person receives the part of the sample; or
 - (b) in any other case—6 months have passed since the sample was taken from the tested person.
- (6) Within 6 months after the sample is taken, the tested person, or another person authorised by the tested person, may request that a part of the sample sufficient for blood analysis be made available to the tested person as soon as practicable.
- (7) If a request is made under subsection (6), the analyst must—
- (a) ensure that a part of the sample sufficient for blood analysis is made available to the tested person as soon as practicable; and
 - (b) give reasonable assistance to the tested person to ensure that the sample is protected and preserved until it is analysed.

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23 Blood sample—other tests

- (1) This section applies if—
 - (a) a sample of blood is taken from a person under section 20 (Taking of blood sample from detained person) or section 21 (Taking of blood sample from person involved in accident); and
 - (b) the sample could have been taken from the person under the *Road Transport (Alcohol and Drugs) Act 1977*, section 15 (Taking blood samples from people in custody), section 15AA (Taking blood samples from people in hospital) or section 16 (Medical examinations).
- (2) The sample may be analysed in accordance with the *Road Transport (Alcohol and Drugs) Act 1977*, section 15A (Analysis of blood samples) or section 16A (Analysis of body samples) at the same time as it is analysed under this Act.

24 Blood analysis—statement

As soon as practicable after a blood analysis of a sample of a person's blood is carried out under this division, a police officer must give the person a written statement that includes the following information:

- (a) the date and the time when the blood sample was taken;
- (b) the place where the blood sample was taken;
- (c) the result of the analysis;
- (d) the address where the blood sample is being held;

- (e) that the person may, not later than 6 months after the blood sample was taken—
 - (i) collect an unanalysed sample of the person's blood from the analyst; or
 - (ii) authorise, in writing, another person to collect the unanalysed sample from the analyst;
- (f) any other information prescribed by regulation.

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Division 3.4 Requirements for drug screening tests etc

25 Ensuring privacy

- (1) This section applies if a police officer, authorised operator or sample taker is supervising or carrying out any of the following procedures in relation to a person:
 - (a) a drug screening test;
 - (b) the giving of an oral fluid sample for analysis;
 - (c) the taking of a blood sample for analysis.
- (2) The police officer, authorised operator or sample taker must take reasonable steps to ensure that it is not readily apparent to members of the public that the procedure is being supervised or carried out.

26 Disposal of devices used for drug screening tests

If a person undergoes a drug screening test, the police officer supervising the test must ensure that the drug screening device used for the test is disposed of in the way prescribed by regulation.

27 Permitted use of blood or oral fluid samples

A sample of oral fluid or blood given or taken under this Act may only be used for the following purposes:

- (a) analysis under this Act;
- (b) analysis under the *Road Transport (Alcohol and Drugs) Act 1977*, as mentioned in section 23 (Blood sample—other tests);

- (c) research relating to drivers of motor vehicles affected by drugs, but only if identifying information about the person who provided the sample cannot be ascertained from it.

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Part 4 Offences

Note 1 In deciding the sentence to be imposed on a person under this part, the court must consider the matters under the *Crimes (Sentencing) Act 2005*, s 33 (Sentencing—relevant considerations).

Note 2 The court may impose a combination sentence on a person under this part (see *Crimes (Sentencing) Act 2005*, pt 3.6, in particular, s 30).

28 Driving with controlled drug in oral fluid or blood

- (1) A person commits an offence if—
- (a) the person drives a motor vehicle on a public street or in a public place; and
 - (b) a controlled drug is present in the person's oral fluid or blood.

Maximum penalty: 50 penalty units, licence disqualification for up to 1 year or both.

- (2) An offence against subsection (1) is a strict liability offence.
- (3) It is a defence to a prosecution for an offence against this section if the defendant proves that—
- (a) a doctor prescribed the controlled drug for the defendant; and
 - (b) the defendant used the controlled drug only in accordance with the prescription; and
 - (c) the defendant's ability to drive safely was not impaired by the defendant's use of the controlled drug in accordance with the prescription.

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

(4) In this section:

prescription, in relation to a controlled drug, means an oral or written direction to a person—

- (a) if the person is authorised under the *Medicines, Poisons and Therapeutic Goods Act 2008* to administer the controlled drug—to administer the controlled drug; or
- (b) if the person is authorised under the *Medicines, Poisons and Therapeutic Goods Act 2008* to dispense the controlled drug—to dispense the controlled drug.

29 Refusing to give oral fluid for analysis

A person commits an offence if—

- (a) the person is required, under this Act, to give a sample of oral fluid for analysis; and
- (b) the person refuses to give the sample in accordance with the reasonable directions of a police officer.

Maximum penalty: 30 penalty units, licence disqualification for up to 1 year or both.

30 Refusing to give blood for analysis

(1) A person commits an offence if—

- (a) the person is required, under this Act, to allow a sample of blood to be taken for analysis; and

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- (b) the person refuses to allow a sample taker to take the sample in accordance with the reasonable directions of the sample taker.

Maximum penalty: 30 penalty units, licence disqualification for up to 1 year or both.

- (2) It is a defence to a prosecution for an offence against this section if the defendant proves that the refusal was based on religious or other conscientious grounds or on medical grounds.

Note A defendant has a legal burden in relation to the matters mentioned in s (2) (see Criminal Code, s 59).

31 Driving while impaired by medicine

- (1) A person commits an offence if—
 - (a) the person drives a motor vehicle on a public street or in a public place; and
 - (b) the person has taken a medicine; and
 - (c) the person's ability to drive safely is impaired by the effect of the medicine on the person.

Maximum penalty: 50 penalty units, licence disqualification for up to 1 year or both.

- (2) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant—
 - (a) took the medicine in accordance with—
 - (i) the directions of the doctor who prescribed the medicine; or
 - (ii) the instructions for the medicine; and

- (b) either—
- (i) believed on reasonable grounds that the defendant's ability to drive safely was not impaired by the medicine; or
 - (ii) could not reasonably have known that the defendant's ability to drive safely was impaired by the medicine.

Note A defendant has a legal burden in relation to the matters mentioned in s (2) (see Criminal Code, s 59).

32 Unauthorised use or analysis of blood or oral fluid sample

- (1) A person must not do any of the following in relation to the blood or oral fluid sample of a person (the *tested person*) given under this Act:
- (a) supply the sample to a person for prohibited analysis;
 - (b) carry out prohibited analysis of the sample;
 - (c) carry out research using the sample, if identifying information about the tested person can be ascertained from the sample;
 - (d) include information derived from prohibited analysis of the sample on a DNA database;
 - (e) use information obtained from an analysis of the sample as evidence in a proceeding against the tested person for an offence against another Act, other than the *Road Transport (Alcohol and Drugs) Act 1977*.

Maximum penalty: 30 penalty units.

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(2) In this section:

DNA database—see the *Crimes (Forensic Procedures) Act 2000*, dictionary.

prohibited analysis, of a blood or oral fluid sample, means analysis of the sample for a purpose other than a purpose mentioned in section 27 (Permitted use of blood or oral fluid samples).

Part 5 Evidence

Division 5.1 Evidentiary certificates

33 Application—pt 5

- (1) This part applies to a proceeding against a person for an offence against this Act.
- (2) This part does not limit evidence that can be presented apart from this part.

34 Use of evidentiary certificates

A certificate given under this division—

- (a) is admissible in evidence; and
- (b) is evidence of the matters stated in the certificate and of the facts on which the certificate is based; and
- (c) has the probative value the court determines consistently with other evidence before the court.

35 Evidentiary certificate—analysis of oral fluid sample

- (1) A certificate that appears to be signed by a police officer and states a matter relevant to any of the following is evidence of the matter:
 - (a) the carrying out of an oral fluid analysis in relation to a person, including the procedures followed and precautions taken in relation to the analysis;
 - (b) the use of an oral fluid analysis instrument for carrying out the analysis;
 - (c) when and where the analysis was carried out;

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- (d) whether the police officer was an authorised operator when carrying out the analysis;
 - (e) whether a part of the sample was sent to an approved laboratory for confirmation of the result in accordance with section 17 (Analysis of oral fluid by authorised operator);
 - (f) anything done or not done in relation to the oral fluid analysis under a regulation made for part 3 (Testing for presence of drugs).
- (2) Without limiting subsection (1), a certificate given under that subsection may state any of the following matters:
- (a) that the instrument used to carry out the analysis was an oral fluid analysis instrument;
 - (b) that the oral fluid analysis instrument has been maintained, tested or used as required or permitted under a regulation made for part 3;
 - (c) the condition of the instrument when the oral fluid analysis was carried out;
 - (d) that the oral fluid analysis was carried out in accordance with the procedures mentioned in part 3;
 - (e) the result of the oral fluid analysis;
 - (f) whether the person complied with, or failed to comply with, the directions given by the police officer in relation to carrying out the oral fluid analysis;
 - (g) the steps taken to ensure that it was not readily apparent to members of the public that the oral fluid analysis was being carried out.

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- (3) A certificate that appears to be signed by an analyst and states a matter relevant to any of the following is evidence of the matter:
- (a) that the person signing the certificate is an analyst;
 - (b) that a sample of oral fluid (the *analysed sample*) was analysed by the analyst at an approved laboratory;
 - (c) that the analysed sample was labelled in accordance with procedures prescribed under a regulation made for part 3;
 - (d) that a part of the sample sufficient for analysis to be carried out by or for the person tested was protected and preserved in accordance with section 18 (Analysis of oral fluid at approved laboratory);
 - (e) the result of the analysis;
 - (f) that the analysis was accurate.

36 Evidentiary certificate—blood sample not taken

A certificate that appears to be signed by a sample taker and states a matter relevant to any of the following is evidence of the matter:

- (a) that the person signing the certificate is a sample taker;
- (b) that the sample taker attended a person mentioned in the certificate (the *relevant person*) on a stated day, at a stated time, in a stated sampling facility;
- (c) if the relevant person is a person mentioned in section 20 (Taking of blood sample from detained person)—that a police officer had asked the sample taker to take a sample of the person's blood;

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- (d) if the relevant person is a person mentioned in section 21 (Taking of blood sample from person involved in accident)—that the sample taker believed that the relevant person—
 - (i) was involved in an accident and had attended the hospital for examination or treatment because of the accident; and
 - (ii) the accident had happened not longer than 6 hours before the relevant person arrived at the hospital;
- (e) whether the sample taker believed that—
 - (i) taking the sample would, or would not, be detrimental to the relevant person’s health; or
 - (ii) a sample of blood had, or had not, been taken from the relevant person since the accident under section 20 or section 21.

37 Evidentiary certificate—analysis of blood sample by analyst

A certificate that appears to be signed by an analyst and states a matter relevant to any of the following is evidence of the matter:

- (a) that the person signing the certificate is an analyst;
- (b) that a blood sample (the *analysed sample*) was analysed by the analyst at an approved laboratory;
- (c) that the analysed sample was labelled in accordance with procedures prescribed under a regulation made for part 3;
- (d) that a part of the blood sample sufficient for analysis to be carried out by or for the person tested was protected and preserved in accordance with section 22 (Analysis of blood sample for medicine or controlled drug);
- (e) the analysis to which the analysed sample was subjected;

- (f) the result of the analysis;
- (g) that the analysis was accurate.

38 Evidentiary certificate—oral fluid analysis statement

A statement mentioned in section 17 (6) (Analysis of oral fluid by authorised operator) that is a print-out from an oral fluid analysis instrument is evidence of the matters mentioned in the statement.

39 NSW evidentiary certificates

A certificate that appears to be a certificate mentioned in the *Road Transport (Safety and Traffic Management) Act 1999* (NSW), section 33B, section 33D or section 35 is evidence of the matters stated in the certificate.

40 Oral evidence about div 5.1 certificate

- (1) This section applies in relation to a person (the *witness*) who has given an evidentiary certificate under this division.
- (2) A person charged with an offence against this Act may, by written notice to the chief police officer, require the witness's attendance at court on the hearing of the charge, for the purpose of giving evidence orally.
- (3) The notice may be given by leaving it at, or posting it to, the chief police officer at the chief police officer's office, not less than—
 - (a) 7 days before the date fixed for the hearing of the charge; or
 - (b) if the court orders a shorter period for service—the shorter period.

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Division 5.2 Other provisions about evidence

41 Evidence for insurance purposes

Explanatory note

This section is based on the *Road Transport (Alcohol and Drugs) Act 1977*, s 41A. The explanatory statement for the *Motor Traffic (Alcohol and Drugs) (Amendment) Bill 1989* that originally introduced this section, states that it limits the use which may be made of evidence in relation to blood samples taken from an unconscious person. Your comments are sought on whether the provision should be limited to blood samples taken from unconscious people or whether the wider exclusions in this draft should be retained.

- (1) Evidence in relation to a blood or oral fluid sample of a person taken or analysed under this Act—
- (a) may be used in evidence in a proceeding against the person for—
- (i) an offence against this Act; or
- (ii) an offence against the *Road Transport (Alcohol and Drugs) Act 1977*; or
- (iii) an offence of culpable driving; and
- (b) must not be used for any other purpose.

Examples—other purposes

- 1 to void an insurance contract
- 2 in a proceeding for an offence against the *Drugs of Dependence Act 1989*

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

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- (2) Evidence in relation to the conviction, or finding of guilt, of a person of any of the following offences is not admissible in any proceeding in relation to an insurance contract as evidence that the person was affected by a medicine or controlled drug:
- (a) section 28 (Driving with controlled drug in oral fluid or blood);
 - (b) section 29 (Refusing to give oral fluid for analysis);
 - (c) section 30 (Refusing to give blood for analysis);
 - (d) section 31 (Driving while impaired by medicine);
 - (e) another provision of this Act prescribed by regulation;
 - (f) an offence of culpable driving.

42 Effect of noncompliance—analysis of blood or oral fluid sample

- (1) This section applies if, in hearing a charge for an offence against this Act resulting from the carrying out of an oral fluid analysis or the taking and analysis of a sample of the blood of a person (the *testing procedure*), the court is not satisfied that every provision of this Act has been complied with in relation to the testing procedure.

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) The court may hear the charge if satisfied that, even if the testing procedure had been complied with, the result obtained in the testing procedure would have shown the presence of a controlled drug.

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43 Effect of noncompliance—refusing to give oral fluid for analysis

- (1) This section applies if, in hearing a charge for an offence against section 29 (Refusing to give oral fluid for analysis), a court is not satisfied that every provision of this Act has been complied with in relation to that part of the carrying out of an oral fluid analysis required to be carried out before the sample of oral fluid is given.

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) The court may hear the charge if satisfied that, even if the failure to comply with the provisions of this Act mentioned in subsection (1) had not occurred and the oral fluid analysis had taken place, the result obtained in the analysis would have shown the presence of a controlled drug.

44 Effect of noncompliance—refusing to give blood for analysis

- (1) This section applies if, in hearing a charge for an offence against section 30 (Refusing to give blood for analysis), a court is not satisfied that every provision of this Act has been complied with in relation to that part of the carrying out of a blood analysis required to be carried out before the sample of blood is given.

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) The court may hear the charge if satisfied that, even if the failure to comply with the provisions of this Act mentioned in subsection (1) had not occurred and the blood analysis had taken place, the result obtained in the analysis would have shown the presence of a controlled drug.

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Part 6 Miscellaneous

45 Police may direct person not to drive

- (1) This section applies if—
- (a) a person has been required under part 3 to undergo a drug screening test or to give a sample of oral fluid or blood for analysis; and
 - (b) a police officer believes on reasonable grounds that the person's ability to drive a motor vehicle safely is impaired by a medicine or controlled drug.

Examples—reasonable grounds

- the way the person is driving
- the way the person is behaving

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

- (2) The police officer may direct the person not to drive a motor vehicle.
- (3) The direction must—
- (a) be in writing; and
 - (b) state the period, not longer than 12 hours, for which the person must not drive a motor vehicle; and
 - (c) be signed by the police officer.

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- (4) The person commits an offence if the person fails to comply with the direction.

Maximum penalty: 10 penalty units.

- (5) On request by the person, the chief police officer may revoke the direction if satisfied on reasonable grounds that the person's ability to drive a motor vehicle safely is no longer impaired by a medicine or controlled drug.

46 Conducting alcohol-related tests and drug-related tests at same time

Nothing in this Act prevents a police officer requiring a person to undergo a breath screening test under the *Road Transport (Alcohol and Drugs) Act 1977*, part 2 (Examination of people for alcohol or drugs) and a drug screening test under division 3.2 (Power to require drug screening tests) at the same time.

47 Right of arrested person to medical examination

Explanatory note

This section is based on the *Road Transport (Alcohol and Drugs) Act 1977*, s 47. It is being considered as part of the review of the Act and your comments are sought.

- (1) This section applies if a police officer arrests a person for an offence against this Act.
- (2) The police officer must tell the arrested person, or someone else (the **representative**) 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 the representative.

(3) If the arrested person or representative asks the police officer to arrange a medical examination by a nominated doctor or nominated nurse practitioner, 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.

(4) In this section:

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

48 Approved forms

(1) The chief executive may approve forms for this Act.

(2) If the chief executive approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

(3) An approved form is a notifiable instrument.

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

49 Regulation-making power

(1) The Executive may make regulations for this Act.

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

(2) A regulation may create offences and fix maximum penalties of not more than 20 penalty units for the offences.

(3) A regulation may provide defences for offences against a regulation and provide who bears the onus of proof for the defences.

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- (4) In addition to a penalty mentioned in subsection (2), a regulation may provide for a person who is convicted or found guilty by a court of an offence against this Act to be disqualified by order of the court from holding or obtaining a driver licence for the period the court considers appropriate.
- (5) A regulation may provide for a person who is prosecuted for an aggravated form of an offence against a regulation to be found guilty by a court of a lesser offence if the court is not satisfied that the elements of the aggravated offence have been proven, but is satisfied that the elements of the lesser offence have been proven.
- (6) A regulation may provide that a document that is signed or appears to be signed by a sample taker and stating any matter relevant to the taking of a sample of blood or oral fluid under this Act, is evidence of the matter in a proceeding before a court or tribunal.

50 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

Schedule 1 Consequential amendments

(s 50)

Part 1.1 Crimes Act 1900

[1.1] Section 29 (1)

substitute

(1) In this section:

controlled drug—see the *Road Transport (Drug Driving) Act 2010*, dictionary.

medicine—see the *Road Transport (Drug Driving) Act 2010*, dictionary.

[1.2] Section 29 (6) (b)

omit

or a drug,

substitute

or a medicine or controlled drug,

Part 1.2 Road Transport (Alcohol and Drugs) Act 1977

Explanatory note

Consequential amendments of the *Road Transport (Alcohol and Drugs) Act 1977* will be included in the Bill.

Part 1.3 Road Transport (Driver Licensing) Regulation 2000

[1.3] Section 77 heading

substitute

77 Driving while impaired by medical condition or treatment (other than medicine)

[1.4] Section 77 (1)

substitute

- (1) A person commits an offence if—
- (a) the person drives a motor vehicle on a public street or in a public place; and
 - (b) the person has an illness, injury or incapacity; and
 - (c) the person's ability to drive safely is impaired by the effect of the illness, injury or incapacity on the person.

Maximum penalty: 20 penalty units.

- (1A) A person commits an offence if—
- (a) the person drives a motor vehicle on a public street or in a public place; and
 - (b) the person is being treated (other than by a medicine) for an illness, injury or incapacity; and

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- (c) the person's ability to drive safely is impaired by the effect of the treatment on the person.

Maximum penalty: 20 penalty units.

Note It is also an offence for a person to drive a motor vehicle if the person's ability to drive safely is impaired by the effects of a medicine (see *Road Transport (Drug Driving) Act 2010*, s 31).

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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:

- appoint
- chief police officer
- doctor
- driver licence
- exercise
- fail
- found guilty
- in relation to
- may (see s 146)
- must (see s 146)
- nurse
- nurse practitioner
- penalty unit (see s 133)
- police officer
- prescribed
- proceeding
- provision
- road transport authority
- under.

Note 3 The *Road Transport (General) Act 1999* contains definitions relevant to this Act. For example, the following terms are defined in the *Road Transport (General) Act 1999*, dictionary:

- another jurisdiction
- driver

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- jurisdiction
- motor vehicle
- ride
- road transport legislation (see s 6).

Note 4 If a word or expression is defined in an Act (but not a regulation or another publication) included in the road transport legislation, the definition applies to each use of the word or expression in other road transport legislation unless the contrary intention appears (see *Road Transport (General) Act 1999*, s 8).

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

analyst means a person appointed by the road transport authority under section 10.

approved laboratory means a laboratory or other entity approved by the road transport authority under section 11.

authorised nurse practitioner means a nurse practitioner who—

- (a) occupies a nurse practitioner position; and
- (b) acts within the scope of practice for the position.

authorised operator means a police officer whose name is included in the register kept under section 9.

blood analysis, in relation to a person, means an analysis of the person's blood for the presence of a medicine or controlled drug.

controlled drug—

- (a) means a controlled drug under the Criminal Code, section 600; but
- (b) does not include a drug prescribed by regulation.

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drive, a motor vehicle—see the *Road Transport (Alcohol and Drugs) Act 1977*, dictionary.

drug screening device—see section 6.

drug screening test, for a person, means a test of a sample of the person's oral fluid for the presence of an oral fluid-detectable controlled drug using a drug screening device.

licence disqualification means disqualification from holding or obtaining a driver licence.

medicine—see the *Medicines, Poisons and Therapeutic Goods Act 2008*, dictionary.

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 of motor vehicle); 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 the person drove a motor vehicle.

oral fluid analysis instrument—see section 7.

oral fluid-detectable controlled drug means any of the following controlled drugs:

- (a) delta-9-tetrahydrocannabinol;
- (b) methylamphetamine;
- (c) N, α -Dimethyl-3,4-(Methylenedioxy)phenylethylamine (MDMA).

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

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

sample taker means any of the following:

- (a) a doctor;
- (b) an authorised nurse practitioner;
- (c) a nurse;
- (d) a person prescribed by regulation.

sampling facility means—

- (a) a hospital; or
- (b) another facility prescribed by regulation to which a person may be taken for the purpose of having a blood sample taken for analysis under part 3 (Testing for presence of drugs).

scope of practice, for a nurse practitioner position—see the *Health Act 1993*, section 195 (2).

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Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2010.

2 Notification

Notified under the Legislation Act on 2010.

3 Republications of amended laws

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

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