



New South Wales

Road Transport Amendment (Alcohol and Drug Testing) Bill 2014

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Road Transport Act 2013* as follows:
 - (i) to enable a police officer to require a person who has been physically unable to submit to a breath analysis to provide a blood sample instead for alcohol analysis,
 - (ii) to prevent a person who provides a blood sample in the above circumstances from being liable to be convicted for refusing or failing to submit to a breath analysis,
 - (iii) to enable a police officer to require a person who has submitted to oral fluid testing to remain at the place of testing so that testing may be completed,
 - (iv) to make certain procedures relating to the taking of urine samples under the Act consistent with those relating to the taking of blood and oral fluid samples,
 - (v) to extend the bases on which a police officer may form a reasonable belief that a person may be under the influence of a drug (as a prerequisite to requiring the person to submit to a sobriety test) to include the person's behaviour, condition or appearance,
 - (vi) to enable sample takers and analysts to perform their duties under the Act through persons acting at their direction,
 - (vii) to reframe the matters in relation to which certificate evidence may be given by analysts to accommodate performance of their duties by persons acting under their authority,

- (viii) to clarify who may give certificate evidence concerning sample taking or analysis performed in another jurisdiction,
 - (ix) to provide that certain breath analyses carried out by police officers who had undertaken relevant training are taken to have been carried out by police officers duly authorised to do so,
 - (x) to make consequential, minor or ancillary amendments, and
- (b) to amend the *Marine Safety Act 1998*:
- (i) to make amendments corresponding with those referred to in paragraph (a) (i)–(iii) and (v)–(viii), and
 - (ii) to make consequential, minor or ancillary amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Road Transport Act 2013 No 18

Requirement to provide blood sample for alcohol analysis if physically unable to submit to breath analysis

Schedule 1 [8] enables a police officer to require a person who has been physically unable to submit to a breath analysis as directed, to provide instead a sample of the person's blood, in accordance with the directions of an authorised sample taker, for analysis to determine the concentration of alcohol in the blood. **Schedule 1 [7]** enables a person to be arrested, taken to a hospital or prescribed place and detained there for the purpose of providing such a blood sample. **Schedule 1 [5]** provides for the period after the expiration of which a police officer cannot require a person to provide such a blood sample.

Schedule 1 [14] creates an offence of refusing or failing to submit to the taking of a blood sample if required to do so in the above circumstances. The maximum penalty for the offence is 30 penalty units (currently \$3,300) or imprisonment for 18 months, or both, in the case of a first offence, or 50 penalty units (currently \$5,500) or imprisonment for 2 years, or both, in the case of a second or subsequent offence. It is a defence to a prosecution for the offence that the defendant was unable to provide a blood sample on medical grounds.

The proposed offence has the same maximum penalty, and is treated in the same way for the purposes of the Act, as the offence of failing or refusing to submit to a breath analysis when required to do so by a police officer, including by being made a *major offence* (enabling immediate licence suspension and automatic licence disqualification) and an *alcohol-related major offence* (enabling participation in an interlock program as an alternative to disqualification). **Schedule 1 [1]–[4]** make related amendments.

Schedule 1 [31] makes a consequential amendment to prevent a person who submits to the taking of a blood sample when required to do so in the proposed circumstances from being charged with driving under the influence of alcohol in relation to the same driving event (as is the case with a person who submits to a breath analysis).

Schedule 1 [33] prevents a person who submits to the taking of a blood sample when required to do so in the proposed circumstances (or who is prosecuted for failing or refusing to submit to the taking of a blood sample but satisfies the court that he or she was unable, on medical grounds, to so submit) from being liable to be convicted, in relation to the person's inability to submit to the breath analysis, of the offence of failing or refusing to submit to a breath analysis.

Schedule 1 [33] also prevents a person who fails or refuses to provide a blood sample in those circumstances from being convicted of both the offence of failing or refusing to submit to a breath analysis and the proposed offence of failing or refusing to submit to the taking of a blood sample.

Schedule 1 [15] makes a consequential amendment to make it an offence for a person to wilfully alter the concentration of alcohol in the person's blood between the time of the driving event that preceded the requirement for a breath test and the time the person provides a sample of blood when required to do so in the proposed circumstances. The offence attracts the same maximum penalty (being the same as that referred to in relation to the offence created by Schedule 1 [14]), and is treated in the same way for the purposes of the Act, as the equivalent offence in relation to breath analysis.

Schedule 1 [34] extends provision for protection from personal liability for authorised sample takers to cover the proposed sample taking.

As a consequence of the amendment proposed to be made by Schedule 1 [8], **Schedule 1 [10]** amends a provision that enables a police officer to require a person to provide a blood sample if the person has been unable to comply with a direction to provide an oral fluid sample, to make it clear that the inability to comply must be physical in nature.

Requirement to remain at place of oral fluid testing for reasonable period to enable completion of testing

Schedule 1 [9] enables a police officer to direct a person who has submitted to an oral fluid test to remain at or near the place of testing for such period as is reasonable to enable the test to be completed. A person who does not comply with such a direction is liable to a maximum penalty of 10 penalty units (currently \$1,100).

Revision of procedures for urine sampling consistent with blood and oral fluid sampling

Schedule 1 [19]–[21] make the procedure for taking urine samples consistent with those for taking blood and oral fluid samples by requiring the sample taker to give the person from whom the sample was taken a certificate identifying the urine sample as the person's sample (rather than a portion of the urine sample itself) for the purposes of obtaining an independent analysis. The person may, within 12 months, apply to an authorised laboratory for a portion of the sample to be sent for analysis (at the person's own expense) to a medical practitioner or laboratory nominated by the person.

Requirement to submit to sobriety assessment on basis of behaviour, condition or appearance

Schedule 1 [12] enables a police officer to require a person who was driving or attempting to drive a vehicle and whose breath test results do not permit the person to be required to submit to a breath analysis, to submit to a sobriety assessment if the police officer reasonably believes the person may be under the influence of a drug by the behaviour, condition or appearance of the person. Currently, a police officer may form this belief only on the basis of the way in which the person was driving or attempting to drive the vehicle. **Schedule 1 [13]** notes provision in the Act for the period after the expiration of which a police officer cannot require a person who has been required to submit to a sobriety assessment, to provide a blood or urine sample as a consequence of the assessment or a refusal to submit to it.

Schedule 1 [6], [11], [16] and [17] reframe certain temporal reference points as a consequence of the amendment proposed to be made by Schedule 1 [12].

Discharge of duties of sample takers and analysts

Schedule 1 [23] enables the duties of an authorised sample taker or analyst under the Act to be performed by other persons at the direction of (rather than only under the supervision of) the authorised sample taker or analyst and provides that a duty performed by any such person is taken to have been performed by the authorised sample taker or analyst.

Evidence certificates of sample takers and analysts

Schedule 1 [26]–[29] reframe provisions specifying matters concerning samples submitted for analysis that may be the subject of certificate evidence from analysts in proceedings for certain

offences under the Act, to accommodate the performance of analysts' duties by persons acting under their supervision or at their direction, rather than by analysts personally.

Schedule 1 [30] expands the definitions of *interstate analyst* and *interstate sample taker* to make it clear that certificate evidence concerning sample taking or analysis that is performed in another jurisdiction may be given not only by persons who personally perform the analysis or sample taking but also by persons who supervise or direct those procedures.

Schedule 1 [22] requires a police officer to notify the prescribed laboratory to which a blood or urine sample is submitted following a fatal accident, rather than an analyst at the laboratory, of certain matters before the sample may be analysed.

Amendments dealing with savings, transitional and other matters

Schedule 1 [18] and [32] make amendments by way of statute law revision.

Schedule 1 [24] and [25] standardise references to an authority required from the Commissioner of Police under the Act to carry out a breath analysis.

Schedule 1 [35] makes provision of a savings and transitional nature consequent on certain of the proposed amendments.

Schedule 1 [35] also provides that breath analyses carried out between 1 December 1999 and 21 February 2014 by police officers who had undertaken a NSW Police Force training course in breath analysis are taken to have been carried out by police officers duly authorised to do so, and the police officers to have been duly authorised to carry them out.

Schedule 2 Amendment of Marine Safety Act 1998 No 121

Schedule 2 amends the *Marine Safety Act 1998* to the same effect as Schedule 1 amends the *Road Transport Act 2013*, and makes certain consequential and related amendments, as follows:

- (a) **Schedule 2 [1]–[5], [9], [26] and [32]–[36]**—Requirement to provide blood sample for alcohol analysis if physically unable to submit to breath analysis,
- (b) **Schedule 2 [12], [13] and [16]**—Revision of procedures for urine sampling consistent with blood and oral fluid sampling,
- (c) **Schedule 2 [17]–[19] and [23]–[25]**—Requirement to submit to sobriety assessment on basis of behaviour, condition or appearance,
- (d) **Schedule 2 [8]**—Discharge of duties of sample takers and analysts,
- (e) **Schedule 2 [11], [14], [15] and [27]–[31]**—Evidence certificates of sample takers and analysts.

Schedule 2 also makes amendments to the *Marine Safety Act 1998* dealing with savings, transitional and other matters, as follows:

- (a) **Schedule 2 [6] and [7]** replace certain references to “medical practitioner” with references to “authorised sample taker”, consistent with the *Road Transport Act 2013*,
- (b) **Schedule 2 [10] and [20]–[22]** make amendments by way of statute law revision,
- (c) **Schedule 2 [37]** inserts savings and transitional provisions consequent on the proposed amendments to which the provisions refer.

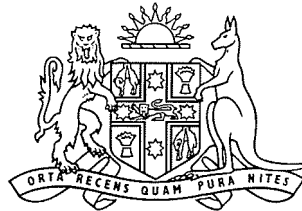


New South Wales

Road Transport Amendment (Alcohol and Drug Testing) Bill 2014

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New South Wales

Road Transport Amendment (Alcohol and Drug Testing) Bill 2014

No. , 2014

A Bill for

An Act to amend the *Road Transport Act 2013* and the *Marine Safety Act 1998* to make further provision with respect to alcohol and drug testing; and for other purposes.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Road Transport Amendment (Alcohol and Drug Testing) Act 2014*.

3

2 Commencement

4

This Act commences on a day or days to be appointed by proclamation.

5

Schedule 1	Amendment of Road Transport Act 2013 No 18	1
[1] Section 205 Disqualification for certain major offences		2
	Insert “(a), (b) or (c)” after “clause 17 (1)” wherever occurring in section 205 (2) (c) and (3) (c).	3 4
[2] Section 208 Definitions		5
	Insert “or 17 (1) (a1)” after “16 (1) (b)” in paragraph (g) of the definition of <i>alcohol-related major offence</i> .	6 7
[3] Section 210 Disqualification period may be suspended for participation in interlock program		8 9
	Insert “or 17 (1) (a1)” after “16 (1) (b)” wherever occurring in items 1 and 2 in Column 1 of the Table.	10 11
[4] Section 224 When immediate licence suspension notice may be issued by police officer		12 13
	Omit “17 (2)” from section 224 (1) (b). Insert instead “17 (1) (a1) or (2)”.	14
[5] Schedule 3 Testing for alcohol and drug use		15
	Insert after clause 2 (2) (a):	16
	(a1) for a blood sample taken under clause 5A—at any time after the expiration of 4 hours from the occurrence of the event that entitled the officer under clause 3 (1) to require the person to submit to a breath test, or	17 18 19 20
[6] Schedule 3, clause 2 (2) (e)		21
	Omit “referred to in clause 13 (2) (a) (i) or (ii) because of which the officer was entitled to require the person to submit to the assessment or provide the sample”.	22 23
	Insert instead “that entitled a police officer under clause 3 (1) to require the person to submit to the breath test that entitled a police officer under clause 13 (1) to require the person to submit to a sobriety assessment”.	24 25 26
[7] Schedule 3, clause 4 (2) (d)		27
	Insert at the end of clause 4 (2) (c):	28
	, and	29
	(d) if clause 5A permits the taking of a blood sample from the person—take the person (or cause the person to be taken) with such force as may be necessary to a hospital or a prescribed place and there detain the person (or cause the person to be detained) for the purpose of the person providing such a blood sample in accordance with clause 5A.	30 31 32 33 34
[8] Schedule 3, clause 5A		35
	Insert after clause 5:	36
5A Taking blood sample following arrest		37
	(1) A police officer may require a person to provide a sample of the person’s blood (whether or not the person consents to the provision of the sample) in accordance with the directions of an authorised sample taker if the person has been physically unable to submit to a breath analysis as directed under this Division.	38 39 40 41 42

(2)	An authorised sample taker is under a duty to take the sample if the authorised sample taker is informed by the police officer that the sample is required to be taken for the purposes of this clause.	1 2 3
	Note. A refusal or failure by the authorised sample taker to take a sample that the authorised sample taker is required to take under this Schedule may constitute an offence against clause 20.	4 5 6
(3)	A blood sample taken under this clause may be used for the purpose of conducting an analysis to determine the concentration of alcohol in the blood.	7 8
	Note. Part 4 provides for the procedures in relation to the taking and analysis of samples taken under this clause.	9 10
[9]	Schedule 3, clause 6 (4) and (5)	11
	Insert after clause 6 (3):	12
(4)	A police officer may direct a person who has submitted to an oral fluid test under subclause (1) to remain at or near the place of testing in accordance with the police officer’s directions for such period as is reasonable in the circumstances to enable the test to be completed.	13 14 15 16
(5)	A person must comply with any direction given to the person under subclause (4).	17 18
	Maximum penalty: 10 penalty units.	19
[10]	Schedule 3, clause 9 (1) (b)	20
	Insert “physically” after “been”.	21
[11]	Schedule 3, clause 13 (1) (a)	22
	Insert “by reason of the occurrence of an event referred to in clause 3 (1) (a) or (b)” after “Division 2”.	23 24
[12]	Schedule 3, clause 13 (2) (a)	25
	Omit the paragraph. Insert instead:	26
(a)	a police officer has a reasonable belief that the person may be under the influence of a drug:	27 28
(i)	by the way in which the person:	29
(A)	is or was driving a motor vehicle on a road, or	30
(B)	is or was occupying the driving seat of a motor vehicle on a road and attempting to put the vehicle in motion, or	31 32
(ii)	by the behaviour, condition or appearance of the person at the time of or after the relevant event referred to in subclause (1) (a), and	33 34 35
[13]	Schedule 3, note to clause 13	36
	Insert at the end of the clause:	37
	Note. Clause 2 (2) (e) provides for the period after the expiration of which a police officer cannot require a person who has been required to submit to a sobriety assessment, to provide a blood or urine sample under clause 15.	38 39 40
[14]	Schedule 3, clause 17 (1) (a1) and (a)	41
	Omit clause 17 (1) (a). Insert instead:	42
(a1)	to submit to the taking of a blood sample under clause 5A in accordance with the directions of the sample taker, or	43 44

	(a) to submit to the taking of a blood sample under clause 9, 12 or 15 in accordance with the directions of the sample taker, or	1 2
[15]	Schedule 3, clause 18 (1) (b) Insert “or provides a sample of the person’s blood” after “breath analysis”.	3 4
[16]	Schedule 3, clause 18 (1) (f) and (g) Omit “referred to in clause 13 (2) (a) (i) or (ii) in respect of which the person has been required by a police officer” wherever occurring. Insert instead “that entitled a police officer under clause 3 (1) to require the person to submit to the breath test that entitled a police officer under clause 13 (1) to require the person”.	5 6 7 8 9
[17]	Schedule 3, clause 18 (3) (f) Omit “referred to in clause 13 (2) (a) (i) or (ii)”. Insert instead “that entitled a police officer under clause 3 (1) to require the person to submit to the breath test that entitled a police officer under clause 13 (1) to require the person to submit to the sobriety assessment”.	10 11 12 13 14
[18]	Schedule 3, clause 18 (4) Insert “who is responsible” after “rules)” in the definition of <i>appropriate health professional</i> .	15 16 17
[19]	Schedule 3, clause 22 (1) Insert “, urine” after “blood”.	18 19
[20]	Schedule 3, clause 22 (2) (a) Insert “or urine” after “blood”.	20 21
[21]	Schedule 3, clause 25 (2) Omit the subclause. Insert instead: (2) A urine sample taker must: (a) place the sample into a container, and (b) fasten and seal the container, and (c) mark or label the container for future identification, and (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person’s urine, and (e) make appropriate arrangements for the urine sample to be submitted to a prescribed laboratory for analysis by an analyst.	22 23 24 25 26 27 28 29 30 31 32
[22]	Schedule 3, clause 27 (2) Omit “the analyst” where secondly occurring. Insert instead “the laboratory”.	33 34
[23]	Schedule 3, clauses 27 (4), 41 (2) and 42 (1) Insert “at the direction or” after “acting” wherever occurring.	35 36
[24]	Schedule 3, clause 31 (2) (a) Omit “breath analysing instrument operated”. Insert instead “breath analysis carried out”.	37 38

[25] Schedule 3, clause 35 (2) (a) and (3)	1
Omit “operate breath analysing instruments” wherever occurring.	2
Insert instead “carry out a breath analysis”.	3
[26] Schedule 3, clause 36 (5) (a)	4
Omit the paragraph. Insert instead:	5
(a) that a sample of a specified person’s blood, urine or oral fluid was received, on a specified day, in a container submitted for analysis under this Schedule,	6 7 8
[27] Schedule 3, clause 36 (5) (b), (c) and (j)	9
Omit “by the analyst” wherever occurring.	10
[28] Schedule 3, clause 36 (5) (d) (i) and (e) (i)	11
Omit “the analyst carried out an analysis of the sample” wherever occurring.	12
Insert instead “an analysis of the sample was carried out”.	13
[29] Schedule 3, clause 36 (5) (f) (i)	14
Omit “the analyst carried out an oral fluid analysis of the sample”.	15
Insert instead “an oral fluid analysis of the sample was carried out”.	16
[30] Schedule 3, clause 36 (9)	17
Omit the subclause. Insert instead:	18
(9) Definitions	19
In this clause:	20
<i>interstate analyst</i> means a person (however described) who analyses, or who supervised or directed the analysis of, a blood, urine or oral fluid sample in another jurisdiction.	21 22 23
<i>interstate sample taker</i> means a person (however described) who takes, or who supervised or directed the taking of, a blood, urine or oral fluid sample in another jurisdiction.	24 25 26
[31] Schedule 3, clause 40 (2) (a) and (b)	27
Omit the paragraphs. Insert instead:	28
(a) is required by a police officer to submit to a breath test by reason of the occurrence of an event referred to in clause 3 (1) (a), (b) or (c) and, as a consequence, to submit to a breath analysis or to provide a sample of the person’s blood under Division 2 of Part 2, and	29 30 31 32
(b) submits to the breath analysis in accordance with the directions of a police officer, or to the taking of a blood sample in accordance with the directions of an authorised sample taker,	33 34 35
[32] Schedule 3, clause 40 (2) (c) and (d)	36
Omit “intoxicating liquor” wherever occurring. Insert instead “alcohol”.	37

[33] Schedule 3, clause 40 (3A) and (3B)	1
Insert after clause 40 (3):	2
(3A) A person:	3
(a) who submits to the taking of a blood sample under clause 5A, or	4
(b) who is prosecuted for failing or refusing to submit to the taking of a blood sample under clause 5A but who is able to establish the defence under clause 17 (4) in relation to the prosecution,	5 6 7
is not liable to be convicted of an offence against clause 16 (1) (b) in relation to the person's inability to submit to a breath analysis that gave rise to the requirement to provide a blood sample.	8 9 10
(3B) A person is not liable to be convicted of both an offence against clause 16 (1) (b) and an offence against clause 17 (1) (a1) if the offences arose directly or indirectly out of the same circumstances.	11 12 13
[34] Schedule 3, clause 41 (1)	14
Insert "determine the concentration of alcohol or" after "used by an analyst to".	15
[35] Schedule 4 Savings, transitional and other provisions	16
Insert at the end of the Schedule with appropriate Part and clause numbering:	17
 Part Provisions consequent on enactment of Road Transport Amendment (Alcohol and Drug Testing) Act 2014	 18 19 20
Definition	21
In this Part:	22
<i>amending Act</i> means the <i>Road Transport Amendment (Alcohol and Drug Testing) Act 2014</i> .	23 24
Convictions for offences in periods preceding conviction for certain new offences	25 26
(1) In this clause:	27
<i>new provision</i> means any of the following provisions of Schedule 3:	28
(a) clause 17 (1) (a1),	29
(b) clause 18 (1) (b), (f) or (g), as amended by the amending Act, and, in relation to a provision referred to in paragraph (b), a reference to the commencement of a new provision is a reference to the commencement of the relevant amendment.	30 31 32 33
(2) For the purposes of section 9, a conviction for an equivalent offence within the applicable re-offending period for an offence against a new provision is a conviction for such an offence during that period regardless of whether that period commenced before or after the commencement of the new provision.	34 35 36 37
(3) For the purposes of section 203, an application of section 10 of the <i>Crimes (Sentencing Procedure) Act 1999</i> during the period of 5 years before a court's determination in respect of a charge for an offence against a new provision is an application of section 10 of that Act during that period, regardless of whether that period commenced before or after the commencement of the new provision.	38 39 40 41 42 43

(4)	For the purposes of section 205 or 217, a conviction for a major offence during the period of 5 years before a conviction for an offence against a new provision is a conviction for such an offence during that period regardless of whether that period commenced before or after the commencement of the new provision.	1 2 3 4 5
(5)	For the purposes of section 210, a conviction for an alcohol-related major offence during the period of 5 years before a conviction for an offence against clause 17 (1) (a1) of Schedule 3 is a conviction for such an offence during that period regardless of whether that period commenced before or after the commencement of clause 17 (1) (a1).	6 7 8 9 10
(6)	For the purposes of section 214, a conviction for an offence against clause 17 (1) (a1) of Schedule 3 during an interlock participation period is a conviction for a major offence during that period whether or not that period commenced before or after the commencement of clause 17 (1) (a1).	11 12 13 14
	Application of amendment relating to sobriety assessments	15
	The amendment made to clause 18 (3) (f) of Schedule 3 by the amending Act applies only in relation to an offence committed after the commencement of that amendment.	16 17 18
	Application of certain amendments relating to procedures for taking urine samples	19 20
	The amendments made to clause 22 of Schedule 3 by the amending Act apply in relation to a urine sample only if it was taken after the commencement of those amendments.	21 22 23
	Notification by police officer before analysis of sample relating to fatal accident	24 25
	A notification under clause 27 (2) of Schedule 3 before its amendment by the amending Act is taken to be a notification under that provision as amended, in relation to an analysis of a sample to which the notification relates carried out after the commencement of the amendment.	26 27 28 29
	Application of certain amendments relating to certificate evidence by analysts and authorised sample takers	30 31
(1)	The amendments made to clause 36 (5) of Schedule 3 by the amending Act apply to a certificate in relation to a sample regardless of whether the sample was received by or on behalf of an analyst before or after the commencement of those amendments.	32 33 34 35
(2)	Clause 36 (9) of Schedule 3, as amended by the amending Act, applies in relation to a certificate referred to in clause 36 (6) regardless of whether the sample to which the certificate relates was taken before or after the commencement of that amendment.	36 37 38 39
	Authorisation of certain police officers to carry out breath analyses	40
	A police officer who had undertaken a training course in breath analysis conducted by the NSW Police Force before carrying out a breath analysis on or after 1 December 1999 and before 21 February 2014 is taken to have been authorised by the Commissioner of Police to operate a breath analysing instrument, and the breath analysis is taken to have been a breath analysis carried out by a police officer authorised to do so under clause 5 (2) of Schedule 3 or section 15 (2) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> (as appropriate).	41 42 43 44 45 46 47 48

Schedule 2	Amendment of Marine Safety Act 1998 No 121	1
[1]	Schedule 1 Alcohol and drug use—random breath testing and related matters	2
	Omit “ and breath analysis ” from the heading to Part 2.	3
	Insert instead “, breath analysis and related sample taking ”.	4
[2]	Schedule 1, clause 3 (2) (d)	5
	Insert at the end of clause 3 (2) (c):	6
	, and	7
	(d) if clause 4A permits the taking of a blood sample from the person—take the person (or cause the person to be taken) with such force as may be necessary to a hospital or a prescribed place and there detain the person (or cause the person to be detained) for the purpose of the person providing such a blood sample in accordance with clause 4A.	8 9 10 11 12
[3]	Schedule 1, clause 4A	13
	Insert after clause 4:	14
	4A Taking blood sample following arrest	15
	(1) An authorised officer may require a person to provide a sample of the person’s blood (whether or not the person consents to the provision of the sample) in accordance with the directions of an authorised sample taker if the person has been physically unable to submit to a breath analysis as directed under clause 4.	16 17 18 19 20
	(2) The authorised officer must inform any such authorised sample taker that the blood sample is required to be taken for the purposes of this clause.	21 22
	(3) A blood sample taken under this clause may be used for the purpose of conducting an analysis to determine the concentration of alcohol in the blood.	23 24
	(4) Subject to subclause (3), clause 20 (3)–(5A) and (8)–(10) and the offences and defence under clause 22 (5)–(7) apply in relation to a requirement to take a blood sample under this clause in the same way as they apply in relation to a requirement to take a blood sample for the purposes of Part 5 of this Schedule. Note. Clause 20 provides for procedures for the taking of blood samples by authorised sample takers and for analysis of samples. Clause 22 (5) and (7) provide for related offences applying to authorised sample takers and persons from whom the blood sample is required to be taken.	25 26 27 28 29 30 31 32
	(5) A person who is required by an authorised officer under subclause (1) to provide a sample of the person’s blood must not refuse or fail to submit to the taking of the sample of blood in accordance with the directions of an authorised sample taker. Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).	33 34 35 36 37 38 39
	(6) It is a defence to a prosecution for an offence under subclause (5) if the defendant satisfies the court that the defendant was unable, on medical grounds, to provide a sample when the defendant was required to do so.	40 41 42

[4] Schedule 1, clause 5 (b)	1
Omit the paragraph. Insert instead:	2
(b) if the person is required by an authorised officer to submit to a breath analysis or provide a sample of the person’s blood—between the time of the event referred to in clause 2 (1) or (2) in respect of which the person has been required by an authorised officer to undergo a breath test and the time when the person submits to the breath analysis or provides a sample of the person’s blood.	3 4 5 6 7 8
[5] Schedule 1, clause 6	9
Omit the clause. Insert instead:	10
6 When breath test, breath analysis or related sample taking not permitted	11
An authorised officer cannot require a person to undergo a breath test, to submit to a breath analysis or to provide a blood sample:	12 13
(a) if that person has been admitted to hospital for medical treatment, unless the medical practitioner in immediate charge of his or her treatment has been notified of the intention to make the requisition and the medical practitioner does not object on the grounds that compliance with it would be prejudicial to the proper care or treatment of that person, or	14 15 16 17 18
(b) if it appears to the officer that it would, by reason of injuries sustained by that person, be dangerous to that person’s medical condition to undergo a breath test, submit to a breath analysis or provide the blood sample, or	19 20 21 22
(c) in the case of a breath test or breath analysis—at any time after the expiration of 2 hours from the occurrence of the event by reason of which an authorised officer was entitled under clause 2 (1) or (2) to require that person to undergo a breath test, or	23 24 25 26
(d) in the case of a blood sample—at any time after the expiration of 4 hours from the occurrence of the event by reason of which an authorised officer was entitled under clause 2 (1) or (2) to require that person to undergo a breath test, or	27 28 29 30
(e) at that person’s home.	31
[6] Schedule 1, clause 7 (1) and (3)	32
Omit “a medical practitioner” and “A medical practitioner”.	33
Insert instead “an authorised sample taker” and “An authorised sample taker”, respectively.	34
[7] Schedule 1, clause 7 (4)	35
Omit “medical practitioner”. Insert instead “authorised sample taker”.	36
[8] Schedule 1, clauses 7 (7), 12 (8), 13 (1), 15 (9) and (10), 20 (9) and (10) and 33 (2)	37
Insert “at the direction or” after “acting” wherever occurring.	38
[9] Schedule 1, clause 9 (5) (b)	39
Insert “clause 4A or” after “purposes of”.	40
[10] Schedule 1, clause 11 (4)	41
Insert “who is responsible” after “this Act,” in paragraph (a) of the definition of <i>appropriate health professional</i> .	42 43

[11] Schedule 1, clause 12 (4)	1
Omit the subclause. Insert instead:	2
(4) A medical practitioner who, in another jurisdiction, takes, or supervises or directs the taking of, a sample of blood:	3
(a) from a person attended by the medical practitioner in consequence of an accident in this jurisdiction, and	4
(b) in accordance with provisions of a law of that other jurisdiction that substantially correspond to the provisions of clause 9,	5
and	6
may arrange for a portion of the sample to be submitted for an analysis by an analyst to determine the concentration of alcohol in the blood.	7
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[12] Schedule 1, clauses 15 (3)–(5) and 20 (3)–(5)	11
Insert “or urine” after “blood” wherever occurring.	12
[13] Schedule 1, clauses 15 (6) and (7) and 20 (6) and (7)	13
Omit the subclauses.	14
[14] Schedule 1, clause 15 (8)	15
Omit “to whom”. Insert instead “to which”.	16
[15] Schedule 1, clause 15 (8)	17
Omit “the analyst”. Insert instead “the laboratory”.	18
[16] Schedule 1, clause 17 (4) (b)	19
Omit “, (4), (6) or (7)”. Insert instead “or (4)”.	20
[17] Schedule 1, clause 18 (1) (a)	21
Insert “by reason of the occurrence of an event referred to in clause 2 (1) or (2)” after “Schedule”.	22
	23
[18] Schedule 1, clause 18 (2) (a)	24
Omit the paragraph. Insert instead:	25
(a) an authorised officer has a reasonable belief that the person may be under the influence of a drug:	26
(i) by the way in which the person is or was operating a vessel, or	27
(ii) by the behaviour, condition or appearance of the person at the time of or after the relevant event referred to in subclause (1) (a),	28
and	29
	30
	31
[19] Schedule 1, note to clause 18	32
Insert at the end of the clause:	33
Note. Clause 21 (c) provides for the period after the expiration of which an authorised officer cannot require a person to submit to a sobriety assessment or to provide a sample under this Part.	34
	35
	36
[20] Schedule 1, clause 20 (3) and (4)	37
Omit the penalty provisions wherever occurring.	38

[21] Schedule 1, clause 20 (3)	1
Insert after clause 20 (3):	2
Note. A failure by an authorised sample taker to comply with any requirement made by subclause (3) may constitute an offence against clause 22 (5).	3 4
[22] Schedule 1, clause 20 (4)	5
Insert after clause 20 (4):	6
Note. A failure by an authorised sample taker to comply with any requirement made by subclause (4) may constitute an offence against clause 22 (5).	7 8
[23] Schedule 1, clause 21 (c)	9
Omit the paragraph. Insert instead:	10
(c) at any time after the expiration of 4 hours from the occurrence of the event that entitled an authorised officer under clause 2 (1) or (2) to require the person to submit to the breath test that entitled an authorised officer under clause 18 (1) to require the person to submit to a sobriety assessment, or	11 12 13 14 15
[24] Schedule 1, clause 22 (2) (b) and (c)	16
Omit “referred to in clause 18 (2) (a) in respect of which the person has been required by an authorised officer” wherever occurring.	17 18
Insert instead “that entitled an authorised officer under clause 2 (1) or (2) to require the person to submit to the breath test that entitled an authorised officer under clause 18 (1) to require the person”.	19 20 21
[25] Schedule 1, clause 22 (4)	22
Omit the subclause. Insert instead:	23
(4) It is a defence to a prosecution of a person for an offence under subclause (2) (b) if the person satisfies the court that the offending thing was done more than 4 hours after the time of the event that entitled an authorised officer under clause 2 (1) or (2) to require the person to submit to the breath test that entitled an authorised officer under clause 18 (1) to require the person to submit to an assessment.	24 25 26 27 28 29
[26] Schedule 1, clause 27 (4) (a)–(c)	30
Omit the paragraphs. Insert instead:	31
(a) that he or she was an authorised sample taker who attended a specified person who attended at or was admitted into a hospital or a prescribed place as referred to in Part 2 or 3 of this Schedule,	32 33 34
(b) that he or she took a sample of the person’s blood in accordance with Part 2 or 3 of this Schedule, and any relevant provisions of the regulations, on the day and at the time stated in the certificate,	35 36 37
(c) that he or she dealt with the sample in accordance with Part 2 or 3 of this Schedule and any relevant provisions of the regulations,	38 39
[27] Schedule 1, clause 27 (6) (a)	40
Omit the paragraph. Insert instead:	41
(a) that a sample of a specified person’s blood was received, on a specified day, in a container submitted for analysis under this Schedule,	42 43

[28] Schedule 1, clauses 27 (6) (b), (c) and (i) and 29 (3) (b), (c) and (i)	1
Omit “by the analyst” wherever occurring.	2
[29] Schedule 1, clauses 27 (6) (d) and 29 (3) (d)	3
Omit “the analyst carried out an analysis of the sample” wherever occurring.	4
Insert instead “an analysis of the sample was carried out”.	5
[30] Schedule 1, clause 27 (7)–(9)	6
Omit clause 27 (7). Insert instead:	7
(7) In proceedings for an offence under section 24, a certificate purporting to be signed by an interstate sample taker or interstate analyst in accordance with provisions of a law of another jurisdiction that substantially correspond to the provisions of Part 3 of this Schedule is admissible and is prima facie evidence of the particulars certified in and by the certificate.	8 9 10 11 12
(8) An analysis to which a certificate referred to in subclause (7) relates is taken to be an analysis under Part 3 of this Schedule.	13 14
(9) In this clause: <i>interstate analyst</i> means a person (however described) who analyses, or who supervised or directed the analysis of, a blood sample in another jurisdiction. <i>interstate sample taker</i> means a person (however described) who takes, or who supervised or directed the taking of, a blood sample in another jurisdiction.	15 16 17 18 19 20
[31] Schedule 1, clause 29 (3) (a)	21
Omit the paragraph. Insert instead:	22
(a) that a sample of a specified person’s blood or urine was received, on a specified day, in a container submitted for analysis under Part 3, 4 or 5 of this Schedule,	23 24 25
[32] Schedule 1, clause 32 (1) and (2)	26
Insert “4A (5),” after “4 (4),” wherever occurring.	27
[33] Schedule 1, clause 32 (3)	28
Omit the subclause. Insert instead:	29
(3) A person:	30
(a) who is required by an authorised officer to undergo a breath test by reason of the occurrence of an event referred to in clause 2 (1) or (2) and, as a consequence, to submit to a breath analysis, or to provide a sample of the person’s blood under clause 4A, and	31 32 33 34
(b) who submits to the breath analysis in accordance with the directions of an authorised officer, or to the taking of a blood sample in accordance with the directions of an authorised sample taker,	35 36 37
cannot be charged with an offence under section 28 (1) of operating a vessel, at the time of that event, while the person was under the influence of alcohol.	38 39

[34] Schedule 1, clause 32 (5) and (6)	1
Insert after clause 32 (4):	2
(5) A person:	3
(a) who submits to the taking of a sample of the person’s blood under clause 4A, or	4 5
(b) who is prosecuted for an offence under clause 4A (5) but who is able to establish the defence under clause 4A (6) in relation to the prosecution,	6 7
is not liable to be convicted of an offence under clause 4 (4) in relation to the person’s inability to submit to a breath analysis that gave rise to the requirement to provide a blood sample.	8 9 10
(6) A person is not liable to be convicted of both an offence under clause 4 (4) and an offence under clause 4A (5) if the offences arose directly or indirectly out of the same circumstances.	11 12 13
[35] Schedule 1, clause 33 (1)	14
Insert “determine the concentration of alcohol or” after “analyst to”.	15
[36] Schedule 1, clause 33 (2)	16
Insert “including as applied by clause 4A (4)” after “20 (9)”.	17
[37] Schedule 4 Savings, transitional and other provisions	18
Insert at the end of the Schedule with appropriate Part and clause numbering:	19
Part Provisions consequent on enactment of Road Transport Amendment (Alcohol and Drug Testing) Act 2014	20 21 22
Definition	23
In this Part:	24
<i>amending Act</i> means the <i>Road Transport Amendment (Alcohol and Drug Testing) Act 2014</i> .	25 26
Application of certain amendments relating to procedures for taking urine samples	27 28
The amendments made to clauses 15 (5) and 20 (5) of Schedule 1 by the amending Act apply only in relation to a sample of urine taken after the commencement of those amendments.	29 30 31
Notification by authorised officer before analysis of sample relating to fatal accident	32 33
A notification under clause 15 (8) of Schedule 1, before its amendment by the amending Act, is taken to be a notification under that provision as amended, in relation to an analysis of a sample to which the notification relates carried out after the commencement of the amendment.	34 35 36 37
Application of amendment relating to sobriety assessments	38
Clause 22 (4) of Schedule 1, as substituted by the amending Act, applies only in relation to an offence committed after the commencement of that substitution.	39 40 41

Application of certain amendments relating to certificate evidence by analysts and authorised sample takers	1
	2
(1) The amendments made to clauses 27 (6) and 29 (3) of Schedule 1 by the amending Act apply to a certificate in relation to a sample regardless of whether the sample was received by or on behalf of an analyst before or after the commencement of those amendments.	3 4 5 6
(2) Clause 27 (7)–(9) of Schedule 1, as inserted by the amending Act, apply in relation to a certificate regardless of whether the sample to which the certificate relates was taken before or after the commencement of those provisions.	7 8 9 10