

# CONCURRENCE COPY

## MOTOR TRAFFIC (ROAD SAFETY) AMENDMENT BILL, 1982

### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The Crimes (Road Safety) Amendment Bill, 1982, is cognate with this Bill.

The objects of this Bill are to amend the Motor Traffic Act, 1909 ("the Principal Act"), as from 17th December, 1982—

- (a) to introduce random breath testing (Schedule 1);
  - (b) to vary the offences and penalties relating to prescribed concentrations of alcohol, and the penalties for certain other offences (Schedule 2);
  - (c) to introduce compulsory blood testing of drivers of motor vehicles (including riders of motor cycles) and pedestrians involved in motor accidents, if admitted to or treated at a hospital in consequence of such a motor accident (Schedule 3); and
  - (d) to make minor amendments to 2 definitions (Schedule 4),
- and to enact savings and transitional provisions (Schedule 5).

Schedule 1 (amendments relating to random breath testing) amends the Principal Act—

- (a) to empower a member of the police force, who has reasonable cause to believe that any person is or was driving a motor vehicle, to require the driver to undergo a breath test (subject to the existing limitations, e.g., that the requirement must be made within 2 hours); and
- (b) to provide that that power to require a breath test may not be exercised after 16th December, 1985, i.e., 3 years after the amendments come into operation.

Schedule 2 (amendments relating to offences and penalties) amends the Principal Act—

- (a) to provide for 3 levels of prescribed concentrations of alcohol ("PCA") :—
  - (i) the low range PCA (0.05–0.08 g. in 100 ml. of blood);
  - (ii) the medium range PCA (0.08–0.15 g. in 100 ml. of blood); and
  - (iii) the high range PCA (0.15 g. or more in 100 ml. of blood),(proposed section 2 (3));
- (b) to introduce an offence for each of the 3 levels (proposed section 4E (1E), (1F), (1G));



- (c) to increase penalties for various other offences under the Principal Act (proposed sections 4 (3), 4E (6), 4E (7), 8 (2)); and
- (d) to vary—
  - (i) the periods of automatic licence disqualification; and
  - (ii) the minimum periods of licence disqualification which may be ordered by a court,following a conviction for certain major offences (proposed section 10A).

Schedule 3 (amendments relating to blood testing) amends the Principal Act—

- (a) to require a medical practitioner to take a blood sample from a person of or above the age of 15 years who attends at or is admitted into a hospital for examination or treatment in consequence of an accident involving a motor vehicle (proposed section 4F (1)–(4));
- (b) to specify circumstances in which medical practitioners have a defence for failing to take a blood sample (proposed section 4F (5));
- (c) to protect medical practitioners from legal proceedings in respect of the taking of blood samples (proposed section 4F (11));
- (d) to provide for the analysis of blood samples taken for the purpose of determining the concentration of alcohol in the blood (proposed section 4G);
- (e) to enable evidence to be given of an analysis of blood for the purposes of the PCA offences (proposed section 4G (8)–(11)); and
- (f) to make other provisions of a consequential and ancillary nature.

Schedule 4 (minor amendments) amends the Principal Act so as to permit certain approvals to be given by way of order published in the Gazette, thereby enabling the approvals to be amended or revoked.

Schedule 5 contains savings and transitional provisions.

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## **MOTOR TRAFFIC (ROAD SAFETY) AMENDMENT BILL, 1982**

No. , 1982.

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### **A BILL FOR**

An Act to amend the Motor Traffic Act, 1909, to introduce random breath testing, to increase penalties for certain offences and to require the blood testing of certain persons involved in motor accidents; and for other purposes.

[Mr Cox—24 November, 1982.]

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See also Crimes (Road Safety) Amendment Bill, 1982.

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*Motor Traffic (Road Safety) Amendment.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**5 Short title.**

1. This Act may be cited as the "Motor Traffic (Road Safety) Amendment Act, 1982".

**Commencement.**

2. (1) Sections 1 and 2 shall commence on the date of assent to this  
10 Act.

(2) Except as provided by subsection (1), this Act shall commence on 17th December, 1982.

**Principal Act.**

3. The Motor Traffic Act, 1909, is referred to in this Act as the  
15 Principal Act.

**Schedules.**

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
RANDOM BREATH TESTING.

20 SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
OFFENCES AND PENALTIES.

SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
BLOOD TESTING.

SCHEDULE 4.—MINOR AMENDMENTS TO THE PRINCIPAL ACT.

25 SCHEDULE 5.—SAVINGS AND TRANSITIONAL PROVISIONS.



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*Motor Traffic (Road Safety) Amendment.*

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**Amendment of Act No. 5, 1909.**

**5.** The Principal Act is amended in the manner set forth in Schedules 1-4.

**Savings and transitional provisions.**

5     **6.** Schedule 5 has effect.

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**SCHEDULE 1.**

(Sec. 5.)

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO RANDOM BREATH TESTING.**

10   (1) Section 4E (2A)-(2C)—

After section 4E (2), insert:—

(2A) Notwithstanding subsection (2), but subject to subsection (2C), where a member of the police force has reasonable cause to believe that any person—

15       (a) is or was driving a motor vehicle upon a public street; or

(b) is or was occupying the driving seat of a motor vehicle upon a public street and attempting to put the motor vehicle in motion,

20       a member of the police force may require that person to undergo a breath test in accordance with the directions of a member of the police force.

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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO RANDOM BREATH  
TESTING—*continued.*

5 (2B) Subject to subsection (2C), and without limiting any other  
power or authority, any member of the police force may, for the  
purposes of this section, request or signal the driver of a motor  
vehicle to stop the vehicle, and any person who fails to comply with  
any request or signal made or given pursuant to this subsection shall  
10 be guilty of an offence under this Act and shall be liable to a penalty  
not exceeding \$1,000.

(2C) After 16th December, 1985—

(a) subsection (2A) shall have no force or effect; and

15 (b) without limiting any other power or authority, the power or  
authority conferred by subsection (2B) may not be exercised  
by a member of the police force unless he has reasonable  
cause to believe the matters referred to in subsection (2) (a),  
(b) or (c).

(2) Section 4E (3), (5), (6)—

After “subsection (2)” wherever occurring, insert “or (2A)”.

20 (3) Section 4E (6), (7), (15)—

Omit “that member” wherever occurring, insert instead “a member of  
the police force”.

(4) Section 4E (7), (11), (15)—

25 After “subsection (2) (a), (b) or (c)” wherever occurring, insert  
“or (2A) (a) or (b)”.

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*Motor Traffic (Road Safety) Amendment.*

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND PENALTIES.

5 (1) Section 1A—

Omit “10A”, insert instead “10B”.

(2) (a) Section 2 (1), definitions of “Higher prescribed concentration of alcohol”, “Lower prescribed concentration of alcohol”—

Omit the definitions.

10 (b) Section 2 (1), definition of “Major offence”—

Before the definition of “Motor vehicle”, insert:—

“Major offence” means—

- (a) a crime or offence referred to in section 10A; or
- (b) an offence under section 4E (1) or (1B) as in  
15 force before the commencement of this paragraph.

(c) Section 2 (3)—

After section 2 (2), insert:—

(3) A reference in this Act to—

- 20 (a) the low range prescribed concentration of alcohol is a reference to a concentration of 0.05 grammes or more, but less than 0.08 grammes, of alcohol in 100 millilitres of blood;
- 25 (b) the middle range prescribed concentration of alcohol is a reference to a concentration of 0.08 grammes or more, but less than 0.15 grammes, of alcohol in 100 millilitres of blood; and
- 30 (c) the high range prescribed concentration of alcohol is a reference to a concentration of 0.15 grammes or more of alcohol in 100 millilitres of blood.



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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND  
PENALTIES—*continued.*

## (3) Section 4 (3), (4)—

5 Omit section 4 (3), insert instead:—

(3) A person convicted of an offence under this section shall be liable—

10 (a) where the conviction is for the offence of driving a motor vehicle upon a public street negligently—to a penalty not exceeding \$500; or

(b) where the conviction is for the offence of driving a motor vehicle upon a public street, furiously, or recklessly, or at a speed or in a manner which is dangerous to the public—

15 (i) in the case of a first offence—to a penalty not exceeding \$1,500 or to imprisonment for a period not exceeding 9 months or to both such penalty and imprisonment; or

20 (ii) in the case of a second or subsequent offence—to a penalty not exceeding \$2,000 or to imprisonment for a period not exceeding 12 months or to both such penalty and imprisonment.

(4) For the purposes of subsection (3), where a person is guilty of an offence under this section, that offence—

25 (a) is a second or subsequent offence as referred to in that subsection if and only if, within the period of 5 years immediately before his being convicted of that offence, he was convicted of a major offence; and

(b) otherwise shall be treated as a first offence.

## (4) (a) Section 4E (1)–(1D)—

30 Omit the subsections.



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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND  
PENALTIES—*continued.*

## (b) Section 4E (1E)–(1K)—

5                   Before section 4E (2), insert:—

(1E) Any person who while there is present in his blood the low range prescribed concentration of alcohol—

(a) drives a motor vehicle; or

10                   (b) occupies the driving seat of a motor vehicle and attempts to put the motor vehicle in motion,

shall be guilty of an offence under this Act and shall be liable—

(c) in the case of a first offence—to a penalty not exceeding \$500; or

15                   (d) in the case of a second or subsequent offence—to a penalty not exceeding \$1,000.

(1F) Any person who while there is present in his blood the middle range prescribed concentration of alcohol—

(a) drives a motor vehicle; or

20                   (b) occupies the driving seat of a motor vehicle and attempts to put the motor vehicle in motion,

shall be guilty of an offence under this Act and shall be liable to a penalty not exceeding \$1,000 or to imprisonment for a period not exceeding 6 months or to both such penalty and imprisonment.

25                   (1G) Any person who while there is present in his blood the high range prescribed concentration of alcohol—

(a) drives a motor vehicle; or

(b) occupies the driving seat of a motor vehicle and attempts to put the motor vehicle in motion,



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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND  
PENALTIES—*continued.*

shall be guilty of an offence under this Act and shall be liable—

- 5 (c) in the case of a first offence—to a penalty not exceeding \$1,500 or to imprisonment for a period not exceeding 9 months or to both such penalty and imprisonment; or
- (d) in the case of a second or subsequent offence—to a  
10 penalty not exceeding \$2,000 or to imprisonment for a period not exceeding 12 months or to both such penalty and imprisonment.

(1H) For the purposes of subsection (1E) or (1G), where a person is guilty of an offence under that subsection, that offence—

- 15 (a) is a second or subsequent offence under that subsection if and only if, within the period of 5 years immediately before his being convicted of that offence, he was convicted of a major offence; and
- (b) otherwise shall be treated as a first offence.

- 20 (1I) If, on a prosecution of a person for an offence under subsection (1F), the court is satisfied that, at the time the person did the act referred to in subsection (1F) (a) or (b), as the case may be, there was not present in his blood the middle range prescribed concentration of alcohol but there was present  
25 in his blood the low range prescribed concentration of alcohol, the court may convict the person of an offence under subsection (1E).

- (1J) If, on a prosecution of a person for an offence under subsection (1G), the court is satisfied that, at the time the person did the act referred to in subsection (1G) (a) or (b), as the case may be, there was not present in his blood the high range prescribed concentration of alcohol but there was present in his blood—

- 30 (a) the middle range prescribed concentration of alcohol, the court may convict the person of an offence under subsection (1F); or
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*Motor Traffic (Road Safety) Amendment.*

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**SCHEDULE 2—continued.****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND PENALTIES—continued.**

- 5 (b) the low range prescribed concentration of alcohol, the court may convict the person of an offence under subsection (1E).
- (1K) It is not a defence to a prosecution for—
- 10 (a) an offence under subsection (1E) if the defendant proves that, at the time he did the act referred to in subsection (1E) (a) or (b), as the case may be, there was present in his blood a concentration of alcohol of 0.08 grammes or more in 100 millilitres of his blood; or
- 15 (b) an offence under subsection (1F) if the defendant proves that, at the time he did the act referred to in subsection (1F) (a) or (b), as the case may be, there was present in his blood a concentration of alcohol of 0.15 grammes or more in 100 millilitres of his blood.
- (c) Section 4E (6)—  
Omit "\$500", insert instead "\$1,000".
- 20 (d) Section 4E (7)—  
Omit "liable to a penalty not exceeding \$1,000 or to imprisonment for a period not exceeding six months or to both such penalty and imprisonment.", insert instead:—  
liable—
- 25 (c) in the case of a first offence—to a penalty not exceeding \$1,500 or to imprisonment for a period not exceeding 9 months or to both such penalty and imprisonment; or
- 30 (d) in the case of a second or subsequent offence—to a penalty not exceeding \$2,000 or to imprisonment for a period not exceeding 12 months or to both such penalty and imprisonment.



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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND  
PENALTIES—*continued.*

## (e) Section 4E (7A)—

5           After section 4E (7), insert:—

(7A) For the purposes of subsection (7), where a person is guilty of an offence under that subsection, that offence—

10           (a) is a second or subsequent offence under that subsection if and only if, within the period of 5 years immediately before his being convicted of that offence, he was convicted of a major offence; and

(b) otherwise shall be treated as a first offence.

## (f) Section 4E (11)—

15           Omit “subsection (1) or (1B)”, insert instead “subsection (1E), (1F) or (1G)”.

## (g) Section 4E (11) (a), (b), (c)—

Omit section 4E (11) (a) and (b), insert instead:—

20           (a) in the case of an offence under subsection (1E), less than 0.05 grammes of alcohol in 100 millilitres of his blood;

(b) in the case of an offence under subsection (1F), less than 0.08 grammes of alcohol in 100 millilitres of his blood; or

25           (c) in the case of an offence under subsection (1G), less than 0.15 grammes of alcohol in 100 millilitres of his blood,

## (h) Section 4E (11)—

Omit “subsection (1A)”, insert instead “subsection (1I) or (1J)”.



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*Motor Traffic (Road Safety) Amendment.*

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**SCHEDULE 2—continued.****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND PENALTIES—continued.**

- (i) Section 4E (12) (a)—  
5 Omit “subsection (1) or (1B)”, insert instead “subsection (1E), (1F) or (1G)”.
- (j) Section 4E (13) (a)—  
Omit “subsection (1), (1B)”, insert instead “subsection (1E), (1F), (1G)”.
- 10 (5) Section 8 (2), (2A)—  
Omit section 8 (2), insert instead:—
- (2) Any person knowingly acting in contravention of subsection (1) shall be guilty of an offence under this Act and shall be liable—  
15 (a) in the case of a first offence—to a penalty not exceeding \$1,500 or to imprisonment for a period not exceeding 9 months or to both such penalty and imprisonment; or  
(b) in the case of a second or subsequent offence—to a penalty not exceeding \$2,000 or to imprisonment for a period not exceeding 12 months or to both such penalty and imprisonment.  
20
- (2A) For the purposes of subsection (2), where a person is guilty of an offence under that subsection, that offence—  
(a) is a second or subsequent offence under that subsection if and only if, within the period of 5 years immediately before  
25 his being convicted of that offence, he was convicted of a major offence; and  
(b) otherwise shall be treated as a first offence.
- (6) (a) Section 10 (1)—  
Omit “subsection (3A)”, insert instead “section 10A”.

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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND  
PENALTIES—*continued.*

(b) Section 10 (3A), (3AA), (3AB)—

5 Omit the subsections.

(c) Section 10 (5)—

Omit “(1), (1B)”, insert instead “(1E), (1F), (1G)”.

(7) Section 10A—

After section 10, insert:—

10 **Disqualification for certain major offences.**

10A. (1) This section applies to a person (referred to in this section as “the convicted person”) who—

15 (a) is, in respect of the death of or bodily harm to another person caused by or arising out of the use of a motor vehicle driven by the firstmentioned person at the time of the occurrence out of which the death or harm arose, convicted of—

(i) the crime of murder or manslaughter; or

(ii) an offence under section 33, 35, 53 or 54 or any other provision of the Crimes Act, 1900;

20 (b) is convicted of—

(i) the offence under section 4 of driving a motor vehicle upon a public street furiously or recklessly or at a speed or in a manner which is dangerous to the public; or

25 (ii) an offence under section 4E (1E), (1F), (1G) or (7), section 4F (7), section 5 (2) or section 8 (1); or

(c) is convicted of aiding, abetting, counselling or procuring the commission of, or being an accessory before the fact to, any such crime or offence,

30 any such conviction being referred to in this section as “the conviction”.



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*Motor Traffic (Road Safety) Amendment.*

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*SCHEDULE 2—continued.**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND PENALTIES—continued.*

- 5           (2) If, at the time of the conviction of the convicted person or during the period of 5 years before the conviction (whether that period commenced before or commences after the commencement of this section), the convicted person is not or has not been convicted of any other crime or offence (whether of the same or a different kind) of the class referred to in this section, then—
- 10           (a) where the conviction is for an offence under section 4E (1E)—
- 15               (i) he shall be disqualified by the conviction and without any specific order for 6 months from holding a driver's license under this Act or under the Transport Act, 1930; or
- (ii) where the court upon the conviction thinks fit to order a shorter period of disqualification, he shall be disqualified for such shorter period as may be specified in the order;
- 20           (b) where the conviction is for an offence under section 4E (1F)—
- 25               (i) he shall be disqualified by the conviction and without any specific order for 12 months from holding any such license; or
- (ii) where the court upon the conviction thinks fit to order a shorter period (but not shorter than 3 months) or longer period of disqualification, he shall be disqualified for such period as may be specified in the order; or
- 30           (c) except as provided in paragraphs (a) and (b)—
- (i) he shall be disqualified by the conviction and without any specific order for a period of 3 years from holding any such license; or



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*Motor Traffic (Road Safety) Amendment.*

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*SCHEDULE 2—continued.**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND PENALTIES—continued.*

5 (ii) where the court upon the conviction thinks fit to order a shorter period (but not shorter than 6 months) or longer period of disqualification, he shall be disqualified for such period as may be specified in the order.

10 (3) If, at the time of the conviction of the convicted person or during the period of 5 years before the conviction (whether that period commenced before or commences after the commencement of this section), the convicted person is or has been convicted of one or more other crimes or offences (whether of the same or a different kind) of the class referred to in this section, then—

15 (a) where the conviction is for an offence under section 4E (1E)—

(i) he shall be disqualified by the conviction and without any specific order for 12 months from holding a driver's license under this Act or under the Transport Act, 1930; or

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(ii) where the court upon the conviction thinks fit to order a shorter period (but not shorter than 3 months) or longer period of disqualification, he shall be disqualified for such period as may be specified in the order;

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(b) where the conviction is for an offence under section 4E (1F)—

(i) he shall be disqualified by the conviction and without any specific order for 3 years from holding any such license; or

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(ii) where the court upon the conviction thinks fit to order a shorter period (but not shorter than 6 months) or longer period of disqualification, he shall be disqualified for such period as may be specified in the order; or

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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND  
PENALTIES—*continued.*

- (c) except as provided in paragraphs (a) and (b)—
- 5           (i) he shall be disqualified by the conviction and without any specific order for 5 years from holding any such license; or
- (ii) where the court upon the conviction thinks fit to order a shorter period (but not shorter than 12 months) or
- 10           longer period of disqualification, he shall be disqualified for such period as may be specified in the order.
- (4) Where 2 or more convictions of a person are made, whether or not at the same time, for crimes or offences arising out of a single incident involving the use of a motor vehicle, then—
- 15           (a) for the purpose of ascertaining which of subsections (2) and (3) should apply in relation to any such conviction, the other or others of those convictions shall be disregarded, and subsection (2) or (3), as the case may require, shall accordingly be the applicable subsection;
- 20           (b) the maximum period of automatic disqualification in respect of all those crimes or offences shall be—
- (i) where subsection (2) is applicable—3 years; or
- (ii) where subsection (3) is applicable—5 years; and
- 25           (c) any minimum period of ordered disqualification shall, in respect of those crimes or offences, be disregarded to the extent that the total period of ordered and (where relevant) automatic disqualification would exceed—
- (i) where subsection (2) is applicable—6 months; or
- (ii) where subsection (3) is applicable—12 months,
- 30           but nothing in paragraph (c) prevents the court, if it thinks fit, from making any order it could have made if that paragraph had not been enacted.



*Motor Traffic (Road Safety) Amendment.*

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND  
PENALTIES—*continued.*

5 (5) Any disqualification under this section shall be in  
addition to any penalty imposed upon the conviction.

10 (6) If the convicted person is the holder of a driver's license  
under this Act or the Transport Act, 1930, the license shall, during  
any period of disqualification under this section, be of no effect, and  
the person shall, forthwith after conviction, deliver the license to the  
Commissioner.

(7) If a person fails to deliver a license as required by  
subsection (6), the person shall be guilty of an offence under this  
Act.

15 (8) A reference in this section to—  
(a) automatic disqualification is a reference to disqualification  
under this section without specific order of a court; and  
(b) ordered disqualification is a reference to disqualification under  
this section ordered by a court.

20 (8) Section 10A (as inserted by section 179 (d) of Act No. 18, 1930)—  
Renumber the section as section 10B.

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING.

25 (1) Section 2 (1), definition of "Analyst"—  
Before the definition of "Breath analysing instrument", insert:—  
"Analyst" means—

(a) any person employed by the Government as an  
analyst;



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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
*continued.*

- 5 (b) any person who is an analyst within the meaning of the Therapeutic Goods and Cosmetics Act, 1972; or
- (c) a prescribed person or a person of a prescribed class or description.

## (2) Section 3 (1) (p1)—

After section 3 (1) (p), insert:—

- 10 (p1) make provision for or with respect to—
- (i) the methods and conditions to be observed by medical practitioners in taking samples of blood under section 4F;
- (ii) the storage of samples so taken;
- 15 (iii) the delivery or transmission of portions of samples so taken to the persons from whom they are taken, to members of the police force or to analysts;
- (iv) the destruction of portions of samples so taken; and
- (v) any other matters to which sections 4F and 4G relate;

## 20 (3) Sections 4F, 4G—

After section 4E, insert:—

**Blood samples to be taken in certain cases.**

- 25 4F. (1) Where a person of or above the age of 15 years attends at or is admitted into a hospital for examination or treatment in consequence of an accident involving a motor vehicle, it is the duty of any medical practitioner by whom the person is attended at the hospital to take as soon as practicable from the person a sample of the person's blood for analysis, whether or not the person consents to the taking thereof.



*Motor Traffic (Road Safety) Amendment.*

SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
*continued.*

(2) This section does not require the taking of a sample of blood from a person involved in an accident involving a motor vehicle unless the person was, at the time of the accident—

- (a) driving a motor vehicle involved in the accident;
- (b) occupying the driving seat of a motor vehicle involved in the accident and attempting to put the motor vehicle in motion; or
- (c) a pedestrian involved in the accident.

(3) A medical practitioner is not required by this section to take a sample of a person's blood if a sample of the person's blood has instead been taken in accordance with this section by another medical practitioner.

(4) Where a medical practitioner fails to take a person's blood sample as required by this section, he shall be guilty of an offence under this Act.

(5) It is a defence to a prosecution for an offence under subsection (4) if the medical practitioner satisfies the court that—

- (a) he believed on reasonable grounds that the taking of blood from the person from whom he was required by this section to take a sample of blood would be prejudicial to the proper care and treatment of the person;
- (b) he did not believe that the person was of or above the age of 15 years and it was reasonable for him not to have so believed;
- (c) he did not believe that the person had attended at or been admitted into the hospital in consequence of an accident involving a motor vehicle;



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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
*continued.*

- 5 (d) without limiting paragraph (c), he did not believe that the person was a person from whom he was required by this section to take a sample of blood and it was reasonable for him not to have so believed;
- 10 (e) he did not know, and could not with reasonable diligence have ascertained, which of 2 or more persons involved in an accident involving a motor vehicle was or were a person or persons from whom he was required by this section to take a sample or samples of blood;
- 15 (f) he was, by reason of the behaviour of the person, unable to take a sample of blood from the person at the time the person attended at or was admitted into the hospital or a reasonable time thereafter; or
- (g) there was reasonable cause for him not to take a sample of blood from the person in accordance with this section.
- 20 (6) A person who hinders or obstructs a medical practitioner in attempting to take a sample of the blood of any other person in accordance with this section shall be guilty of an offence under this Act and shall be liable to a penalty not exceeding \$1,000.
- (7) Any person who—
- 25 (a) by reason of his behaviour, prevents a medical practitioner from taking a sample of his blood in accordance with this section; or
- 30 (b) between the time of the accident concerned and the taking of a sample of his blood in accordance with this section wilfully does anything to alter the concentration of alcohol in his blood (except at the direction or under the supervision of a medical practitioner for the proper care and treatment of the person),



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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
*continued.*

shall be guilty of an offence under this Act and shall be liable—

5 (c) in the case of a first offence—to a penalty not exceeding \$1,500 or to imprisonment for a period not exceeding 9 months or to both such penalty and imprisonment; or

10 (d) in the case of a second or subsequent offence—to a penalty not exceeding \$2,000 or to imprisonment for a period not exceeding 12 months or to both such penalty and imprisonment,

and, for the purposes of this subsection, where a person is guilty of an offence under this subsection, that offence—

15 (e) is a second or subsequent offence under this subsection if and only if, within the period of 5 years immediately before his being convicted of that offence, he was convicted of a major offence; and

(f) otherwise shall be treated as a first offence.

20 (8) Any duty of a medical practitioner under this section and any relevant provisions of the regulations may be performed by a person acting under the supervision of the medical practitioner, and in that event the duty shall be deemed to have been performed by the medical practitioner.

(9) A person convicted of an offence—

25 (a) under subsection (7); or

(b) under section 5 (2),

shall not be liable—

30 (c) where he has been convicted of an offence referred to in paragraph (a), to be convicted of an offence referred to in paragraph (b); or

(d) where he has been convicted of an offence referred to in paragraph (b), to be convicted of an offence referred to in paragraph (a),



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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
*continued.*

5 if the offence referred to in paragraph (a), and the offence referred to in paragraph (b), arose directly or indirectly out of the same circumstances.

10 (10) Where a sample of blood is taken from a person in accordance with this section, he shall not be charged with an offence under section 5 (2), being the offence of driving a motor vehicle, at the time of the accident concerned, while he was under the influence of intoxicating liquor or the offence of occupying the driving seat of a motor vehicle and attempting to put the motor vehicle in motion, at the time of the accident concerned, while he was under the influence of intoxicating liquor.

15 (11) No action lies against a medical practitioner in respect of anything properly and necessarily done by him in the course of taking a sample of the blood of a person where—

- (a) he believed on reasonable grounds that he was required to take the sample from the person under this section; or
- 20 (b) he believed on reasonable grounds that the person was involved in an accident involving a motor vehicle and he did not know, and could not with reasonable diligence have ascertained, whether or not he was required to take the sample from the person under this section,
- 25 nor against any person acting under the supervision of the medical practitioner as referred to in subsection (8).

30 (12) In this section, “hospital” means any hospital whose name is included in the Second, Third or Fifth Schedule to the Public Hospitals Act, 1929, any private hospital within the meaning of the Private Hospitals Act, 1908, or any prescribed premises, institution or establishment.

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*Motor Traffic (Road Safety) Amendment.*

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**SCHEDULE 3—continued.****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
continued.****Analysis of samples of blood.**

- 5           4G. (1) The medical practitioner by whom a sample of a person's  
blood is taken in accordance with section 4F shall—
- (a) divide the sample into 3 approximately equal portions;
  - (b) place each portion into a container;
  - (c) fasten and seal each such container; and
  - 10       (d) mark or label each such container for future identification.
- (2) Of the 3 portions of a sample of blood—
- (a) one shall be used for an analysis referred to in subsection (3);
  - (b) one may be used for an analysis referred to in subsection (4);  
and
  - 15       (c) one shall be available to or for the use and benefit of the  
person from whom the sample was taken.
- (3) The medical practitioner by whom a sample of a person's  
blood is taken in accordance with section 4F shall, as soon as  
20       reasonably practicable after the sample is taken, arrange for a portion  
of the sample to be submitted for an analysis by an analyst to deter-  
mine the concentration of alcohol in the blood.
- (4) A member of the police force may arrange for a portion  
of a sample of a person's blood taken in accordance with section 4F  
to be submitted for an analysis by an analyst to determine the  
25       concentration of alcohol in the blood.
- (5) An analyst to whom a portion of a sample of blood is  
submitted for analysis under this section may carry out an analysis  
of the portion to determine the concentration of alcohol in the blood.



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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
*continued.*

5 (6) An analysis referred to in subsection (5) may be carried out, and any act, matter or thing in connection with the analysis (including the receipt of the portion of the sample of blood to be analysed and the breaking of any seal securing the portion) may be done, by a person acting under the supervision of an analyst, and in that event shall be deemed to have been carried out or done by the analyst.

15 (7) Any duty of a medical practitioner under this section and any relevant provisions of the regulations may be performed by a person acting under the supervision of the medical practitioner, and in that event the duty shall be deemed to have been performed by the medical practitioner.

20 (8) In proceedings for an offence under section 4E (1E), (1F) or (1G) evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined pursuant to an analysis under this section of a portion of a sample of that person's blood, and the concentration of alcohol so determined shall be deemed to be the concentration of alcohol in the blood of that person at the time of the occurrence of the event referred to in section 4E (2) (a), (b) or (c) or (2A) (a) or (b), as the case may be, where the sample of blood was taken within 2 hours after that event, unless the defendant proves that the concentration of alcohol in his blood at that time was—

- 25
- (a) in the case of an offence under section 4E (1E), less than 0.05 grammes of alcohol in 100 millilitres of his blood;
  - 30 (b) in the case of an offence under section 4E (1F), less than 0.08 grammes of alcohol in 100 millilitres of his blood; or
  - (c) in the case of an offence under section 4E (1G), less than 0.15 grammes of alcohol in 100 millilitres of his blood,

but nothing in this section affects the operation of section 4E (1I) or (1J).

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*Motor Traffic (Road Safety) Amendment.*

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**SCHEDULE 3—continued.****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
continued.**

5 (9) In proceedings for an offence under section 4E (1E), (1F) or (1G) a certificate purporting to be signed by a medical practitioner certifying any one or more of the following matters:—

(a) that he was a medical practitioner who attended a specified person who attended at or was admitted into a hospital as referred to in section 4F;

10 (b) that he took a sample of the person's blood in accordance with section 4F, and any relevant provisions of the regulations, on the day and at the time stated in the certificate;

(c) that he dealt with the sample in accordance with subsection (1) and any relevant provisions of the regulations;

15 (d) that he used equipment of a specified description in so taking and dealing with the sample;

(e) that the container was sealed, and marked or labelled, in a specified manner,

20 shall be prima facie evidence of the particulars certified in and by the certificate.

(10) In proceedings for an offence under section 4E (1E), (1F) or (1G) a certificate purporting to be signed by a member of the police force certifying any one or more of the following matters:—

25 (a) that he received a portion of a sample of a specified person's blood taken in accordance with section 4F;

(b) that he arranged for the portion to be submitted for an analysis by an analyst to determine the concentration of alcohol in the blood;

30 (c) that the container was sealed, and marked or labelled, in a specified manner,

shall be prima facie evidence of the particulars certified in and by the certificate.



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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
*continued.*

- 5 (11) In proceedings for an offence under section 4E (1E),  
(1F) or (1G) a certificate purporting to be signed by an analyst  
certifying any one or more of the following matters:—
- (a) that he received a portion of a sample of blood in a container  
submitted for analysis under this section;
  - 10 (b) that the container, as received by him, was sealed, and marked  
or labelled, in a specified manner;
  - (c) that on receipt by him of the container, the seal was unbroken;
  - (d) that he carried out an analysis of the portion to determine the  
concentration of alcohol in the sample;
  - 15 (e) that the concentration of alcohol determined pursuant to the  
analysis and expressed in grammes of alcohol in 100 millilitres  
of blood was present in that sample;
  - (f) that he was, at the time of the analysis, an analyst within the  
meaning of this Act,
- shall be prima facie evidence—
- 20 (g) of the particulars certified in and by the certificate;
  - (h) that the sample was a portion of the sample of the blood  
of that specified person; and
  - (i) that the portion had not been tampered with before it was  
received by the analyst.
- 25 (12) The result of an analysis under this section shall not,  
for the purpose of any contract of insurance, be admissible as evidence  
of the fact that a person was at any time under the influence of or  
in any way affected by intoxicating liquor or incapable of driving or  
of exercising effective control over a motor vehicle, but nothing in  
30 this section precludes the admission of any other evidence to show  
any such fact.



*Motor Traffic (Road Safety) Amendment.*

SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
*continued.*

5 (13) The provisions of subsection (12) have effect notwithstanding anything in any contract of insurance and any covenant, term, condition or provision therein is, to the extent that the operation of that subsection is excluded, limited, modified or restricted, void.

(14) Any medical practitioner who fails to comply with subsection (1) or (3) shall be guilty of an offence under this Act.

10

SCHEDULE 4.

(Sec. 5.)

MINOR AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 2 (1), definition of "Breath analysing instrument"—

Omit "notification", insert instead "order".

15 (2) Section 2 (1), definition of "Breath test"—

Omit "notification", insert instead "order".



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*Motor Traffic (Road Safety) Amendment.*

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## SCHEDULE 5.

(Sec. 6.)

## SAVINGS AND TRANSITIONAL PROVISIONS.

**Offences committed before 17th December, 1982, not affected by amendments made by this Act.**

1. (1) The Principal Act applies to and in respect of offences committed on or before 16th December, 1982, as if this Act had not been enacted.

(2) Without limiting the operation of subclause (1), section 4E (13) of the Principal Act, as amended by this Act, applies to and in respect of offences committed under section 4E (1) or (1B) of the Principal Act on or before 16th December, 1982, in the same way as it applies to and in respect of offences committed under section 4E (1E), (1F) and (1G) of that Act, as amended by this Act, after that date.

(3) Nothing in this clause shall be construed as preventing an offence committed on or before 16th December, 1982, from being regarded as a major offence within the meaning of the Principal Act, as amended by this Act.

**Random breath testing offences during trial period not affected by expiry of trial period.**

2. The Principal Act, as amended by this Act, applies to and in respect of offences committed on or after 17th December, 1982, and on or before 16th December, 1985, as if section 4E (2C) of that Act, as so amended, had not been enacted.

**20 Notification of approval of instruments and devices used for breath testing.**

3. A notification published in the Gazette before the commencement of Schedule 4, under or for the purposes of the definition of "Breath analysing instrument" or "Breath test" in section 2 (1) of the Principal Act—

(a) shall be deemed to be an order published under or for the purposes of that definition as amended by this Act; and

(b) may accordingly be rescinded, revoked, altered or varied, as referred to in section 32 of the Interpretation Act, 1897.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1982







**MOTOR TRAFFIC (ROAD SAFETY)  
AMENDMENT ACT, 1982, No. 123**

**New South Wales**



ANNO TRICESIMO PRIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 123, 1982.**

An Act to amend the Motor Traffic Act, 1909, to introduce random breath testing, to increase penalties for certain offences and to require the blood testing of certain persons involved in motor accidents; and for other purposes. [Assented to 8th December, 1982.]

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See also Crimes (Road Safety) Amendment Act, 1982.



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*Motor Traffic (Road Safety) Amendment.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title.**

**1.** This Act may be cited as the "Motor Traffic (Road Safety) Amendment Act, 1982".

**Commencement.**

**2. (1)** Sections 1 and 2 shall commence on the date of assent to this Act.

**(2)** Except as provided by subsection (1), this Act shall commence on 17th December, 1982.

**Principal Act.**

**3.** The Motor Traffic Act, 1909, is referred to in this Act as the Principal Act.

**Schedules.**

**4.** This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO RANDOM BREATH TESTING.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND PENALTIES.

SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING.

SCHEDULE 4.—MINOR AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 5.—SAVINGS AND TRANSITIONAL PROVISIONS.



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*Motor Traffic (Road Safety) Amendment.*

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**Amendment of Act No. 5, 1909.**

5. The Principal Act is amended in the manner set forth in Schedules 1-4.

**Savings and transitional provisions.**

6. Schedule 5 has effect.

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**SCHEDULE 1.**

(Sec. 5.)

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO RANDOM BREATH TESTING.**

- (1) Section 4E (2A)-(2C)—

After section 4E (2), insert:—

(2A) Notwithstanding subsection (2), but subject to subsection (2C), where a member of the police force has reasonable cause to believe that any person—

- (a) is or was driving a motor vehicle upon a public street; or
- (b) is or was occupying the driving seat of a motor vehicle upon a public street and attempting to put the motor vehicle in motion,

a member of the police force may require that person to undergo a breath test in accordance with the directions of a member of the police force.



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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO RANDOM BREATH  
TESTING—*continued.*

(2B) Subject to subsection (2C), and without limiting any other power or authority, any member of the police force may, for the purposes of this section, request or signal the driver of a motor vehicle to stop the vehicle, and any person who fails to comply with any request or signal made or given pursuant to this subsection shall be guilty of an offence under this Act and shall be liable to a penalty not exceeding \$1,000.

(2C) After 16th December, 1985—

(a) subsection (2A) shall have no force or effect; and

(b) without limiting any other power or authority, the power or authority conferred by subsection (2B) may not be exercised by a member of the police force unless he has reasonable cause to believe the matters referred to in subsection (2) (a), (b) or (c).

(2) Section 4E (3), (5), (6)—

After “subsection (2)” wherever occurring, insert “or (2A)”.

(3) Section 4E (6), (7), (15)—

Omit “that member” wherever occurring, insert instead “a member of the police force”.

(4) Section 4E (7), (11), (15)—

After “subsection (2) (a), (b) or (c)” wherever occurring, insert “or (2A) (a) or (b)”.

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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND  
PENALTIES.

(1) Section 1A—

Omit “10A”, insert instead “10B”.

(2) (a) Section 2 (1), definitions of “Higher prescribed concentration of alcohol”, “Lower prescribed concentration of alcohol”—

Omit the definitions.

(b) Section 2 (1), definition of “Major offence”—

Before the definition of “Motor vehicle”, insert:—

“Major offence” means—

- (a) a crime or offence referred to in section 10A; or
- (b) an offence under section 4E (1) or (1B) as in force before the commencement of this paragraph.

(c) Section 2 (3)—

After section 2 (2), insert:—

(3) A reference in this Act to—

- (a) the low range prescribed concentration of alcohol is a reference to a concentration of 0.05 grammes or more, but less than 0.08 grammes, of alcohol in 100 millilitres of blood;
- (b) the middle range prescribed concentration of alcohol is a reference to a concentration of 0.08 grammes or more, but less than 0.15 grammes, of alcohol in 100 millilitres of blood; and
- (c) the high range prescribed concentration of alcohol is a reference to a concentration of 0.15 grammes or more of alcohol in 100 millilitres of blood.



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*Motor Traffic (Road Safety) Amendment.*

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**SCHEDULE 2—continued.****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND PENALTIES—continued.****(3) Section 4 (3), (4)—**

Omit section 4 (3), insert instead:—

(3) A person convicted of an offence under this section shall be liable—

- (a) where the conviction is for the offence of driving a motor vehicle upon a public street negligently—to a penalty not exceeding \$500; or
- (b) where the conviction is for the offence of driving a motor vehicle upon a public street, furiously, or recklessly, or at a speed or in a manner which is dangerous to the public—
  - (i) in the case of a first offence—to a penalty not exceeding \$1,500 or to imprisonment for a period not exceeding 9 months or to both such penalty and imprisonment; or
  - (ii) in the case of a second or subsequent offence—to a penalty not exceeding \$2,000 or to imprisonment for a period not exceeding 12 months or to both such penalty and imprisonment.

(4) For the purposes of subsection (3), where a person is guilty of an offence under this section, that offence—

- (a) is a second or subsequent offence as referred to in that subsection if and only if, within the period of 5 years immediately before his being convicted of that offence, he was convicted of a major offence; and
- (b) otherwise shall be treated as a first offence.

**(4) (a) Section 4E (1)–(1D)—**

Omit the subsections.

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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND  
PENALTIES—*continued.*

(b) Section 4E (1E)–(1K)—

Before section 4E (2), insert:—

(1E) Any person who while there is present in his blood the low range prescribed concentration of alcohol—

- (a) drives a motor vehicle; or
- (b) occupies the driving seat of a motor vehicle and attempts to put the motor vehicle in motion,

shall be guilty of an offence under this Act and shall be liable—

- (c) in the case of a first offence—to a penalty not exceeding \$500; or
- (d) in the case of a second or subsequent offence—to a penalty not exceeding \$1,000.

(1F) Any person who while there is present in his blood the middle range prescribed concentration of alcohol—

- (a) drives a motor vehicle; or
- (b) occupies the driving seat of a motor vehicle and attempts to put the motor vehicle in motion,

shall be guilty of an offence under this Act and shall be liable to a penalty not exceeding \$1,000 or to imprisonment for a period not exceeding 6 months or to both such penalty and imprisonment.

(1G) Any person who while there is present in his blood the high range prescribed concentration of alcohol—

- (a) drives a motor vehicle; or
- (b) occupies the driving seat of a motor vehicle and attempts to put the motor vehicle in motion,



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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND  
PENALTIES—*continued.*

shall be guilty of an offence under this Act and shall be liable—

- (c) in the case of a first offence—to a penalty not exceeding \$1,500 or to imprisonment for a period not exceeding 9 months or to both such penalty and imprisonment; or
- (d) in the case of a second or subsequent offence—to a penalty not exceeding \$2,000 or to imprisonment for a period not exceeding 12 months or to both such penalty and imprisonment.

(1H) For the purposes of subsection (1E) or (1G), where a person is guilty of an offence under that subsection, that offence—

- (a) is a second or subsequent offence under that subsection if and only if, within the period of 5 years immediately before his being convicted of that offence, he was convicted of a major offence; and
- (b) otherwise shall be treated as a first offence.

(1I) If, on a prosecution of a person for an offence under subsection (1F), the court is satisfied that, at the time the person did the act referred to in subsection (1F) (a) or (b), as the case may be, there was not present in his blood the middle range prescribed concentration of alcohol but there was present in his blood the low range prescribed concentration of alcohol, the court may convict the person of an offence under subsection (1E).

(1J) If, on a prosecution of a person for an offence under subsection (1G), the court is satisfied that, at the time the person did the act referred to in subsection (1G) (a) or (b), as the case may be, there was not present in his blood the high range prescribed concentration of alcohol but there was present in his blood—

- (a) the middle range prescribed concentration of alcohol, the court may convict the person of an offence under subsection (1F); or

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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND  
PENALTIES—*continued.*

(b) the low range prescribed concentration of alcohol, the court may convict the person of an offence under subsection (1E).

(1K) It is not a defence to a prosecution for—

(a) an offence under subsection (1E) if the defendant proves that, at the time he did the act referred to in subsection (1E) (a) or (b), as the case may be, there was present in his blood a concentration of alcohol of 0.08 grammes or more in 100 millilitres of his blood; or

(b) an offence under subsection (1F) if the defendant proves that, at the time he did the act referred to in subsection (1F) (a) or (b), as the case may be, there was present in his blood a concentration of alcohol of 0.15 grammes or more in 100 millilitres of his blood.

(c) Section 4E (6)—

Omit “\$500”, insert instead “\$1,000”.

(d) Section 4E (7)—

Omit “liable to a penalty not exceeding \$1,000 or to imprisonment for a period not exceeding six months or to both such penalty and imprisonment.”, insert instead:—

liable—

(c) in the case of a first offence—to a penalty not exceeding \$1,500 or to imprisonment for a period not exceeding 9 months or to both such penalty and imprisonment; or

(d) in the case of a second or subsequent offence—to a penalty not exceeding \$2,000 or to imprisonment for a period not exceeding 12 months or to both such penalty and imprisonment.



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*Motor Traffic (Road Safety) Amendment.*

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**SCHEDULE 2—continued.**

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**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND PENALTIES—continued.****(e) Section 4E (7A)—**

After section 4E (7), insert:—

(7A) For the purposes of subsection (7), where a person is guilty of an offence under that subsection, that offence—

- (a) is a second or subsequent offence under that subsection if and only if, within the period of 5 years immediately before his being convicted of that offence, he was convicted of a major offence; and
- (b) otherwise shall be treated as a first offence.

**(f) Section 4E (11)—**

Omit “subsection (1) or (1B)”, insert instead “subsection (1E), (1F) or (1G)”.

**(g) Section 4E (11) (a), (b), (c)—**

Omit section 4E (11) (a) and (b), insert instead:—

- (a) in the case of an offence under subsection (1E), less than 0.05 grammes of alcohol in 100 millilitres of his blood;
- (b) in the case of an offence under subsection (1F), less than 0.08 grammes of alcohol in 100 millilitres of his blood; or
- (c) in the case of an offence under subsection (1G), less than 0.15 grammes of alcohol in 100 millilitres of his blood,

**(h) Section 4E (11)—**

Omit “subsection (1A)”, insert instead “subsection (1I) or (1J)”.

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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND  
PENALTIES—*continued.*

(i) Section 4E (12) (a)—

Omit “subsection (1) or (1B)”, insert instead “subsection (1E), (1F) or (1G)”.

(j) Section 4E (13) (a)—

Omit “subsection (1), (1B)”, insert instead “subsection (1E), (1F), (1G)”.

(5) Section 8 (2), (2A)—

Omit section 8 (2), insert instead:—

(2) Any person knowingly acting in contravention of subsection (1) shall be guilty of an offence under this Act and shall be liable—

(a) in the case of a first offence—to a penalty not exceeding \$1,500 or to imprisonment for a period not exceeding 9 months or to both such penalty and imprisonment; or

(b) in the case of a second or subsequent offence—to a penalty not exceeding \$2,000 or to imprisonment for a period not exceeding 12 months or to both such penalty and imprisonment.

(2A) For the purposes of subsection (2), where a person is guilty of an offence under that subsection, that offence—

(a) is a second or subsequent offence under that subsection if and only if, within the period of 5 years immediately before his being convicted of that offence, he was convicted of a major offence; and

(b) otherwise shall be treated as a first offence.

(6) (a) Section 10 (1)—

Omit “subsection (3A)”, insert instead “section 10A”.



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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND PENALTIES—*continued.*

- (b) Section 10 (3A), (3AA), (3AB)—

Omit the subsections.

- (c) Section 10 (5)—

Omit “(1), (1B)”, insert instead “(1E), (1F), (1G)”.

- (7) Section 10A—

After section 10, insert:—

**Disqualification for certain major offences.**

10A. (1) This section applies to a person (referred to in this section as “the convicted person”) who—

- (a) is, in respect of the death of or bodily harm to another person caused by or arising out of the use of a motor vehicle driven by the firstmentioned person at the time of the occurrence out of which the death or harm arose, convicted of—

(i) the crime of murder or manslaughter; or

(ii) an offence under section 33, 35, 53 or 54 or any other provision of the Crimes Act, 1900;

- (b) is convicted of—

(i) the offence under section 4 of driving a motor vehicle upon a public street furiously or recklessly or at a speed or in a manner which is dangerous to the public; or

(ii) an offence under section 4E (1E), (1F), (1G) or (7), section 4F (7), section 5 (2) or section 8 (1); or

- (c) is convicted of aiding, abetting, counselling or procuring the commission of, or being an accessory before the fact to, any such crime or offence,

any such conviction being referred to in this section as “the conviction”.

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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND  
PENALTIES—*continued.*

(2) If, at the time of the conviction of the convicted person or during the period of 5 years before the conviction (whether that period commenced before or commences after the commencement of this section), the convicted person is not or has not been convicted of any other crime or offence (whether of the same or a different kind) of the class referred to in this section, then—

(a) where the conviction is for an offence under section 4E (1E)—

- (i) he shall be disqualified by the conviction and without any specific order for 6 months from holding a driver's license under this Act or under the Transport Act, 1930; or
- (ii) where the court upon the conviction thinks fit to order a shorter period of disqualification, he shall be disqualified for such shorter period as may be specified in the order;

(b) where the conviction is for an offence under section 4E (1F)—

- (i) he shall be disqualified by the conviction and without any specific order for 12 months from holding any such license; or
- (ii) where the court upon the conviction thinks fit to order a shorter period (but not shorter than 3 months) or longer period of disqualification, he shall be disqualified for such period as may be specified in the order; or

(c) except as provided in paragraphs (a) and (b)—

- (i) he shall be disqualified by the conviction and without any specific order for a period of 3 years from holding any such license; or



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*Motor Traffic (Road Safety) Amendment.*

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**SCHEDULE 2—continued.****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND PENALTIES—continued.**

- (ii) where the court upon the conviction thinks fit to order a shorter period (but not shorter than 6 months) or longer period of disqualification, he shall be disqualified for such period as may be specified in the order.
- (3) If, at the time of the conviction of the convicted person or during the period of 5 years before the conviction (whether that period commenced before or commences after the commencement of this section), the convicted person is or has been convicted of one or more other crimes or offences (whether of the same or a different kind) of the class referred to in this section, then—
  - (a) where the conviction is for an offence under section 4E (1E)—
    - (i) he shall be disqualified by the conviction and without any specific order for 12 months from holding a driver's license under this Act or under the Transport Act, 1930; or
    - (ii) where the court upon the conviction thinks fit to order a shorter period (but not shorter than 3 months) or longer period of disqualification, he shall be disqualified for such period as may be specified in the order;
  - (b) where the conviction is for an offence under section 4E (1F)—
    - (i) he shall be disqualified by the conviction and without any specific order for 3 years from holding any such license; or
    - (ii) where the court upon the conviction thinks fit to order a shorter period (but not shorter than 6 months) or longer period of disqualification, he shall be disqualified for such period as may be specified in the order; or

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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND  
PENALTIES—*continued.*

- (c) except as provided in paragraphs (a) and (b)—
  - (i) he shall be disqualified by the conviction and without any specific order for 5 years from holding any such license; or
  - (ii) where the court upon the conviction thinks fit to order a shorter period (but not shorter than 12 months) or longer period of disqualification, he shall be disqualified for such period as may be specified in the order.

(4) Where 2 or more convictions of a person are made, whether or not at the same time, for crimes or offences arising out of a single incident involving the use of a motor vehicle, then—

- (a) for the purpose of ascertaining which of subsections (2) and (3) should apply in relation to any such conviction, the other or others of those convictions shall be disregarded, and subsection (2) or (3), as the case may require, shall accordingly be the applicable subsection;
- (b) the maximum period of automatic disqualification in respect of all those crimes or offences shall be—
  - (i) where subsection (2) is applicable—3 years; or
  - (ii) where subsection (3) is applicable—5 years; and
- (c) any minimum period of ordered disqualification shall, in respect of those crimes or offences, be disregarded to the extent that the total period of ordered and (where relevant) automatic disqualification would exceed—
  - (i) where subsection (2) is applicable—6 months; or
  - (ii) where subsection (3) is applicable—12 months,

but nothing in paragraph (c) prevents the court, if it thinks fit, from making any order it could have made if that paragraph had not been enacted.



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*Motor Traffic (Road Safety) Amendment.*

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**SCHEDULE 2—continued.****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO OFFENCES AND PENALTIES—continued.**

(5) Any disqualification under this section shall be in addition to any penalty imposed upon the conviction.

(6) If the convicted person is the holder of a driver's license under this Act or the Transport Act, 1930, the license shall, during any period of disqualification under this section, be of no effect, and the person shall, forthwith after conviction, deliver the license to the Commissioner.

(7) If a person fails to deliver a license as required by subsection (6), the person shall be guilty of an offence under this Act.

(8) A reference in this section to—

- (a) automatic disqualification is a reference to disqualification under this section without specific order of a court; and
- (b) ordered disqualification is a reference to disqualification under this section ordered by a court.

(8) Section 10A (as inserted by section 179 (d) of Act No. 18, 1930)—  
Renumber the section as section 10B.

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**SCHEDULE 3.**

(Sec. 5.)

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING.**

(1) Section 2 (1), definition of "Analyst"—

Before the definition of "Breath analysing instrument", insert:—

"Analyst" means—

- (a) any person employed by the Government as an analyst;

*Motor Traffic (Road Safety) Amendment.*

SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
*continued.*

- (b) any person who is an analyst within the meaning of the Therapeutic Goods and Cosmetics Act, 1972; or
- (c) a prescribed person or a person of a prescribed class or description.

(2) Section 3 (1) (p1)—

After section 3 (1) (p), insert:—

(p1) make provision for or with respect to—

- (i) the methods and conditions to be observed by **medical** practitioners in taking samples of blood under **section 4F**;
- (ii) the storage of samples so taken;
- (iii) the delivery or transmission of portions of samples **so** taken to the persons from whom they are **taken**, to members of the police force or to analysts;
- (iv) the destruction of portions of samples so taken; **and**
- (v) any other matters to which sections 4F and 4G **relate**;

(3) Sections 4F, 4G—

After section 4E, insert:—

**Blood samples to be taken in certain cases.**

4F. (1) Where a person of or above the age of 15 years **attends** at or is admitted into a hospital for examination or treatment in consequence of an accident involving a motor vehicle, it is **the duty** of any medical practitioner by whom the person is attended **at the** hospital to take as soon as practicable from the person a **sample of** the person's blood for analysis, whether or not the person **consents** to the taking thereof.



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*Motor Traffic (Road Safety) Amendment.*

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*SCHEDULE 3—continued.**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
continued.*

(2) This section does not require the taking of a sample of blood from a person involved in an accident involving a motor vehicle unless the person was, at the time of the accident—

- (a) driving a motor vehicle involved in the accident;
- (b) occupying the driving seat of a motor vehicle involved in the accident and attempting to put the motor vehicle in motion;  
or
- (c) a pedestrian involved in the accident.

(3) A medical practitioner is not required by this section to take a sample of a person's blood if a sample of the person's blood has instead been taken in accordance with this section by another medical practitioner.

(4) Where a medical practitioner fails to take a person's blood sample as required by this section, he shall be guilty of an offence under this Act.

(5) It is a defence to a prosecution for an offence under subsection (4) if the medical practitioner satisfies the court that—

- (a) he believed on reasonable grounds that the taking of blood from the person from whom he was required by this section to take a sample of blood would be prejudicial to the proper care and treatment of the person;
- (b) he did not believe that the person was of or above the age of 15 years and it was reasonable for him not to have so believed;
- (c) he did not believe that the person had attended at or been admitted into the hospital in consequence of an accident involving a motor vehicle;

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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
*continued.*

- (d) without limiting paragraph (c), he did not believe that the person was a person from whom he was required by this section to take a sample of blood and it was reasonable for him not to have so believed;
- (e) he did not know, and could not with reasonable diligence have ascertained, which of 2 or more persons involved in an accident involving a motor vehicle was or were a person or persons from whom he was required by this section to take a sample or samples of blood;
- (f) he was, by reason of the behaviour of the person, unable to take a sample of blood from the person at the time the person attended at or was admitted into the hospital or a reasonable time thereafter; or
- (g) there was reasonable cause for him not to take a sample of blood from the person in accordance with this section.

(6) A person who hinders or obstructs a medical practitioner in attempting to take a sample of the blood of any other person in accordance with this section shall be guilty of an offence under this Act and shall be liable to a penalty not exceeding \$1,000.

## (7) Any person who—

- (a) by reason of his behaviour, prevents a medical practitioner from taking a sample of his blood in accordance with this section; or
- (b) between the time of the accident concerned and the taking of a sample of his blood in accordance with this section wilfully does anything to alter the concentration of alcohol in his blood (except at the direction or under the supervision of a medical practitioner for the proper care and treatment of the person),



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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 3—*continued.***AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
*continued.***

shall be guilty of an offence under this Act and shall be liable—

- (c) in the case of a first offence—to a penalty not exceeding \$1,500 or to imprisonment for a period not exceeding 9 months or to both such penalty and imprisonment; or
- (d) in the case of a second or subsequent offence—to a penalty not exceeding \$2,000 or to imprisonment for a period not exceeding 12 months or to both such penalty and imprisonment,

and, for the purposes of this subsection, where a person is guilty of an offence under this subsection, that offence—

- (e) is a second or subsequent offence under this subsection if and only if, within the period of 5 years immediately before his being convicted of that offence, he was convicted of a major offence; and
- (f) otherwise shall be treated as a first offence.

(8) Any duty of a medical practitioner under this section and any relevant provisions of the regulations may be performed by a person acting under the supervision of the medical practitioner, and in that event the duty shall be deemed to have been performed by the medical practitioner.

(9) A person convicted of an offence—

- (a) under subsection (7); or
- (b) under section 5 (2),

shall not be liable—

- (c) where he has been convicted of an offence referred to in paragraph (a), to be convicted of an offence referred to in paragraph (b); or
- (d) where he has been convicted of an offence referred to in paragraph (b), to be convicted of an offence referred to in paragraph (a),

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*Motor Traffic (Road Safety) Amendment.*

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*SCHEDULE 3—continued.**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
continued.*

if the offence referred to in paragraph (a), and the offence referred to in paragraph (b), arose directly or indirectly out of the same circumstances.

(10) Where a sample of blood is taken from a person in accordance with this section, he shall not be charged with an offence under section 5 (2), being the offence of driving a motor vehicle, at the time of the accident concerned, while he was under the influence of intoxicating liquor or the offence of occupying the driving seat of a motor vehicle and attempting to put the motor vehicle in motion, at the time of the accident concerned, while he was under the influence of intoxicating liquor.

(11) No action lies against a medical practitioner in respect of anything properly and necessarily done by him in the course of taking a sample of the blood of a person where—

- (a) he believed on reasonable grounds that he was required to take the sample from the person under this section; or
- (b) he believed on reasonable grounds that the person was involved in an accident involving a motor vehicle and he did not know, and could not with reasonable diligence have ascertained, whether or not he was required to take the sample from the person under this section,

nor against any person acting under the supervision of the medical practitioner as referred to in subsection (8).

(12) In this section, "hospital" means any hospital whose name is included in the Second, Third or Fifth Schedule to the Public Hospitals Act, 1929, any private hospital within the meaning of the Private Hospitals Act, 1908, or any prescribed premises, institution or establishment.



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*Motor Traffic (Road Safety) Amendment.*

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**SCHEDULE 3—continued.****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
continued.****Analysis of samples of blood.**

4G. (1) The medical practitioner by whom a sample of a person's blood is taken in accordance with section 4F shall—

- (a) divide the sample into 3 approximately equal portions;
- (b) place each portion into a container;
- (c) fasten and seal each such container; and
- (d) mark or label each such container for future identification.

(2) Of the 3 portions of a sample of blood—

- (a) one shall be used for an analysis referred to in subsection (3);
- (b) one may be used for an analysis referred to in subsection (4);  
and
- (c) one shall be available to or for the use and benefit of the person from whom the sample was taken.

(3) The medical practitioner by whom a sample of a person's blood is taken in accordance with section 4F shall, as soon as reasonably practicable after the sample is taken, 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.

(4) A member of the police force may arrange for a portion of a sample of a person's blood taken in accordance with section 4F to be submitted for an analysis by an analyst to determine the concentration of alcohol in the blood.

(5) An analyst to whom a portion of a sample of blood is submitted for analysis under this section may carry out an analysis of the portion to determine the concentration of alcohol in the blood.

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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
*continued.*

(6) An analysis referred to in subsection (5) may be carried out, and any act, matter or thing in connection with the analysis (including the receipt of the portion of the sample of blood to be analysed and the breaking of any seal securing the portion) may be done, by a person acting under the supervision of an analyst, and in that event shall be deemed to have been carried out or done by the analyst.

(7) Any duty of a medical practitioner under this section and any relevant provisions of the regulations may be performed by a person acting under the supervision of the medical practitioner, and in that event the duty shall be deemed to have been performed by the medical practitioner.

(8) In proceedings for an offence under section 4E (1E), (1F) or (1G) evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined pursuant to an analysis under this section of a portion of a sample of that person's blood, and the concentration of alcohol so determined shall be deemed to be the concentration of alcohol in the blood of that person at the time of the occurrence of the event referred to in section 4E (2) (a), (b) or (c) or (2A) (a) or (b), as the case may be, where the sample of blood was taken within 2 hours after that event, unless the defendant proves that the concentration of alcohol in his blood at that time was—

- (a) in the case of an offence under section 4E (1E), less than 0.05 grammes of alcohol in 100 millilitres of his blood;
- (b) in the case of an offence under section 4E (1F), less than 0.08 grammes of alcohol in 100 millilitres of his blood; or
- (c) in the case of an offence under section 4E (1G), less than 0.15 grammes of alcohol in 100 millilitres of his blood,

but nothing in this section affects the operation of section 4E (1I) or (1J).



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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
*continued.*

(9) In proceedings for an offence under section 4E (1E), (1F) or (1G) a certificate purporting to be signed by a medical practitioner certifying any one or more of the following matters:—

- (a) that he was a medical practitioner who attended a specified person who attended at or was admitted into a hospital as referred to in section 4F;
- (b) that he took a sample of the person's blood in accordance with section 4F, and any relevant provisions of the regulations, on the day and at the time stated in the certificate;
- (c) that he dealt with the sample in accordance with subsection (1) and any relevant provisions of the regulations;
- (d) that he used equipment of a specified description in so taking and dealing with the sample;
- (e) that the container was sealed, and marked or labelled, in a specified manner,

shall be prima facie evidence of the particulars certified in and by the certificate.

(10) In proceedings for an offence under section 4E (1E), (1F) or (1G) a certificate purporting to be signed by a member of the police force certifying any one or more of the following matters:—

- (a) that he received a portion of a sample of a specified person's blood taken in accordance with section 4F;
- (b) that he arranged for the portion to be submitted for an analysis by an analyst to determine the concentration of alcohol in the blood;
- (c) that the container was sealed, and marked or labelled, in a specified manner,

shall be prima facie evidence of the particulars certified in and by the certificate.

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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
*continued.*

(11) In proceedings for an offence under section 4E (1E), (1F) or (1G) a certificate purporting to be signed by an analyst certifying any one or more of the following matters:—

- (a) that he received a portion of a sample of blood in a container submitted for analysis under this section;
- (b) that the container, as received by him, was sealed, and marked or labelled, in a specified manner;
- (c) that on receipt by him of the container, the seal was unbroken;
- (d) that he carried out an analysis of the portion to determine the concentration of alcohol in the sample;
- (e) that the concentration of alcohol determined pursuant to the analysis and expressed in grammes of alcohol in 100 millilitres of blood was present in that sample;
- (f) that he was, at the time of the analysis, an analyst within the meaning of this Act,

shall be prima facie evidence—

- (g) of the particulars certified in and by the certificate;
- (h) that the sample was a portion of the sample of the blood of that specified person; and
- (i) that the portion had not been tampered with before it was received by the analyst.

(12) The result of an analysis under this section shall not, for the purpose of any contract of insurance, be admissible as evidence of the fact that a person was at any time under the influence of or in any way affected by intoxicating liquor or incapable of driving or of exercising effective control over a motor vehicle, but nothing in this section precludes the admission of any other evidence to show any such fact.



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*Motor Traffic (Road Safety) Amendment.*

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SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO BLOOD TESTING—  
*continued.*

(13) The provisions of subsection (12) have effect notwithstanding anything in any contract of insurance and any covenant, term, condition or provision therein is, to the extent that the operation of that subsection is excluded, limited, modified or restricted, void.

(14) Any medical practitioner who fails to comply with subsection (1) or (3) shall be guilty of an offence under this Act.

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SCHEDULE 4.

(Sec. 5.)

## MINOR AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 2 (1), definition of "Breath analysing instrument"—

Omit "notification", insert instead "order".

(2) Section 2 (1), definition of "Breath test"—

Omit "notification", insert instead "order".

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*Motor Traffic (Road Safety) Amendment.*

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## SCHEDULE 5.

(Sec. 6.)

## SAVINGS AND TRANSITIONAL PROVISIONS.

**Offences committed before 17th December, 1982, not affected by amendments made by this Act.**

1. (1) The Principal Act applies to and in respect of offences committed on or before 16th December, 1982, as if this Act had not been enacted.

(2) Without limiting the operation of subclause (1), section 4E (13) of the Principal Act, as amended by this Act, applies to and in respect of offences committed under section 4E (1) or (1B) of the Principal Act on or before 16th December, 1982, in the same way as it applies to and in respect of offences committed under section 4E (1E), (1F) and (1G) of that Act, as amended by this Act, after that date.

(3) Nothing in this clause shall be construed as preventing an offence committed on or before 16th December, 1982, from being regarded as a major offence within the meaning of the Principal Act, as amended by this Act.

**Random breath testing offences during trial period not affected by expiry of trial period.**

2. The Principal Act, as amended by this Act, applies to and in respect of offences committed on or after 17th December, 1982, and on or before 16th December, 1985, as if section 4E (2C) of that Act, as so amended, had not been enacted.

**Notification of approval of instruments and devices used for breath testing.**

3. A notification published in the Gazette before the commencement of Schedule 4, under or for the purposes of the definition of "Breath analysing instrument" or "Breath test" in section 2 (1) of the Principal Act—

- (a) shall be deemed to be an order published under or for the purposes of that definition as amended by this Act; and
- (b) may accordingly be rescinded, revoked, altered or varied, as referred to in section 32 of the Interpretation Act, 1897.

*In the name and on behalf of Her Majesty I assent to this Act.*

**J. A. ROWLAND,**  
*Governor.*

*Government House,  
Sydney, 8th December, 1982.*



