

FIRST PRINT

**MOTOR TRAFFIC (ROAD SAFETY) AMENDMENT BILL
1987**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The following Bills are cognate with this Bill:

Crimes (Road Safety) Amendment Bill 1987;

General Traffic (Road Safety) Amendment Bill 1987.

The object of this Bill is to amend the Motor Traffic Act 1909 so as—

- (a) to provide for the taking of samples of blood and urine from the drivers of motor vehicles, where their driving gives reasonable cause for belief that they are under the influence of drugs and they do not appear to have a prohibited concentration of alcohol in their blood after a breath test, and for the giving of certificate evidence relating to analyses of those samples for the presence of drugs;
- (b) to extend the present requirements of the Principal Act relating to the compulsory taking and analysis of samples of blood from drivers and pedestrians admitted to hospitals after having been involved in road accidents to the drivers and riders of vehicles which are not motor vehicles and of horses; and
- (c) to provide that samples of blood taken at hospitals under the Principal Act for the purpose of finding any concentration of alcohol present may be used for road safety research purposes.

Clause 1 specifies the short title of the proposed Act.

Motor Traffic (Road Safety) Amendment 1987

Clause 2 provides that, with minor exceptions, the proposed Act will commence on a day or days appointed by the Governor-in-Council and notified in the Gazette.

Clause 3 states that the Motor Traffic Act 1909 is referred to in the proposed Act as the Principal Act.

Clause 4 is a formal provision that gives effect to the Schedules of amendments to the Principal Act.

Clause 5 saves regulations which would otherwise be repealed by the proposed Act.

Clause 6 declares that the amendments to be made by the proposed Act do not apply in respect of offences alleged to have been committed before those amendments commence.

SCHEDULE 1—AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS

Schedule 1 (1) inserts definitions of "Drug" (to be defined so as to include alcohol) and "Hospital" into section 2 of the Principal Act (Interpretation) as a consequential amendment.

Schedule 1 (2) amends section 3 of the Principal Act (Regulations) so as to authorise the making of regulations with respect to the taking of samples of blood and urine to be analysed for the presence of drugs.

Schedule 1 (3) makes consequential amendments to section 4F of the Principal Act (Blood samples to be taken in certain cases).

Schedule 1 (4) (a) amends section 5 (2) of the Principal Act so as to vary the offence commonly known as "driving under the influence". The proposed amendment omits the present reference to "intoxicating liquor" and expressly refers to alcohol as a drug, without affecting the new meaning to be given in the Principal Act to the word "drug".

Schedule 1 (4) (b) is a minor consequential amendment omitting the present definition of "drug" which is to be replaced.

Schedule 1 (4) (c) inserts proposed section 5 (2A) into the Principal Act which declares—

- (a) that a person may be charged with having been under the influence of more than one drug (which may or may not include alcohol) when driving; and
- (b) that the offence of driving under the influence may be proved if a person is found to have been under the influence of a combination of drugs (which may or may not include alcohol).

Schedule 1 (5) inserts into the Principal Act proposed sections 5AA–5AC of which—

Section 5AA (Samples for detecting drugs) sets out the conditions which need to be satisfied before a sample of blood or urine which will be analysed for drugs can be required to be taken and the procedure to be followed in taking and disposing of the sample.

Motor Traffic (Road Safety) Amendment 1987

Section 5AB (Evidence of the presence of drugs) makes evidentiary provisions relating to the taking of such a sample, the conduct of an analysis of the sample and the findings of an analyst, being similar to those of the Principal Act relating to breath analyses for the presence of alcohol.

Section 5AC (Offences relating to testing for drugs) creates offences to assist enforcement of requirements made by proposed section 5AA corresponding to those which assist enforcement of provisions of the Principal Act relating to breath analyses for the presence of alcohol.

Schedule 1 (6) amends section 10A of the Principal Act (Disqualification for certain major offences) so as to disqualify a person from holding a licence under that Act if the person refuses to provide or tampers with a sample of blood or urine.

SCHEDULE 2—AMENDMENTS RELATING TO RIDING UNDER THE INFLUENCE OF ALCOHOL AND TO ROAD ACCIDENT RESEARCH

Schedule 2 (1) and (2) amend the long title of the Principal Act and insert a definition of "Vehicle" into section 2 of that Act as a consequence of the intention to apply certain of the provisions of that Act to the drivers and riders of vehicles which are not motor vehicles and of horses.

Schedule 2 (3) and (4) amend sections 4F and 4G of the Principal Act, which require doctors to take samples of blood from drivers and pedestrians admitted to hospital after having been involved in motor vehicle accidents and provide for the analysis of those samples, so as to apply those sections to the drivers and riders of vehicles which are not motor vehicles and of horses.

Schedule 2 (5) inserts proposed section 17B (Use of samples for accident research) into the Principal Act which will permit samples of blood taken at hospitals under section 4F of that Act, as well as samples of saliva voluntarily provided, to be used in road safety research programmes approved by the Minister.

The proposed section prevents results of that research from being used as evidence against the person who provided any such sample and prohibits disclosure of the identity of that person by persons carrying out that research.



MOTOR TRAFFIC (ROAD SAFETY) AMENDMENT BILL 1987

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Principal Act
4. Amendment of Act No. 5, 1909
5. Saving of certain regulations
6. Application of Principal Act

SCHEDULE 1—AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS

SCHEDULE 2—AMENDMENTS RELATING TO RIDING UNDER THE
INFLUENCE OF ALCOHOL AND TO ROAD ACCIDENT RESEARCH

**MOTOR TRAFFIC (ROAD SAFETY) AMENDMENT BILL
1987**

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Motor Traffic Act 1909 with respect to driving or riding while under the influence and to research into road accidents.

See also Crimes (Road Safety) Amendment Bill 1987; General Traffic (Road Safety) Amendment Bill 1987.

Motor Traffic (Road Safety) Amendment 1987

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 1987".

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 such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

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

Amendment of Act No. 5, 1909

4. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

20 Saving of certain regulations

5. (1) This Act does not operate so as to repeal any regulation which could be made under the Principal Act, as amended by this Act.

(2) A regulation which, immediately before the commencement of Schedule 1—

25 (a) prescribed any premises, institution or establishment for the purposes of section 4F (12) of the Principal Act shall be deemed to prescribe the premises, institution or establishment as a hospital for the purposes of section 4F of that Act, as amended by this Act; or

30 (b) prescribed substances as being drugs for the purposes of paragraph (b) of the definition of "drug" in section 5 (2) of the Principal Act shall be deemed to prescribe the substances as drugs for the purposes of the definition of "Drug" in section 2 (1) of that Act, as amended by this Act.

*Motor Traffic (Road Safety) Amendment 1987***Application of Principal Act**

6. The Principal Act applies to and in respect of any offence alleged to have been committed—

- 5 (a) before the commencement of Schedule 1, as if that Schedule had not been enacted; or
- (b) before the commencement of Schedule 2, as if that Schedule had not been enacted.

SCHEDULE 1

(Sec. 4)

10 AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS

(1) Section 2 (**Interpretation**)—

Section 2 (1), definitions of “Drug”, “Hospital”—

After the definition of “Driver’s license”, insert:

15 “Drug” means—

- (a) alcohol;
- 20 (b) a prohibited drug within the meaning of the Drug Misuse and Trafficking Act 1985, not being a substance specified in the regulations as being excepted from this definition; and
- (c) any other substance prescribed as a drug for the purposes of this definition.

“Hospital” means—

- 25 (a) any hospital under the control of an area health service constituted under the Area Health Services Act 1986;
- (b) any hospital whose name is included in the Second, Third or Fifth Schedule to the Public Hospitals Act 1929; and
- 30 (c) any private hospital, within the meaning of the Private Hospitals Act 1908.

Motor Traffic (Road Safety) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

(2) Section 3 (**Regulations**)—

(a) Section 3 (1) (p1) (i)—

Omit “under section 4F”, insert instead “or urine under section 4F or 5AA”.

5 (b) Section 3 (1) (p1) (v)—

Omit “sections 4F and 4G relate”, insert instead “section 4F, 4G, 5AA, 5AB or 5AC relates”.

(3) Section 4F (**Blood samples to be taken in certain cases**)—

(a) Section 4F (3)—

10 Omit the subsection, insert instead:

(3) A medical practitioner is not required by this section to take a sample of a person’s blood—

15 (a) if a sample of the person’s blood has already been taken in accordance with this section by another medical practitioner; or

(b) if the medical practitioner has been informed by a member of the police force or has reasonable grounds to believe that the sample is required to be taken for the purposes of section 5AA.

20 (b) Section 4F (12)—

Omit the subsection, insert instead:

(12) In this section, a reference to a hospital includes a reference to any premises, institution or establishment prescribed as a hospital for the purposes of this section.

25 (4) Section 5 (**Offences**)—

(a) Section 5 (2)—

Omit “whilst he is under the influence of intoxicating liquor or of a drug”, insert instead “, while under the influence of alcohol or any other drug”.

*Motor Traffic (Road Safety) Amendment 1987*SCHEDULE 1—*continued*AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

(b) Section 5 (2)—

Omit all matter relating to the definition of “drug”.

(c) Section 5 (2A)—

After section 5 (2), insert:

5 (2A) Where a person is charged with an offence under subsection
(2)—

10 (a) the information may allege the person was under the
influence of more than one drug and is not liable to be
dismissed on the ground of uncertainty or duplicity if each
of those drugs is described in the information; and

(b) the offence is proved if the court is satisfied beyond
reasonable doubt that the defendant was under the
influence of—

(i) a drug described in the information; or

15 (ii) a combination of drugs any one or more of which was
or were described in the information.

(5) Sections 5AA–5AC—

After section 5, insert:

Samples for detecting drugs

20 5AA. (1) Where—

(a) a person has undergone a breath test in accordance with
section 4E; and

(b) the result of the test does not permit the person to be
required to submit to a breath analysis,

25 a member of the police force may require the person to submit to
an assessment of his or her sobriety in accordance with the
directions of a member of the police force.

Motor Traffic (Road Safety) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

(2) The person shall not be required to submit to the assessment unless—

(a) a member of the police force has a reasonable belief that, by the way in which the person—

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

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

10 the person may be under the influence of a drug; and

(b) the assessment is carried out by a member of the police force at or near the place where the person underwent the breath test.

15 (3) If the person refuses to submit to the assessment or, after the assessment has been made, a member of the police force has a reasonable belief that the person is under the influence of a drug, the member may—

(a) arrest that person without warrant; and

20 (b) 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 purposes of the following subsections.

25 (4) Except as provided by subsection (5), a member of the police force may require a person who has been so arrested to provide samples of the person's blood and urine, whether or not the person consents to them being taken, in accordance with the directions of a medical practitioner, who shall be informed by the member that the samples are required to be taken for the purposes of this section.

Motor Traffic (Road Safety) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

- (5) A member of the police force shall not require a person to submit to an assessment or to provide a sample—
- 5 (a) if the person has been admitted to hospital for medical treatment, unless the medical practitioner in immediate charge of the person's treatment has been notified of the intention to make the requirement and the medical practitioner does not object on the grounds that compliance would be prejudicial to the proper care and treatment of the person;
 - 10 (b) if it appears to that member that it would, because of the person's injuries, be dangerous to the person's medical condition to submit to the assessment or provide the sample;
 - 15 (c) at any time after the expiration of 2 hours from the occurrence of the event referred to in subsection (2) (a) (i) or (ii) because of which the member was entitled to require the person to submit to the assessment or provide the sample; or
 - (d) at the person's home.
 - 20 (6) The medical practitioner by whom or under whose directions a sample of blood or urine is taken in accordance with this section shall—
 - (a) divide the sample into 2 approximately equal portions;
 - (b) place each portion into a container;
 - 25 (c) fasten and seal each such container; and
 - (d) mark or label each such container for future identification.
 - (7) Of the 2 sealed containers—
 - 30 (a) one shall be handed by the medical practitioner to the person from whom it was taken or to some other person on behalf of that person; and

*Motor Traffic (Road Safety) Amendment 1987*SCHEDULE 1—*continued*AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

5 (b) the other shall be handed by the practitioner to the member of the police force present when the sample was taken and forwarded to a prescribed laboratory for analysis by an analyst to determine whether the blood or urine contains a drug.

(8) An analyst at a prescribed laboratory to whom any blood or urine is submitted for analysis under this section or any blood is submitted under section 4G may carry out an analysis of the blood or urine to determine whether it contains a drug.

10 (9) 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 practitioner and, in that event, the duty shall be deemed to have been performed by the practitioner.

15 (10) An analysis under this section may be carried out, and anything in connection with the analysis (including the receipt of the blood or urine to be analysed and the breaking of any seal) may be done, by a person acting under the supervision of an analyst and, in that event, shall be deemed to have been carried
20 out or done by the analyst.

Evidence of presence of drugs

5AB. (1) In proceedings for an offence under section 5 (2)—

(a) evidence may be given of—

(i) the presence of a drug; or

25 (ii) the presence of a particular concentration of a drug,

in the blood or urine of the person charged, as determined pursuant to an analysis under section 5AA of part of a sample of the person's blood or urine; and

*Motor Traffic (Road Safety) Amendment 1987*SCHEDULE 1—*continued*AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

5 (b) the drug the presence of which is so determined or the particular concentration of the drug the presence of which is so determined, as the case may be, shall be deemed to have been present in the blood or urine of that person when the event referred to in section 5 (2) (a) or (b), as the case may be, occurred,

where the sample was taken within 2 hours after the event, unless the defendant proves the absence of the drug, or the presence of the drug in a different concentration, when the event occurred.

10 (2) In proceedings for an offence under section 5 (2), a certificate purporting to be signed by a medical practitioner certifying any one or more of the following matters:

15 (a) that the practitioner was a medical practitioner who attended a specified person who attended at or was admitted into a hospital or a prescribed place as referred to in section 5AA or 4F;

20 (b) that the practitioner took a sample of the person's blood or urine in accordance with section 5AA or 4F and any relevant provisions of the regulations, on the day and at the time stated in the certificate;

(c) that the practitioner dealt with the sample in accordance with section 5AA or 4G and any relevant provisions of the regulations;

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

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

30 (3) In proceedings for an offence under section 5 (2), a certificate purporting to be signed by a member of the police force certifying any one or more of the following matters:

(a) that the member received a part of a sample of a specified person's blood or urine taken in accordance with section 5AA or 4F;

SCHEDULE 1—*continued*AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

(b) that the member arranged for the part to be submitted for an analysis by an analyst to determine whether any drug was present in the sample;

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

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

10 (4) In proceedings for an offence under section 5 (2), a certificate purporting to be signed by an analyst certifying any one or more of the following matters:

(a) that the analyst received, on a specified day, a part of a sample of a specified person's blood or urine in a container submitted for analysis under section 5AA or 4G;

15 (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner;

(c) that on receipt by the analyst of the container, the seal was unbroken;

(d) that the analyst carried out an analysis of the part to determine whether any drug was present in the sample;

20 (e) that a specified drug ascertained pursuant to the analysis was present in that part and, if so certified, was present in that part in a specified concentration;

(f) that the analyst was, at the time of the analysis, an analyst within the meaning of this Act,

25 is prima facie evidence—

(g) of the particulars certified in and by the certificate;

(h) that the part was a part of the sample of the blood or urine of that specified person; and

30 (i) that the part had not been tampered with before it was received by the analyst.

SCHEDULE 1—*continued*AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

5 (5) The result of an analysis under section 5AA 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 a drug or incapable of driving or of exercising effective control over a motor vehicle, but nothing in section 5AA or this section precludes the admission of

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

Offences related to testing for drugs

15 5AC. (1) Any person who, when required by a member of the police force to submit to an assessment under section 5AA, refuses or fails to submit to the assessment in accordance with the directions of a member of the police force is guilty of an offence under this Act and liable to a penalty not exceeding \$1,000.

(2) Any person who—

20 (a) upon being required under section 5AA by a member of the police force to provide samples of blood and urine—

(i) refuses or fails to submit to the taking of the sample of blood; or

(ii) refuses or fails to provide the sample of urine,

25 in accordance with the directions of a medical practitioner;
or

SCHEDULE 1—*continued*AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

(b) between the time of the event referred to in section 5AA (2) (a) (i) or (ii) in respect of which the person has been required by a member of the police force to submit to an assessment and the time when the person undergoes that assessment or, if the person is required by a member of the police force to provide a sample, the time when the person provides the sample, wilfully does anything to introduce, or alter the amount of, a drug in the person's blood or urine,

is guilty of an offence against this Act and liable to a penalty not exceeding \$1,500 or to imprisonment for a period not exceeding 9 months or to both that penalty and imprisonment.

(3) It is a defence to a prosecution for an offence under subsection (1) or (2) (a) if the defendant satisfies the court that the defendant was unable on medical grounds when the defendant was required to do so to submit to an assessment or to provide a sample.

(4) It is a defence to a prosecution of a person for an offence under subsection (2) (b) of wilfully doing anything to introduce, or alter the amount of, a drug in the person's blood or urine if the person satisfies the court that the thing was done more than 2 hours after the time of the event referred to in section 5AA (2) (a) (i) or (ii).

(5) A person convicted of an offence—

(a) under subsection (2); or

(b) under section 5 (2),

is not liable—

(c) where the person 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 the person has been convicted of an offence referred to in paragraph (b), to be convicted of an offence referred to in paragraph (a),

SCHEDULE 1—*continued*AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*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.

5 (6) Where a medical practitioner is informed by a member of the police force in accordance with section 5AA that a sample is required to be taken for the purposes of that section, the practitioner is guilty of an offence under this Act if the practitioner—

(a) fails to take the sample; or

10 (b) fails to comply with any requirement made by section 5AA (6) or (7) in relation to the sample.

(7) It is a defence to a prosecution for an offence under subsection (6) if the medical practitioner satisfies the court that—

15 (a) the practitioner believed on reasonable grounds that the taking of the sample from the person would be prejudicial to the proper care and treatment of the person;

(b) the practitioner did not believe that the person was of or above the age of 15 years and it was reasonable for the practitioner not to have so believed;

20 (c) the practitioner was, because of the behaviour of the person, unable to take the sample; or

(d) there was other reasonable cause for the practitioner not to take the sample.

25 (8) A person who hinders or obstructs a medical practitioner in attempting to take a sample of the blood or urine of any other person in accordance with section 5AA is guilty of an offence under this Act and liable to a penalty not exceeding \$1,000.

Motor Traffic (Road Safety) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

5 (9) No civil or criminal liability is incurred by a medical practitioner in respect of anything properly and necessarily done by the practitioner in the course of taking a sample of blood or urine from a person for the purpose of its being used by an analyst to detect the presence of any drug, where the practitioner—

(a) believed on reasonable grounds that he or she was required under this Act to take the sample of blood or urine from the person; or

10 (b) was informed by a member of the police force that the person was a person from whom the practitioner was required under this Act to take the sample of blood or urine,

nor by any person acting under the supervision of the medical practitioner as referred to in section 5AA (9).

15 (6) Section 10A (**Disqualification for certain major offences**)—

(a) Section 10A (1) (b) (ii)—

After “excepted)”, insert “, section 5AC (2)”.

(b) Section 10A (2) (b), (3) (b)—

20 Omit “or section 5 (2)” wherever occurring, insert instead “, 5 (2) or 5AC (2)”.

SCHEDULE 2

(Sec. 4)

AMENDMENTS RELATING TO RIDING UNDER THE INFLUENCE
OF ALCOHOL AND TO ROAD ACCIDENT RESEARCH

25 (1) Long title—

Omit “purposes incidental thereto or consequent thereon”, insert instead “other purposes”.

*Motor Traffic (Road Safety) Amendment 1987*SCHEDULE 2—*continued*AMENDMENTS RELATING TO RIDING UNDER THE INFLUENCE OF ALCOHOL AND TO ROAD ACCIDENT RESEARCH—*continued*(2) Section 2 (**Interpretation**)—

Section 2 (1), definition of “Vehicle”—

After the definition of “Traffic Authority”, insert:

5 “Vehicle” means any description of vehicle upon wheels except vehicles used on railways or tramways.

(3) Section 4F (**Blood samples to be taken in certain cases**)—

(a) Section 4F (1)—

Omit “involving a motor vehicle”, insert instead “upon a public street involving a motor or other vehicle or a horse”.

10 (b) Section 4F (2), (5) (c), (e), (11) (b)—

Omit “involving a motor vehicle” wherever occurring, insert instead “upon a public street involving a vehicle or horse”.

(c) Section 4F (2) (b)—

Omit “or”.

15 (d) Section 4F (2) (d), (e)—

After section 4F (2) (c), insert:

(d) driving or riding a vehicle (not being a motor vehicle) involved in the accident; or

(e) driving or riding a horse involved in the accident.

20 (e) Section 4F (7), (7A)—

After “pedestrian” wherever occurring, insert “or a person who was driving or riding a vehicle, not being a motor vehicle, or a horse, being a pedestrian or person”.

(4) Section 4G (**Analysis of samples of blood**)—

25 Section 4G (12)—

Omit “motor vehicle”, insert instead “vehicle or horse”.

Motor Traffic (Road Safety) Amendment 1987

SCHEDULE 2—*continued*

AMENDMENTS RELATING TO RIDING UNDER THE INFLUENCE
OF ALCOHOL AND TO ROAD ACCIDENT RESEARCH—*continued*

(5) Section 17B—

After section 17A, insert:

Use of samples for accident research

5 17B. (1) Where a sample of blood is provided in accordance
with section 4F—

(a) the sample or any part of it; and

(b) any sample of saliva voluntarily provided at the same time,
may be used in any research programme which is related to road
safety and has been approved by the Minister.

10 (2) The results of research carried out under this section with
respect to the blood or saliva of a person shall not be admissible
as evidence of the presence of any drug in the blood or saliva of
the person.

15 (3) A person who carries out research under this section with
respect to blood or saliva is guilty of an offence under this Act
and liable to a penalty not exceeding \$500 if the person carries
out the research in such a way as identifies the person who
provided the blood or saliva.





**MOTOR TRAFFIC (ROAD SAFETY) AMENDMENT ACT
1987 No. 44**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Principal Act
4. Amendment of Act No. 5, 1909
5. Saving of certain regulations
6. Application of Principal Act

SCHEDULE 1—AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS

SCHEDULE 2—AMENDMENTS RELATING TO RIDING UNDER THE
INFLUENCE OF ALCOHOL AND TO ROAD ACCIDENT RESEARCH

THE UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535
MEMORANDUM FOR THE DIRECTOR
SUBJECT: [Illegible]

REPORT OF [Illegible]



DATE: [Illegible]

1981 APR 24
[Illegible text]

MOTOR TRAFFIC (ROAD SAFETY) AMENDMENT ACT 1987 No. 44

NEW SOUTH WALES



Act No. 44, 1987

An Act to amend the Motor Traffic Act 1909 with respect to driving or riding while under the influence and to research into road accidents.
[Assented to 21 May 1987]

See also Crimes (Road Safety) Amendment Act 1987; General Traffic (Road Safety) Amendment Act 1987.

Motor Traffic (Road Safety) Amendment 1987

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 1987".

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 such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

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

Amendment of Act No. 5, 1909

4. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

Saving of certain regulations

5. (1) This Act does not operate so as to repeal any regulation which could be made under the Principal Act, as amended by this Act.

(2) A regulation which, immediately before the commencement of Schedule 1—

- (a) prescribed any premises, institution or establishment for the purposes of section 4F (12) of the Principal Act shall be deemed to prescribe the premises, institution or establishment as a hospital for the purposes of section 4F of that Act, as amended by this Act; or
- (b) prescribed substances as being drugs for the purposes of paragraph (b) of the definition of "drug" in section 5 (2) of the Principal Act shall be deemed to prescribe the substances as drugs for the purposes of the definition of "Drug" in section 2 (1) of that Act, as amended by this Act.

Motor Traffic (Road Safety) Amendment 1987

Application of Principal Act

6. The Principal Act applies to and in respect of any offence alleged to have been committed—

- (a) before the commencement of Schedule 1, as if that Schedule had not been enacted; or
- (b) before the commencement of Schedule 2, as if that Schedule had not been enacted.

SCHEDULE 1

(Sec. 4)

AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS

(1) Section 2 (**Interpretation**)—

Section 2 (1), definitions of “Drug”, “Hospital”—

After the definition of “Driver’s license”, insert:

“Drug” means—

- (a) alcohol;
- (b) a prohibited drug within the meaning of the Drug Misuse and Trafficking Act 1985, not being a substance specified in the regulations as being excepted from this definition; and
- (c) any other substance prescribed as a drug for the purposes of this definition.

“Hospital” means—

- (a) any hospital under the control of an area health service constituted under the Area Health Services Act 1986;
- (b) any hospital whose name is included in the Second, Third or Fifth Schedule to the Public Hospitals Act 1929; and
- (c) any private hospital, within the meaning of the Private Hospitals Act 1908.

Motor Traffic (Road Safety) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

(2) Section 3 (**Regulations**)—

(a) Section 3 (1) (p1) (i)—

Omit “under section 4F”, insert instead “or urine under section 4F or 5AA”.

(b) Section 3 (1) (p1) (v)—

Omit “sections 4F and 4G relate”, insert instead “section 4F, 4G, 5AA, 5AB or 5AC relates”.

(3) Section 4F (**Blood samples to be taken in certain cases**)—

(a) Section 4F (3)—

Omit the subsection, insert instead:

(3) A medical practitioner is not required by this section to take a sample of a person’s blood—

(a) if a sample of the person’s blood has already been taken in accordance with this section by another medical practitioner; or

(b) if the medical practitioner has been informed by a member of the police force or has reasonable grounds to believe that the sample is required to be taken for the purposes of section 5AA.

(b) Section 4F (12)—

Omit the subsection, insert instead:

(12) In this section, a reference to a hospital includes a reference to any premises, institution or establishment prescribed as a hospital for the purposes of this section.

(4) Section 5 (**Offences**)—

(a) Section 5 (2)—

Omit “whilst he is under the influence of intoxicating liquor or of a drug”, insert instead “, while under the influence of alcohol or any other drug”.

Motor Traffic (Road Safety) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

(b) Section 5 (2)—

Omit all matter relating to the definition of “drug”.

(c) Section 5 (2A)—

After section 5 (2), insert:

(2A) Where a person is charged with an offence under subsection (2)—

- (a) the information may allege the person was under the influence of more than one drug and is not liable to be dismissed on the ground of uncertainty or duplicity if each of those drugs is described in the information; and
- (b) the offence is proved if the court is satisfied beyond reasonable doubt that the defendant was under the influence of—
 - (i) a drug described in the information; or
 - (ii) a combination of drugs any one or more of which was or were described in the information.

(5) Sections 5AA–5AC—

After section 5, insert:

Samples for detecting drugs

5AA. (1) Where—

- (a) a person has undergone a breath test in accordance with section 4E; and
- (b) the result of the test does not permit the person to be required to submit to a breath analysis,

a member of the police force may require the person to submit to an assessment of his or her sobriety in accordance with the directions of a member of the police force.

Motor Traffic (Road Safety) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

(2) The person shall not be required to submit to the assessment unless—

(a) a member of the police force has a reasonable belief that, by the way in which the person—

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

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

the person may be under the influence of a drug; and

(b) the assessment is carried out by a member of the police force at or near the place where the person underwent the breath test.

(3) If the person refuses to submit to the assessment or, after the assessment has been made, a member of the police force has a reasonable belief that the person is under the influence of a drug, the member may—

(a) arrest that person without warrant; and

(b) 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 purposes of the following subsections.

(4) Except as provided by subsection (5), a member of the police force may require a person who has been so arrested to provide samples of the person's blood and urine, whether or not the person consents to them being taken, in accordance with the directions of a medical practitioner, who shall be informed by the member that the samples are required to be taken for the purposes of this section.

Motor Traffic (Road Safety) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

(5) A member of the police force shall not require a person to submit to an assessment or to provide a sample—

- (a) if the person has been admitted to hospital for medical treatment, unless the medical practitioner in immediate charge of the person's treatment has been notified of the intention to make the requirement and the medical practitioner does not object on the grounds that compliance would be prejudicial to the proper care and treatment of the person;
- (b) if it appears to that member that it would, because of the person's injuries, be dangerous to the person's medical condition to submit to the assessment or provide the sample;
- (c) at any time after the expiration of 2 hours from the occurrence of the event referred to in subsection (2) (a) (i) or (ii) because of which the member was entitled to require the person to submit to the assessment or provide the sample; or
- (d) at the person's home.

(6) The medical practitioner by whom or under whose directions a sample of blood or urine is taken in accordance with this section shall—

- (a) divide the sample into 2 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.

(7) Of the 2 sealed containers—

- (a) one shall be handed by the medical practitioner to the person from whom it was taken or to some other person on behalf of that person; and

Motor Traffic (Road Safety) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

(b) the other shall be handed by the practitioner to the member of the police force present when the sample was taken and forwarded to a prescribed laboratory for analysis by an analyst to determine whether the blood or urine contains a drug.

(8) An analyst at a prescribed laboratory to whom any blood or urine is submitted for analysis under this section or any blood is submitted under section 4G may carry out an analysis of the blood or urine to determine whether it contains a drug.

(9) 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 practitioner and, in that event, the duty shall be deemed to have been performed by the practitioner.

(10) An analysis under this section may be carried out, and anything in connection with the analysis (including the receipt of the blood or urine to be analysed and the breaking of any seal) 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.

Evidence of presence of drugs

5AB. (1) In proceedings for an offence under section 5 (2)—

(a) evidence may be given of—

(i) the presence of a drug; or

(ii) the presence of a particular concentration of a drug,

in the blood or urine of the person charged, as determined pursuant to an analysis under section 5AA of part of a sample of the person's blood or urine; and

SCHEDULE 1—*continued*AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

- (b) the drug the presence of which is so determined or the particular concentration of the drug the presence of which is so determined, as the case may be, shall be deemed to have been present in the blood or urine of that person when the event referred to in section 5 (2) (a) or (b), as the case may be, occurred,

where the sample was taken within 2 hours after the event, unless the defendant proves the absence of the drug, or the presence of the drug in a different concentration, when the event occurred.

(2) In proceedings for an offence under section 5 (2), a certificate purporting to be signed by a medical practitioner certifying any one or more of the following matters:

- (a) that the practitioner was a medical practitioner who attended a specified person who attended at or was admitted into a hospital or a prescribed place as referred to in section 5AA or 4F;
- (b) that the practitioner took a sample of the person's blood or urine in accordance with section 5AA or 4F and any relevant provisions of the regulations, on the day and at the time stated in the certificate;
- (c) that the practitioner dealt with the sample in accordance with section 5AA or 4G and any relevant provisions of the regulations;
- (d) that the container was sealed, and marked or labelled, in a specified manner,

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

(3) In proceedings for an offence under section 5 (2), a certificate purporting to be signed by a member of the police force certifying any one or more of the following matters:

- (a) that the member received a part of a sample of a specified person's blood or urine taken in accordance with section 5AA or 4F;

Motor Traffic (Road Safety) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

- (b) that the member arranged for the part to be submitted for an analysis by an analyst to determine whether any drug was present in the sample;
- (c) that the container was sealed, and marked or labelled, in a specified manner,

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

(4) In proceedings for an offence under section 5 (2), a certificate purporting to be signed by an analyst certifying any one or more of the following matters:

- (a) that the analyst received, on a specified day, a part of a sample of a specified person's blood or urine in a container submitted for analysis under section 5AA or 4G;
- (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner;
- (c) that on receipt by the analyst of the container, the seal was unbroken;
- (d) that the analyst carried out an analysis of the part to determine whether any drug was present in the sample;
- (e) that a specified drug ascertained pursuant to the analysis was present in that part and, if so certified, was present in that part in a specified concentration;
- (f) that the analyst was, at the time of the analysis, an analyst within the meaning of this Act,

is prima facie evidence—

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

Motor Traffic (Road Safety) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

(5) The result of an analysis under section 5AA 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 a drug or incapable of driving or of exercising effective control over a motor vehicle, but nothing in section 5AA or this section precludes the admission of any other evidence to show any such fact.

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

Offences related to testing for drugs

5AC. (1) Any person who, when required by a member of the police force to submit to an assessment under section 5AA, refuses or fails to submit to the assessment in accordance with the directions of a member of the police force is guilty of an offence under this Act and liable to a penalty not exceeding \$1,000.

(2) Any person who—

(a) upon being required under section 5AA by a member of the police force to provide samples of blood and urine—

(i) refuses or fails to submit to the taking of the sample of blood; or

(ii) refuses or fails to provide the sample of urine,

in accordance with the directions of a medical practitioner;
or

*Motor Traffic (Road Safety) Amendment 1987*SCHEDULE 1—*continued*AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

- (b) between the time of the event referred to in section 5AA (2) (a) (i) or (ii) in respect of which the person has been required by a member of the police force to submit to an assessment and the time when the person undergoes that assessment or, if the person is required by a member of the police force to provide a sample, the time when the person provides the sample, wilfully does anything to introduce, or alter the amount of, a drug in the person's blood or urine,

is guilty of an offence against this Act and liable to a penalty not exceeding \$1,500 or to imprisonment for a period not exceeding 9 months or to both that penalty and imprisonment.

(3) It is a defence to a prosecution for an offence under subsection (1) or (2) (a) if the defendant satisfies the court that the defendant was unable on medical grounds when the defendant was required to do so to submit to an assessment or to provide a sample.

(4) It is a defence to a prosecution of a person for an offence under subsection (2) (b) of wilfully doing anything to introduce, or alter the amount of, a drug in the person's blood or urine if the person satisfies the court that the thing was done more than 2 hours after the time of the event referred to in section 5AA (2) (a) (i) or (ii).

(5) A person convicted of an offence—

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

is not liable—

- (c) where the person 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 the person has been convicted of an offence referred to in paragraph (b), to be convicted of an offence referred to in paragraph (a),

Motor Traffic (Road Safety) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*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.

(6) Where a medical practitioner is informed by a member of the police force in accordance with section 5AA that a sample is required to be taken for the purposes of that section, the practitioner is guilty of an offence under this Act if the practitioner—

- (a) fails to take the sample; or
- (b) fails to comply with any requirement made by section 5AA (6) or (7) in relation to the sample.

(7) It is a defence to a prosecution for an offence under subsection (6) if the medical practitioner satisfies the court that—

- (a) the practitioner believed on reasonable grounds that the taking of the sample from the person would be prejudicial to the proper care and treatment of the person;
- (b) the practitioner did not believe that the person was of or above the age of 15 years and it was reasonable for the practitioner not to have so believed;
- (c) the practitioner was, because of the behaviour of the person, unable to take the sample; or
- (d) there was other reasonable cause for the practitioner not to take the sample.

(8) A person who hinders or obstructs a medical practitioner in attempting to take a sample of the blood or urine of any other person in accordance with section 5AA is guilty of an offence under this Act and liable to a penalty not exceeding \$1,000.

Motor Traffic (Road Safety) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS RELATING TO DRIVING UNDER THE
INFLUENCE OF DRUGS—*continued*

(9) No civil or criminal liability is incurred by a medical practitioner in respect of anything properly and necessarily done by the practitioner in the course of taking a sample of blood or urine from a person for the purpose of its being used by an analyst to detect the presence of any drug, where the practitioner—

- (a) believed on reasonable grounds that he or she was required under this Act to take the sample of blood or urine from the person; or
- (b) was informed by a member of the police force that the person was a person from whom the practitioner was required under this Act to take the sample of blood or urine,

nor by any person acting under the supervision of the medical practitioner as referred to in section 5AA (9).

(6) Section 10A (**Disqualification for certain major offences**)—

(a) Section 10A (1) (b) (ii)—

After “excepted”, insert “, section 5AC (2)”.

(b) Section 10A (2) (b), (3) (b)—

Omit “or section 5 (2)” wherever occurring, insert instead “, 5 (2) or 5AC (2)”.

SCHEDULE 2

(Sec. 4)

AMENDMENTS RELATING TO RIDING UNDER THE INFLUENCE
OF ALCOHOL AND TO ROAD ACCIDENT RESEARCH

(1) Long title—

Omit “purposes incidental thereto or consequent thereon”, insert instead “other purposes”.

Motor Traffic (Road Safety) Amendment 1987

SCHEDULE 2—*continued*

AMENDMENTS RELATING TO RIDING UNDER THE INFLUENCE
OF ALCOHOL AND TO ROAD ACCIDENT RESEARCH—*continued*

(2) Section 2 (**Interpretation**)—

Section 2 (1), definition of “Vehicle”—

After the definition of “Traffic Authority”, insert:

“Vehicle” means any description of vehicle upon wheels except vehicles used on railways or tramways.

(3) Section 4F (**Blood samples to be taken in certain cases**)—

(a) Section 4F (1)—

Omit “involving a motor vehicle”, insert instead “upon a public street involving a motor or other vehicle or a horse”.

(b) Section 4F (2), (5) (c), (e), (11) (b)—

Omit “involving a motor vehicle” wherever occurring, insert instead “upon a public street involving a vehicle or horse”.

(c) Section 4F (2) (b)—

Omit “or”.

(d) Section 4F (2) (d), (e)—

After section 4F (2) (c), insert:

(d) driving or riding a vehicle (not being a motor vehicle) involved in the accident; or

(e) driving or riding a horse involved in the accident.

(e) Section 4F (7), (7A)—

After “pedestrian” wherever occurring, insert “or a person who was driving or riding a vehicle, not being a motor vehicle, or a horse, being a pedestrian or person”.

(4) Section 4G (**Analysis of samples of blood**)—

Section 4G (12)—

Omit “motor vehicle”, insert instead “vehicle or horse”.

SCHEDULE 2—*continued*AMENDMENTS RELATING TO RIDING UNDER THE INFLUENCE
OF ALCOHOL AND TO ROAD ACCIDENT RESEARCH—*continued*

(5) Section 17B—

After section 17A, insert:

Use of samples for accident research

17B. (1) Where a sample of blood is provided in accordance with section 4F—

(a) the sample or any part of it; and

(b) any sample of saliva voluntarily provided at the same time, may be used in any research programme which is related to road safety and has been approved by the Minister.

(2) The results of research carried out under this section with respect to the blood or saliva of a person shall not be admissible as evidence of the presence of any drug in the blood or saliva of the person.

(3) A person who carries out research under this section with respect to blood or saliva is guilty of an offence under this Act and liable to a penalty not exceeding \$500 if the person carries out the research in such a way as identifies the person who provided the blood or saliva.



