

TRAFFIC (AMENDMENT) ACT 1990 No. 96

NEW SOUTH WALES



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TRAFFIC (AMENDMENT) ACT 1990 No. 96

NEW SOUTH WALES



Act No. 96, 1990

An Act to amend the Traffic Act 1909 with respect to the taking and testing of blood samples from drivers, the sale and use of radar detection and jamming devices, the driving hours and speed limits applying to certain vehicles and drivers and the permissible blood alcohol concentration for certain drivers; consequently to amend certain Acts; and for other purposes. [Assented to 7 December 1990]

*Traffic (Amendment) 1990***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Traffic (Amendment) Act 1990.

Commencement

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

Amendment of Traffic Act 1909 No. 5

3. The Traffic Act 1909 is amended as set out in Schedules 1–4.

Consequential amendment of Transport Administration Act 1988 No. 109, Sch. 4 (Railway Staff—Alcohol or Other Drugs)

4. Schedule 4 to the Transport Administration Act 1988 is amended as set out in Schedule 5.

Consequential amendment of Crimes Act 1900 No. 40, s. 414A (Certificates to be evidence)

5. The Crimes Act 1900 is amended as set out in Schedule 6.

Validation

6. A regulation purporting to be in force under the Traffic Act 1909 immediately before the commencement of Schedule 3 (1) and which would have been valid, if made after the commencement of that provision, by virtue of a power conferred by section 3 of that Act, as amended by this Act, is taken to have been validly made since its making.

**SCHEDULE 1—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO THE TAKING AND ANALYSIS OF BLOOD
SAMPLES**

(Sec. 3)

- (1) Section 4F (**Blood samples to be taken in certain cases**):
 - (a) After section 4F (1), insert:

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SCHEDULE 1—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO THE TAKING AND ANALYSIS OF BLOOD
SAMPLES—*continued*

(1A) If there is no medical practitioner present to attend the person at the hospital, the blood sample is to be taken by a registered nurse who is attending the person and who is accredited by a hospital as competent to perform the sampling procedures.

- (b) In section 4F (3)–(7A), after “medical practitioner” wherever occurring, insert “or nurse”.
- (c) From section 4F (10), omit “intoxicating liquor” wherever occurring, insert instead “alcohol”.
- (d) In section 4F (11), after “medical practitioner” where firstly occurring, insert “or registered nurse”.

(2) Section 4G (**Analysis of samples of blood**):

- (a) In section 4G (1), (3), (9) and (14), after “medical practitioner” wherever occurring, insert “or nurse”.
- (b) From section 4G (1) (a), omit “3 approximately equal portions”, insert instead “2 approximately equal portions”.
- (c) Omit section 4G (2), insert instead:
 - (2) Of the 2 portions of a sample of blood:
 - (a) one is to be used for any analysis under this section; and
 - (b) the other is to be made available to or for the use and benefit of the person from whom the sample was taken.
- (d) In section 4G (4), after “alcohol”, insert “, or of alcohol and other drugs,”.
- (e) After section 4G (4), insert:

(4A) A member of the police force may not make arrangements under subsection (4) for the analysis of a blood sample to determine the concentration in the blood of a drug other than alcohol except in circumstances where the member of the police force has reasonable grounds to believe that, at the time of the accident concerned, the person from whom the sample was taken was under the influence of a drug other than alcohol and where:

- (a) no member of the police force attended the scene of the accident that led to the taking of the sample; or

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RELATION TO THE TAKING AND ANALYSIS OF BLOOD
SAMPLES—*continued*

- (b) although a member or members of the police force attended the scene of the accident, there was no reasonable opportunity to require the person from whom the sample was taken to submit, in accordance with section 5AA, to an assessment of his or her sobriety.
- (f) In section 4G (5), after “alcohol”, insert “(and, where required, of other drugs)”.
- (3) Section 5AB (Evidence of presence of drugs):
- (a) From section 5AB (1) (a), omit “under section 5AA”, insert instead “under section 4G or 5AA”.
- (b) In section 5AB (2), after “practitioner” wherever occurring, insert “or nurse”.
- (c) After section 5AB (4), insert:
- (4A) Subsections (1)–(4):
- (a) do not apply to proceedings brought on a charge that, by the operation of section 4F (10), cannot be laid; and
- (b) do not enable evidence to be given of or in relation to:
- (i) the presence of a drug other than alcohol; or
- (ii) the presence of a particular concentration of a drug other than alcohol,
- in the blood of a person charged with an offence under section 5 (2), as determined by an analysis under section 4G, unless the court is satisfied that the analysis was not arranged in contravention of section 4G (4A).
- (4) Section 17C:
- After section 17B, insert:
- Certificate evidence may specify minimum concentrations**
- 17C. If, in any proceedings in which evidence is permitted to be given of the results of an analysis, undertaken for the purposes of this Act, of a sample of a person’s blood or urine, evidence is given by a certificate under this Act to the effect that alcohol or another specified drug was found by the analysis to be present in the sample in a concentration not less than a specified concentration:

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SCHEDULE 1—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO THE TAKING AND ANALYSIS OF BLOOD
SAMPLES—*continued*

- (a) the certificate is to be treated as though it stated that the concentration of alcohol or of the other drug concerned was determined by the analysis to be present in the specified minimum concentration; and
- (b) the evidence given by the certificate is not open to challenge on the basis that the analysis, merely because it purports to determine a concentration in terms of a minimum, does not meet the requirements of this Act.

SCHEDULE 2—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO RADAR DETECTORS AND JAMMERS

(Sec. 3)

(1) Section 2 (**Definitions**):

In section 2 (1), insert in alphabetical order:

“**Radar detecting device**” means a device designed or apparently designed to be fitted to or carried in a motor vehicle for the purpose of detecting electromagnetic radiations from an approved speed measuring device.

“**Radar jamming device**” means a device designed or apparently designed to be fitted to or carried in a motor vehicle for the purpose of interfering with the receiving by an approved speed measuring device of reflected electromagnetic radiations.

(2) Sections 4AD, 4AE:

Before section 4B, insert:

Sale, purchase or use of radar detectors and jammers

4AD. (1) A person must not sell or offer for sale, or purchase, a radar detecting device or a radar jamming device.

Maximum penalty: 20 penalty units.

(2) A person must not drive a motor vehicle, or cause a motor vehicle to stand, on a public street if the vehicle is fitted with or is carrying a radar detecting device or a radar jamming device.

Maximum penalty: 20 penalty units.

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SCHEDULE 2—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO RADAR DETECTORS AND JAMMERS—*continued*

(3) The owner of a motor vehicle which is driven or stands on a public street in contravention of subsection (2) is guilty of an offence.

Maximum penalty: 20 penalty units.

(4) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that the device concerned was not designed as a radar detecting device or a radar jamming device but was designed for another purpose.

(5) It is a defence to a prosecution for an offence under subsection (2) or (3) if the defendant satisfies the court that, at the time of the alleged offence:

- (a) the vehicle was in the course of a journey to a place appointed by a member of the police force, an officer of the Authority or a court, in order to surrender the device; or
- (b) the vehicle was the subject of a notice, issued in accordance with the regulations, requiring the owner of the vehicle to remove the device from the vehicle within a specified time and that time had not expired; or
- (c) the defendant did not know, and in the circumstances could not reasonably be expected to have known, that the vehicle was fitted with or was carrying the device concerned.

Surrender and forfeiture of radar detectors and jammers

4AE. (1) A member of the police force who reasonably believes that:

- (a) a radar detecting device or radar jamming device is being sold or offered for sale in contravention of section 4AD (1); or
- (b) a motor vehicle is standing or being driven in contravention of section 4AD (2) because of a device fitted to or carried in the vehicle,

may require a person in possession of the device to surrender it immediately to the member of the police force or (in the case of a device fitted to a motor vehicle and not immediately removable) may by notice in writing served on the owner of the vehicle require the owner to surrender the device within a

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**SCHEDULE 2—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO RADAR DETECTORS AND JAMMERS—*continued***

specified time and in a specified manner to the Commissioner of Police.

(2) An officer of the Authority who is authorised in writing by the Authority for the purposes of this section and who finds a motor vehicle to be fitted with, or to be carrying, a radar detecting device or a radar jamming device may, by notice in writing served on the owner of the vehicle, require the owner to do either or both of the following:

- (a) remove the device (if it is fitted to the vehicle);
- (b) surrender the device within a specified time and in a specified manner to the Commissioner of Police.

(3) A person must comply with a requirement under subsection (1) or (2), whether or not he or she is the owner of the device concerned.

Maximum penalty: 20 penalty units.

(4) A court which finds an offence under section 4AD or under subsection (3) to have been proven against any person may order that the device concerned, if not already surrendered pursuant to a requirement under this section, be delivered to the Commissioner of Police within a time and in a manner specified by the court.

(5) A device surrendered as required under this section is thereby forfeited to the Crown and may be destroyed or otherwise disposed of at the direction of the Commissioner of Police.

(6) No liability attaches to any person on account of the surrender by the person, in pursuance of a requirement under this section, of a radar detecting device or radar jamming device of which that person is not the absolute owner.

**SCHEDULE 3—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO DRIVING HOURS AND SPEED LIMITS
APPLYING TO CERTAIN VEHICLES AND DRIVERS**

(Sec. 3)

(1) Section 3 (**Regulations**):

In section 3 (1) (t1), after "heavy motor vehicle" wherever occurring, insert ", or coach,".

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SCHEDULE 3—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO DRIVING HOURS AND SPEED LIMITS
APPLYING TO CERTAIN VEHICLES AND DRIVERS—*continued*

(2) Section 4A (**Speed limits**):

After section 4A (5A), insert:

(5B) A person who drives a motor vehicle on a public street at a speed that exceeds, by more than 45 kilometres per hour, a speed fixed by the regulations as the maximum speed:

- (a) at which motor vehicles of a class that includes that motor vehicle may be driven; or
- (b) at which any motor vehicle, or any motor vehicle of a class that includes that motor vehicle, may be driven by drivers of a class that includes that person,

is guilty of an offence under this Act and liable to the same penalties, and to be dealt with in the same manner, as for an offence under subsection (1A). This subsection applies only where the maximum speed fixed by the regulations is below the speed limit applicable to the length of public street on which the vehicle is being driven.

(5C) If, on a prosecution of a person for an offence under subsection (5B), the court is satisfied that the person exceeded the relevant maximum speed fixed by the regulations, but is not satisfied that it was exceeded by more than 45 kilometres per hour, the court may, to the extent that exceeding the speed so fixed constitutes an offence under the regulations, convict the person of that offence instead.

(3) Section 11AB (**Suspension or cancellation of drivers' licences by Authority**):

Omit section 11AB (4) (a), insert instead:

- (a) that involves exceeding a speed limit for the purposes of section 4A, or exceeding a maximum speed fixed by the regulations as referred to in section 4A (5B); and

SCHEDULE 4—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO PERMISSIBLE CONCENTRATION OF
ALCOHOL

(Sec. 3)

(1) Section 4E (**Prescribed concentration of alcohol in person's blood**):

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SCHEDULE 4—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO PERMISSIBLE CONCENTRATION OF
ALCOHOL—*continued*

At the end of section 4E (1B) (c), insert:

; or

- (d) if the person is under 25 years of age, unless the person has held a licence (apart from a learner's licence) to drive a motor vehicle for a period of 3 years or more; or
- (e) if that motor vehicle is being driven for hire or reward, or in the course of any trade or business, as a public passenger vehicle within the meaning of the Passenger Transport Act 1990; or
- (f) if that motor vehicle is a coach or heavy motor vehicle; or
- (g) if that motor vehicle:
 - (i) because it carries dangerous goods within the meaning of the Dangerous Goods Act 1975, is required by regulations under that Act, or under any code prescribed for the purposes of this paragraph by regulations under this Act, to have a sign exhibited on it; or
 - (ii) carries any radioactive substance within the meaning of the Radiation Control Act 1990.

- (2) Section 10G (**Application of Part 3A**) (as inserted by Act No. 153 of 1989):

Omit section 10G (1) (b), insert instead:

- (b) any motor vehicle which, because it carries dangerous goods within the meaning of the Dangerous Goods Act 1975, is required by regulations under that Act, or under any code prescribed for the purposes of this paragraph by regulations under this Act, to have a sign exhibited on it.

SCHEDULE 5—AMENDMENT OF TRANSPORT
ADMINISTRATION ACT 1988, SCH. 4 (RAILWAY STAFF—
ALCOHOL OR OTHER DRUGS)

(Sec. 4)

- (1) Clause 10 (**Blood or urine samples taken at hospitals from**

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SCHEDULE 5—AMENDMENT OF TRANSPORT
ADMINISTRATION ACT 1988, SCH. 4 (RAILWAY STAFF—
ALCOHOL OR OTHER DRUGS)—*continued*

railway employees involved in accidents in carrying out railway safety work):

(a) After clause 10 (1), insert:

(1A) If there is no medical practitioner present to attend the person at the hospital, the blood or urine sample is to be taken by a registered nurse who is accredited by a hospital as competent to perform the sampling procedures.

(b) In clause 10 (2), after “practitioner” wherever occurring, insert “or nurse”.

(c) In clause 10 (3), after “medical practitioner”, insert “or any such nurse”.

(2) **Clause 11 (Blood or urine samples taken where breath analysing instrument not available):**

(a) After clause 11 (1), insert:

(1A) If there is no medical practitioner present to attend the person at the hospital, the blood or urine sample is to be taken by a registered nurse who is accredited by a hospital as competent to perform the sampling procedures.

(b) In clause 11 (2), after “practitioner” wherever occurring, insert “or nurse”.

(3) **Clause 13 (Restrictions on requiring breath test, assessment, breath analysis or sample):**

(a) In clause 13 (a), after “hospital” where secondly occurring, insert “(or, where no medical practitioner is present to attend the person, a registered nurse who is accredited by a hospital as competent to perform the sampling procedures)”.

(b) In clause 13 (a), after “medical practitioner” where secondly occurring, insert “or nurse”.

(4) **Clause 14 (Action by medical practitioner or nurse with respect to samples of blood or urine):**

After “medical practitioner” wherever occurring, insert “or nurse”.

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SCHEDULE 5—AMENDMENT OF TRANSPORT
ADMINISTRATION ACT 1988, SCH. 4 (RAILWAY STAFF—
ALCOHOL OR OTHER DRUGS)—*continued*(5) Clause 15 (**Analysis of samples of blood or urine**):

(a) After clause 15 (1), insert:

(1A) If the blood or urine sample was obtained under clause 10, an authorised officer or a member of the police force may not make arrangements under this clause for the analysis of the sample to determine the concentration in the blood or urine of a drug other than alcohol except in circumstances where the authorised officer or member of the police force has reasonable grounds to believe that, at the time of the accident concerned, the person from whom the sample was taken was under the influence of a drug other than alcohol and where:

(a) no member of the police force or authorised officer attended the scene of the accident that led to the taking of the sample; or

(b) although a member or members of the police force or one or more authorised officers attended the scene of the accident, there was no reasonable opportunity to require the person from whom the sample was taken to submit, in accordance with clause 12, to a breath test or assessment of his or her sobriety.

(b) From clause 15 (2), omit “a drug”, insert instead “alcohol or other drugs, as the case requires”.

(6) Clause 16 (**Medical practitioners and nurses—protection from liability**):

After “practitioner” wherever occurring, insert “or nurse”.

(7) Clause 22 (**Certificate evidence of presence of drugs**):

After clause 22 (4), insert:

(5) Nothing in this clause enables evidence to be given of or in relation to:

(a) the presence of a drug other than alcohol; or

(b) the presence of a particular concentration of a drug other than alcohol,

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SCHEDULE 5—AMENDMENT OF TRANSPORT
ADMINISTRATION ACT 1988, SCH. 4 (RAILWAY STAFF—
ALCOHOL OR OTHER DRUGS)—*continued*

in the blood or urine of a person charged with an offence under clause 4, as determined by an analysis of a sample obtained under clause 10, unless the court is satisfied that the analysis was not arranged in contravention of clause 15 (1A).

SCHEDULE 6—CONSEQUENTIAL AMENDMENT OF
CRIMES ACT 1900

(Sec. 5)

Section 414A (Certificates to be evidence):

(a) After section 414A (4), insert:

(4A) A certificate referred to in subsection (4) is not admissible, in proceedings under the Drug Misuse and Trafficking Act 1985, as evidence of the use or administration, by the person to whom the certificate relates, of any prohibited drug within the meaning of that Act.

(b) After section 414A (7), insert:

(7A) A certificate referred to in subsection (7) is not admissible, in proceedings under the Drug Misuse and Trafficking Act 1985, as evidence of the use or administration, by the person to whom the certificate relates, of any prohibited drug within the meaning of that Act.

[Minister's second reading speech made in—
Legislative Assembly on 20 November 1990
Legislative Council on 28 November 1990]





FIRST PRINT

TRAFFIC (AMENDMENT) BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to amend the Traffic Act 1909 with respect to:

- (a) the taking and analysis of blood samples from drivers; and
- (b) the sale, purchase and use of radar detecting devices and radar jammers; and
- (c) permissible driving hours and speed limits for certain vehicles and drivers; and
- (d) the permissible blood alcohol concentration for certain drivers.

The Bill makes related amendments to the provisions of the Crimes Act 1900 dealing with the admissibility in criminal proceedings of certificates prepared for the purposes of the Traffic Act 1909 and to the provisions of the Transport Administration Act 1988 dealing with the taking and analysis of blood and urine samples from railway workers.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or proclaimed days.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Traffic Act 1909.

Clause 4 is a formal provision that gives effect to the Schedule of amendments to the Transport Administration Act 1988.

Clause 5 is a formal provision that gives effect to the Schedule of amendments to the Crimes Act 1900.

Clause 6 is a validation of certain regulations concerning permissible driving hours for coach drivers, to make it clear that those regulations apply to all such drivers equally, whether or not a particular coach is a heavy motor vehicle.

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SCHEDULE 1—AMENDMENT OF TRAFFIC ACT 1909 IN RELATION TO THE TAKING AND ANALYSIS OF BLOOD SAMPLES**Samples to be taken by nurses in certain cases**

Section 4F requires a blood sample to be taken from a person who has been admitted to hospital after a road accident. At present the section requires the sample to be taken by the medical practitioner attending the person at the hospital. Schedule 1 (1) amends the section so as to require the sample to be taken by a suitably qualified registered nurse in a case where a medical practitioner is not present to attend the person concerned. The nurse in such a case is given the same legal indemnities as a doctor in the same circumstances.

Schedule 1 (2) (a) and (3) (b) make consequential amendments.

Procedure after sampling

When a blood sample is taken at a hospital under section 4F, the provisions of section 4G currently require the sample to be divided into three parts. One part is given to the person who provided the sample. The other two parts may be used for analysis. In practice, only one of these latter samples has been used for analysis, the other being retained for use in case the first is lost or stolen or adversely affected in some way. Due to developments in methods of analysis and secure storage of samples, the second sample is now considered unnecessary. Schedule 1 (2) (b) and (c) accordingly amend section 4G so that the section will provide for a sample to be divided into only two parts instead of three.

Testing of hospital blood sample for drugs

Blood samples taken at a hospital following a road accident are routinely tested for the presence of alcohol, but are not tested for other drugs. Under the Act at present, the only occasions on which a blood sample is tested for the presence of a drug other than alcohol are when the sample is taken following the arrest of a motorist under section 5AA. Schedule 1 (2) (d)–(f) amend section 4G so as to enable a police officer to require a blood sample taken at hospital following a road accident to be tested for other drugs as well as alcohol, but only when the accident was not attended by police or where, for some other reason, there was no opportunity for police to require the person from whom the sample was taken to undergo a sobriety test.

Schedule 1 (3) (a) and (c) make consequential amendments to section 5AB, allowing results of an analysis undertaken in accordance with section 4G (as amended) to be given in evidence in a prosecution for driving under the influence of drugs.

Degree of accuracy of analysis

Schedule 1 (4) inserts a new section 17C, dealing with the interpretation of the result of an analysis of blood or urine carried out for the purposes of the Principal Act. The scientific equipment and methods used in carrying out such an analysis produce a result that is reliable only to a particular degree of accuracy. The effect of the new section is to allow a certificate attesting to the result of an analysis to state the result in terms of a minimum concentration of alcohol or drugs present in the sample concerned. The specified minimum concentration is arrived at by subtracting from the figure produced by the analysis an amount representing the greatest error that can be produced by the proper employment of the analytical equipment and methods used. This minimum figure

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is taken to be the actual figure. The driver is thus given the benefit of any doubt that may arise from limitations on the degree of accuracy of the analysis.

**SCHEDULE 2—AMENDMENT OF TRAFFIC ACT 1909 IN RELATION TO
RADAR DETECTORS AND JAMMERS**

Schedule 2 (1) amends section 2 to insert definitions of “radar detecting device” and “radar jamming device”.

Schedule 2 (2) inserts new sections 4AD and 4AE. Under proposed section 4AD, it is an offence:

- (a) to buy or sell these devices or offer them for sale; or
- (b) to drive or stand a motor vehicle on a public street if the vehicle has one of these devices fitted or if one of these devices is being carried in the vehicle.

Under proposed section 4AE, police can demand immediate surrender of a device involved in a contravention of proposed section 4AD. If the device is on sale, it can be required to be surrendered at the point of sale. If the device is fitted to a motor vehicle and difficult to remove immediately, police can require the device to be surrendered at an appointed time and place. Similarly, officers of the Roads and Traffic Authority who, while inspecting a vehicle for any reason, come across such a device may serve a notice on the owner of the vehicle requiring its surrender to police. In addition, a court which finds an offence proven with respect to a device can also order the surrender of the device.

**SCHEDULE 3—AMENDMENT OF TRAFFIC ACT 1909 IN RELATION TO
DRIVING HOURS AND SPEED LIMITS APPLYING TO CERTAIN
VEHICLES AND DRIVERS**

Driving hours for coach drivers

The intent of clause 6, and of the amendments made to section 3 by Schedule 3 (1), is to remove any doubt that regulations may be made with respect to driving hours, mandatory rest periods and associated requirements for drivers of coaches (as defined in section 2) whether or not they are heavy motor vehicles, and that regulations already made for that purpose are valid.

Speed limits

Schedule 3 (2) amends section 4A to make it clear that the heavy penalties provided by the Act for exceeding the speed limit by more than 45 kilometres per hour apply equally whether the speed limit concerned is fixed by the Act itself, or by a road sign, or by regulations relating to particular vehicles or drivers (for example, in relation to learner drivers or drivers of heavy motor vehicles or coaches).

Schedule 3 (3) makes a consequential amendment.

**SCHEDULE 4—AMENDMENT OF TRAFFIC ACT 1909 IN RELATION TO
PERMISSIBLE CONCENTRATION OF ALCOHOL**

Schedule 4 (1) amends section 4E, which regulates the blood alcohol content of drivers. The 0.02 limit that now applies to learners, provisional licensees and unlicensed

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drivers is extended by the amendment to a wider class of drivers. The persons affected are:

- (a) any person under 25 years of age, unless the person has held a licence (apart from a learner's licence) for at least 3 years; and
- (b) drivers of public passenger vehicles (i.e. buses, taxis and private hire cars); and
- (c) drivers of coaches and heavy motor vehicles; and
- (d) drivers of vehicles carrying radioactive substances and dangerous goods.

Schedule 4 (2) makes a consequential amendment (for consistency of expression).

SCHEDULE 5—AMENDMENT OF TRANSPORT ADMINISTRATION ACT 1988, SCH. 4 (RAILWAY STAFF—ALCOHOL OR OTHER DRUGS)

Schedule 4 to the Transport Administration Act 1988 makes provision for the testing of blood and urine samples from railway workers for alcohol and other drugs in cases where they are engaged in work affecting the safety of the public. Schedule 5 to the Bill contains amendments similar to those contained in Schedule 1 in relation to motorists. The amendments:

- (a) provide for the taking of a blood or urine sample by an appropriately qualified registered nurse in cases where there is no medical practitioner in attendance at the material time (Schedule 5 (1)–(4) and (6)); and
- (b) specify the circumstances in which a blood or urine sample taken at hospital after an accident may be tested for drugs other than alcohol (Schedule 5 (5)) and prevent the giving of evidence in relation to a sample that has been analysed in other circumstances (Schedule 5 (7)).

SCHEDULE 6—AMENDMENT OF CRIMES ACT 1900

Schedule 6 amends section 414A of the Crimes Act 1900 to provide that a certificate, prepared in accordance with either the Traffic Act 1909 or the Transport Administration Act 1988, to the effect that the presence of drugs (other than alcohol) was detected in the analysis of a blood sample obtained following a road accident, or of a blood or urine sample from a railway worker, is not admissible in proceedings under the Drug Misuse and Trafficking Act 1985 as evidence of the use or administration of a prohibited drug within the meaning of that Act.

FIRST PRINT

TRAFFIC (AMENDMENT) BILL 1990

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SCHEDULE 1—AMENDMENT OF TRAFFIC ACT 1909 IN RELATION TO THE TAKING AND ANALYSIS OF BLOOD SAMPLES

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SCHEDULE 5—AMENDMENT OF TRANSPORT ADMINISTRATION ACT 1988, SCH. 4 (RAILWAY STAFF—ALCOHOL OR OTHER DRUGS)

SCHEDULE 6—CONSEQUENTIAL AMENDMENT OF CRIMES ACT 1900

TRAFFIC (AMENDMENT) BILL 1990

NEW SOUTH WALES



No. , 1990

A BILL FOR

An Act to amend the Traffic Act 1909 with respect to the taking and testing of blood samples from drivers, the sale and use of radar detection and jamming devices, the driving hours and speed limits applying to certain vehicles and drivers and the permissible blood alcohol concentration for certain drivers; consequently to amend certain Acts; and for other purposes.

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The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Traffic (Amendment) Act 1990.

Commencement

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

Amendment of Traffic Act 1909 No. 5

3. The Traffic Act 1909 is amended as set out in Schedules 1-4.

Consequential amendment of Transport Administration Act 1988 No. 109, Sch. 4 (Railway Staff—Alcohol or Other Drugs)

4. Schedule 4 to the Transport Administration Act 1988 is amended as set out in Schedule 5.

Consequential amendment of Crimes Act 1900 No. 40, s. 414A (Certificates to be evidence)

5. The Crimes Act 1900 is amended as set out in Schedule 6.

Validation

6. A regulation purporting to be in force under the Traffic Act 1909 immediately before the commencement of Schedule 3 (1) and which would have been valid, if made after the commencement of that provision, by virtue of a power conferred by section 3 of that Act, as amended by this Act, is taken to have been validly made since its making.

**SCHEDULE 1—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO THE TAKING AND ANALYSIS OF BLOOD
SAMPLES**

(Sec. 3)

- (1) Section 4F (**Blood samples to be taken in certain cases**):
 - (a) After section 4F (1), insert:

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**SCHEDULE 1—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO THE TAKING AND ANALYSIS OF BLOOD
SAMPLES—*continued***

- (1A) If there is no medical practitioner present to attend the person at the hospital, the blood sample is to be taken by a registered nurse who is attending the person and who is accredited by a hospital as competent to perform the sampling procedures.
- (b) In section 4F (3)–(7A), after “medical practitioner” wherever occurring, insert “or nurse”.
- (c) From section 4F (10), omit “intoxicating liquor” wherever occurring, insert instead “alcohol”.
- (d) In section 4F (11), after “medical practitioner” where firstly occurring, insert “or registered nurse”.
- (2) Section 4G (**Analysis of samples of blood**):
- (a) In section 4G (1), (3), (9) and (14), after “medical practitioner” wherever occurring, insert “or nurse”.
- (b) From section 4G (1) (a), omit “3 approximately equal portions”, insert instead “2 approximately equal portions”.
- (c) Omit section 4G (2), insert instead:
- (2) Of the 2 portions of a sample of blood:
- (a) one is to be used for any analysis under this section;
and
- (b) the other is to be made available to or for the use and benefit of the person from whom the sample was taken.
- (d) In section 4G (4), after “alcohol”, insert “, or of alcohol and other drugs,”.
- (e) After section 4G (4), insert:
- (4A) A member of the police force may not make arrangements under subsection (4) for the analysis of a blood sample to determine the concentration in the blood of a drug other than alcohol except in circumstances where the member of the police force has reasonable grounds to believe that, at the time of the accident concerned, the person from whom the sample was taken was under the influence of a drug other than alcohol and where:
- (a) no member of the police force attended the scene of the accident that led to the taking of the sample; or

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SCHEDULE 1—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO THE TAKING AND ANALYSIS OF BLOOD
SAMPLES—*continued*

- (b) although a member or members of the police force attended the scene of the accident, there was no reasonable opportunity to require the person from whom the sample was taken to submit, in accordance with section 5AA, to an assessment of his or her sobriety.
- (f) In section 4G (5), after “alcohol”, insert “(and, where required, of other drugs)”.
- (3) Section 5AB (**Evidence of presence of drugs**):
- (a) From section 5AB (1) (a), omit “under section 5AA”, insert instead “under section 4G or 5AA”.
- (b) In section 5AB (2), after “practitioner” wherever occurring, insert “or nurse”.
- (c) After section 5AB (4), insert:
- (4A) Subsections (1)–(4):
- (a) do not apply to proceedings brought on a charge that, by the operation of section 4F (10), cannot be laid; and
- (b) do not enable evidence to be given of or in relation to:
- (i) the presence of a drug other than alcohol; or
- (ii) the presence of a particular concentration of a drug other than alcohol,
- in the blood of a person charged with an offence under section 5 (2), as determined by an analysis under section 4G, unless the court is satisfied that the analysis was not arranged in contravention of section 4G (4A).
- (4) Section 17C:
- After section 17B, insert:
- Certificate evidence may specify minimum concentrations**
- 17C. If, in any proceedings in which evidence is permitted to be given of the results of an analysis, undertaken for the purposes of this Act, of a sample of a person’s blood or urine, evidence is given by a certificate under this Act to the effect that alcohol or another specified drug was found by the analysis to be present in the sample in a concentration not less than a specified concentration:

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SCHEDULE 1—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO THE TAKING AND ANALYSIS OF BLOOD
SAMPLES—*continued*

- (a) the certificate is to be treated as though it stated that the concentration of alcohol or of the other drug concerned was determined by the analysis to be present in the specified minimum concentration; and
- (b) the evidence given by the certificate is not open to challenge on the basis that the analysis, merely because it purports to determine a concentration in terms of a minimum, does not meet the requirements of this Act.

SCHEDULE 2—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO RADAR DETECTORS AND JAMMERS

(Sec. 3)

(1) Section 2 (**Definitions**):

In section 2 (1), insert in alphabetical order:

“**Radar detecting device**” means a device designed or apparently designed to be fitted to or carried in a motor vehicle for the purpose of detecting electromagnetic radiations from an approved speed measuring device.

“**Radar jamming device**” means a device designed or apparently designed to be fitted to or carried in a motor vehicle for the purpose of interfering with the receiving by an approved speed measuring device of reflected electromagnetic radiations.

(2) Sections 4AD, 4AE:

Before section 4B, insert:

Sale, purchase or use of radar detectors and jammers

4AD. (1) A person must not sell or offer for sale, or purchase, a radar detecting device or a radar jamming device.

Maximum penalty: 20 penalty units.

(2) A person must not drive a motor vehicle, or cause a motor vehicle to stand, on a public street if the vehicle is fitted with or is carrying a radar detecting device or a radar jamming device.

Maximum penalty: 20 penalty units.

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SCHEDULE 2—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO RADAR DETECTORS AND JAMMERS—*continued*

(3) The owner of a motor vehicle which is driven or stands on a public street in contravention of subsection (2) is guilty of an offence.

Maximum penalty: 20 penalty units.

(4) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that the device concerned was not designed as a radar detecting device or a radar jamming device but was designed for another purpose.

(5) It is a defence to a prosecution for an offence under subsection (2) or (3) if the defendant satisfies the court that, at the time of the alleged offence:

- (a) the vehicle was in the course of a journey to a place appointed by a member of the police force, an officer of the Authority or a court, in order to surrender the device; or
- (b) the vehicle was the subject of a notice, issued in accordance with the regulations, requiring the owner of the vehicle to remove the device from the vehicle within a specified time and that time had not expired; or
- (c) the defendant did not know, and in the circumstances could not reasonably be expected to have known, that the vehicle was fitted with or was carrying the device concerned.

Surrender and forfeiture of radar detectors and jammers

4AE. (1) A member of the police force who reasonably believes that:

- (a) a radar detecting device or radar jamming device is being sold or offered for sale in contravention of section 4AD (1); or
- (b) a motor vehicle is standing or being driven in contravention of section 4AD (2) because of a device fitted to or carried in the vehicle,

may require a person in possession of the device to surrender it immediately to the member of the police force or (in the case of a device fitted to a motor vehicle and not immediately removable) may by notice in writing served on the owner of the vehicle require the owner to surrender the device within a

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**SCHEDULE 2—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO RADAR DETECTORS AND JAMMERS—*continued***

specified time and in a specified manner to the Commissioner of Police.

(2) An officer of the Authority who is authorised in writing by the Authority for the purposes of this section and who finds a motor vehicle to be fitted with, or to be carrying, a radar detecting device or a radar jamming device may, by notice in writing served on the owner of the vehicle, require the owner to do either or both of the following:

- (a) remove the device (if it is fitted to the vehicle);
- (b) surrender the device within a specified time and in a specified manner to the Commissioner of Police.

(3) A person must comply with a requirement under subsection (1) or (2), whether or not he or she is the owner of the device concerned.

Maximum penalty: 20 penalty units.

(4) A court which finds an offence under section 4AD or under subsection (3) to have been proven against any person may order that the device concerned, if not already surrendered pursuant to a requirement under this section, be delivered to the Commissioner of Police within a time and in a manner specified by the court.

(5) A device surrendered as required under this section is thereby forfeited to the Crown and may be destroyed or otherwise disposed of at the direction of the Commissioner of Police.

(6) No liability attaches to any person on account of the surrender by the person, in pursuance of a requirement under this section, of a radar detecting device or radar jamming device of which that person is not the absolute owner.

**SCHEDULE 3—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO DRIVING HOURS AND SPEED LIMITS
APPLYING TO CERTAIN VEHICLES AND DRIVERS**

(Sec. 3)

(1) Section 3 (**Regulations**):

In section 3 (1) (t1), after "heavy motor vehicle" wherever occurring, insert ", or coach,".

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SCHEDULE 3—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO DRIVING HOURS AND SPEED LIMITS
APPLYING TO CERTAIN VEHICLES AND DRIVERS—*continued*

(2) Section 4A (**Speed limits**):

After section 4A (5A), insert:

(5B) A person who drives a motor vehicle on a public street at a speed that exceeds, by more than 45 kilometres per hour, a speed fixed by the regulations as the maximum speed:

- (a) at which motor vehicles of a class that includes that motor vehicle may be driven; or
- (b) at which any motor vehicle, or any motor vehicle of a class that includes that motor vehicle, may be driven by drivers of a class that includes that person,

is guilty of an offence under this Act and liable to the same penalties, and to be dealt with in the same manner, as for an offence under subsection (1A). This subsection applies only where the maximum speed fixed by the regulations is below the speed limit applicable to the length of public street on which the vehicle is being driven.

(5C) If, on a prosecution of a person for an offence under subsection (5B), the court is satisfied that the person exceeded the relevant maximum speed fixed by the regulations, but is not satisfied that it was exceeded by more than 45 kilometres per hour, the court may, to the extent that exceeding the speed so fixed constitutes an offence under the regulations, convict the person of that offence instead.

(3) Section 11AB (**Suspension or cancellation of drivers' licences by Authority**):

Omit section 11AB (4) (a), insert instead:

- (a) that involves exceeding a speed limit for the purposes of section 4A, or exceeding a maximum speed fixed by the regulations as referred to in section 4A (5B); and

SCHEDULE 4—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO PERMISSIBLE CONCENTRATION OF
ALCOHOL

(Sec. 3)

(1) Section 4E (**Prescribed concentration of alcohol in person's blood**):

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**SCHEDULE 4—AMENDMENT OF TRAFFIC ACT 1909 IN
RELATION TO PERMISSIBLE CONCENTRATION OF
ALCOHOL—*continued***

At the end of section 4E (1B) (c), insert:

; or

- (d) if the person is under 25 years of age, unless the person has held a licence (apart from a learner's licence) to drive a motor vehicle for a period of 3 years or more; or
 - (e) if that motor vehicle is being driven for hire or reward, or in the course of any trade or business, as a public passenger vehicle within the meaning of the Passenger Transport Act 1990; or
 - (f) if that motor vehicle is a coach or heavy motor vehicle; or
 - (g) if that motor vehicle:
 - (i) because it carries dangerous goods within the meaning of the Dangerous Goods Act 1975, is required by regulations under that Act, or under any code prescribed for the purposes of this paragraph by regulations under this Act, to have a sign exhibited on it; or
 - (ii) carries any radioactive substance within the meaning of the Radiation Control Act 1990.
- (2) Section 10G (**Application of Part 3A**) (as inserted by Act No. 153 of 1989):

Omit section 10G (1) (b), insert instead:

- (b) any motor vehicle which, because it carries dangerous goods within the meaning of the Dangerous Goods Act 1975, is required by regulations under that Act, or under any code prescribed for the purposes of this paragraph by regulations under this Act, to have a sign exhibited on it.

**SCHEDULE 5—AMENDMENT OF TRANSPORT
ADMINISTRATION ACT 1988, SCH. 4 (RAILWAY STAFF—
ALCOHOL OR OTHER DRUGS)**

(Sec. 4)

- (1) Clause 10 (**Blood or urine samples taken at hospitals from**

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**SCHEDULE 5—AMENDMENT OF TRANSPORT
ADMINISTRATION ACT 1988, SCH. 4 (RAILWAY STAFF—
ALCOHOL OR OTHER DRUGS)—*continued*****railway employees involved in accidents in carrying out
railway safety work):**

(a) After clause 10 (1), insert:

(1A) If there is no medical practitioner present to attend the person at the hospital, the blood or urine sample is to be taken by a registered nurse who is accredited by a hospital as competent to perform the sampling procedures.

(b) In clause 10 (2), after “practitioner” wherever occurring, insert “or nurse”.

(c) In clause 10 (3), after “medical practitioner”, insert “or any such nurse”.

(2) **Clause 11 (Blood or urine samples taken where breath analysing instrument not available):**

(a) After clause 11 (1), insert:

(1A) If there is no medical practitioner present to attend the person at the hospital, the blood or urine sample is to be taken by a registered nurse who is accredited by a hospital as competent to perform the sampling procedures.

(b) In clause 11 (2), after “practitioner” wherever occurring, insert “or nurse”.

(3) **Clause 13 (Restrictions on requiring breath test, assessment, breath analysis or sample):**

(a) In clause 13 (a), after “hospital” where secondly occurring, insert “(or, where no medical practitioner is present to attend the person, a registered nurse who is accredited by a hospital as competent to perform the sampling procedures)”.

(b) In clause 13 (a), after “medical practitioner” where secondly occurring, insert “or nurse”.

(4) **Clause 14 (Action by medical practitioner or nurse with respect to samples of blood or urine):**

After “medical practitioner” wherever occurring, insert “or nurse”.

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SCHEDULE 5—AMENDMENT OF TRANSPORT
ADMINISTRATION ACT 1988, SCH. 4 (RAILWAY STAFF—
ALCOHOL OR OTHER DRUGS)—*continued*

(5) Clause 15 (**Analysis of samples of blood or urine**):

(a) After clause 15 (1), insert:

(1A) If the blood or urine sample was obtained under clause 10, an authorised officer or a member of the police force may not make arrangements under this clause for the analysis of the sample to determine the concentration in the blood or urine of a drug other than alcohol except in circumstances where the authorised officer or member of the police force has reasonable grounds to believe that, at the time of the accident concerned, the person from whom the sample was taken was under the influence of a drug other than alcohol and where:

(a) no member of the police force or authorised officer attended the scene of the accident that led to the taking of the sample; or

(b) although a member or members of the police force or one or more authorised officers attended the scene of the accident, there was no reasonable opportunity to require the person from whom the sample was taken to submit, in accordance with clause 12, to a breath test or assessment of his or her sobriety.

(b) From clause 15 (2), omit “a drug”, insert instead “alcohol or other drugs, as the case requires”.

(6) Clause 16 (**Medical practitioners and nurses—protection from liability**):

After “practitioner” wherever occurring, insert “or nurse”.

(7) Clause 22 (**Certificate evidence of presence of drugs**):

After clause 22 (4), insert:

(5) Nothing in this clause enables evidence to be given of or in relation to:

(a) the presence of a drug other than alcohol; or

(b) the presence of a particular concentration of a drug other than alcohol,

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**SCHEDULE 5—AMENDMENT OF TRANSPORT
ADMINISTRATION ACT 1988, SCH. 4 (RAILWAY STAFF—
ALCOHOL OR OTHER DRUGS)—*continued***

in the blood or urine of a person charged with an offence under clause 4, as determined by an analysis of a sample obtained under clause 10, unless the court is satisfied that the analysis was not arranged in contravention of clause 15 (1A).

**SCHEDULE 6—CONSEQUENTIAL AMENDMENT OF
CRIMES ACT 1900**

(Sec. 5)

Section 414A (Certificates to be evidence):

(a) After section 414A (4), insert:

(4A) A certificate referred to in subsection (4) is not admissible, in proceedings under the Drug Misuse and Trafficking Act 1985, as evidence of the use or administration, by the person to whom the certificate relates, of any prohibited drug within the meaning of that Act.

(b) After section 414A (7), insert:

(7A) A certificate referred to in subsection (7) is not admissible, in proceedings under the Drug Misuse and Trafficking Act 1985, as evidence of the use or administration, by the person to whom the certificate relates, of any prohibited drug within the meaning of that Act.
